

Chapter 4

Possible false or misleading evidence to, or improper interference with, a committee hearing

Scope of the inquiry

4.1 The terms of reference require the committee to examine the following matters:

- (a) whether there was any false or misleading evidence given, particularly by reference to a document that was later admitted to be false; and
- (b) whether there was any improper interference with the hearing, particularly by any collusive prearrangement of the questions to be asked and the answers to be given for an undisclosed purpose.

4.2 In the course of the inquiry, the committee received from the President of the Senate further correspondence from Senator Heffernan alleging certain conduct in relation to Mr Grech. Senator Heffernan drew attention to information in Mr Grech's response to the Auditor-General suggesting that there may have been an attempt to improperly influence Mr Grech in respect of his evidence to the Economics Legislation Committee. Senator Heffernan also raised the issue of Mr Grech's health and the pressure he was allegedly working under and whether, by allowing Mr Grech to testify, the Treasury Department failed to respond adequately to the requirement of the Economics Legislation Committee for information, which resulted in an interference with the free exercise of its authority within the meaning of paragraph (1) of Privilege Resolution 6.¹

4.3 The committee considers that these matters, which may be characterised as improper interference with a witness in respect of his evidence, and improper interference with a committee, are better dealt with in this chapter since they are clearly not actions in consequence of Mr Grech's evidence.

False or misleading evidence by reference to a document later admitted to be false

4.4 During the hearing of the Economics Legislation Committee on 19 June 2009, Senator Abetz asked whether the Prime Minister's office had made any representations on behalf of John Grant or his firm, Ipswich Central Motors. Mr Martine reiterated his opening statement that a search of records in the Treasury Department had failed to locate any evidence of any such communication.² There followed an attempt by

1 Senator the Honourable Bill Heffernan, correspondence to the President of the Senate, dated 7 August 2009.

2 *Committee Hansard*, p. E32.

Senator Abetz to ask Mr Grech whether he had seen any such communication, an attempt which was parried by Mr Martine and the committee chair, Senator Hurley, indicating that the question had been answered. Disputation followed with other members of the committee joining in.³ Senator Abetz then indicated that a 'person, a journalist in fact', had suggested to him that there was a communication from the Prime Minister's office along lines which Senator Abetz read out to the committee:

The Prime Minister has asked if the car dealer financing vehicle is available to assist a Queensland dealership, John Grant Motors, who seem to be having trouble getting finance. If you could follow up on this as soon as possible, that would be very useful.⁴

4.5 Mr Martine again took the question, reiterating Mr Grech's evidence that there had been no phone calls from the Prime Minister's office on this matter and his own evidence that there was no trace of a document to that effect. Further disputation followed and Senator Abetz again asked the question directly of Mr Grech. In response to the question, Mr Grech spoke of his distress at seeing the articles published by Steve Lewis that morning and the natural assumption his colleagues would make that he was the source. In an apparently distressed state, Mr Grech insisted on continuing:

But it was my understanding that the initial contact I had with respect to John Grant was from the Prime Minister's office. As David [Mr Martine] has said, we have, and our IT people have, undertaken in the last 24 hours as diligent a search as possible to trace, locate through our backups and emails, which may or may not have existed, and we just cannot find it. But, and I do not hide from this, it was certainly my understanding that the original representation with respect to Mr Grant came from the Prime Minister's office. But what did I do with that representation? I did nothing with it because the Treasurer's office got onto me, and you have seen the email exchanges that emanated from that intervention. That is all I can say.⁵

4.6 Senator Abetz again asked Mr Grech whether he had seen a document of the nature previously described by Senator Abetz, and Mr Grech replied:

My recollection may well be totally false or faulty, but my recollection—and it is a big qualification—but my recollection is that there was a short email from the PMO to me which very simply alerted me to the case of John Grant, but I do not have the email.⁶

When Senator Abetz asked again whether it was similar to the email he had read out, further disputation followed. Senator Abetz raised the name, Andrew Charlton, and asked whether he had sent the email. Again, disputation followed amongst committee

3 *Committee Hansard*, pp. E32–E34.

4 *Committee Hansard*, p. E35.

5 *Committee Hansard*, p. E37.

6 *Committee Hansard*, p. E38.

members, with Mr Martine insisting that Mr Grech was unsure about the email and Senator Abetz insisting on an answer from Mr Grech.⁷ Finally, Mr Grech indicated that he deferred to 'the seniority of Mr Martine on that issue'.⁸

Was this evidence false or misleading?

4.7 The committee sought submissions on this issue from the Economics Legislation Committee as a whole, and/or from individual members. It also sought submissions from Senator Abetz, his Chief of Staff, the AFP, the Treasury Department and from Mr Grech.

The Economics Legislation Committee

4.8 Although the issue of representations from the offices of the Prime Minister and the Treasurer consumed a substantial part of the hearing, there was only brief mention of it in the committee's report:

1.5 In addition to questions regarding the bill, a number of questions were asked in relation to actions taken on behalf of individual car dealers. There was extensive questioning of Treasury officers regarding representations from Members of Parliament. These questions related to which Members of Parliament made representations and what actions were taken as a result. They dealt with procedure rather than the substance of the Bill.⁹

4.9 In reply to this committee's invitation, only Senator Hurley, Chair of the Economics Legislation Committee, provided a response, as an individual member of the committee. In relation to this particular issue, Senator Hurley wrote:

Clearly Mr Grech misled the Committee on p38 of the Hansard when he said "...but my recollection is that there was a short email from the PMO to me which very simply alerted me to the case of John Grant, but I do not have the email."

We now know that Mr Grech did have the (faked) email, and media reports state that Senator Abetz had seen it. If that is so, I would say that Senator Abetz misled the Committee by not then disclosing that he had seen that email. If the Committee had been in full possession of the facts, it might have been able to establish very quickly that the email had been faked. As it was, Senator Cameron was interrupted by me in his line of questioning about the involvement of the journalist, Mr Steve Lewis, that might have resulted in Mr Grech revealing the pressures under which the email was created. That line of questioning was cut short, with Senator Abetz's

7 *Committee Hansard*, pp. E38–43.

8 *Committee Hansard*, p. E43.

9 Economics Legislation Committee, *Car Dealership Financing Guarantee Appropriation Bill 2009*, June 2009, p. 1.

encouragement (pE44), because I believed Mr Grech was distressed and exhausted.¹⁰

Senator Abetz

4.10 In his submission to the committee, Senator Abetz reiterated the content of his statement to the Senate of 11 August 2009 and his joint statement with the Leader of the Opposition on 4 August 2009 and informed the committee 'that my questioning of Mr Grech about a particular email was pursued as a result of information received from Mr Grech and accepted by me in good faith'.¹¹

4.11 Senator Abetz then submitted that he was not a witness at the hearing and therefore gave no evidence. On this basis, he submitted, his participation was not covered by this term of reference.

4.12 Generally speaking, the questioning and commentary provided by senators at any committee hearing is not evidence, although senators may sometimes give evidence *as witnesses*. There may be occasions, however, when examining the question of whether false or misleading evidence has been given, that this committee may need to have regard to the proceedings of the subject committee as a whole, or to the conduct of senators before or after the hearing. To give an extreme example, a senator may be a party to the conduct of a witness who, with the senator's encouragement, knowingly gives false evidence to a committee. In that situation, the senator's conduct would fall within the terms of reference of an inquiry into that false or misleading evidence. It does not necessarily follow, therefore, that because a senator does not give evidence, his or her conduct is not covered by such terms of reference. But, for reasons which will become more apparent as this chapter proceeds, such is not the case here.

4.13 It is not disputed that Senator Abetz met with Mr Grech and was aware of the material that Mr Grech proposed to put before the Economics Legislation Committee in evidence. However, Senator Abetz told the Senate that he listened to Mr Grech 'because he was a person with direct knowledge of the matters in question'.¹² He believed the material to be authentic and his questions at the hearing were premised on the belief that the material was authentic. The committee does not dispute that Senator Abetz was acting in good faith on the basis of information provided to him by a source he did not doubt.

The committee notes Senator Abetz's statement that he had been told about the terms of the email by a journalist. It is also the case that information was provided in the Joint Press release of 4 August 2009 to the effect that Mr Grech showed the email to Mr Turnbull and Senator Abetz at the Sydney meeting on 12 June. However, as

10 Senator Annette Hurley, submission dated 27 August 2009.

11 Senator the Honourable Eric Abetz, submission dated 26 August 2009.

12 Senator Abetz, statement to the Senate, *Senate Debates*, 11 August 2009, p. 4420.

Senator Abetz pointed out in his statement to the Senate on 11 August 2009, these accounts are not mutually exclusive and both were true.

Mr Stansfield

4.14 Mr Stansfield (Senator Abetz's Chief of Staff) was not a participant in the inquiry and therefore had no information for the committee on this aspect of its terms of reference.¹³ He did inform the committee that he was unaware the email was false until the AFP's media statement on Monday 22 June 2009 revealed it to be so. The committee does not dispute that this is the case.

The AFP

4.15 The committee invited the AFP to provide it with any further information on its second terms of reference but the information provided by the AFP was almost exclusively relevant to part (b) of these second terms of reference and will be addressed below.

The Treasury

4.16 In Treasury's submission, 'it would be open to the Committee of Privileges to conclude that Mr Grech was an unreliable and untrustworthy witness' who appeared to have given false and misleading evidence to the hearing:

... Treasury is of the view that false or misleading evidence appears to have been given at the hearing by Mr Grech. Whether the evidence Mr Grech gave in respect of the fake email was deliberately false or merely based on a genuine or mistaken belief arises for consideration. Treasury is of the view that the evidence points to Mr Grech knowingly and deliberately misleading the Senate.¹⁴

4.17 It was Treasury's view that it was 'inherently implausible' that Mr Grech received an email from Dr Charlton making representations on behalf of John Grant:

- a. the very suggestion of misplacement or deletion of any email from the PMO (let alone one of this character) is somewhat far-fetched, bearing in mind the information technology system in place within the Treasury. Indeed, when Mr Grech did receive an email from the PMO's office in respect of Hunter Holden on 17 April 2009, he actioned it within 20 minutes;
- b. given Mr Grech's political leanings, it strains credulity to suggest that he somehow inadvertently misplaced or deleted the particular email in question. Had Mr Grech received any such email he would have understood its potential significance and would have 'handled' it accordingly;

13 Mr Brad Stansfield, submission dated 28 August 2009.

14 Treasury submission, dated 31 August 2009, p. 4; Treasury submission, dated 24 September 2009, paragraph 4.

- c. if Mr Grech had misplaced or deleted the email, as asserted by him, one would expect an inquiry to be made by him to the IT area of the Treasury in order to locate it. No such inquiry was ever made.
29. The profound misgivings which arise as a result of the above factors are magnified when regard is had to his own accounts about the matter. The key passages in his evidence to the Committee were as follows:
- ...it was certainly my understanding that the original representation with respect to Mr Grant came from the Prime Minister's office. But what did I do with that representation? I did nothing with it because the Treasurer's office got onto me...
- ...my recollection may well be totally false or faulty, but my recollection - and it is a big qualification - but my recollection is that there was a short email from the PMO to me which very simply alerted me to the case of John Grant, but I do not have the email.
30. Mr Grech has subsequently given three accounts about the creation of the fake email and the genuineness of his belief that the email he created on 5 June 2009 was a reproduction of an email he had received from Dr Charlton but could no longer locate.
31. These versions of events were given to the ANAO, Dr Henry and the Australian newspaper. They are broadly consistent in making a claim that as a result of questioning by staff in the Treasurer's office on 4 June 2009, Mr Grech volunteered that he had received a representation from the PMO in relation to John Grant. Following the conversation he went back to his office to search for an email from Dr Charlton in relation to John Grant. When none could be found he made a record which he believed accurately reflected the email he had received. From then on he held a genuine belief that he had received such a representation and so gave the answers which he did based on that genuine belief on 19 June 2009.
32. There are however significant problems with this version of events.
33. First, Mr Grech gave evidence on 4 June 2009 to Senate Estimates that he had received only one representation from the PMO in relation to Ozcar. His evidence was as follows:
- Senator Abetz - How many representations have been made by the Prime Minister's office for dealerships and how many by the Treasurer's office?
- Mr Grech - I think there has only been the one case from the PMO.
34. While Mr Grech did not name the dealer, it was well known to Mr Grech and the PMO's office that a representation had been made by Hunter Holden and referred to Treasury by the PMO. The Prime Minister gave an answer to this effect during question time on both 4 June 2009 and 15 June 2009. Mr Grech had personally responded to

an email from Dr Charlton in relation to Hunter Holden and had included reference to Hunter Holden in a comprehensive briefing on OzCar that Mr Grech prepared for the Prime Minister on 21 April 2009. According to Mr Grech's account given to the ANAO, he specifically mentioned this briefing note to the Prime Minister when he met with him on 7 May 2009.

35. Accordingly, it appears unlikely that on 4 June 2009 Mr Grech held any genuine belief that he had received a representation in relation to John Grant Motors from Dr Charlton. He testified to Senate Estimates that he thought he had received only one representation from the PMO in relation to Ozcar which was a truthful and accurate answer. He had received only one and it was in relation to Hunter Holden. (If, contrary to that view, Mr Grech did on 4 June hold a genuine belief that he had received a second representation from Dr Charlton then it would be open to conclude that his evidence to the Senate Estimates on that day was intentionally false and misleading.)
36. On the following day Mr Grech appears to have used the email which constituted the one representation he had received from the PMO's office, concerning Hunter Holden, and which had been referred to in his evidence in Senate Estimates the previous day, to create a second representation in relation to John Grant Motors.
37. When the sequence is looked at in this way, it is, in Treasury's submission, most unlikely that Mr Grech genuinely believed he was re-creating an authentic record at the time, or believed he had received any representation from the PMO in relation to John Grant when he gave evidence on 19 June 2009.
38. There are other aspects of the matter which also suggest that Mr Grech never held an honest belief that he had received a representation in relation to Mr Grant from the PMO in February. First, Mr Grech claims that following the Prime Minister's answers in question time on 4 June 2009, he raised with the Secretary that the Prime Minister may have misled the House if he inferred that he did not know what had happened with the Hunter Holden representation. This strongly suggests that at that time Mr Grech did not believe he had received a representation from the PMO concerning John Grant. If he had such a belief, one would expect him to also raise with the Secretary the fact that the Prime Minister had stated categorically to the House in his answer, that 'neither I nor my office have ever made any representations on [John Grant's] behalf', and advise the Secretary that the answer was false.
39. Secondly, on 11 June 2009 Mr Grech, in response to an FOI request from Senator Abetz, provided a bundle of documents to the Treasury in-house legal counsel with a signed cover note indicating that this was the extent of the documentation. There were no emails from the Prime Minister's office in the bundle. Shortly prior to producing this bundle Mr Grech did raise in conversation with his supervisor, the possibility that he may have received an email from Dr Charlton in relation to John Grant which he did not action and subsequently

deleted. Mr Grech was advised to search for any such document as it was covered by the FOI request. Ultimately though, Mr Grech signed off as complete a bundle which did not include any email from Dr Charlton relating to John Grant. If Mr Grech believed that the email he had created on 5 June 2009 was an authentic reproduction of an email actually received, Treasury submits that he would have either disclosed the existence of the email he had created as part of the FOI document search or sought IT assistance in tracking down the genuine version of the email. He did not take either of these steps.

40. Thirdly, Treasury email records show that Dr Andrew Charlton raised the case of another car dealership, Hunter Holden, with Mr Grech (copied to the Treasurer's office) on 17 April 2009. Mr Grech responded to this email within 20 minutes, but makes no mention in his response to Dr Charlton about the apparent referral by him two months earlier of the case of John Grant Motors – a referral which according to Mr Grech he had not responded to at that stage. From this point (and not from February 2009), Mr Grech starts to copy Dr Charlton into some emails to the Treasurer's Office on car dealership representations.

41. There is only one document which might suggest that Mr Grech believed that he had received an email from the PMO. It is a document created on 11 June 2009, the day before Mr Grech met with the Leader of the Opposition and Senator Abetz. The document is a series of possible questions which the Leader of the Opposition has confirmed Mr Grech supplied to him. The Leader of the Opposition asked a question very similar to the second dot point in the House on 15 June 2009. The question proposed by Mr Grech was:

My question is to the Prime Minister. Prime Minister, having had another week to reflect on the representations of Mr John Grant, do you stand by your statement of 4 June 2009 to this House that neither you, or any member of your Office, made any representations on behalf of Mr John Grant to the Treasurer, the Treasurer's Office, Treasury or any other party?

42. In italics, after the question, Mr Grech noted:

If he stands by the original answer - he will have misled the Parliament again

43. Two possible explanations for this statement suggest themselves. The first is that Mr Grech genuinely believed that the Prime Minister had misled the House in stating that his office had never made any representations on behalf of Mr John Grant to the Treasury. This however seems unlikely. In Mr Grech's email of 5 June 2009 to the Leader of the Opposition (and released publicly by the Leader of the Opposition), Mr Grech writes that

Swan is probably more exposed than Rudd

44. If, as Mr Grech now claims, he had an honest and genuine belief that representations had come from the PMO to Treasury, in circumstances where the Prime Minister had specifically denied such

representations to the House, then the Prime Minister would be more exposed having specifically misled the House.

45. The second, and more likely, explanation is that Mr Grech wanted the Leader of the Opposition to pursue the issue in the belief that Mr Grech had received a representation from the PMO's office.¹⁵

4.18 Treasury's view is that the objective facts point to a conclusion that such an email was never sent. The committee has set out Treasury's submission on this point fully. It is aware that it contains many adverse reflections against Mr Grech. For this reason, Treasury's submission and the relevant parts of the report were provided to Mr Grech's legal representative for any response. Had Mr Grech chosen to respond to the committee, his response would have been equally fully set out.

Mr Martine

4.19 Treasury submitted that no evidence given by Mr Martine was false or misleading:

Indeed in light of what is now known, it is clear that Mr Martine's conduct at that hearing was exemplary and assisted greatly in ensuring that the Committee was accurately apprised of the most reliable evidence available concerning communications from the Prime Minister's office in relation to the OzCar scheme. Indeed, Mr Martine's actions may have helped to mitigate any attempts by Mr Grech to mislead the committee.¹⁶

4.20 A different view was expressed by Senator Eggleston, Deputy Chair of the Economics Legislation Committee, who regarded attempts by Mr Martine and the committee chair, Senator Hurley, 'to dissuade Mr Grech from answering questions as improper conduct interfering with the capacity of a witness to give evidence to the Committee and accordingly I formally request that this issue be considered by the Committee in the general context of this matter'.¹⁷ Mr Martine, as the senior Treasury officer present, was obliged to answer the committee's questions if he felt he was in a better position to provide those answers, provided that his intervention did not constitute improper interference with the ability of a junior officer to respond to questions from the committee. That is not to say that there may not be cases where such a high level of intervention by an officer in relation to questions asked of a junior officer is objectionable, but the committee is satisfied in this particular case that there was no improper conduct by Mr Martine. Similarly, the committee does not accept Senator Eggleston's criticism of Senator Hurley's chairing of the hearing.

15 Treasury submission dated 24 September 2009, paragraphs 28–45.

16 Treasury submission dated 31 August 2009.

17 Senator Alan Eggleston, correspondence dated 11 August 2009.

Mr Grech

4.21 Mr Grech's initial response to the terms of reference was provided via a legal representative whose only comment on this aspect of the terms of reference was as follows:

As to paragraph (a) of the second matter, Hansard records what Mr Grech said at the hearing.

I submit that Mr Grech's first answer on page E 38 of Hansard speaks for itself and is a complete answer to the issue before the Committee.¹⁸

4.22 Mr Grech's first answer on page E 38 was as follows:

My recollection may well be totally false or faulty, but my recollection—and it is a big qualification—but my recollection is that there was a short email from the PMO to me which very simply alerted me to the case of John Grant, but I do not have the email.

In his statement to the Auditor-General, Mr Grech gave several reasons for his response to the Economics Legislation Committee:

When I appeared before the Senate Committee on Friday 19 June 2009, there were FIVE key reasons why I could not give the Senate a definitive response ruling out the possibility that the PMO had first raised the case of John Grant with me. Those reasons are as follows:

(1) It was⁹⁸ [See footnote 86.] and remains my genuine recollection that I had received an e mail from Andrew Charlton of the PMO regarding John Grant on or around 19 February 2009.

(2) I had stated this directly to the Treasurer's Chief of Staff, Mr Chris Barrett, at a meeting that I attended with him at his request on Thursday 4 June 2009. I told Mr Barrett – in the company of Andrew Thomas and Amanda Robbins from the Treasurer's Office that it was my belief that I had received an email from Andrew Charlton raising Mr Grant's case on or around 19 February 2009. Mr Barrett said that he would check and get back to me. He did not get back to me. Rather, what happened was that two weeks later on the evening of 18 June 2009 I called Mr Barrett. During the course of our conversation Mr Barrett said words to the effect of, 'You must have confused Grant with someone else in referring to a possible email from Andrew Charlton'.

(3) The Treasury IT team undertook a search of the Treasury e mail system, including back up servers, on 18 June 2009 and on the morning of 19 June 2009. Although they could not find any e mails from Andrew Charlton to me for the months of February and March 2009, the SES Band 2 officer with responsibility for IT, Ms Deidre Gerathy, informed Mr David Martine and me on the morning of 19 June 2009 – just a couple of hours before we were due to appear before the Senate – **that for some**

18 Mr John Wilson, submission on behalf of Mr Godwin Grech, dated 28 August 2009, paragraphs 43–44.

unexplained reason the Treasury back up servers failed to work on 3 critical days in February 2009 – one of which was Friday 20 February 2009.

Mr Martine and I were told clearly and without qualification by Ms Gerathy and her IT team that this meant that if I had received an e mail from Andrew Charlton on Friday 20 February 2009 and it had been deleted that same day – Treasury IT would not be able to trace it.

Given that Andrew Thomas from the Treasurer's Office initiated contact with me about Mr Grant later that same day, i.e. 20 February 2009, it then occurred to me that, rather than the explanation for me not being able to locate an email from Mr Charlton about Mr Grant being that (as I had hitherto been surmising) it had been received by me on 19 February 2009 and then deleted by me because Mr Thomas's approach on the same subject on that day had overtaken the matter, the reason that I had not been able to locate the Charlton email was that it was, in fact, sent on 20 February 2009.

(4) At around 11.30am on the morning of Friday 19 June 2009, I received a message from the personal assistant to the Deputy Secretary of Treasury, Mr Jim Murphy, to call Mr Murphy in Sydney urgently.

I called Mr Murphy and he said, 'If you are asked any questions in the Senate this afternoon about John Grant and the Prime Minister or the PMO you should simply say that you've confused the Grant case with some other case'. Mr Murphy also said, 'It is very important that you do not make any trouble'.⁹⁹

(5) Just prior to my and Mr Martine's appearance before the Senate Committee, the Treasurer's Office, presumably with the authority of the PMO, agreed to release most of the e mails relating to John Grant, the Treasurer's Office, the Treasurer and me to the Committee. Both Mr Martine and I were surprised by this move, and I saw it as an attempt by the PMO to seek to divert attention away from any possible involvement of the PMO in the John Grant case.

In themselves, these factors did not mean that there was a Charlton e mail on John Grant buried somewhere in the system, but they did mean that I could not responsibly go into the Committee that afternoon and hold my hand on my heart and say that there was definitely no e mail from Charlton.

Footnote 99 to the ANAO report was as follows:

⁹⁹ ANAO explicitly asked Mr Murphy about the lead-up to evidence given to the Senate Committee on 19 June 2009. In this respect, Mr Murphy testified to ANAO that:

- he, Mr Martine and Mr Grech met on the evening before the hearing at which Mr Murphy said to Mr Grech that: 'Look, there's obviously a discrepancy here. You said you thought you saw an email. No-one can find the email. We know it's not in the Treasury. We checked the systems. Look, are you sure you're not confused? You know, there's lots of traffic. Are you sure you're not confused?'; and 'You say what you want to say. You're the one who has to give the evidence. But are you sure you have not confused yourself? So just take that on board because

if you are saying one thing and we can't find a record of it, well, something's awry. We can keep checking, but something is awry.'; and

- Mr Grech 'was never told by us to say anything other than what he thought because he is the only one who really knew'.¹⁹

Mr Grech also addressed this matter in his statement published in *The Australian* on 4 August 2009:

There were three key reasons why I would never agree to release my record of exchange:

1. It was only a record and I could not be 100 per cent certain that there was a genuine exchange;
2. I was never going to mislead the Senate or perjure myself to the Senate; and
3. releasing the record of exchange would have immediately resulted in me being the subject of all attention – which I never wanted.

Despite the enormous pressure I was under, and my absolute determination to complete OzCar – I held firm and did not mislead the Senate.

The developments on the morning of 19 June 2009, especially the advice that Mr Martine and I were given about the failure of the Treasury IT back up servers on 20 February put me in an even more difficult situation.

Given that Mr Martine and I were being told that if I had received an e mail from Andrew Charlton on the 20th of February – and I had deleted it that day, it could not be traced, I then believed that it was indeed possible that my general recollection of the Charlton e mail was correct but that it had come in on the 20th rather than the 19th.

This meant that I could simply not go into the Senate that afternoon and put my hand on my heart and swear before the Senate that I had never received an e mail from the PMO on Mr Grant. It was – and remains- my recollection that there was an e mail. But we could not find [it].

4.23 The committee received submissions disputing aspects of Mr Grech's account, including from Mr Barrett and Treasury on behalf of Mr Martine and Mr Murphy, but received no further submissions from Mr Grech or his legal representatives on this matter.

Was there any other false or misleading evidence?

4.24 As well as giving false and misleading evidence based on a non-existent and fabricated email, Treasury submits that Mr Grech also gave false or misleading evidence on two other matters.

¹⁹ Australian National Audit Office, *Representations to the Department of the Treasury in Relation to Motor Dealer Financing Assistance*, Report No. 1 2009–10, p. 97n.

4.25 The first was in relation to questions from Senator Joyce about the level of attention John Grant received relative to other dealers:

25. Mr Grech may also have mislead [sic] the Committee in the following passage of his evidence:

Senator Joyce - I have just one question. Mr Grech, how many other dealers did you give the level of attention and the level of advocacy that you gave to Mr Grant? Would you, if we asked for it, be able to table the emails and the replies and the correspondence to prove the case?

Mr Grech - In answer to your question, Senator, I will not deny the fact that the case of Mr Grant was -

Senator Joyce - Special?

Mr Grech - It was labour-intensive.

Senator Joyce - It was very labour-intensive, I suggest?

Mr Grech - It was labour-intensive.

26. There is little evidence that Mr Grant's case was in fact labour intensive in either relative or absolute terms. The ANAO report concludes that only moderate assistance was given to John Grant. On Mr Grech's account to the ANAO, his assistance consisted of:

a) discussing the limited options available with Mr Grant and the Treasurer's office on 20 February 2009;

b) raising the matter with Ford Credit at a meeting on 23 February 2009;

c) taking a call from Mr Grant on the afternoon of 23 February 2009; and

d) making a further call to Mr Grant on 27 February 2009.²⁸

27. A description of this as "labour intensive" in circumstances where the Committee was exploring whether political pressure was applied to Mr Grech to increase his assistance was, in Treasury's submission, a misleading answer. Treasury considers that the answer was probably deliberately misleading.²⁰

4.26 The second matter related to questions asked by Senator Cameron regarding Mr Grech's dealings with Steve Lewis:

Following evidence to the Committee by Mr Grech that he had spoken to journalist Steve Lewis on four occasions the day before the Committee hearing, Mr Grech was asked by Senator Cameron how many times he had spoken to journalist Steve Lewis in the previous 12 months. Mr Grech responded:

'I don't know the guy',

20 Treasury submission dated 24 September 2009, paragraphs 25–27.

When asked whether he initiated any of the phone calls, Mr Grech answered:

'No'.

Mr Grech then said:

'He approached me. I did follow up on one occasion just to clarify a point that he was making but he approached me'.

Senator Cameron then asked: 'You indicated earlier in your evidence that you were surprised to see the reporting in relation to Mr Lewis's report. Is that because you had denied the existence of any correspondence between the Prime Minister's department and Mr Lewis [sic] to Mr Lewis? Is that the position you put to Mr Lewis?' Mr Grech replied:

'That is correct'.

On 22 June 2009, Mr Grech gave a very different version of events to me in a telephone conversation he initiated. Mr Grech advised me that he had rung Mr Lewis on 16 June 2009 and when Mr Lewis asked about the email Mr Grech read out to him the contents of the email which Mr Grech had prepared himself and which represented that there was correspondence between Mr Grech and the Prime Minister's office.

Further, on 5 August 2009 Mr Lewis published an article in the *Daily Telegraph* which gives a very different account of his dealings to the one given by Mr Grech to the Committee. According to that article, Mr Grech initiated the contact with Mr Lewis, Mr Grech volunteered information about the Ozcar scheme and, importantly, Mr Grech asserted to the journalist that the Prime Minister's office had made representations on Mr Grant's behalf.

This version, given by Mr Lewis, is broadly consistent with the version of events given by Mr Grech to me on 22 June 2009. It is largely inconsistent with the tenor of the evidence he gave to the Committee which could, based on this information, properly be described as misleading. Indeed, a finding that it was deliberately false may be open.²¹

Moreover, Treasury provided the committee with copies of SMS and phone records for Mr Grech which showed him receiving on his Treasury Blackberry details of Steve Lewis's phone number on 15 June 2009. Calls to this number were made from Mr Grech's office landline on 16 June (3 calls), 17 June (1 call) and 18 June (3 calls). A further call to that number was made on 18 June from Mr Grech's Treasury mobile phone.²² Treasury observes that this material is incomplete in a number of respects:

It does not include any information on telephone calls received [*emphasis in original*] by Mr Grech's mobile or blackberry from the telephone number

21 Treasury submission dated 31 August 2009, attachment setting out Mr Grech's evidence regarding his contact with Mr Lewis.

22 Treasury submission dated 31 August 2009, attachment, list of numbers called from Mr Grech's office and mobile phones and Blackberry.

which was the source of the above SMS message or from Mr Lewis. Optus and Telstra advise that they would need a subpoena (or some other compulsive instrument) to extract that information. This would be a matter for the Committee of Privileges to pursue should it wish to do so.

It does not include any information on telephone calls made from or received by Mr Grech's landline, blackberry or mobile numbers to any other persons possible involved in a relevant prearrangement.²³

For example, Mr Lewis, in his article in the Daily Telegraph on 5 August 2009, refers to a 45 minute phone call he received from Mr Grech on 16 June 2009 from a Treasury phone prefix 6263 (Mr Lewis does not give the extension number).

4.27 The committee was also provided by the AFP with copies of correspondence between Mr Grech and Mr Turnbull that confirmed that Mr Grech contacted Steve Lewis, gave him details of the email and subsequently provided him with a 'teaser' as the basis of a story to be published by Steve Lewis on the morning of the hearing.²⁴

4.28 On the basis of this evidence, the committee is of the view that Mr Grech's evidence to the Economics Legislation Committee was untrue or misleading in the following respects:

- His reference to the case of John Grant as being 'labour intensive' does not accord with the description given by Treasury of the work he did on that case, compared with work the committee is aware he did on the case of Hawkesbury Valley Holden involving multiple emails and phone calls.
- His account of his dealings with Steve Lewis is not consistent with the version given by Steve Lewis in his *Daily Telegraph* article on 5 August 2009 and is also incompatible with the record of phone calls to Steve Lewis's number from Mr Grech's Treasury office, mobile and Blackberry numbers.
- In telling the committee that he had a recollection of an email from the Prime Minister's office regarding John Grant, false or faulty though his recollection may have been, Mr Grech did not disclose that he had recreated a record of the email that he asserts he believed existed.

See paragraphs 1.22 and 5.5 to 5.8 for a discussion of the consequences of Mr Grech's medical incapacity to participate in the inquiry on the committee's ability to reach conclusions.

23 Treasury submission, dated 31 August 2009, p. 3.

24 AFP submission dated 11 September 2009, attachments, emails between Mr Grech and Mr Lewis and Mr Grech and Mr Turnbull, dated 16 and 17 June 2009. Also see chapter 2, paragraph 2.13–2.16.

Collusive pre-arrangement of questions and answers for an undisclosed purpose

4.29 In a response to this committee's first terms of reference (see chapter 3), the chair of the Economics Committee, Senator Hurley, alluded to:

... allegations that one of the opposition committee participants (Sen Abetz) had met with one of the witnesses to discuss the nature of the evidence to be given. If these allegations are correct then the manipulation of the committee proceedings that resulted would inevitably have impacted on the media response.²⁵

The question for the committee is whether there was any pre-arrangement of questions and answers for the hearing and, if so, whether this constituted an improper interference with the hearing of the Economics Legislation Committee on 22 June 2009.

4.30 It is a matter of record that Mr Grech met with Mr Turnbull, Senator Abetz and Senator Abetz's Chief of Staff, Mr Stansfield, in Sydney on Friday, 12 June 2009. At the meeting, Mr Grech gave an account of the OzCar situation and representations made on behalf of Mr Grant. He showed those present a copy of the alleged email from Dr Charlton and notes of its content were taken. Mr Grech also provided Mr Turnbull with a list of possible questions to be asked of the Prime Minister and Treasurer.²⁶ Further discussion of the hearing took place in correspondence between Mr Grech and Mr Turnbull and Mr Grech also promised to supply questions as a guide for Senator Abetz to ask of Ford Credit.²⁷

4.31 The meeting and, indeed, the committee inquiry itself, was suggested by Mr Grech in an email to Mr Turnbull on 5 June 2009, as follows:

Malcolm

Perhaps one way of getting me before a Committee to give evidence is to refer the OzCar Guarantee Bill, which is scheduled for Senate consideration in just over a week, to a Committee Inquiry.

Although we will be silly not to allow the Bill through, a short Committee inquiry could be useful.

But it is important that any inquiry involve only me from Treasury.

25 Submission by Senator Annette Hurley, Chair, Economics Legislation Committee, dated 27 July 2009.

26 See chapter 2, paragraphs 2.11–2.12; Senator Abetz, submission dated 26 August 2009, attachment, OzCar: Possible questions; Treasury submission, dated 18 August 2009, attachment, OzCar: Possible questions; AFP submission, dated 11 September 2009, attachment, OzCar: Possible questions; statement by Mr Grech published in *The Australian*, 4/8/2009.

27 AFP submission, dated 11 September 2009, attachment, email from Mr Grech to Mr Turnbull, dated 14 June 2009.

Once this gets more momentum, they may try to stop me from appearing and send up one of my bosses instead.

I am the only person in Treasury to have worked on OzCar – quite remarkable really given that they normally allocate teams of about 10 people to such projects; but I have carried this on my own from the very start.

My point is that you will be on firm ground if you demand that only I appear.

I am happy for you to start using my name in Parliament or in media interviews when pressing for this.

In your interview with the ABC this morning, you referred to a Treasury official. I am OK for you to refer to me publicly to make it clear who you are after.

Also, with Swan daring you to haul up the relevant Treasury staff for investigation in Parliament on Thursday – you can simply dare him to follow through with his 'offer'.

I really do believe there is meat in this one.

Swan is probably more exposed than Rudd. Sure he disclosed the fact that he was making representations for Grant – but what is not appreciated is what I did – with the approval of the TO and Swan – in trying to get finance for Grant. Ford Credit and the subsequent decision by ERC to allow Ford Credit to participate in OzCar – with Swan as ERC chair – is relevant to all of this.

Perhaps we should talk to sort out next steps.

Also, I am happy to meet with you and perhaps Abetz (no staffers) – to show you the various e mails [sic] I have.

This may help you decide how strong you may want to push.

Let me know what you want to do.

Godwin

5 June 2009²⁸

4.32 Senator Abetz, who provided a copy of this email to the committee, stated to the committee that there was no collusive prearrangement of either the questions to be asked at the hearing or the answers to be given. Senator Abetz wrote that he met with Mr Grech 'in the same way as committee members frequently meet with witnesses before committee hearings'.²⁹

It should be noted that no document containing proposed questions and answers for the hearing on 19 June 2009 has ever been located. This is consistent with Senator

28 Senator Abetz, submission dated 26 August 2009, attachment, email from Mr Grech to Mr Turnbull, dated 5 June 2009.

29 Senator Abetz, submission dated 26 August 2009.

Abetz's submission that there was no collusive prearrangement of questions or answers.

4.33 Senator Abetz also quoted advice from the Clerk of the Senate to the Leader of the Opposition in the Senate, Senator Minchin, as follows:

There is nothing to prevent a Senator or other person discussing a witness's evidence with a witness before a hearing ... but serious privilege issues could arise if a conversation contained any element of influencing, or attempting to influence, a witness in respect of the witness's evidence.³⁰

Senator Abetz stated to the committee that:

... prior to the Economics Legislation Committee hearing on 19 June I had no such conversation with any witness. Dealing specifically with the various examples given by the Clerk, I can assure the Committee:

- I offered no inducements and made no threats in relation to the evidence to be given;
- I did not rehearse or script the evidence to be given by any witness;
- I did not coach any witness as to the evidence to be given;
- I did not suggest to any witness that particular evidence should be given, or that particular evidence should be withheld, or that evidence should be given in a particular way;
- I did not suggest to any witness that the evidence should be changed in any way; and
- I did not suggest to any witness that evidence should be given that could be false or misleading.³¹

Senator Abetz also submitted to the committee that, in relation to the phrase 'undisclosed purpose' in the terms of reference, '[a]t no stage, to my knowledge, has any Senator been required to "disclose" the "purpose" of their questions'.³²

4.34 The fact that questions asked by senators may often have a political motive is commonplace and unremarkable. Senators have an important role in holding governments to account. As noted by the Clerk of the Senate:

Free states work through party politics. The ultimate safeguard against the misuse of power by a government is the ability of its opponents and rivals to find out about, and draw attention to, its mistakes and misdeeds.

30 Senator Abetz, submission dated 26 August 2009.

31 Senator Abetz, submission dated 26 August 2009.

32 Senator Abetz, submission dated 26 August 2009.

Accountability is not a refined process which operates on a refined plane, above sordid politics.³³

4.35 In the joint press statement of 4 August 2009, Senator Abetz and Mr Turnbull said of the Sydney meeting:

9. The meeting was held on 12 June. Present were Mr Grech, Mr Turnbull, Senator Abetz and Senator Abetz's Chief of Staff. Mr Grech spoke freely and naturally, and neither Senator Abetz nor Mr Turnbull had any reason to doubt the truth of what this senior and well respected public servant had to say.
10. Mr Grech began by stating that on 19 February 2009 he had received an email from Andrew Charlton in the Prime Minister's Office seeking assistance from OzCar for John Grant Motors. He showed Senator Abetz and Mr Turnbull a copy of the email. It appeared to have been received by Mr Grech at his Treasury account at 2.01 pm on 19 February and there was no reason to suspect that it was not genuine. Senator Abetz and Mr Turnbull took an abbreviated note of its contents but did not take a copy of it.
11. At the meeting Mr Grech told Senator Abetz and Mr Turnbull about his conversations with Mr Swan's office, Mr Grant, and Ford Credit, the substance of which is now on the public record.
12. At that meeting Mr Grech provided Senator Abetz and Mr Turnbull with a further list of possible questions to the Prime Minister and Treasurer concerning OzCar (attached and marked "C").
13. Neither Mr Turnbull nor Senator Abetz had any reason to doubt the truth of what Mr Grech had told them.³⁴

4.36 The joint press statement was made partly to respond to allegations made by Mr Grech in *The Australian* that morning. In that statement Mr Grech had implied that Opposition interest in John Grant had led him to agree to meet Mr Turnbull and Senator Abetz in Sydney on 12 June because he was fearful that the Opposition 'may seek to use the John Grant drama to delay or frustrate the Bill with the consequences being blamed in part at least on both the Government and then me'.³⁵ This and further claims in Mr Grech's statement are contradicted by the terms of Mr Grech's email to Mr Turnbull of 5 June, quoted in full above. They were also disputed in the joint press statement.

4.37 In his submission to the committee, Mr Stansfield (Senator Abetz's Chief of Staff) confirmed the substance of Senator Abetz's statement to the Senate on 11 August 2009 and the joint press statement of 4 August 2009, and informed the

33 Harry Evans, 'Senate estimates hearings and the government majority in the Senate', Address to the National Press Club, 11 April 2006.

34 Senator Abetz, submission dated 26 August 2009, attachment, Joint press release.

35 Godwin Grech, statement published by *The Australian*, 4 August 2009.

committee that neither he nor Senator Abetz had any conversations with any witness of the kind referred to by the Clerk in his advice to Senator Minchin.³⁶

4.38 It was Treasury's submission that, in view of the extent and nature of the contact between Mr Grech and members of the Opposition, principally Mr Turnbull:

... it may even be that the reason for the *Car Dealership Financing Guarantee Appropriation Bill 2009* being referred to a Senate Committee was specifically, and for no other reason, to facilitate Mr Grech giving answers in relation to what representations he had received from the Treasurer's and the Prime Minister's office.³⁷

4.39 The committee is satisfied that there was no inappropriate pre-arrangement of questions and answers for the hearing. The Treasury submission nevertheless raises (albeit in a speculative manner) the question of why the bill was referred to the Economics Legislation Committee at all. It does appear to the committee that Mr Grech initiated the sequence of events which resulted in the referral of the bill to the committee. Mr Grech urged that course upon Mr Turnbull and Senator Abetz. There is no evidence that either man took Mr Grech at anything other than face value in acting in good faith on the information provided by him.

4.40 This then raises difficult issues for senators who receive information from a great many sources, a question of general interest to all senators. The free flow of information is vital to the Senate's ability to conduct inquiries into matters of public policy and administration. It is a corollary of the great principle of freedom of speech in parliament. But as this case shows, senators cannot always rely on information being provided to them in good faith. There will be occasional instances, like this one and like the situation encountered by the committee in its 72nd Report,³⁸ where senators need to exercise caution. Where the information is a leak from an unauthorised source, senators need to be circumspect about the motives of the leaker.

Was there an improper interference with the hearing?

4.41 The committee received only one submission on this point, from the Chair of the Economics Legislation Committee, Senator Hurley, on her own behalf. Senator Hurley considered that the hearing on 19 June was:

... at least a gross misuse of the committee process. If the proceedings were the subject of prior scripting, it is clear that Mr Grech could have been asked, and dealt with, the email early in the hearings. It seems to me that in

36 Mr Brad Stansfield, submission dated 28 August 2009.

37 Treasury submission dated 24 September 2009, paragraph 49.

38 Committee of Privileges, 72nd Report, *Possible improper action against a person (Dr William de Maria)*, PP No. 117/1998. For a summary of this report, see the committee's 125th Report, pp. 158–59.

hindsight that Mr Grech drew out the questioning for maximum theatre and effect.³⁹

Senator Hurley had strong criticism of her Opposition colleagues on the committee:

Committee members do meet with witnesses from time to time to discuss matters relating to the Committee inquiry generally. They might then build up a line of questioning that leads to an answer they clearly expect. They often, but not always, refer to the fact they have had a meeting with the witness.

The difference in this case is that the Liberal opposition had information from a leaked source that they could have made public in a number of ways, especially through parliamentary processes. Instead they chose to make a partial revelation through a committee hearing that was not strictly relevant to the topic and in a way that deceived the majority of committee members. The Committee, in good faith, made time available to question a matter that seemed to be in the public interest to explore. The good intentions of the Committee were exploited by the Liberal participants at the hearing who chose to collude with a witness to produce an outcome that had much more to do with providing fodder for the media than getting information for the public good. That is, the Liberal members used the Committee as a way of releasing information, rather than getting information, while maintaining the deception that they had no more knowledge of the matter than other committee members.⁴⁰

4.42 No other members of the committee responded to this committee's invitation. It is apparent from Senator Hurley's comments that the Economics Legislation Committee had made provision, in the public interest, for exploring this controversial matter by scheduling two hours for the Treasury witnesses compared with half an hour for the other witnesses, even though the expected evidence was not likely to be directly relevant to the bill.

4.43 What was not known at the time to Senator Abetz was that the information he was exploring to establish whether there had been improper interference in the OzCar scheme by the Prime Minister and the Treasurer was based on a forged document. While the inquiry itself was undoubtedly a legitimate use of Senate procedures to explore a matter of possible misfeasance, it was based, unbeknown to all but Mr Grech, on a falsified document. In this sense, there was an improper interference with the hearing of the Economics Legislation Committee on 19 June 2009 and the chief agent of that improper interference was Mr Grech. However, without having the opportunity to speak to Mr Grech, it is difficult for the committee to take any further the issue of whether any contempt was committed. As previously noted, it is not suggested that Senator Abetz misled the committee.⁴¹

39 Senator Annette Hurley, submission dated 27 August 2009.

40 Senator Annette Hurley, submission dated 27 August 2009.

41 See paragraphs 4.12 – 4.13.

4.44 Whether the committee should nonetheless find that a contempt was committed in this regard is considered in chapter 6.

Possible interference with Mr Grech in relation to his evidence

4.45 After the publication of the Auditor-General's report on 4 August 2009, the suggestion was raised by Senator Heffernan that Mr Grech had been placed under pressure in respect of his evidence. Senator Heffernan wrote to the President of the Senate who referred the correspondence to the committee to consider in the context of its initial terms of reference. Having received further terms of reference on 12 August 2009, the committee considered that these matters were more appropriately considered in the context of its second terms of reference. This is because the matters raised by Senator Heffernan were more closely related to the theme of possible interference with a committee (through possible interference with a witness) than to the theme of possible adverse actions taken against a witness in consequence of his evidence.

Was Mr Grech placed under pressure in respect of his evidence?

Mr Murphy

4.46 Senator Heffernan quoted a reference by Mr Grech in his statement to the Auditor-General to an alleged telephone call from Mr Jim Murphy, Executive Director (or deputy secretary), Markets Group, Treasury. According to Mr Grech:

At around 11.30am on the morning of Friday 19 June 2009, I received a message from the personal assistant to the Deputy Secretary of Treasury, Mr Jim Murphy, to call Mr Murphy in Sydney urgently.

I called Mr Murphy and he said, 'if you are asked any questions in the Senate this afternoon about John Grant and the Prime Minister or the PMO you should simply say that you've confused the Grant case with some other case'. Mr Murphy also said, 'It is very important that you do not make any trouble'.⁴²

Senator Heffernan concluded that:

The alleged conversation between the Deputy Secretary of the Treasury and Mr Grech raises the issue whether a witness before a Senate committee was urged by another person to give false and misleading evidence. Resolution No. 6 of the Senate Privilege Resolutions ... If Mr Grech's statement is correct, there was at least an attempted conspiracy to have false evidence given to a Senate committee.⁴³

42 Australian National Audit Office, *Representations to the Department of the Treasury in Relation to Motor Dealer Financing Assistance*, Report No. 1 2009–10, pp. 96–97.

43 Senator the Honourable Bill Heffernan, correspondence to the President of the Senate, dated 7 August 2009.

4.47 On 11 August 2009, after the President of the Senate had made a statement giving precedence to the committee's second terms of reference, Senator Heffernan, by way of a question to the President, repeated these allegations in the Senate:

Mr President, can I seek an explanation about a letter I sent to you on the matter of what I think are allegations of criminal perjury raised by a Treasury official coaching the witness before he appeared at the committee. Will that be dealt with under the previous privileges matter or under my privileges matter? This is about a Treasury official, according to the Audit Office, according to the witness, making allegations that he was coached that, 'If you change your evidence, say you forgot or you were confused if they approach this matter in the committee.' I think that is a matter of criminal conspiracy.⁴⁴

The committee notes that, in his correspondence to the President, Senator Heffernan did not refer to the qualifying footnote appended to Mr Grech's allegation in the Auditor-General's report:

⁹⁹ ANAO explicitly asked Mr Murphy about the lead-up to evidence given to the Senate Committee on 19 June 2009. In this respect, Mr Murphy testified to ANAO that:

- he, Mr Martine and Mr Grech met on the evening before the hearing at which Mr Murphy said to Mr Grech that: 'Look, there's obviously a discrepancy here. You said you thought you saw an email. No-one can find the email. We know it's not in the Treasury. We checked the systems. Look, are you sure you're not confused? You know, there's lots of traffic. Are you sure you're not confused?'; and 'You say what you want to say. You're the one who has to give the evidence. But are you sure you have not confused yourself? So just take that on board because if you are saying one thing and we can't find a record of it, well, something's awry. We can keep checking, but something is awry.'; and
- Mr Grech 'was never told by us to say anything other than what he thought because he is the only one who really knew'.⁴⁵

4.48 The committee sought a response from Mr Murphy which Treasury provided on his behalf and with his approval.⁴⁶ Treasury conceded that the matter was indeed a serious one if, as acknowledged by Senator Heffernan, Mr Grech's statement was correct. Treasury noted the Auditor-General's qualification of Mr Grech's statement in footnote 99 in the report and submitted that Mr Grech's statement was false for the following reasons:

44 *Senate Debates*, 11 August 2009, p. 4418.

45 Australian National Audit Office, *Representations to the Department of the Treasury in Relation to Motor Dealer Financing Assistance*, Report No. 1 2009–10, p. 97n.

46 Owing to a family bereavement, Mr Murphy was on leave at the time the committee sought his response. Treasury submission dated 24 September 2009, covering letter.

53. First, Mr Murphy denies the allegation made by Mr Grech. In his evidence to the ANAO, Mr Murphy confirms that he met with Mr Grech on the evening before the hearing and said to Mr Grech ...”You say what you want to say. You’re the one who has to give the evidence. But are you sure you have not confused yourself?”. According to Mr Murphy, the call on the morning of the 19th did not deal with question of Mr Grech's evidence to the committee in any substantive way. There is no reason to question his version of the telephone call. Mr Grech, on the other hand, has revealed himself through the material obtained by Treasury from Mr Grech's IT system and released publicly by others, to be a person who is likely to be dishonest and who has had little regard for his duties as a public servant.
54. Secondly, it is clear from other evidence that there was no reason for Mr Murphy to make such a call and speak in the terms alleged by Mr Grech. At 5.45am on the morning that this conversation is alleged to have occurred, Mr Grech had circulated an email, the recipients of which included Mr Murphy. In that email Mr Grech said in respect of a telephone call from journalist Steve Lewis:
- Lewis wanted me to confirm that there had been 'correspondence' and 'communication' between the PMO and Treasury on Grant. I denied that there was any communication. He persisted and asked 'Are you sure?'. I again denied any communication...When Lewis called the fourth time at around 8.00pm, he again asked about the PMO communication. I again denied it....At estimates today, I plan on playing with a straight bat and saying it as I understand the true facts to be'.
55. In these circumstances, where Mr Grech six hours earlier, specifically disavowed that he had any communication with the PMO in relation to John Grant and had confirmed that his evidence would be that there was no communication between the PMO and Treasury, there is simply no reason for Mr Murphy to make a call of the kind described by Mr Grech to ask him to change his evidence.
56. Thirdly, the allegation by Mr Grech is contained in a document, authored by Mr Grech for the purpose of justifying his own conduct and casting it in the best possible light. In order to do so he makes many implausible statements in an attempt to justify or explain his own conduct.⁴⁷

Treasury then gives examples of these implausible statements and concludes:

59. When these factors are considered, the explanation offered by Mr Grech looks like a self serving and disingenuous attempt to explain away improper conduct. The allegations against Mr Murphy, in Treasury's submission are in the same category; an attempt by Mr

47 Treasury submission, dated 24 September 2009, paragraphs 53–56.

Grech to direct attention away from his own misconduct by false statements.

60. For these reasons, it is Treasury's submission that the Committee should find that Mr Murphy did not make the statements attributed to him by Mr Grech and was not involved in any attempt or conspiracy to have false evidence given to a Senate committee.⁴⁸

4.49 In respect of the inconsistency between Mr Grech's allegation about Mr Murphy and the account of events given by Treasury, the committee does not dispute Treasury's account.

Mr Barrett

4.50 Another possible source of pressure is suggested by Mr Grech in an email to Mr Turnbull on the night of the Press Gallery ball. Mr Grech forwarded a copy of his communication to Steve Lewis of a 'teaser' for possible publication before the hearing and added:

Swan's office told me tonight that whilst they want me to appear on Friday – I must be accompanied by my bosses (probably David Martine and/or Jim Murphy). Chris Barrett has instructed that I say nothing or very little. (*emphasis in original*)⁴⁹

4.51 The committee put this allegation to Mr Barrett who responded in detail, including in his submission to the committee material that he had provided under oath to the AFP.⁵⁰ Mr Barrett informed the committee that he had no contact with Mr Grech on this date (17 June 2009) but that on two occasions when he had discussed with Mr Grech the issue of representations from the Prime Ministers' office on behalf of John Grant:

I note in passing that in both of these conversations Mr Grech appeared to offer political staff (and a Departmental Liaison Officer) an opportunity to acquiesce in his lying to a Senate Committee. When seen in the broader context of facts now known in the public domain, this appears to point to a pattern of behaviour.⁵¹

In respect of the inconsistency between Mr Grech's allegation about Mr Barrett and the account of events given by Mr Barrett, the committee does not dispute Mr Barrett's account.

48 Treasury submission, dated 24 September 2009, paragraphs 59–60.

49 AFP submission, dated 11 September 2009, attachment, email from Mr Grech to Mr Turnbull, dated 18 June 2009.

50 See paragraphs 2.6 and 2.22–2.23.

51 Submission from Mr Chris Barrett, dated 27 October 2009.

Was there any other possible source of pressure before the hearing in relation to Mr Grech's evidence?

4.52 As noted in paragraph 3.24, there were rumours circulating in the week leading up to the hearing concerning the existence of documentary evidence that the Prime Minister's office had made representations on behalf of John Grant. The reporting of these rumours, together with the reporting of the incident at the Press Gallery ball, may in itself have been a source of pressure on Mr Grech. In chapter 2, the committee recorded two occasions during that week when Mr Grech had emailed senior officers in Treasury and ministerial staff to explain his contact with Steve Lewis, including at 5.46 am on the day of the hearing. However, it is clear from the evidence provided to the committee that Mr Grech had not been approached by Steve Lewis. Rather, it was Mr Grech who called the journalist after discussing his approach with Mr Turnbull in email exchanges. Mr Grech was in this position because he had extensive email contact with a number of individuals associated with the Liberal Party, in which he offered strategic and policy advice both to Mr Turnbull directly and to other individuals associated with the Liberal Party. There was no evidence that Mr Grech had any official role in the Liberal Party.

4.53 From his position as a Senior Executive Service officer in Treasury, Mr Grech was working in support of the Opposition and against the Government, although, as he emailed to an acquaintance, he knew he was taking considerable personal risk in doing so.⁵² The hearing of the Economics Legislation Committee provided an opportunity for Mr Grech to publish his allegations under parliamentary privilege. He had stressed to those to whom he had disclosed the contents of the email (later demonstrated to have been a fabrication) that the information was not for publication or attribution, despite a willingness to have his name used in the press in related contexts.⁵³ As the hearing approached, the potential consequences of Mr Grech's actions, and the possibility that he would be revealed as the source of the email, now known to members of the Opposition and the media, must have been increasingly apparent to him. These factors are likely to have been the source of considerable pressure. However, while this pressure may have had a bearing on the capacity of Mr Grech to give evidence, it is clear that these stressors were attributable to Mr Grech's own actions.

4.54 The committee asked Mr Grech about any pressure he may have been under and sought a written response but, as noted in paragraph 1.19, Mr Grech did not wish to put anything further to the committee. The committee therefore has no basis on which to make any further examination of this allegation.

⁵² Treasury submission, dated 18 August 2009, attachment, email from Mr Grech to (name redacted), dated 7 November 2008.

⁵³ AFP submission, dated 11 September, attachment, email from Mr Grech to Mr Turnbull, dated 5 June 2009.

Was Mr Grech in a fit state to give evidence?

4.55 A second matter raised by Senator Heffernan in his correspondence to the President of the Senate dated 7 August 2009 was 'the treatment of Mr Grech by the Treasury Department before he gave his evidence to the Committee':

According to the Audit Office report and the statement provided to the Audit Office by Mr Grech, Mr Grech was suffering from serious health problems and extreme work pressure at the time of his evidence to the Senate Committee.

I believe that this raises the question of whether adverse treatment of a witness which could impair the ability of the witness to properly give evidence to a Senate Committee may also be treated as a contempt. I believe that it would be open to the Senate to regard such treatment of a witness as a contempt. If the facts are as stated by Mr Grech, the Department allowed him to represent the Department as a principal witness at a hearing concerning a significant government program. Although the Department knew of his difficult state of health and the work pressure under which he was operating. This could well be regarded by the Senate as a failure to adequately respond to the requirement of a Senate Committee for information, and an interference with the free exercise of a Senate Committee of its authority within the meaning of paragraph (1) of Privilege Resolution No. 6.

In view of the above information and the way that this may have influenced the behaviour and evidence given by the witness to the Senate Economics Legislation Committee on 19 June 2009, it is likely that these actions may have directly influenced the nature of evidence received and the obvious adverse actions by the media, the public and officials towards Mr Grech as a consequence of his evidence.⁵⁴

4.56 Treasury provided a response to this suggestion which is reproduced in full as follows:

62. While the formulation of an allegation of contempt in this way is novel, Treasury accepts that it is possible as a matter of theory that a prospective witness may be the subject of adverse treatment by a third person such that he is unable to properly give evidence to a Senate Committee, and thus the third party is guilty of contempt.
63. Mr Grech's case is not such a case.
64. Treasury does not accept that Mr Grech suffered from any physical or mental condition which prevented him from giving proper assistance to the Senate Committee. Treasury has not seen any evidence which suggests that Mr Grech was suffering from any ailment which prevented him, had he wished to, from providing the Committee with honest and rational assistance in relation to the Ozcar program.

54 Senator the Honourable Bill Heffernan, correspondence to the President of the Senate, dated 7 August 2009.

65. Senior Treasury management were aware of the physical health condition of Mr Grech. However, at no point did Mr Grech raise concerns that his physical health condition would compromise his ability to perform his work duties. On the contrary, during the period leading up to the Senate Inquiry, Mr Grech actively sought higher level positions within the Treasury, particularly at the General Manager level. He also agreed to take on additional work responsibilities, and volunteered for a range of corporate tasks. In his response to the ANAO report, Mr Grech states that he returned to work prematurely after being hospitalised in early February 2009. However, Mr Grech was advised by email on 6 February 2009 that there was “no rush to come back”. Mr Grech returned to work on 16 February. On his return, Mr Grech’s workload was immediately reduced. Prior to being hospitalised, Mr Grech was heavily involved in the development of the Australian Business Investment Partnership (ABIP), including attending meetings and negotiations with the major banks. This work ceased on his return.
66. Accordingly, in Treasury's submission, appropriate accommodation of Mr Grech's physical ailment was made and there is no reason to think that it interfered in any way with the evidence he gave to the Senate committee on 19 June 2009.
67. In relation to the claim that Mr Grech was under significant work pressure to a point that he was mentally compromised in the evidence he gave, Treasury rejects such a claim. Mr Grech was provided with appropriate assistance and support as required in relation to OzCar. Contrary to the claims made by Mr Grech in his response to the ANAO report, Mr Grech did not deliver on OzCar alone. As a non-government trust facility, the bulk of the work to establish OzCar was, and was always intended to be, undertaken by the private sector. To assist in the establishment of the facility, Credit Suisse were engaged by the Treasury in November 2008 to provide all necessary services to establish OzCar. Credit Suisse devoted considerable expertise, experience and resources (a dedicated project team) in order to develop and finalise the OzCar structure.
68. A range of other third parties also provided crucial skills and resources in order to establish the facility, including two separate legal firms, and Perpetual Trustee (to perform the role of trustee for OzCar).
69. Mr Grech's role in the Treasury was to instruct Credit Suisse and the other parties as appropriate, consistent with the Government's policy direction. Treasury does not accept that Mr Grech was under any special pressure from his duties at Treasury. If he was, he did not bring it to his supervisor's attention as a problem. To the extent that Mr Grech involved himself in the micro-management of some dealer's problems, that involvement and any pressure it may have placed on Mr Grech, appears to have been motivated by political affiliation rather than any requirement of Treasury's. Indeed Mr Grech's own assessment of his health was that he would not let it

interfere with his activities. In responding to an email from a Liberal Party supporter on 7 November 2008 about possibly joining the Office of the Leader of the Opposition, Mr Grech declines and states:

“...Health is an issue for me, I cannot hide that; but I am determined not to let that stop me. My immediate motivation is to place myself where I think I could be of most value to MT and the Party. At this stage, I am probably more value here in Treasury (albeit the personal risks I am taking).”

70. Mr Grech states that he was working between 60-70 hours per week from late February. The Treasury does not dispute that Mr Grech was present in the office for lengthy periods, although Treasury pass records suggest that in general it was less than claimed by Mr Grech. In addition, documents and emails recovered from the Treasury IT system indicate that Mr Grech was active during normal business hours in corresponding with third parties on issues of a political nature, and outside of his core work responsibilities. Accordingly, it is unlikely that Mr Grech was spending anything like that amount of time devoting himself to the work of Treasury.
71. It is possible that subsequent to the hearing of 19 June 2009 Mr Grech did suffer some kind of mental ailment. The evidence provided by Mr Grech to Treasury has been sparse on this issue. Treasury does, however, know that since 22 June 2009 Mr Grech has been an in-patient in a mental health facility.
72. Treasury considers it unlikely that this state of affairs has been brought about by any work pressure per se. Mr Grech was undoubtedly under enormous pressure as a consequence of certain aspects of his conduct coming to light - faking an email, providing it to members of the Opposition, discussing the matter with journalists and arranging for questions to be asked in the Parliament. These events were, however, all matters within Mr Grech's control and beyond Treasury's knowledge at the time.
73. At the time Treasury selected Mr Grech to give evidence to the Senate Committee, Treasury believed he would give honest evidence about a program in respect of which he had detailed knowledge. If Mr Grech was disabled by any condition, he did not provide Treasury with any reason for thinking that he was, and it is clear from his email correspondence with the Leader of the Opposition that he was determined to give evidence to the Committee. In these circumstances there is no substance to any claim that Treasury either knowingly, or without proper consideration, put forward a witness which it knew was not in a fit state to give assistance to the Committee.⁵⁵

4.57 As the committee has noted previously, any conduct may constitute an offence against a House (that is, a contempt) if it amounts, or is intended or likely to amount, to an improper interference with the free exercise by a House or committee of

55 Treasury submission, dated 24 September 2009, paragraphs 62–73.

its authority or functions, or with the free performance by a member of the member's duties as a member.⁵⁶ For an act to be an improper interference with such conduct, however, the committee has always taken the view that there must be culpable intention involved⁵⁷. The committee believes that it is drawing a long bow to suggest that Treasury, in allowing Mr Grech to give evidence, knowing his difficult state of health and the work pressure he was under, may have failed to respond adequately to the requirements of a Senate committee and may therefore be in contempt. The assumptions on which this charge is based are challenged quite forcefully by Treasury in its submission. In any case, there is a complete lack of evidence of any intention on the part of Treasury officers (other than Mr Grech) to behave inappropriately in relation to the committee inquiry. The committee believes that there is no case to answer on this issue.

Conclusions

4.58 The committee's conclusions on each of the matters discussed in this chapter are summarised in chapter 6.

56 Chapter 1, paragraph 1.21. This is the threshold test prescribed in s. 4 of the *Parliamentary Privileges Act 1987*.

57 In considering questions of contempt, the committee is required to have regard to Privilege Resolution 3, Criteria to be taken into account when determining matters relating to contempt.