

Chapter 6

Conclusions

6.1 In this chapter, the committee's conclusions and findings are summarised.

6.2 There can be little doubt that this is one of the worst cases of improper interference with the operations of a Senate committee that this committee has examined. A public servant who behaved in a politically partisan fashion used the process of a Senate committee inquiry and, with it, the protection of parliamentary privilege to raise allegations of corruption against senior government ministers based on a document which, it later emerged, had been fabricated by that person. The person, Mr Godwin Grech was an apparently well respected and hard working public servant holding a position in the Senior Executive Service of the Department of the Treasury. Yet, Mr Grech engaged in correspondence and conversations with fellow politically partisan individuals, using Commonwealth IT and communications equipment for the purpose, and apparently working against the Government and in support of the Opposition and its federal parliamentary leader.

6.3 These matters first came to the committee as terms of reference directed at establishing whether any adverse actions had been taken against Mr Grech in consequence of his evidence to the Senate Economics Legislation Committee on 19 June 2009. Only later, after revelations that Mr Grech had fabricated the email that he asserted he believed he had seen, were the second terms of reference, relating to possible false or misleading evidence and improper interference with the Economics Legislation Committee, agreed by the Senate.

6.4 While the committee has examined both matters together, the second terms of reference and the admissions by Mr Grech did not affect its endeavours to establish the facts in relation to the first terms of reference and to take all steps to ensure that the protection of witnesses before Senate committees remained of paramount importance.

Possible adverse actions taken against Mr Godwin Grech in consequence of his evidence to a committee

6.5 In respect of the matters examined in chapter 3, the committee **finds** as follows:

Media harassment

- At the conclusion of the hearing on 19 June 2009, members of the Press Gallery, particularly camera operators and photographers, flagrantly breached the Presiding Officers' Guidelines for filming and photography in Parliament

House by continuing to film after the adjournment of the hearing and by filming Mr Grech and Mr Martine as they left the building.

- Although the televising of the hearing was duly authorised, the Senate Economics Legislation Committee did not apply the relevant Senate broadcasting resolutions to control the activities of the media present in the hearing room during the hearing.
- Mr Grech (and Mr Martine) was subject to undue pressure from the media during and after the hearing, but there is evidence that Mr Grech invited media attention by his provision of material to a journalist for the purpose of pre-hearing publicity. Mr Grech did not seek the protection of the committee from the media.
- The media attention was a direct consequence of Mr Grech's evidence to the committee.
- There is no evidence that, in their zealotry, camera operators and photographers intended any harm to Mr Grech or to the operations of the committee. However, the conduct of the media at and after the hearing was excessive, inappropriate and in contravention of the rules.

The AFP inquiry

- The AFP inquiry was initiated by the Secretary of the Attorney-General's Department after consultations with the Attorney-General and following an approach from the Secretary of the Department of the Prime Minister and Cabinet.
- The Secretary of the Department of the Prime Minister and Cabinet asked the Secretary of the Attorney-General's Department to examine possible criminal offences and take the necessary action after extensive searches of the relevant departments' IT systems had failed to locate the alleged email and the conclusion was drawn that the email was false.
- In initiating the action which led to the referral of matters to the AFP, the Secretary of the Department of the Prime Minister and Cabinet believed that Mr Grech may have been a victim of the false email. This aspect of the referral was therefore not an action adverse to Mr Grech.
- Further matters referred to the AFP by the Secretary to the Treasury were in consequence of the discovery on Mr Grech's computer of documents indicating possible wrongdoing by him, the search having been initiated by Dr Henry because of concern about the source of material published by journalist, Steve Lewis. This aspect of the referral was an action adverse to Mr Grech.
- The initiation of the AFP inquiry was not primarily motivated by Mr Grech's evidence to the committee.

Disciplinary action by Treasury

- Disciplinary action against Mr Grech was initiated after the discovery on his computer system of incriminating material that suggested that he had breached the Public Service Code of Conduct.
- The search of Mr Grech's computer system was initiated by the Secretary to the Treasury because of concern about the source of material published by journalist, Steve Lewis.
- The initiation of disciplinary action was an adverse action.
- The initiation of disciplinary action was not a direct consequence of Mr Grech's evidence to the committee.
- In the immediate aftermath of the hearing senior Treasury officers took all reasonable steps to comfort Mr Grech and provide for his welfare.

'Backgrounding' of the media

- The committee was unable to discover any evidence of 'backgrounding' of the media.

6.6 In respect of action which the committee found to be both adverse and taken in consequence of Mr Grech's evidence, namely the undue pressure placed on Mr Grech by camera operators and photographers at and after the hearing, the committee also found no evidence of any intention on the part of those camera operators or photographers to cause any harm to Mr Grech or to the committee's operations. The committee has **concluded**, therefore, that **no contempt was committed**.

Recommendation 1

6.7 In respect of its first terms of reference, the committee **recommends**:

- (a) that the Senate endorse the committee's findings in paragraph 6.5 and the conclusion in paragraph 6.6 of the report;
- (b) that the President of the Senate resume consideration of an appropriate response to flagrant breaches of the Presiding Officers' guidelines on filming and photography in Parliament House by members of the media on 19 June 2009, noting the committee's suggestion in paragraph 3.23 of the report; and
- (c) that the Chairs' Committee established under standing order 25(10) consider model practices for handling the media at committee hearings, and the inclusion of additional information about witnesses' rights under the broadcasting resolutions in the standard information provided to all witnesses, as discussed in paragraphs 3.14 and 3.15 of the report.

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

6.8 In respect of the matters examined in chapter 4, the committee **finds** as follows:

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

- There is evidence that the Economics Legislation Committee was misled by the references to a document later admitted to be false.
- Senator Abetz did not give false or misleading evidence to, or cause any improper interference with, the hearing of the Economics Legislation Committee. He did not know at the time that it was a false document. The committee does not dispute that Senator Abetz was acting in good faith in using material supplied by a source he did not doubt.
- Mr Stansfield was unaware that the email was false until it was revealed to be so by the AFP's press release.
- Mr Godwin Grech provided false information to his Treasury colleagues on several documented occasions.
- There are discrepancies between the accounts of events given by Mr Grech and all other persons from whom the committee received submissions.
- No false or misleading evidence was given by Mr David Martine to the Economics Legislation Committee in respect of the document or in respect of any other matter. There was no improper conduct by Mr Martine at the hearing.
- The committee does not accept Senator Eggleston's criticism of Senator Hurley's chairing of the hearing.

Other false or misleading evidence

- Mr Godwin Grech gave a misleading impression to the Economics Legislation Committee about the amount of work involved in his advocacy on behalf of Mr John Grant.
- Mr Godwin Grech gave evidence to the committee about his dealings with the journalist, Steve Lewis, that was untrue.
- Mr Godwin Grech did not disclose to the committee that he had created a record of the email that he asserts he believed existed.

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

- Mr Godwin Grech suggested to the Opposition that the Car Dealership Financing Guarantee Appropriation Bill 2009 should be referred to a Senate

committee for the purpose of getting his 'evidence' about alleged corrupt conduct by the Prime Minister into the public arena.

- Mr Godwin Grech met with the Opposition Leader, Mr Turnbull, and Senator Abetz in Sydney for the purpose of showing them the 'evidence' he had of alleged corrupt conduct by the Prime Minister.
- Unbeknown to Mr Turnbull and Senator Abetz, Mr Grech's 'evidence' of this alleged corrupt conduct had been created by himself as a record of an email that he asserts he believed existed.
- Apart from Mr Grech's recollection, which he asserted may be faulty or false, there was no evidence put before the committee that an email resembling Mr Grech's record of it ever existed.
- There was no inappropriate pre-arrangement by Senator Abetz of questions and answers for the hearing of the Economics Legislation Committee.
- Questions which may have a political motive are a commonplace and unremarkable part of the processes employed by senators for holding governments to account.

Improper use of a hearing

- The hearing by the Economics Legislation Committee was an entirely legitimate use of Senate procedures to explore a matter of possible misfeasance.
- Unbeknown to all but Mr Godwin Grech, evidence of the possible misfeasance had been recreated, as a record of an email that he asserts he believed existed. In this sense, there was an improper interference with the hearing of the Economics Legislation Committee on the OzCar bill.

Possible interference with Mr Grech in relation to his evidence

- In respect of the allegation concerning Mr Jim Murphy, the committee does not dispute Treasury's account.
- In respect of the allegation concerning Mr Chris Barrett, the committee does not dispute Mr Barrett's account.
- There is no evidence that improper pressure was placed on Mr Grech in respect of his evidence by any person other than himself, or that any other person caused any improper interference with Mr Grech in respect of his evidence.

Mr Grech's fitness to give evidence on 19 June 2009

- The Department of the Treasury and its senior officers have no case to answer that in allowing Mr Grech to give evidence, knowing his difficult state of health and the work pressure he was under, they failed to respond adequately to the requirements of a Senate committee, thereby causing an improper interference with the free exercise by the committee of its authority.

6.9 Although evidence was given to the Economics Legislation Committee by Mr Grech that was objectively false and misleading, and although the committee was also misled by references to an email later revealed to have been fabricated by Mr Grech, this committee has not been able to make findings about Mr Grech's state of mind at the time he took those actions. A finding of contempt by misleading a Senate committee depends upon the existence of a subjective intention to do so. This committee has not been able to conclude that Mr Grech knowingly and deliberately gave false or misleading evidence, or that he knowingly and deliberately misled the Economics Legislation Committee about the basis of its inquiry. This committee is frustrated by its inability to arrive at a conclusion as to Mr Grech's culpability, both because of the state of his health, and the practical difficulty of testing the claim of medical incapacity advanced by his treating doctor. Nevertheless, the committee is not in a position to dispute the medical evidence of Mr Grech's incapacity to participate in its proceedings. In these circumstances, the committee **is unable to arrive at a conclusion that a contempt was committed by Mr Grech.**

Recommendation 2

6.10 In respect of its second terms of reference, the committee **recommends** that the Senate endorse the committee's findings in paragraph 6.8 and the conclusion in paragraph 6.9 of the report.

George Brandis
Chair