

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE  
COMMITTEE OF PRIVILEGES

POSSIBLE ADVERSE TREATMENT OF  
A WITNESS BEFORE THE SELECT COMMITTEE  
ON THE ADMINISTRATION OF ABORIGINAL AFFAIRS

(21ST REPORT)

DECEMBER 1989



**MEMBERS OF THE COMMITTEE**

Senator Patricia Giles (Western Australia), Chair  
Senator John Black (Queensland)  
Senator Bruce Childs (New South Wales)  
Senator John Coates (Tasmania)  
Senator the Honourable Peter Durack, Q.C. (Western Australia)  
Senator Janet Powell (Victoria)  
Senator Baden Teague (South Australia)

The Senate  
Parliament House  
CANBERRA A.C.T. 2600



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## REPORT

### Introduction

1. On 9 March 1989, the following matter was referred to the Committee of Privileges:

"Whether there was any adverse treatment of Mr Michael Pope by the Aboriginal Development Commission or its officers in consequence of evidence given by him to the Select Committee on the Administration of Aboriginal Affairs and whether any contempt of the Senate was involved."

The President's statement when he determined on that day to give precedence to the motion, the documents which he tabled and the debate on the motion are at Appendix A to this report.

2. In the course of its deliberations, the Committee wrote successively to Mr Cedric Wyatt, former Acting General Manager of the Aboriginal Development Commission (ADC), who gave the instruction which resulted in the letter at Appendix A5 to this Report, Mr Michael Pope, the witness before the Senate Select Committee to whom the letter was addressed, and Mr Michael Stewart, the current Acting General Manager of the Commission, who wrote the Minute at Appendix A6, seeking written submissions on the terms of reference. In its letter to Mr Wyatt, the Committee sought, and subsequently received, all original documents in the custody of the Commission or its officers relating to the matter.

3. Following consideration of the submissions, which are incorporated at pp 3-154 in the Hansard record of the Committee's proceedings, the Committee decided to take oral evidence on the matter on 30 August. Owing to the pilots' dispute, the hearing proposed for that night was postponed. Despite a number of attempts by the Committee to arrange a hearing soon thereafter, it was not until 29 November that the hearing could be arranged. In the meantime, the Committee received a further submission on behalf of Messrs Wyatt and Stewart (see transcript, pp 155-8). All submissions made by each of Mr Wyatt, Mr Stewart and Mr Pope were transmitted to the relevant persons, on a confidential basis. On the night of the hearing, Mr Wyatt, at the Committee's request, read into the record another submission on behalf of himself and Mr Stewart (see transcript, pp 184-9). Mr Wyatt and Mr Stewart were accompanied by Mr A.A. Howie, of Minter Ellison. Mr Pope and his legal adviser, Mr G. Walker, of Crossin Power Haslem, were present throughout the proceedings. On 11 December, a further communication was received from Mr Howie, of Minter Ellison, which is at Appendix B to this Report.

### **Background**

1. The circumstances giving rise to the reference of the matter to the Committee were as follows:
2. Mr Michael Pope, until his resignation on 4 November 1988, had been a senior officer of the Aboriginal Development Commission. At some time late in February 1989 Mr Pope became aware of a minute sent by Mr Michael Stewart, in his capacity as Assistant General Manager, Corporate Services, ADC, advising all Divisional Heads, Branch Managers (Head Office) and Regional Managers that "The A/g General Manager [Mr Wyatt] has decided that



should Mr Michael Pope wish to attend an office of the Aboriginal Development Commission then he should formally seek and obtain prior approval for any such visit". The minute went on to say that, should any of those people directly receive a request from Mr Pope to visit an Aboriginal Development Commission office, then they should refer the matter to the Acting General Manager. The minute concluded with an instruction that Regional Managers inform Branch Managers within their region of the minute. The minute was dated 20 February 1989.

6. Mr Pope, having become aware of the minute, rang the central office on 27 February, and was advised by Mr Colin Kay, who, at that time, was the Acting Assistant General Manager, Administration, that the previous Acting Assistant General Manager Administration (Mr Peter McMahon) had written to Mr Pope in early January advising that, should he wish to visit Bonner House (the Head Office of the ADC), he should first contact Mr Cedric Wyatt, Acting General Manager. Mr Kay sent a memorandum to the Acting General Manager (Mr Wyatt) seeking his approval, in accordance with Mr Pope's request, to provide a copy of the letter to Mr Pope. Mr Wyatt approved the recommendation on 28 February. The letter, dated 4 January 1988 [sic], read as follows:

"The acting General Manager has noted that you have on occasions been visiting Bonner House. He has asked me to advise you that in the light of the allegations you have made to the Senate Select Committee (emphasis added) he has asked that should you wish to visit Bonner House in the future would you please make a formal request in writing to Mr Wyatt for his consideration." (Transcript, p 7)

7. An annotation on the letter read as follows:

"Above letter was returned unopened from the Macquarie Hostel. I gather Mr Pope had moved on by that time. C.Kay 20/2/89."

The letter of 4 January was despatched to Mr Pope on 1 March 1989.

8. As indicated during debate in the Senate, the letter from Mr Wyatt to Mr Pope, and the subsequent minute by Mr Stewart, prompted the reference to the Committee of Privileges.
9. In each of their submissions in response to the Committee's invitation, Mr Wyatt and Mr Stewart indicated that their primary concern in taking the action relating to Mr Pope related to the security of the Commission's offices and information held by the Commission. Mr Wyatt's submission, after setting out facts in relation to the sending of the letter, concluded, as follows:

"At all times my concern was for the security of the Commission's offices and information. At no time was it intended to restrict or penalise or deprive Mr Pope from any benefit on account of evidence given to a Senate Committee by issuing that instruction although there may have been a potential for this misunderstanding.

It was my intention to merely remind Mr Pope that as a former employee of the Aboriginal Development Commission, he did not have free access to the Commission.

My prime concern has been and remains the security of the Commission's offices and information held by the Commission."  
(Transcript, p 5)

10. Enclosed as attachments to the submission were three staff circulars on security of information as follows: 10/85, dated 24 January 1985, re-issued 28 July 1987; 48/88, dated 13 July 1988; and 74/88, dated 30 November 1988. In evidence (transcript p 191) reference was made to a further memorandum to all staff, from the then Principal Legal Officer, concerning responsibilities of individuals giving evidence before Select Committees, but the Committee was advised that it could not be located. The Committee believes that the document in question was included in the submission made by Commissioners of the ADC to its earlier inquiry, tabled with its Report on 16 June, and has included it at Appendix C to this Report, for completeness. The document is not, however, in the Committee's view, of particular significance to its current inquiry.
11. Mr Wyatt's submission advised the Committee that, on 23 November, the then Manager, Corporate Planning and Review Branch, reported three matters relating to Mr Pope (transcript, p 9). The submission also drew attention to a minute by Mr Michael Stewart, dated 13 December, advising Mr Wyatt of the presence of Mr Pope in Bonner House on at least two occasions on Monday, 12

December 1988 (transcript, p 10). On that hand-written minute, Mr Wyatt, who advised the Committee that he saw the minute on 20 December, wrote the following:

"Mr McMahon

In view of Mr Pope's allegations to the Senate Select C'tee, I consider that further visits to this office be made by formal request in writing to me. Pls advise Mr Pope accordingly. CW 20/12."  
(Transcript, p 10)

12. Mr Stewart, in his submission to the Committee (transcript pp 153-4), also advised the Committee of his concern about security. In particular, he advised that he had written the minute of 13 December to Mr Wyatt reporting Mr Pope's presence on the previous day because:

"I was concerned at his presence in an office in the building in view of the security of the Commission's offices and information held by the Commission. My concern was strengthened by my knowledge that there had been unauthorised releases of information to the Senate Select Committee, other inquiries and persons."

13. Later in his submission (transcript, p 153), Mr Stewart indicated that "I did not make any judgement in regard to Mr Pope being a source for the unauthorised release of information", and at the Committee's hearing stated: "I have not suspected Mr Pope of leaking information" (transcript, p 226). Mr Wyatt, who had not specifically addressed this matter in his submission, was asked

whether Mr Pope might have posed a greater threat to the security of the Commission's offices than other former officers or employees. He responded:

"I do not know whether there was a serious threat. I think what I was trying to do was this. Mr Pope had left the employ of the Commission, had on a number of occasions been seen in the building. I suppose that I wanted to make absolutely clear to him that he did have access to and was privy to a lot of confidential information, probably more so than anybody else and at that time we had around-the-clock guards on our files that the Auditor-General wanted to inspect and in view of that knowledge I was concerned. There were leaks coming out of the Commission; they were coming out like nobody's business. A number of other people were suspected but in fact nobody was ever able to bring any evidence to that effect. But certainly there were a lot of leaks..." (Transcript, p 201)

11. Mr Stewart went on to advise the Committee that in February 1989 he became aware that Mr Pope had also visited the Commission's offices in Brisbane and Sydney. (In evidence before the Committee (transcript, p 167) Mr Pope indicated that he had not visited the Brisbane office but had visited the Sydney office. Mr Stewart accepted that the information provided to him about the Brisbane office was inaccurate (transcript, pp 237, 238).) Mr Stewart further advised that he was aware of the letter of 4 January, written by Mr McMahon at Mr Wyatt's request. On hearing of the alleged visit to the Brisbane office, and, on 20 February, to the Sydney

office, he checked with the Acting Assistant General Manager, Administration, and was advised that the letter had been returned to the Commission. Mr Stewart decided, in the absence of the Acting General Manager, to issue a staff circular dated 20 February "in similar terms to Mr McMahon's letter of 4 January" (transcript, p 153). In a covering note advising the Acting Assistant General Manager, Administration (Mr Kay) of his actions, Mr Stewart made the following statement:

I have decided, as Delegate, to broaden the scope of Mr Wyatt's decision to include all offices of the Aboriginal Development Commission. (Appendix D)

15. Mr Stewart's submission concluded, as follows:

"At no time did I intend to restrict or penalise or deprive Mr Pope from any benefit on account of evidence given to a Senate Committee by issuing that circular although there may have been some potential for this misunderstanding. I did not make any judgement in regard to Mr Pope being a source for the unauthorised release of information ....

All I endeavoured to do was to ensure the Commission's staff were aware that as a former employee of the Commission, Mr Pope did not have free access to the Commission.

My prime concern has been and remains the general principle of security of the Commission's offices and information held by the Commission." (Transcript, pp 153-4)

16. In their later submission to the Committee, signed on their behalf by Mr A.A. Howie, from Minter Ellison, the question of security was again dominant (see transcript, pp 156 - 7). In that submission, a further point was put to the Committee, viz, "the wish of both Mr Wyatt and Mr Stewart to minimise the disruption to staff performance engendered by the public debate concerning the Commission and Aboriginal affairs generally" (p 157). The submission then asserts that "at no stage has there been any adverse treatment of Mr Pope in consequence of evidence given to the Select Committee". It continues:

"To our mind, it was important that staff concentrate on Commission business so as to better serve the Commission's clients. Quite simply, we wished to allow staff to go about their business unhindered during working hours by visitors who we knew from their public remarks espoused a philosophy about Aboriginal affairs in many respects quite different from the view of the Commission and its own staff.

Indeed, this is supported by the terms of the letter of 4 January. That letter refers not to the fact of giving evidence, but to the allegations that Mr Pope made to the Select Committee. In other words, Mr Pope's quite different philosophy made it necessary, we considered, to control his presence on Commission premises and involvement with Commission personnel during working hours. It was merely coincidental that it was in the forum of the Select Committee that Mr Pope's philosophy was so forcefully announced."

17. This submission went on to state that :

"In hindsight, it may be that the wording might have been differently expressed, but the intent behind the letter always related only to the security of Commission business and the on-the-job performance of its personnel. No contempt of the Senate was intended nor, we respectfully submit, committed."

18. Mr Pope's submission (transcript, pp 20-152) included what he regarded as concerns about the letter from Mr Wyatt and the minute circulated by Mr Stewart, as follows:

1. A penalty was being inflicted on me specifically because of 'allegations you have made to the Senate Select Committee'.
2. Notice of this had been widely published in a manner likely to cause and actually causing me injury.
3. When I gave evidence to the Committee,
  - (a) I was no longer an ADC employee and
  - (b) I did so in a private capacity as an Australian citizen.
4. The public evidence given was either a matter of fact or opinion, known to former Commissioners or ascertainable from questions in Parliament or under the Freedom of Information Act.



5. It was not a condition of my employment in the ADC that after leaving the ADC I should not make disclosures of the kind made.

6. The public evidence given did not disclose other ADC information of a commercial-in-confidence nature."

(Transcript, pp 22-3)

19. In his submission (transcript, pp 28-29) and evidence (pp 169, 178-9) Mr Pope advised the Committee that the first of the visits he made on 12 December, and referred to in Mr Stewart's minute of 13 December, was to see Mr Michael O'Brien, during the lunch break. Mr O'Brien was the former General Manager of the ADC, who was performing special duties in relation to the Aboriginal and Torres Strait Islander Commission proposal. Mr O'Brien was not available, and instead Mr Pope saw Mrs Shirley McPherson, Chairman of the Commission, with whom he had a cup of coffee. He advised her that he would return at 5 p.m., that is, after official working hours, to see Mr O'Brien. This he did, and was seen by Mr Stewart making a telephone call from Mr O'Brien's office, while Mr O'Brien was not present. Mr Pope advised the Committee that Mr O'Brien had been in his office when he first arrived; Mr O'Brien left the office, but before he did so Mr Pope asked his permission to make a telephone call during his absence. He was still on the phone when Mr O'Brien returned.

20. Mr Pope concluded that the letter and minute were intended and did, in fact, impose a penalty on him, and caused him injury, because of evidence he gave to the Select Committee on the Administration of Aboriginal Affairs (transcript, p 31).

## Purpose of hearing

21. The purpose of the Committee's hearing on 29 November was to receive oral evidence to assist its deliberations on the questions it was required to determine. The material of particular relevance to its terms of reference consisted of:

- (a) a minute from Mr Stewart, dated 13 December 1988, four days after Mr Pope gave evidence to the Senate Select Committee, advising that Mr Pope had twice been seen on the 5th floor of Bonner House (the Head Office of the ADC), the second time in an office left unattended by the officer concerned (Mr Michael O'Brien, former General Manager of the ADC). That minute also included the annotation, dated 20 December, quoted at paragraph 11 above, from Mr Cedric Wyatt which gave the instruction to Mr McMahon that "In view of Mr Pope's allegations to the Senate Select C(ommit)tee" further visits to "this office" be made by "formal request in writing" to Mr Wyatt and that Mr Pope be advised accordingly;
- (b) the initially undelivered letter to Mr Pope dated 4 January, from Mr McMahon, carrying out Mr Wyatt's instruction; and
- (c) Mr Stewart's minute of 20 February, sent to all offices, extending the instruction to apply to all ADC offices.

**Issues for determination**

22. When examining the question whether there was any adverse treatment of Mr Pope in consequence of his giving evidence before the Senate Select Committee, the Committee focussed upon paragraph 6(11) of the Privilege Resolutions, as follows:

6(11) A person shall not inflict any penalty or injury upon, or deprive of any benefit, another person on account of any evidence given or to be given before the Senate or a committee.

23. In paragraph 28 of the Committee's 18th Report, tabled on 16 June 1989, relating to possible interference with witnesses in consequence of their giving evidence before the Senate Select Committee on the Administration of Aboriginal Affairs, the Committee drew attention to the criteria which it is required to take into account when inquiring into any matter referred to it:

3(a) the principle that the Senate's power to adjudge and deal with contempts should be used only where it is necessary to provide reasonable protection for the Senate and its committees and for Senators against improper acts tending substantially to obstruct them in the performance of their functions, and should not be used in respect of matters which appear to be of a trivial nature or unworthy of the attention of the Senate;

(b) the existence of any remedy other than that power for any act which may be held to be a contempt; and

(c) whether a person who committed any act which may be held to be a contempt:

(i) knowingly committed that act, or

(ii) had any reasonable excuse for the commission of that act.

21. In the present case, as in the previous case which also concerned the ADC, the Committee decided that the criterion in 3(b) was inapplicable in that there was no readily available remedy other than the Senate's power to deal with contempt. It decided, however, that the other criteria were relevant and took them into consideration in making its findings on this reference.

22. The Committee, at paragraph 30 of its 18th Report, emphasised that it, and the Senate, may find that a contempt has been committed even in the absence of any intention on the part of the person or persons to commit any act which may be held to be a contempt. The Committee continues to be of the view that such a finding of strict liability would be justified only in exceptional circumstances. The damage to the Senate and its committees resulting from any such acts would need to be of a most serious kind. For reasons which are discussed at paragraph 56 below, the Committee concluded, as in the previous ADC case, that this matter did not warrant being considered with a view to such a finding.

## Questions for consideration

26. The terms of reference given to the Committee were in three parts:

- (a) whether there was any adverse treatment of Mr Pope;
- (b) if so, whether such adverse treatment was in consequence of (emphasis added) his having given evidence before the Senate Select Committee on the Administration of Aboriginal Affairs; and
- (c) if so, whether such adverse treatment constituted a contempt of the Senate.

### (a) Possible adverse treatment

27. The question whether Mr Pope had been adversely treated by the issuing of the letter and the minute was the first matter discussed by the Committee, although there was general agreement that it was closely linked to the second question, that is, whether any adverse treatment was in consequence of Mr Pope's having given evidence to the Select Committee. As noted previously at paragraph 18, Mr Pope's submission stated that the actions of Mr Wyatt and Mr Stewart inflicted a penalty and had caused him injury, and counsel for Mr Pope also mentioned in his closing statement that Mr Pope had suffered a deprivation of benefit (transcript, p 249).

28. The Committee considered the question separately in respect of the actions taken by Mr Wyatt and Mr Stewart. In the case of Mr Wyatt, his communication was to Mr

Pope only, and involved what was alleged to be the deprivation of a benefit, that is, a previously-availed-of opportunity to visit former colleagues without hindrance. As Mr Pope acknowledged, as a former employee of the ADC he did not have a right of entry to the working areas of the building, and the ADC did not have the right to, and in fact did not, place a restriction on his capacity to meet officers elsewhere. Mr Pope interpreted the extent of the condition imposed on him to include the public areas of ADC offices. Mr Wyatt and Mr Stewart, on the other hand, indicated that they had no intention of preventing Mr Pope from visiting such public areas. The Committee believes the instruction was not completely clear on this matter, but in any case accepts Mr Pope's reluctance to visit the public areas. Despite the option available to him to test the condition by requesting permission, he did not do so, though the Committee understands his unwillingness to do so in the circumstances.

29. Mr Pope pointed out (transcript, p 162) that officers in the Head Office were aware that the condition had been imposed in view of the "allegations I made to the Senate Select Committee" and, as he put it, "it has not improved my reputation". It is fair to comment, however, that the reason for Mr Wyatt's decision would have been known to relatively few people, and thus any injury to Mr Pope's reputation was likely to be marginal. It is also fair to comment that Mr Pope was known at Head Office, where he had worked for a number of years, and thus persons in that office would in all likelihood have had the opportunity to make their own judgment about his reputation.

30. Mr Stewart's minute, on the other hand, was circulated, and extended the condition to apply to all ADC offices throughout Australia. It did not state any reason for the instruction. The minute, which was headed "MR MICHAEL POPE", advised of a decision of the Acting General Manager, which in fact had not been made by Mr Wyatt who "was not aware that the circular was to be issued and had not given any instructions in this regard" (transcript, p 5), that "should Mr Michael Pope wish to attend an office of the Aboriginal Development Commission then he should formally seek and obtain prior approval for any such visit" and that any such request should be referred to the Acting General Manager (transcript, p 19).
31. Mr Stewart explained to the Committee that, when he discovered that Mr Wyatt's letter to Mr Pope had been returned undelivered (transcript, pp 153, 227) and thus that Mr Pope would be unaware of the requirement to seek permission to visit Head Office, he considered that "by far the easiest way to achieve the objective would be to give a direction to staff who would be the recipient of Mr Pope's visitations" (transcript, p 237). He explained his decision to broaden the scope of Mr Wyatt's instruction in the following terms:

"A trend was starting to be established - I had what I now know to be a wrong report that Mr Pope had visited the Brisbane office. But there was a trend that was clearly starting to be established that the only effective means of giving expression to Mr Wyatt's letter was to bring it to the attention of staff. At the time Mr Wyatt was interstate and he had left me with his administrative delegations, so I felt it incumbent upon myself to take a

responsible action to broaden the scope and to bring it to the attention of officers that this requirement for Mr Pope to request and receive formal approval before visits occurred was in place; that this was the wish of the general manager. It was not in place, obviously, because Mr Pope had not received the letter." (Transcript, pp 237-8)

32. The effect of Mr Stewart's minute was to advise all offices throughout Australia that a special condition was to be imposed on a named person, concerning access to ADC offices. In this context it may be recalled that the staff circular of 30 November did not impose a requirement that permission must be sought from the Acting General Manager, and evidence before the Committee indicates that Mr Pope was the only person who was the subject of special instructions. Further, although Mr Stewart's minute did not set out the condition, contained in Mr Wyatt's letter, that Mr Pope must apply to him in writing for permission to visit Head Office, all staff were advised that any requests from Mr Pope were to be referred to Mr Wyatt, who had imposed the original condition that requests from Mr Pope must be in writing.
33. Despite questioning, neither Mr Pope nor his counsel expanded on the allegations that his reputation had been harmed or on the assertion of adverse treatment in terms of penalty or injury. The Committee accepts Mr Wyatt's evidence that Mr Pope's reputation was high, and was undiminished by the minute.
34. The Committee, having examined the issues in the terms of Privileges Resolution 6(11), observes -



- (a) there was no benefit, as of right; the benefit that Mr Pope lost was one for which permission had been granted by implication since no objection to his presence had been conveyed to him on his previous visits;
  - (b) to the extent that Mr Pope had to seek permission to visit, that might be regarded as a penalty, but not one that was unreasonable or onerous; Mr Pope himself described it as reasonable; and
  - (c) the injury complained of - harm to his reputation - was not specifically substantiated; any effect on his reputation was mainly in his own mind; the highest it was put by Mr Pope was an assertion that "it has not improved my reputation" (transcript, p 162). However, it may be reasonable to assume that at least some officers of the Commission might have regarded a person who was the subject of a minute imposing special conditions with some degree of suspicion. The question of reputation is not as relevant to Mr Wyatt, as his action led only to a letter to Mr Pope, not a circulated minute as in Mr Stewart's case.
5. The Committee also considered the matter in relation to the term of reference about "adverse treatment". The above comments also apply to this more general term. Some members of the Committee believe there was adverse treatment of Mr Pope, although it was not of a serious nature. Others regard his treatment as adverse only to the extent that no-one else had such a specific instruction about them, but note that there were few, if any, other persons who were in Mr Pope's situation of

being a former officer who visited without apparent hindrance - to use his own words "I simply marched into the office" (transcript, p 175). If this was adverse treatment, it was minor.

**b) Whether in consequence of allegations before Select Committee on Administration of Aboriginal Affairs**

16. The Committee next directed its attention to the question whether the treatment of Mr Pope was in consequence of his having given evidence before the Senate Select Committee on Aboriginal Affairs. As outlined at paragraph 21, the documents of immediate relevance to this question were

(a) Mr Stewart's minute to Mr Wyatt of 13 December, on which was annotated Mr Wyatt's instruction of 20 December to Mr McMahon to advise Mr Pope of the restrictions imposed on his access to Head Office;

(b) Mr McMahon's letter of 4 January; and

(c) Mr Stewart's minute of 20 February to Divisional Heads and Branch and Regional Managers.

17. As mentioned at paragraph 6 above, the letter of 4 January clearly stated that it was "in the light of the allegations.... made to the Senate Select Committee" that the particular requirement was imposed that Mr Pope write to the Acting General Manager requesting permission to visit the central office.

38. The annotation itself, and the letter conveying the instructions, thus are unambiguous. Each directly linked the imposition of conditions on Mr Pope's access to the Head Office with his "allegations before the Select Committee". Mr Stewart's minute of 20 February did not mention the Select Committee, but advised all offices of the special conditions applicable to Mr Pope.
  
39. Mr Stewart acknowledged, both in his written submission and during evidence before the Committee, that he was aware of Mr Wyatt's instruction, and, in exercising his delegation, decided to extend that instruction, to apply to all ADC offices. The second submission made on behalf of Mr Wyatt and Mr Stewart placed great emphasis on the terminology of Mr Wyatt's instruction, that is, "in view of [the] allegations made to the Senate Select Committee". During its hearings, the Committee asked both Mr Wyatt and Mr Stewart to specify the allegations which caused concern. Neither Mr Wyatt nor Mr Stewart was able to recall what was meant by "allegations", thus reinforcing the Committee's impression of the atmosphere of paranoia and confusion at that time (and see paragraph 52).
  
40. The Committee, having had available to it the first, separate submissions from Mr Wyatt and Mr Stewart, and a further joint submission signed on their behalf, examined both persons at length on their motivation and intention in giving and extending the instruction concerning Mr Pope. The Committee also had regard to the document "Further Submissions on behalf of Messrs C Wyatt and M A Stewart" which was presented at the hearing of 29 November and which placed their actions in the context of the matters the Committee is required to consider (transcript, pp 184-9).

41. As previously discussed, the submissions from Mr Wyatt and Mr Stewart stressed the question of security of the premises. As also previously discussed, the Committee's attention was drawn to a number of staff circulars on the subject. In particular, a circular was issued to staff on 30 November 1988. This was the fourth of a series (including one circular issued in 1985 and re-issued in July 1987) which addressed the matter. Unlike the previous staff circulars, the circular of 30 November contained the following paragraph:

"5. Staff on duty who are visited by non-official visitors shall request authorisation to receive them from their Section or Branch Head. Where possible visitors are to be received in areas away from where sensitive information is being processed or displayed. Supervisors are to take this into account when approached by staff for approval to receive visitors." (Transcript, pp 17 and 147)

Mr Pope had resigned from the ADC on 4 November and was not aware of this circular. The circular predated his giving evidence to the Select Committee.

42. Before discussing the evidence given at the hearing, the Committee draws attention to paragraph 15 of the document "Further Submissions on behalf of Messrs C Wyatt and M A Stewart", presented at its hearing, as follows:

"The Committee will be aware of the lengthy debate, both inside and outside the Parliament, that has surrounded the administration of the Aboriginal Affairs

portfolio and the Aboriginal Development Commission. It has meant that for some considerable time, Commission business had been conducted in a politically turbulent atmosphere. Indeed, Senator Tate has recently described the atmosphere of the period as one of 'tremendous turmoil', an expression we respectfully adopt." (Transcript, p 188)

- ' 3. The word "turbulent", used in that paragraph, was also used by this Committee, at paragraph 53 of its 18th Report, when describing the events in May 1988 concerning the dismissal of former acting Commissioners and the appointment of new acting Commissioners of the ADC. The Committee noted the "constant state of suspicion and antagonism" at Board level, and is aware that this was not confined to the Board level.
  
- ' 4. On 18 October 1988, Mr Pope advised Mr Michael O'Brien, the then General Manager of the ADC, that he was interested in accepting an offer of management-initiated voluntary retirement (Committee papers). His retirement took effect on 4 November. Selected events affecting the operations of the Aboriginal Development Commission during the period from just before Mr Pope's notification of his interest in retirement and his appearance before the Senate Select Committee are as follows:

10 - 14 October:

. Meeting of ADC in Adelaide, at which a number of resolutions, including those which were the

subject of the Committee of Privileges' 18th Report, were passed. (18th Report, pp 2-4)

Mr Cedric Wyatt was transferred to the position of Acting General Manager of the ADC (18th Report, p 4).

25 & 26 October

Hearings of Senate Estimates Committee E relating to the Estimates of the Aboriginal Development Commission

2 November

Senate Select Committee on the Administration of Aboriginal Affairs reported to the Senate, recommending that certain questions arising from the appearance of witnesses before that Committee be referred to the Committee of Privileges

3 November

Matters referred to Committee of Privileges

4 November

Mr Charles Perkins ceased to occupy his positions as Secretary to the Department of Aboriginal Affairs and as an acting Commissioner of the Aboriginal Development Commission

7 November

Inquiries by Mr A.A. Menzies, the Department of Finance, the Public Service Commission and the Auditor-General into a number of matters concerning Aboriginal Affairs and the ADC announced by the Minister for Aboriginal Affairs

8 November

Matters arising from the hearings of Estimates Committee E and the appearance of certain witnesses before the Select Committee on the Administration of Aboriginal Affairs referred to the Committee of Privileges

45. It is also to be noted that throughout this period the Senate Select Committee on the Administration of Aboriginal Affairs was conducting the inquiry on which it reported to the Senate in February 1989, and that matters relating to the Department of Aboriginal Affairs and the Aboriginal Development Commission were the subject of much parliamentary debate at the time. It is clear from those debates that a significant amount of material from both the Department and the ADC was available to Senators and members of the House of Representatives, and that much of the material had been provided without authorisation. As Mr Wyatt put it in evidence:

"There were leaks coming out of the Commission; they were coming out like nobody's business."  
(Transcript, p 201)

Mr Stewart, in his evidence, added:

"We had just been through a quite intense period of the Senate Estimates Committee hearings in which there were an inordinate number of questions on notice. It was apparent that information had been leaked from the Department of Aboriginal Affairs and the ADC. It was obvious that staff were not discharging their responsibilities in regard to security of information." (Transcript, pp 236-7)

46. The concern for security reached its height when the Auditor-General began his inquiry. Mr Wyatt stated to the Committee:

"... at that time we had around-the-clock guards on our files that the Auditor-General wanted to inspect." (Transcript, p 201)

As Mr Wyatt put it, knowing at the time that so many leaks were coming out of the Commission, "in the enormous pressure we became quite paranoid about the security of our files and documents, and the building" (transcript, p 201).

47. The sequence of events in relation to Mr Pope at this time is relevant. On 23 November, Mr Paul Fitzwarryne, then Manager, Corporate Services and Planning, wrote a memorandum to Mr Wyatt advising as follows:



"General Manager

SECURITY OF COMMISSION DOCUMENTS

I would like to bring to your notice 3 matters possibly affecting the security of Commission documents and information:

- . Mr Pope, a previous employee of the Commission, entered my office while I was away on duty. My desk was clear, but there were documents in the "in-tray" and possibly in that of the Manager, Efficiency Audit.
  
- . While visiting Parliament House I met Mr Pope in the Dining Room carrying 2 large bags of documents. I do not know whether the documents were private or copies of documents to which Mr Pope had access while an ADC officer.
  
- . According to staff officers, Mr Pope had visited Bonner House several times since resigning and attempted to discuss Commission matters.

23/11/88 Paul Fitzwarryne [signed]"

48. While Mr Wyatt, in his written submission, indicated that "No action was taken as a result of this advice", in fact two events occurred after the memorandum was sent: First, the staff circular relating to security, dated 30 November, was issued. This circular contained the paragraph, quoted at paragraph 41 above, laying down general conditions for the reception of visitors.

Secondly, in evidence (transcript, pp 204, 206), Mr Wyatt advised the Committee that he sought advice from a detective-sergeant from the Australian Federal Police as to "what would constitute a justification to have a search warrant issued" on the basis of Mr Fitzwarryne's minute. The detective-sergeant advised "that we did not have sufficient information based on Mr Fitzwarryne's report and I let the matter lie" (transcript, p 204).

- 4). On Friday, 9 December, Mr Pope gave evidence, including in camera evidence, before the Select Committee on the Administration of Aboriginal Affairs. On Tuesday, 13 December, Mr Stewart wrote the minute to Mr Wyatt, reporting that Mr Pope had been seen twice at Bonner House the previous day, and Mr Wyatt appended his instruction to that minute one week later.
- 5). The Committee questioned both Mr Wyatt and Mr Stewart at length on what prompted their actions in such proximity to Mr Pope's appearance before the Select Committee. In the case of Mr Wyatt, he was asked why, given the accumulation of events to which he referred during his evidence, culminating in Mr Fitzwarryne's minute, he did not impose the condition at that time, rather than after Mr Pope had appeared before the Committee (transcript, pp 204-7). Mr Wyatt indicated as follows:

"I did not take action on 23 November because there was no reason to take action, based on an informal discussion with a Federal policeman who was visiting on another matter. The other point was that taking action when Mr Stewart reported to me resulted from an accumulation of events in this saga; I made

the judgment then. Obviously, I did not make the judgment at the previous time, perhaps when I should have - I do not know."  
(Transcript, p 206)

51. Mr Stewart was asked what motivated his minute of 13 December to Mr Wyatt. He replied:

"I wrote the internal minute on 12 (sic) December in the knowledge of a series of events that had been occurring over a considerable period of time". (Transcript, p 233)

Later, having previously acknowledged that some staff had resented the fact that Mr Pope had given in camera evidence, that he identified himself with those who had that feeling and that he was "hurt" by the fact of Mr Pope's giving in camera evidence (transcript, p 232), Mr Stewart stated:

"It was merely the fact that there was an ex-employee of the ADC who was not an Aboriginal and therefore not a potential client of the services we provide and who, in my mind, posed a potential for disruption of administration by his presence in the office. It was in that context that I reported his presence to the acting general manager..."  
(Transcript, p 234)

52. Many factors were operating, such as the concern for security stressed in all submissions to, and evidence at the hearing of, the Committee; the disruption to staff and concern for morale which were particularly stressed by Mr Stewart during his evidence; and the differences

in philosophy between Mr Pope and some ADC officers. The general atmosphere of "paranoia" (see paragraph 46 above), which permeated the ADC at the relevant times, was also relevant to actions taken.

53. Nevertheless, in the Committee's view, Mr Pope's evidence before the Senate Select Committee on the Administration of Aboriginal Affairs was a factor in the actions subsequently taken against him by Mr Wyatt and Mr Stewart. As previously indicated, the words of the initial instruction were unambiguous; Mr Stewart was aware that a letter embodying those instructions had been sent to, but not received by, Mr Pope; and the knowledge that the letter had not been received, together with advice that Mr Pope had been visiting other offices since the instruction had been sent, prompted Mr Stewart's decision to extend the instruction to all ADC offices. To the extent that Mr Pope's evidence, particularly the knowledge that he had given evidence in camera, was a factor the Committee has concluded that the instruction by Mr Wyatt and the minute by Mr Stewart were issued partially in consequence of Mr Pope's having given such evidence.

**(c) Whether any contempt of the Senate is involved**

54. Paragraph 23 of this Report sets out the criteria which the Committee, and the Senate, are required to take into account in determining whether a contempt has been committed. As indicated in that paragraph, there was no readily available remedy, under paragraph 3(b) of the Privilege Resolutions, other than the Senate's power to deal with contempt.

15. The Committee concluded that the matter came within the terms of paragraph 3(a), in that any possible molestation of a witness clearly falls squarely within the terms of the necessity "to provide reasonable protection for the Senate and its committees... against improper acts tending substantially to obstruct them in the performance of their duties", and thus was not trivial or unworthy of the attention of the Senate. The operations of Senate Committees are dependent upon their capacity to receive information from witnesses, by compulsion if necessary; with that right comes the obligation to protect such witnesses before, during and after their giving evidence. Any possible adverse treatment of witnesses must therefore, in the Committee's view, come within the ambit of paragraph 3(a), both to protect the individual witness concerned and to reassure any prospective witnesses before other inquiries that they will receive the appropriate protection which the Senate has declared it will provide.

16. As indicated at paragraph 25 above, the Committee adheres to its view that a finding of strict liability would be justified only in exceptional circumstances - a point also put to the Committee on behalf of Messrs Wyatt and Stewart (transcript, paragraph 6, p 186). The Committee has concluded that such exceptional circumstances do not exist, in that, as previously discussed, the adverse treatment was not of a serious nature and that the actions taken against Mr Pope were not exclusively in consequence of his having given evidence before the Select Committee. Nor does the Committee consider that subparagraph 3(c)(i) is relevant to this matter.

57. The Committee has, however, had to decide whether the actions outlined in paragraph 52 constituted a reasonable excuse under subparagraph 3(c)(ii).
58. On each issue on which the Committee was required to come to a conclusion (see paragraphs 26, and 34 to 36), there was extensive debate within the Committee on whether the necessary thresholds were reached. Some members of the Committee did not believe that on each issue the threshold was reached; others believed that the threshold was reached on each of the necessary issues.
59. On balance and in all the circumstances, the Committee concludes that there was adverse treatment of Mr Pope, although to a minor degree; that it was partially in consequence of his having given evidence to the Senate Select Committee on the Administration of Aboriginal Affairs; and that therefore a finding of contempt should be made although it does not constitute a serious contempt.

#### **Action to be taken**

60. Having concluded that a contempt of the Senate has been committed, the Committee gave consideration to whether any further action should be taken in relation to the matter.
61. In the first place, the Committee draws attention to the comments it has made concerning the difficult circumstances under which the Aboriginal Development Commission was operating at the time the actions were taken. While the Committee does not accept that these circumstances constitute a reasonable excuse for the commission of the acts, it considers that they may

fairly be taken into account in mitigation of the seriousness of the offence. In addition, the Committee has concluded that the adverse treatment of Mr Pope was not of a serious nature, in that the benefit of which he was deprived and the injury to his reputation were not of major significance, and, in this instance, the actions did not in fact obstruct the Select Committee in the performance of its functions.

- (2. The Committee also draws attention to the concluding paragraph of the submission placed before it at the hearing of 29 November, as follows:

"Although, in our respectful submission, we have not offended the privilege of the Parliament, if the Committee considers that we have done so, then we ask but two things:

(a) that our sincere apologies, hereby conveyed to the Committee, are accepted by the Senate for a completely unintended breach, and

(b) that the particular and onerous circumstances in which we were attempting to discharge our responsibilities be recognised." (Transcript, p 189)

- (3. It may also be noted that, at the hearing, Mr Wyatt spoke with admiration about Mr Pope's abilities (transcript, pp 202, 214), accepted that "the use of the words in that memo were of an embarrassing and injudicious kind" (transcript, p 218), and tendered an apology to Mr Pope for the use of those words (transcript, p 219).

64. The Committee has concluded that, in the light of their apology to the Committee and the Senate, no penalty should be imposed on either Mr Wyatt or Mr Stewart as a consequence of their actions.

### Findings

65. The Committee finds that, on balance and in all the circumstances:

(a) there was adverse treatment, although to a minor degree, of Michael Pope -

(i) by Cedric Wyatt, in that he instructed that Mr Pope should make formal request in writing before visiting the head office of the Aboriginal Development Commission, and

(ii) by Michael Stewart, in that he extended the instruction to apply to all ADC offices and sent a minute to that effect to all such offices;

(b) the adverse treatment in each case was partially in consequence of Mr Pope's having given evidence to a Senate Committee;

(c) therefore, a contempt of the Senate was committed in each case, although not constituting a serious contempt; and

(d) in the light of Mr Wyatt's and Mr Stewart's apology to the Committee and the Senate, no further action should be taken.

66. In accordance with paragraph 2(10) of the Privilege Resolutions, the Committee, having determined on 20 December the findings, at paragraph 65 above, to be included in its report, acquainted Mr A. Howie, of



Minter Ellison, as the representative of Mr Wyatt and Mr Pope, of those findings on that day. Also on 20 December, Minter Ellison, on behalf of their clients, made submissions on the findings.

The Committee considered the submissions but resolved to adhere to its findings.

Patricia Giles  
Chair



**APPENDICES A TO D**



9 March 1989 SENATE 713

#### MATTER OF PRIVILEGE

The **PRESIDENT**—In accordance with the procedures laid down by the Senate on 25 February 1988, Senator Peter Baume has raised with me a matter of privilege. I am required by those procedures to determine whether a motion relating to the matter should have precedence, having regard to criteria also laid down by a resolution of the Senate. In earlier statements I have indicated to the Senate the way in which I apply the criteria.

The matter raised by Senator Peter Baume gives rise to a question of whether a witness who gave evidence before a Senate committee has been penalised as a result of giving that evidence. This is the same question as is raised by other matters which have been referred to the Privileges Committee.

The matter clearly meets the criteria laid down by the Senate. I have therefore determined that a motion relating to the matter should have precedence. I present to the Senate the letter from Senator Peter Baume and the attached documents to which he has referred. The relevant resolution of the Senate provides that, where the Senate is not expected to meet within a week after my determination, a motion may be moved on the same day. Senator Peter Baume may therefore move a motion to refer the matter to the Privileges Committee.

Senator **PETER BAUME** (New South Wales) (10.08)—I move:

- (1) That the following matter be referred to the Committee of Privileges: whether there was any adverse treatment of Mr Michael Pope by the Aboriginal Development Commission or its officers in consequence of evidence given by him to the Select Committee on the Administration of Aboriginal Affairs, and whether any contempt of the Senate was involved.
- (2) That the provisions of the resolution of 3 November 1988 relating to the powers of the Committee of Privileges apply in relation to the Committee's inquiry into this matter.

The matter which is the subject of this motion relates to evidence which was given last year to the Senate Select Committee on the Administration of Aboriginal Affairs by Mr Michael Pope. Mr Pope was formerly Assistant General Manager of the Aboriginal Development Commission (ADC). He gave some of his evidence publicly and some in camera. His evidence was generally supportive of Mrs Shirley McPherson and the old ADC and was, therefore, generally critical of the reconstituted ADC.

I now move to the substance of the matters that I wish to bring before the Senate and which supports the motion which I have moved. Mr President, those matters are set out in the letter I wrote to you yesterday as soon as possible after I had become aware of the ADC documents. The relevant parts of that letter read as follows:

I have become aware this afternoon of the attached letters. The first was sent to Mr Michael Pope by Mr Peter McMahon, Assistant General Manager, Aboriginal Development Commission on 4 January 1989. This letter was sent to inform him that, in the light of the allegations he had made to the Senate Select Committee on the Administration of Aboriginal Affairs the acting General Manager had indicated that Mr Pope would not be permitted to visit Bonner House in the future without making a formal request in writing to the acting General Manager.

The second letter is in the form of a circular to ADC staff that confirms that the instruction was issued, but in the process extends it to all ADC offices throughout Australia.

On the face of the first letter, the punitive action taken against Mr Pope arises directly from the fact that he gave evidence to the Senate Select Committee.

The letter which was attached, which was the letter sent to Mr Pope, is actually a copy. It is dated 4 January 1988 and I take it that that is meant to be 4 January 1989. That letter states quite specifically that the action has been taken 'in the light of the allegations you have made to the Senate Select Committee' and it asserts that the Acting General Manager—I believe that that is Mr Cedric Wyatt—has authorised the action. In handwriting below the letter is appended an officer's note. The note reads:

714 SENATE 9 March 1989

*Matter of Privilege*

Above letter was returned unopened from the Macquarie Hostel. I gather Mr Pope has moved on by that time.

It is signed C. Kay—that is, Colin Kay—and it is dated 20 February 1989. The letter was sent by Mr McMahon, the Assistant General Manager of the ADC, on 4 January 1989 to Mr Michael Pope. It did restrict his right to visit the headquarters of the ADC, as set out in the letter, and it did identify as the reason for that action allegations he had made in his evidence to the Senate Select Committee.

The second document is a memo sent out on 20 February 1989 by Mr Michael Stewart, Assistant General Manager, Corporate Service, to divisional heads, branch managers at Head Office and regional managers. That document reads:

1. The A/g General Manager has decided that should Mr Michael Pope wish to attend an office of the Aboriginal Development Commission then he should formally seek and obtain prior approval for any such visit.
2. Should you directly receive a request from Mr Pope to visit an ADC office then you should refer the matter to the A/g General Manager.
3. Please inform Branch Managers within your region of this minute.

It is signed M. A. Stewart—that is, Michael Stewart, Assistant General Manager, Corporate Services. I am led to believe that there are other pieces of correspondence within the ADC between officers which might assist the Privileges Committee. I suggest that the Privileges Committee might well seek to obtain those.

The second letter which I have read out went further than the first. It actually extended the requirement for Mr Pope to obtain approval to visit any ADC office anywhere in Australia. I remind honourable senators again of the clear statement in the letter by Mr McMahon that the decision was taken 'in the light of the allegations he had made to the Senate Select Committee'. In the same letter it is made clear that the decision was one made by the Acting General Manager who, I believe, is Mr Cedric Wyatt.

I remind honourable senators of the relevant provisions of the Parliamentary Privileges Act. Section 12 (2) states:

A person shall not inflict any penalty or injury upon, or deprive of any benefit, another person on account of—

- (a) the giving or proposed giving of any evidence; or
- (b) any evidence given or to be given, before a House or a Committee.

Penalty:

- (a) in the case of a natural person, \$5,000 or imprisonment for 6 months, or
- (b) in the case of a corporation, \$25,000.

I observe that that section has been written to cover the most serious kinds of offences which might be committed. There are, however, other grounds which may be called upon. There is a common law offence of contempt of parliament to which we should also address ourselves.

On the face of it, this seems to be an instance of the kind covered by section 12 of the Parliamentary Privileges Act. It appears to have been done by an officer of the Commission acting for that Commission. Of course, at this time we do not know whether or not the commissioners of the ADC ordered the action or whether it was taken solely by and on behalf of Mr Wyatt himself.

This is the third occasion in just a few months that the Senate has referred to the Committee of Privileges matters relating to the appearance of witnesses before the Senate Select Committee into the Administration of Aboriginal Affairs. One matter—that relating to the appearance of certain witnesses; who paid for them; whether the estimates committee was properly informed on the matter—has already been determined. The second matter, relating to certain actions taken against Mrs McPherson and Mr O'Brien, awaits determination by the Privileges Committee and I do not intend to canvass that matter here. However, on a separate matter, I observe in passing that Mr O'Brien has still not received the reasons which he sought in October—

Senator Robert Ray—Mr President, I take a point of order. Senator Baume is speaking to a reference to the Privileges Committee of this matter. I think it would be much better if we restricted ourselves to that matter and did not start discussing other references to the Privileges Committee. I know he said he was doing so in passing but—

*Matter of Privilege*

9 March 1989 SENATE 715

Senator PETER BAUME—Mr President, I understand Senator Ray's point. I am being meticulous in not speaking to the matter before the Privileges Committee. The matter which I am raising now has nothing to do with the reference before the Privileges Committee.

Senator Robert Ray—Further to the point of order, my additional point was whether what Senator Baume is saying has anything to do with the motion he has moved today.

The PRESIDENT—I ask Senator Baume to speak to the motion he has moved today.

Senator PETER BAUME—Yes Mr President. I was making only a one-sentence statement that the witness still had not received certain reasons which he had sought under the Administrative Decisions (Judicial Review) Act in October. I was making the point that it is one man against a bureaucracy having a difficult time. He has now taken retirement and is seeking new employment.

There have been so many revelations about the treatment of witnesses and so many allegations. It is common knowledge that the Minister for Aboriginal Affairs (Mr Hand) does not like Senate committees and also that he has appointed special investigations to look into a number of allegations. But none of those inquiries which have been appointed gives to potential witnesses protection in any way equivalent to that offered by witnesses who appear before a parliamentary committee.

It should be clear by now that all witnesses or potential witnesses in these Aboriginal affairs matters need the protection provided by the Parliamentary Privileges Act. We can now understand why witnesses will not come forward to the various inquiries and why some witnesses before the Senate Select Committee will not now allow their revelations to go to Mr Andrew Menzies for further attention. He cannot offer them adequate protection from the kind of harassment of which we have seen too much. We have even had the spectacle of one organisation sending a Queen's Counsel to represent it before the Auditor-General and then having that QC accuse the Auditor-General of being racist and professionally incompetent.

Within the Westminster system for centuries the High Court of Parliament has offered protection to witnesses. We do so here because we believe in the right of the Senate and of Senate committees to hear witnesses, to receive evidence and not to have those witnesses scared off or punished for appearing. Equally, witnesses have a right to be protected if they assist Senate committees in the performance of their task. I draw to the attention of honourable senators a quotation from page 566 of the fifth edition of Odgers' *Australian Senate Practice*:

The power to protect witnesses is also one of the powers preserved to the Senate and the House of Representatives under section 49 of the Constitution. Any act by any person which operates to the disadvantage of a witness on account of evidence given by him before the Senate, or any committee thereof, would be treated by the Senate as a breach of privilege.

I have presented documents which make a prima facie case that an offence might have been committed against section 12 of the Parliamentary Privileges Act or otherwise constitute an infringement of privilege. I believe that the correct course now is to refer the matter to the Committee of Privileges for examination and report. My motion will permit that to occur.

It gives me no pleasure to rise on this matter, but it seems that neither the Minister nor those whom he has appointed to high statutory office have learned the lessons from quite recent similar episodes. I commend the motion to the Senate.

Senator ROBERT RAY (Victoria—Minister for Immigration, Local Government and Ethnic Affairs) (11.18)—Mr President, the fact that you regard this matter as important would automatically almost govern the attitude of those on this side of the chamber in saying that there must be some case. Senator Peter Baume has made out an adequate case today that this matter should be referred to the Committee of Privileges. I make it quite clear that that reference does not prejudice the issue. One says only that we must protect witnesses. If there is some doubt about that, then we refer the matter to the Privileges Committee. So it is not a matter of prejudging the issue. Therefore, we believe that the matter should be referred to the Privileges Committee and we hope for a prompt report.

Question resolved in the affirmative.



## PARLIAMENT OF AUSTRALIA · THE SENATE

SENATOR THE HON. PETER BAUME MORGAN GRENFELL BUILDING, 56-70 PHILLIP STREET  
G.P.O. BOX 36, SYDNEY, N.S.W. 2000 FAX: (02) 277 377 TEL: (02) 277 281

9 MAR 1989

*ML*  
TABLED  
PAPER

8 March 1989

*Dear Mr President,*

Pursuant to procedures laid down, I raise a matter of privilege. It concerns the apparent penalising of a witness as a result of evidence given by him to a Senate Committee.

I have become aware this afternoon of the attached letters. The first was sent to Mr Michael Pope by Mr Peter McMahon, Assistant General Manager, Aboriginal Development Commission on 4 January 1989. This letter was sent to inform him that, in the light of the allegations he had made to the Senate Select Committee on the Administration of Aboriginal Affairs the acting General Manager had indicated that Mr Pope would not be permitted to visit Bonner House in the future without making a formal request in writing to the acting General Manager.

The second letter is in the form of a circular to ADC staff that confirms that the instruction was issued, but in the process extends it to all ADC offices throughout Australia.

On the face of the first letter, the punitive action taken against Mr Pope arises directly from the fact that he gave evidence to the Senate Select Committee.

It is clear to me that an offence may have been committed against S 12 of the Parliamentary Privileges Act which relates to the protection of witnesses and which provides in subs. (2) that a person shall not inflict any penalty or injury upon another person on account of any evidence given to a committee.

I therefore seek your ruling so that I could move an appropriate motion for reference of this matter to the Committee of Privileges forthwith.

Yours sincerely

*Peter Baume*

Peter Baume  
Senator for New South Wales

Senator the Hon K Sibraa  
President of the Senate  
Parliament House  
CANBERRA ACT 2600

*For advice*  
*Peter Baume*  
*8/3/89*





ABORIGINAL  
DEVELOPMENT  
COMMISSION



APPENDIX A5

Neptune Street  
Woden A.C.T. 2606  
P.O. Box 1200, Woden A.C.T. 2606  
Telephone (062) 89 1868

THE SENATE

9 MAR 1988

*12/2*  
TABLED  
PAPER

Mr Michael Pope  
c/o Macquarie Private Hotel  
National Circuit  
BARTON ACT 2600

Dear Mr Pope

The acting General Manager has noted that you have on occasions been visiting Bonner House. He has asked me to advise you that in the light of the allegations you have made to the Senate Select Committee he has asked that should you wish to visit Bonner House in the future would you please make a formal request in writing to Mr Wyatt for his consideration.

Yours sincerely

*DM*  
Peter McMahon  
Assistant General Manager  
Administration

4 January 1988

*above letter was returned unopened from ~~the~~ Macquarie Hostel. I gather Mr. Pope had moved on by that time*

*L. Kay 20/2/88*

**ABORIGINAL  
DEVELOPMENT  
COMMISSION**



Neptune Street  
Woden A.C.T. 2608

P.O. Box 1200, Woden A.C.T. 26  
Telephone: (062) 891668

*Copies sent to B.D.'s -*

*22.2.89*



Divisional Heads  
Branch Managers (Head Office)  
Regional Managers

**MR MICHAEL POPE**

1. The A/g General Manager has decided that should Mr Michael Pope wish to attend an office of the Aboriginal Development Commission then he should formally seek and obtain prior approval for any such visit.
2. Should you directly receive a request from Mr Pope to visit an ADC office then you should refer the matter to the A/g General Manager.
3. Please inform Branch Managers within your region of this minute.

*M. A. Stewart*

(Michael Stewart)  
Assistant General Manager  
Corporate Services

20 February 1989



# MINTER ELLISON

SOLICITORS, ATTORNEYS & NOTARIES

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DX 117 SYDNEY

OUR REFERENCE:  
**AAH**

YOUR REFERENCE:

11 December 1989

Ms Anne Lynch  
Secretary  
Senate Committee of Privileges  
BY FACSIMILE: (062) 773199

Dear Ms Lynch

Messrs M Stewart & C Wyatt - Reference 9 March 1989

We thank you for your letter dated 4 December and for the copies of the Hansard transcript enclosed therein.

In relation to the opportunity to illustrate particular points, we make the following respectful observations:

1. Prior to 9 December 1988, a well established security regime existed within Commission offices. Relevant documentary evidence comprises:

- Staff Circular No 10/85 dated 24 January 1985.
- Re-issue of the above Circular on 28 July 1987.
- Staff Circular No 48/88 dated 13 July 1988.
- Staff Circular No 74/88 dated 30 November 1988.

2. Mr Pope knew of Staff Circular No 48/88 (transcript page 163) and therefore knew what it said about maintaining physical security to prevent unauthorised access and in relation to prohibiting oral communications dealing with Commission matters being given to anyone outside the ADC without authorisation. Yet after his retirement, Mr Pope apparently deliberately flouted the circular and placed ADC staff in a very difficult position; see transcript pages 169 (the

'general interest question') and 175 ('I simply marched into the office').

3. Mr Pope agrees that before he gave evidence to the Select Committee on 9 December 1988, his views about certain operations of the Aboriginal Development Commission and certain actions of members of the Board of that Commission were known to Messrs Stewart and Wyatt and others in the Commission's senior management (transcript page 181). Those views were that the members of the Commission Board encouraged or tolerated intimidation (transcript 9 December 1988 page 1230); that the Board ignored professional advice, acted in an unbusinesslike manner and failed to treat support staff properly (transcript 9 December 1988 page 1230); that the Board members made bad and unwise decisions and made decisions prompted by considerations of self interest (transcript 9 December 1988 page 1231); that Board meetings were often conducted in a reprehensible manner (transcript 9 December 1988 page 1231); and that the Board would knowingly commit contempt of the Parliament (transcript 9 December 1988 page 1229).

Given these well known views concerning the Commission and the members of the Board, Mr Pope agrees that a condition requiring prior approval before visiting non-public areas of Commission offices would be reasonable (transcript page 182).

4. There is no suggestion that Mr Pope was somehow excluded or banned from Commission offices (transcript page 182) and he could have at any time made a request for approval to visit an office, but chose not to do so (transcript pages 181 and 182).
5. There has been no material effect on Mr Pope as a result of the so called 'exclusion'; he expresses concern about effects on his social life and to his reputation associated with exclusion but these were imagined effects because at no stage has it ever been said, either in the documents in question or in any other information conveyed to Mr Pope, that he was excluded from the premises (transcript pages 163 and 182). In truth, he has suffered no penalty or injury, nor received any adverse treatment.
6. In January 1989, Mr Wyatt was not really aware of the Senate Resolution of 25 February 1988 although he had been told certain alarming things about what the Privileges Committee could do (transcript page 203). Normally a letter of the kind sent to Mr Pope would have gone to legal branch for drafting but this did not occur in this instance and is something which Mr Wyatt accepts as having been his fault (transcript page 191). The letter of 4 January was not signed by Mr Wyatt and was not seen by him until the matter was first mentioned in the Senate (transcript page 193), namely in March 1989. At this time, Mr Wyatt recognised the letter as 'the most stupid thing I had ever written, because there was absolutely no intention to penalise Michael Pope in any way whatsoever' (transcript page 203).

7. The intent of the letter dated 4 January was simply to deny Mr Pope access to material he was not authorised to see (transcript page 218) - a reasonable condition in Mr Pope's own view (transcript page 182).
8. The gist of the intent behind Mr Stewart's broadening of the scope of the spirit of Mr Wyatt's instruction is recorded at transcript page 229:

... it was painfully obvious at the time that we needed to address officer responsibilities in displaying some common sense and responsibilities in receiving staff into the office who had not made their intentions known and who represented an alternative policy position. The potential was there to disrupt their work and to give that psychological disruption to what management and the Board were trying to achieve.

Clearly, this had nothing whatsoever to do with Mr Pope's evidence to the Select Committee.

In the circumstances, we submit that there has been no contempt of the Senate.

Yours faithfully  
MINTER ELLISON



A A Howie



6) **ABORIGINAL  
DEVELOPMENT  
COMMISSION**



390045

- . Chairman
- . General Manager
- . A/DGM
- . AGMs
- . Branch Heads
- . Regional Managers

Senate Select Committee on the Administration  
of Aboriginal Affairs

I have received several inquiries from staff as to the status of submissions and evidence given to the above Committee.

2. The starting point for such an analysis is the Senate's motion of 1 June 1988. Paragraph (9) of that resolution states:

"(9) That the Committee and any sub-committee have power to send for and examine persons, papers and records ..."

3. Clearly the Committee has the power to call witnesses and examine documents. Evidence given by witnesses to a Parliamentary Committee is covered by Parliamentary privilege. This means that a person who makes statements as evidence is immune from legal actions for, say, defamation. Further, a witness is protected from threats, as such an action would be a contempt of Parliament.

4. A witness can request the right to give evidence in camera and while the Committees have, to my knowledge, always protected and maintained confidentiality in such circumstances, it still remains the prerogative of the Committee whether it will make the evidence public in its proceedings and its report. Committees usually prefer evidence to be given at public hearings.

5. What usually happens is that the Committee invites submissions by advertisements in the newspapers. It is far better to lodge a written submission. The Committee decides who it will call as a witness.

6. The Committee usually writes to key organisations or individuals seeking submissions or oral evidence. The Committee has the power to summons a witness if that is warranted.

7. A formal submission from the ADC must state that it is from the ADC and should set out the policies and objectives relevant. A

witness appearing in an official capacity for the ADC can decline to answer questions which might require the witness to be critical of government policy or disclose discussions/correspondence with a Minister.

8. Any person can lodge a submission dealing with the Terms of Reference to the Committee. A submission from an officer of the Commission who does not have formal approval of the Board to make that submission is made in a private capacity. The person must not purport to give formal Commission views in such a submission or in evidence. An officer, as a private individual, might want to inform the committee about theories on organisational structures. Such a submission, made in good faith, would probably cause no problems for the officer as it is only that officer's own views.

9. An officer who believes that, in good conscience, he/she must disclose sensitive material to the Committee runs into a "grey area". The career of a "whistle blower" can be adversely affected; this is common knowledge. In many cases "whistle blowers" are motivated by conscience and what they believe is in the public interest. If an officer believes that they must bring certain things to the attention of a Committee then should contact the Committee Secretary for advice. A request could also be made to have the matter considered by the Chairman of the Committee on an informal basis. This is not an invitation for officers to approach the Committee as such an action should only ever be taken after careful consideration by the officer. There are alternatives to approaching a committee and they are to raise the matter with a superior.

10. The address for the Committee is:

Mr Derek Abbott  
Secretary  
Senate Select Committee on Administration  
Aboriginal Affairs  
The Senate  
Parliament House  
CANBERRA ACT 2600

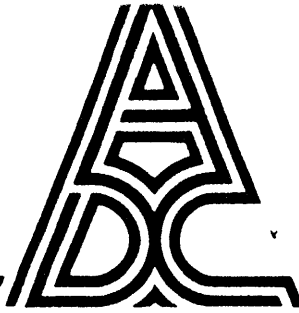
(telephone (062) 773580)

8 August 1988

*B. Bailey*  
B Bailey  
Acting Assistant  
General Manager  
(Special Duties)



**ABORIGINAL  
DEVELOPMENT  
COMMISSION**



APPENDIX D  
BONNER HOUSE  
Neptune Street  
Woden A.C.T. 2606

133

P.O. Box 1200, Woden A.C.T. 2606  
Telephone: (062) 891666

  
A/g Assistant General Manager  
Administration

*Mr. O'Ryan* *11/27/2.*  
*- would you pls place  
these papers on Mr. Pope's  
file*

*B. Hu 20/2/89*

**MR MICHAEL POPE**

1. In response to my enquiry you today advised me that Mr McMahan's letter of 4 January 1989 was returned unopened from Macquarie Hostel.
2. I have decided, as Delegate, to broaden the scope of Mr Wyatts decision to include all offices of the Aboriginal Development Commission.
3. I have despatched an advice to all Regional offices to that effect (copy attached).
4. Please monitor for adherence.

*M.A. Stewart*

(Michael Stewart)  
Assistant General Manager  
Corporate Services

20 February 1989

