
The Parliament of the Commonwealth of Australia

**Report into whether the former Member for Dobell,
Mr Craig Thomson, in a statement to the House on
21 May 2012 deliberately misled the House**

House of Representatives
Standing Committee of Privileges and Members' Interests

March 2016
Canberra

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ISBN 978-1-74366-417-9 (Printed version)

ISBN 978-1-74366-418-6 (HTML version)

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Membership of the Committee

Chair Mr Russell Broadbent MP

Deputy Chair Ms Anna Burke MP

Members

Hon Jamie Briggs MP (nominee of Leader of the House from 24 February 2016)

Hon Joel Fitzgibbon MP

Mr Andrew Giles MP

Dr David Gillespie (from 24 February 2016)

Mr Alex Hawke MP (nominee of Leader of the House to 22 September 2015)

Ms Clare O'Neil MP (nominee of Deputy Leader of the Opposition)

Mr Tony Pasin MP (from 11 February 2015)

Mr Graham Perrett MP

Mr Keith Pitt MP (to 24 February 2016)

Mr Christian Porter MP (to 11 February 2015)

Mr Dan Tehan MP (nominee of Leader of the House from 21 October 2015 to 18 February 2016)

Hon Philip Ruddock MP

Mr Ross Vasta MP



Terms of reference

On 24 February 2014 the Hon Mr Pyne (Leader of the House), moved and the House resolved – that the following matter be referred to the Committee of Privileges and Members’ Interests:

Whether, in the course of his statement to the House on 21 May 2012, and having regard to the findings of the Melbourne Magistrates Court on 18 February 2014 in relation to Mr Thomson, the former Member for Dobell, Mr Craig Thomson, deliberately misled the House.

The issue of whether the former member for Dobell in a statement to the House on 21 May 2012 deliberately misled the House

Introduction and background

- 1.1 The Standing Committee of Privileges and Members' Interests is established under standing orders of the House, SO 216. The current committee was appointed on 4 December 2013, early in the life of the 44th Parliament. Under standing order 216, the committee is charged with responsibility to, among other things, 'inquire into and report on complaints of breach of privilege or contempt which may be referred to it by the House under *standing order 51* or by the Speaker under *standing order 52*, or any other related matter referred to it by or in accordance with a resolution of the House'.
- 1.2 A member is able to raise a matter of privilege during a sitting and if the Speaker is satisfied that a *prima facie* case of contempt or breach of privilege has been made out, the Speaker may grant precedence to a motion to refer the matter to the committee, SO 51. A member may raise with the Speaker a matter of privilege when the House is not sitting, and if satisfied that a *prima facie* case of contempt or breach of privilege has been made out, the Speaker must refer the matter to the committee immediately, SO 52.
- 1.3 The matter in this report concerns an allegation made on 24 February 2014 by the Member for Dobell, Ms Karen McNamara, that in a statement to the House in the last, 43rd, Parliament, on 21 May 2012, the then Member for Dobell, Mr Craig Thomson, had deliberately misled the House. In raising the matter of privilege, Ms McNamara referred to the findings of guilt in

relation to Mr Thomson by the Melbourne Magistrates' Court on 18 February 2014.

- 1.4 Mr Thomson's statement to the House on 21 May 2012 was first formally raised as a matter of privilege in the 43rd Parliament. In advising the House on 9 May 2012 that he would seek to make a statement to the House, Mr Thomson referenced a report of Fair Work Australia (now called the Fair Work Commission) explaining he first had access to it on 7 May 2012 and that it would be appropriate to go through the report and then make 'a comprehensive statement to parliament, which is what I intend to do ... in the next sitting week'.¹ On the day following his statement, 22 May 2012, the Member for Sturt raised in the House as a matter of privilege whether Mr Thomson had deliberately misled the House.² The then Speaker found that a prima facie case had not been made and he did not grant precedence to the matter, although the Speaker observed that it was still open to the House to determine a course of action in relation to the matter. The Member for Sturt then immediately, by leave, moved a motion, which was agreed to by the House:

That the following matter be referred to the Committee of Privileges and Members' Interests: Whether, in the course of his statement of 21 May 2012, the Honourable Member for Dobell deliberately misled the House.

- 1.5 The committee commenced its consideration of the matter. After Mr Thomson was charged with a number of criminal matters, the committee chair, on 14 February 2013, informed the House that the committee would suspend its inquiry until conclusion of judicial proceedings, to avoid potential prejudice, consistent with the operation of the sub judice convention.³ The committee had not completed its inquiry prior to dissolution of the House at the end of the 43rd Parliament, on 5 August 2013, and the inquiry lapsed.

The current reference

- 1.6 On 18 February 2014, the Melbourne Magistrates' Court found Mr Thomson guilty of numerous charges for offences of dishonesty that occurred between 2002 and 2007, in relation to his role as national secretary to the Health Services Union (HSU). The charges arose from an independent investigation following the results of a routine exit audit
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1 Mr Craig Thomson, MP, House of Representatives, *Hansard*, 9 May 2012, p. 4329.

2 The Hon Christopher Pyne, MP, House of Representatives, *Hansard*, 22 May 2012, p. 5036.

3 The Hon Nicola Roxon, MP, House of Representatives, *Hansard*, 14 February 2013, p. 1387.

when Mr Thomson resigned his position. The dishonesty fundamentally related to the use of credit cards issued to Mr Thomson by the HSU as part of his employment.

1.7 The next sitting week, on 24 February 2014, Ms McNamara in raising Mr Thomson's statement of 21 May 2012 as a matter for the attention of the House, cited the court decision and stated that 'this information, I believe, establishes a prima facie case that Mr Thomson deliberately misled the House in his statement of 21 May 2012.'⁴ Ms McNamara requested that the Speaker give precedence to a motion to allow the matter to again be referred to the committee. See Appendix A for a copy of Mr Thomson's statement to the House of 21 May 2012.

1.8 Later that day, Speaker Bishop determined that there were sufficient grounds to give precedence for the matter to be referred to the committee, stating:

Deliberately misleading the House is one of the matters that can be found to be a contempt. As I noted earlier, this matter was referred to the Standing Committee of Privileges and Members' Interests in the last parliament, with the unanimous agreement of the House. I have considered the principal information provided by the honourable member for Dobell and the background material I have already referred to. In light of the fact that the House had referred this matter to the Standing Committee of Privileges and Members' Interests in the last parliament and that the proceedings were suspended and the findings of guilt by the Melbourne Magistrates' Court, I give precedence for this matter to be referred to the Standing Committee of Privileges and Members' Interests.⁵

1.9 Following the Speaker's statement, the House agreed to a motion moved by the Member for Sturt, now Leader of the House, referring to the committee an inquiry in the following terms:

Whether, in the course of his statement to the House on 21 May 2012, and having regard to the findings of the Melbourne Magistrates' Court on 18 February 2014 in relation to Mr Thomson, the former Member for Dobell, Mr Craig Thomson, deliberately misled the House.⁶

4 Ms Karen McNamara, MP, House of Representatives, *Hansard*, 24 February 2014, p. 515.

5 The Hon Bronwyn Bishop, MP, Speaker, House of Representatives, *Hansard*, 24 February 2014, p. 566.

6 The Hon Christopher Pyne, MP, House of Representatives, *Votes and Proceedings*, 24 February 2014, p. 311.

Relevant law

- 1.10 In the 43rd Parliament, the committee received a memorandum dated 29 May 2012 from the Clerk of the House outlining the law relevant to the earlier case. This material was available to the committee in the 44th Parliament, and is directly relevant, given the common focus of the two inquiries on whether Mr Thomson, when a member, deliberately misled the House in the course of his statement to the House on 21 May 2012 (see Appendix B for a copy of the Clerk's memorandum). The point of distinction between the two references was the inclusion in the terms of reference for the current inquiry of the requirement for the committee to have regard to specific court findings in relation to Mr Thomson. The committee also received from the Clerk a note, dated 5 March 2014, prepared for him in relation to the current case.

Contempt and deliberate misleading of the House

- 1.11 The Clerk's memorandum identifies that it was open to the House to hold that a member who has misled the House deliberately, has committed a contempt (an offence against a House). Section 4 of the *Parliamentary Privileges Act 1987* provides a threshold test for whether conduct would be regarded as a contempt:

4. Essential element of offences

Conduct (including the use of words) does not constitute an offence against a House unless it amounts, or is intended or likely to amount, to an improper interference with the free exercise by a House or committee of its authority or functions, or with the free performance by a member of the member's duties as a member.

- 1.12 In the current case the relevant consideration would be whether the conduct, in making the statement, amounts, or is intended or likely to amount, to an improper interference with the free exercise by the House of its authority or functions. The note from the Clerk states that the Act would enable the House to take action in relation to a contempt, if proven, even though Mr Thomson made the statement as a member of the House and he has since ceased to be a member.
- 1.13 *House of Representatives Practice* elaborates on the behaviour of deliberate misleading and, in the absence of a relevant precedent involving the House, considered cases from other Westminster style parliaments, notably citing *Profumo's Case* involving a former member of the UK House of Commons, who was found guilty of deliberate misleading when a member. In the absence of statute law, the definition of contempt applying at the UK Parliament is stated in *May* as including 'any act ... which

obstructs or impedes either House of Parliament in the performance of its functions ...'.⁷

- 1.14 The Clerk's memorandum draws on the report of *Profumo's Case in House of Representatives Practice*:

Mr Profumo had sought the opportunity of making a personal statement to the House of Commons to deny the truth of allegations currently being made against him. Later he was forced to admit that in making his personal statement of denial to the House, he had deliberately misled the House. As a consequence of his actions, he resigned from the House which subsequently agreed to a resolution declaring him guilty of a grave contempt.⁸

Deliberate misleading of the House

- 1.15 The Clerk's memorandum commends a three point test to assist the committee with its deliberations in relation to deliberate misleading. The *McGee test*⁹, named after its New Zealand proponent, has three elements to be established when considering an allegation that a member of Parliament is in contempt by reason of a statement the member has made in a house of Parliament:

- the statement must, in fact, have been misleading;
- it must be established that the member making the statement knew at the time the statement was made that it was incorrect; and
- in making it, the member must have intended to mislead the House.

- 1.16 In elaborating on the test to determine whether a statement was deliberately misleading, McGee states:

... there must be something in the nature of the incorrect statement that indicates an intention to mislead. ... But where the member can be assumed to have personal knowledge of the stated facts and made the statement in a situation of some formality (for example, by way of personal explanation), a presumption of an intention to mislead the House will more readily arise.¹⁰

- 1.17 The final aspect of the test is in relation to the appropriate standard of proof, identified by McGee as:

7 Erskine May, *Parliamentary Practice*, 24th edn, p. 251.

8 House of Representatives Practice, 6th Edition, p. 752.

9 McGee, D., *Parliamentary Practice in New Zealand*, 3rd Ed, 2005, pp. 653-654.

10 McGee, D., *Parliamentary Practice in New Zealand*, 3rd Ed, 2005, p. 654.

... the civil standard of proof on a balance of probabilities but, given the serious nature of the allegations, proof of a very high order. Recklessness in the use of words in debate, though reprehensible in itself, falls short of the standard required to hold a member responsible for deliberately misleading the House.¹¹

- 1.18 The committee determined to adopt the *McGee test*, acknowledging that it is a standard applied in many Westminster style parliaments that have parliamentary privilege, in circumstances where a member is alleged to have deliberately misled the House.

The inquiry

- 1.19 In conducting the inquiry, the committee considered the statement Mr Thomson made to the House on 21 May 2012 when he was the Member for Dobell. Initially, the committee reviewed the findings of the Melbourne Magistrates' Court of 18 February 2014 in relation to Mr Thomson, as cited in the terms of reference. On 25 March, the court convicted Mr Thomson and sentenced him to an aggregate period of 12 months imprisonment, of which nine months was to be suspended for a period of two years. That same day, Mr Thomson appealed against the court's conviction and sentence in relation to the 65 charges, which comprised 16 charges of theft and 49 charges of obtain a financial advantage by deception. He was granted bail, with the appeal date set for 24 November 2014 in the County Court of Victoria.
- 1.20 With the appeal process in train, and in accordance with the sub judice convention, the committee determined to continue its inquiry in private only, until the appeal was finalised.
- 1.21 On 15 December 2014, the County Court of Victoria made its findings in relation to the appeal and sentenced Mr Thomson on 17 December 2014. The period of appeal from the County Court's decision had expired without an appeal being lodged by the time of the committee's next meeting in March 2015. At each step in the chain of legal proceedings deriving from the matter cited in the terms of reference, the committee has considered the latest court findings in relation to that particular matter.
- 1.22 In early 2015 when the committee began to deliberate on the substantive issues, a member of the committee, the Member for Hunter, Mr Joel Fitzgibbon, declared that as party whip he had previously counselled

11 McGee, D., *Parliamentary Practice in New Zealand*, 3rd Ed, 2005, p. 654.

Mr Thomson and that he now intended to withdraw from further proceedings on the inquiry.

- 1.23 Given the general nature of the terms of reference, the committee decided to focus on two specific aspects of the case, in particular, cash withdrawals and HSU credit cards, and escort services.
- 1.24 During the period of the inquiry, there were other court cases and a Royal Commission¹² covering essentially the same period of time and the same circumstances. The committee reviewed these other official reports seeking material relevant to the issues under consideration.

Committee procedures

- 1.25 The committee is not a court and is not bound by the laws and rules applying to courts. Rather, the committee is bound by parliamentary law and procedure. Throughout the inquiry the committee was mindful of the tradition of restraint in respect of exercising the powers of the House in matters of contempt and privilege. The committee has established specific procedures for dealing with privileges references which ensure procedural fairness and natural justice are afforded to all parties. Further, the House resolution adopted on 25 November 2009 provides procedures for the protection of witnesses before the Committee of Privileges and Members' Interests. These procedures are reproduced at Appendix C.
- 1.26 Mr Thomson had been notified of the earlier inquiry in the 43rd Parliament and had made written submissions to the committee. He was notified of the current inquiry and, in accordance with section 2 of the resolution, was invited to respond to the allegations by providing a submission and by giving evidence before the committee. Mr Thomson chose to give oral evidence and did so on 15 October 2015 to an in-camera hearing of the committee. The material submitted by Mr Thomson in the first inquiry was also available to the committee.
- 1.27 The House has the power, which is delegated to committees, to authorise the publication of any evidence given or any document presented even if it has initially been received in private, SO 242 (a). The committee has not authorised publication of the oral or written evidence received in-camera.
- 1.28 Section 10 of the resolution requires that as soon as practicable after the committee has determined findings to be included in the report to the House a person affected by those findings be acquainted with the findings

12 Royal Commission into Trade Union Governance and Corruption, Royal Commissioner John Dyson Heydon AC QC delivered his Final Report to the Governor General on 28 December 2015, copy available at <https://www.tradeunionroyalcommission.gov.au>

and afforded reasonable opportunity to make submissions on those findings. Further, section 11 of the resolution requires that if the committee determines to make a recommendation to the House on a penalty to be imposed on a person, the person affected shall be afforded all reasonable opportunity to make a submission to the committee, in writing and orally, in relation to the proposed penalty.

- 1.29 Mr Thomson was contacted on several occasions and given reasonable opportunity to respond to the committee's adverse findings in relation to him, further details follow.

Mr Thomson's statement to the House on 21 May 2012

- 1.30 As referred above, on 9 May 2012, Mr Thomson rose in the House and, on indulgence, informed the House that he intended to make a statement in the next sitting week. He noted that he had received access to a lengthy report from Fair Work Australia two days previously, that he would go through the report and 'make a comprehensive statement to parliament'.
- 1.31 Then on 21 May, Mr Thomson, by leave, made a statement to the House.¹³ He informed the House that he and his family had received threatening and intimidating messages and he made a general claim, without specifying which allegations he was talking about, that '[S]ince these allegations were first raised I have consistently and on many occasions made it clear that I have done nothing wrong'. Mr Thomson implied that pejorative media coverage had resulted in the public thinking he was guilty of criminal offences. He claimed he was denied the presumption of innocence, and that the rule of law and democracy had been damaged by the media's pursuit of him.
- 1.32 Mr Thomson reflected on his work history with unions and in his electorate. He implied that when he took over as national secretary of the Health Services Union (HSU) he had strengthened the HSU's accountability, changing the rules to limit spending delegations and increase transparency. He implied these changes demonstrated his financial integrity but said they were not well received by his enemies there 'who did not like increased transparency'.
- 1.33 Mr Thomson criticised the process used by Fair Work Australia in conducting its review. He said further that the breaches it identified arose 'because the delegate has misconstrued the rules of the organisation' and that the delegate raised illogical and inappropriate arguments.
-

Mr Thomson considered that the Australian Electoral Commission report of the previous week had destroyed the credibility of the Fair Work investigation.

- 1.34 In relation to cash withdrawals, Mr Thomson claimed that they were appropriately accounted for and receipted. Further he said 'Turning to credit cards and escorts, I have consistently from day one denied any wrongdoing in relation to these issues.' He claimed to have received what he considered to be a 'routine threat' from someone who 'would seek to ruin any political career that I sought and would set me up with a bunch of hookers'.
- 1.35 Mr Thomson said that everyone knew his credit card account numbers, that his driver's licence was commonly available and implied that records of his visiting brothels were falsified. He did not have an explanation as to how certain records were on his phones and implied that phone cloning and identity theft might be relevant, saying that 'I am certainly not going to use parliamentary privilege to lie'.

Findings of the court in relation to Mr Thomson

- 1.36 Although the terms of reference referred to court findings of 18 February 2014, the matter was not finally concluded until the County Court of Victoria had concluded the appeal proceedings and the final appeal period had expired, which it did on 15 February 2015, without a further appeal being lodged.
- 1.37 The appeal to the County Court of Victoria was a re-hearing from the Melbourne Magistrates' Court against conviction and sentence. The County Court, Her Honour Judge Carolyn Douglas presiding, found Mr Thomson not guilty of 49 charges of obtain a financial advantage by deception, making special mention of the nature of the charges laid by the prosecution. Judge Douglas noted the reasons for the decision stating in her sentencing remarks that:
- ... it was regrettable that the prosecution decision was to charge the appellant with obtain a financial advantage by deception in error as it was alleged the financial advantage was evasion of the debt to the credit card provider and, as a matter of law, for reasons

I provided, my decision was in the circumstances I had no option but to find the appellant not guilty of the 49 charges'.¹⁴

- 1.38 In relation to the charges of theft, the County Court found Mr Thomson guilty of 13 of the 16 charges. The convictions are in relation to offending committed over the period 2003 to 2007 when Mr Thomson was national secretary of the HSU, in which Mr Thomson used cash he withdrew from automatic teller machines using the HSU Commonwealth Bank of Australia MasterCard for personal expenses. Judge Douglas stated:

On Monday I ruled that he acted dishonestly, which was one of the issues in the case. My decision was that he knew, during the period of offending, that he had no legal right to use the cash as he did. The evidence was overwhelming as to his dishonesty. The rules were clear, that the HSU funds were to be only used for HSU business.

...

The gravity of the offending is the gross breach of trust involved. The seriousness is reflected in the continued confidence, or arrogance, of Mr Thomson in having no regard for the responsibility imposed on him and the trust reposed in him by his employer as he abused that position by deliberately using the funds for his own purposes, which I describe from the material as "self-indulgent behaviour". That includes charge 173, a lunch with his wife. The amount spent on that lunch was \$400 including a bottle of wine for \$200. Other offences involve paying for sexual services.¹⁵

- 1.39 Judge Douglas noted that although other members of the HSU had the same type of credit cards, Mr Thomson was the only person in the HSU with a pin number for the CBA MasterCard, which enabled him to withdraw cash as an advance. This method was used to withdraw cash on each occasion in the 13 charges.

Issues the committee must resolve

- 1.40 As noted earlier, the Clerk commended the adoption of the McGee test to assist the committee in its considerations, including the attendant civil

14 County Court of Victoria, DPP v Thomson, Reasons for Sentence, 17 December 2014, para. 5, p. 2.

15 County Court of Victoria, DPP v Thomson, Reasons for Sentence, 17 December 2014, paras 12 and 19, pp. 4 and 5.

standard of proof to be met, of a very high order, on the balance of probabilities. There are three issues to be resolved:

1. does Mr Thomson's statement contain any apparent or proven factually incorrect matter, and was the statement misleading?
2. if yes, did Mr Thomson know at the time the statement was made that it was misleading? and
3. was it Mr Thomson's intention to mislead the House?

1.41 The final step for the committee is to consider whether the matter might be found to be a contempt, in accordance with section 4 of the Parliamentary Privileges Act. In particular, whether Mr Thomson's conduct amounted to, was intended to or was likely to amount to, an improper interference with the free exercise by the House of its authority or functions.

1.42 The committee draws its conclusions on these issues in consideration of Mr Thomson's statement, the findings of the court and Mr Thomson's oral evidence to the committee.

Does Mr Thomson's statement contain any apparent or proven factually incorrect matter, and was it misleading?

1.43 In determining whether Mr Thomson's statement contains any apparent or proven factually incorrect matter, the committee has narrowed its examination to comparing certain statements made by Mr Thomson on 21 May 2012 against the final court findings of the County Court of Victoria of 15 December 2014. There is no need to go beyond these sources or examine every item referred to by Mr Thomson in his statement on 21 May. Rather, it is sufficient to determine that there were inconsistencies. For this purpose, the committee has selected the following matters which Mr Thomson referred to in his statement on 21 May and which were dealt with by the courts:

- Unauthorised withdrawal of cash and the use of HSU credit cards; and
- Escort services.

1.44 It is noted that these two matters are interconnected. The withdrawal of cash is dealt with more broadly because Mr Thomson in his statement alleges that cash advances were appropriately accounted for.

1.45 On numerous occasions during the inquiry Mr Thomson mounted a technical legal argument, telling the committee that the 'Statement of undisputed facts' which was tendered to the court could not be relied upon by the committee because it was prepared solely for the matter before the court in accordance with Victorian laws of evidence. In taking

this approach, Mr Thomson appears to have misunderstood the nature of the committee's inquiry and its role. Despite Mr Thomson's argument, the committee is not prevented from considering the findings of the court.

1.46 The committee is not a court, does not conduct legal proceedings and is not bound by the evidence laws which apply to courts. The committee is a parliamentary body which conducts parliamentary proceedings and follows parliamentary procedure. In accordance with its terms of reference, the committee referred to the findings of the court as a means of identifying any apparent or proven factually incorrect matter.

1.47 In examining this information, the committee considered that Mr Thomson's statement is at odds with the findings of the court.

Unauthorised cash advances for escorts

1.48 Mr Thomson in his statement to the House on 21 May 2012 stated:

Turning to credit cards and escorts, I have consistently from day one denied any wrongdoing in relation to these issues.¹⁶

1.49 Following this unequivocal denial, Mr Thomson then proceeded to argue that he was set up, his credit card and licence numbers were known by others, and he was the victim of identity theft. He also discussed the issue of phone cloning. In his oral evidence to the committee, Mr Thomson stood by his statement in the House.

1.50 The County Court found differently. Judge Douglas adjudicated on the 16 offences of theft reviewed, all relating to cash withdrawals for unauthorised purposes. In relation to charge 9, the Judge notes that on 9 October 2003 the appellant withdrew \$200 cash at Canberra Airport and then flew to Sydney where he stayed overnight. The Judge notes that 'at 11.59 he rang an escort service, Club 121, and made a booking for an escort to attend his room.'¹⁷ The Judge stated:

As I accept beyond reasonable doubt he used the \$200 to pay, as I have stated, for the escort, which is an unauthorised expense, regardless of whether the remainder of that fee was from another source, he has committed theft, so I am satisfied beyond reasonable doubt that he is guilty.

...I have found that he was not authorised to use funds from the HSU for any expense other than the carrying out of the business of the HSU. Consequently, any payment of personal expenses and

16 Mr Craig Thomson, MP, House of Representatives, *Hansard*, 9 May 2012, p. 4329.

17 County Court of Victoria, DPP v Thomson, Ruling, 15 December 2014, p. 61.

sexual service from an escort comes into that category, are a non-
authorised expense, and I will not repeat that in each offence.¹⁸

- 1.51 Judge Douglas in her ruling deals with other charges, similar to charge 9, relating to unauthorised cash withdrawals, including for the use of escort services.

Withdrawal of cash from ATMs

- 1.52 Mr Thomson in his statement to the House on 21 May 2012 stated:

...there seems to be this mysterious thought that there was this extra pot of money that I could take cash withdrawals out from that was not accounted for by the union, that was somehow separate to everything else. This quite simply flies in the face of the facts that were there. We made it clear, and the evidence was clear, as was set out by the financial controller at the time when she was interviewed by Fair Work Australia, that cash withdrawals – this is what she said – were 'appropriately accounted for and imported into MYOB'. They were part of the union accounts – these accounts and budgets that went to the executive.¹⁹

- 1.53 Mr Thomson is arguing that cash withdrawals were accounted for and part of the union accounts.

- 1.54 The County Court convicted Mr Thomson of 13 charges of theft relating to the use, by Mr Thomson, of cash he withdrew from automatic teller machines, using the HSU Commonwealth Bank of Australia MasterCard for personal expenses. Judge Douglas in her sentencing remarks stated:

My decision was that he knew, during the period of offending, that he had no legal right to use the cash as he did. The evidence was overwhelming as to his dishonesty. The rules were clear, that the HSU funds were to be only used for HSU business.²⁰

- 1.55 When he appeared before the committee, Mr Thomson claimed that the subject matter of his speech and of the findings by the County Court were not the same. The committee does not agree with this view.

- 1.56 Mr Thomson was responding to a report by Fair Work Australia²¹ and this report covered the period while he was national secretary of the HSU,
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18 County Court of Victoria, DPP v Thomson, Ruling, 15 December 2014, pp. 61-62.

19 Mr Thomson, House of Representatives, *Hansard*, 21 May 2012, p. 4721.

20 County Court of Victoria, DPP v Thomson, Reasons for Sentence, 17 December 2014, para. 12, p. 4.

21 Fair Work Australia, *Report of the Delegate to the General Manager of Fair Work Australia: Investigation into the National Office of the Health Services Union under section 331 of the Fair Work (Registered Organisations) Act 2009* Terry Nassios, 28 March 2012.

August 2002 to December 2007. Mr Thomson made sweeping claims that he had done nothing wrong. However, the court found 13 charges proven relating to Mr Thomson during the same period.

Conclusions

- 1.57 In comparing Mr Thomson's claims in the House and the findings of the court in relation to Mr Thomson, the two cannot be reconciled. Based on these two matters, the committee concludes that Mr Thomson's statement does contain apparent or proven factually incorrect material. There was nothing in Mr Thomson's oral evidence to the committee that provided credible support for the claims in his statement. As referred above, the committee considered other official reports which cover the same period and circumstances relating to Mr Thomson. There was nothing in those reports to support Mr Thomson's claims in the House. On the contrary they were consistent with the County Court's findings. The committee concludes that the statement was misleading.

Did Mr Thomson know at the time the statement was made that it was misleading, and was it his intention to mislead the House?

Manner of the statement by Mr Thomson

- 1.58 Mr Thomson had told the House, on indulgence, on 7 May 2012, that he intended to make a comprehensive statement to the House in the following sitting week. He intended to address issues raised in the recently released report of Fair Work Australia in relation to his role as national secretary during 2002 to 2009, at a time after he had been able to consider the report. Then, on 21 May 2012, Mr Thomson made the statement to the House.
- 1.59 In his oral evidence Mr Thomson told the committee that while it was not a written speech, it was made from well-considered notes, with intent and that he regarded it as accurate, agreeing that he had been thinking about the statement for quite a while before it was made.
- 1.60 The committee regards Mr Thomson's actions and words in first informing the House that he would be making a statement, and following up those remarks with a lengthy statement, as actions and words which, not only are deliberate in nature but also demonstrate a sense of purpose and intention to say what was actually said in his statement.

Was it Mr Thomson's intention to mislead the House?

- 1.61 The committee notes that the 'intention' of a person can be difficult to reveal. Mr Thomson's statement to the House was not made 'off the cuff'.

That is, he expressly sought to address the House; he had personal knowledge of the matters he raised; he made the statement in a situation of formality; and he had a significant period of time to decide whether to make a statement at all, and to consider his words. In considering how to evaluate 'intention', the committee reflected on the point, as referred above, that in cases of such a formal and deliberate character, 'a presumption of an intention to mislead the House will more readily arise.'

- 1.62 The committee considers that in making his misleading statement about matters which related to him directly and personally, in such formal and deliberate circumstances, a reasonable presumption arises of Mr Thomson's intention to mislead the House. It is important to consider what evidence might be available to rebut such a presumption.
- 1.63 There was no evidence before the County Court to support Mr Thomson's alternative proposition that he had been set up. The court found that Mr Thomson was not authorised to use his credit cards in the way that he did and that he knew he had no legal right to use the card as he did.
- 1.64 In his oral evidence to the committee Mr Thomson maintained his stance that the statement was completely true when he made it on 21 May 2012, he was not using the statement to mislead anyone, and it was what he believes to be the truth, and he has nothing to apologise for. However, although he asserted that other persons would soon be charged in respect of the issues related to the misuse of HSU credit cards and payment for escort services, he offered no details to support his assertion.
- 1.65 In the findings of the court and in other official reports, the committee could find no evidence to support Mr Thomson's version of what took place in relation to himself or of his stated belief in the veracity of his claims in the House. Despite his assertions to the committee that other persons would soon be charged in respect of the issues, the committee is not aware that any such action has been taken. The committee considers that many aspects of Mr Thomson's statement are implausible and that it is reasonable to conclude that Mr Thomson intended to mislead the House.
- 1.66 In accordance with the resolution of the House and the committee's procedures for the conduct of inquiries, the committee contacted Mr Thomson to invite him to respond to the committee's adverse finding in relation to him. Mr Thomson responded that he had received the committee's correspondence. No further response has been received to date.

Was Mr Thomson's deliberate misleading of the House a contempt?

- 1.67 The intense scrutiny of the actions and statements of members by other members sees claims that a member has misled the House made quite often. When considered in a political context, from the conclusion that a member has deliberately misled the House, serious political consequences can follow for that individual member. The consequences for the House, by comparison, might not be so sharply in focus.
- 1.68 The test as to whether a matter amounts to a contempt as provided in section 4 of the Parliamentary Privileges Act does not just go to intention of the conduct but also to whether it amounts, or ... is likely to amount to an improper interference with the free exercise by a House of its authority or functions.
- 1.69 As referred to above, findings of contempt in circumstances of deliberate misleading of a House are rare, and the most well documented case is *Profumo's Case* from the UK House of Commons. *Profumo's Case* is authority for a House to make a finding of contempt in circumstances where, a member in making a personal denial to the House about allegations made against the member, deliberately misleads the House, and after he is no longer a member, the House agreeing to a resolution declaring him guilty of a contempt. The committee considers that *Profumo's Case* is a precedent of importance for the current case.
- 1.70 Section 16 of the Parliamentary Privileges Act provides members with the privilege of speaking freely, with immunity from any action by a court for what they say during 'proceedings in Parliament'. Freedom of speech is unquestionably the most important privilege of members of the House. Members are able to express themselves as they determine, in accordance with the rules and practices of the House. Immunity remains, regardless of an individual member's motive in speaking. However, it is of great importance that the House is able to rely on the truthfulness of information provided. With this right of free speech comes responsibility to ensure that correct statements are made in proceedings. Should an error be recognised, that error should be corrected as soon as possible. The need for statements given to the House by members to be truthful, is fundamental not only to the proper functioning of the House but also fundamental to the standing of the Parliament in the community.
- 1.71 The making of misleading statements by a member of Parliament tends to obstruct the House in the performance of its functions by diminishing the respect due to the House. The committee considers that the deliberate misleading of the House in the circumstances of this case would be likely to amount to an improper interference with the House's exercise of its authority or functions, and thereby constitutes a contempt of the House.

- 1.72 In accordance with its procedures for the conduct of inquiries, the committee contacted Mr Thomson to invite him to respond to the committee's adverse finding in relation to him. Mr Thomson responded that he had received the committee's correspondence. No further response has been received to date.

Findings

- 1.73 On considering Mr Thomson's statement to the House referring to the use of escorts and ATM withdrawals from an HSU account, and having regard to the findings of the County Court of Victoria, the two cannot be reconciled. When he met with the committee, and gave oral evidence, Mr Thomson pressed his claims that others, and not he, were responsible for the misuse of HSU credit cards and payments for escort services wrongly attributed to him. The County Court in re-hearing the charges of theft, confirmed that Mr Thomson had drawn unauthorised cash advances, including for the purpose of using escort services. The committee finds that Mr Thomson's statement to the House contains apparent or proven factually incorrect matter.
- 1.74 Even though some of the original findings, of the Melbourne Magistrates' Court, were overturned, the County Court of Victoria convicted Mr Thomson for dishonesty offences involving the use of HSU credit cards, including payment for escort services. The committee considers that a reasonable person listening to Mr Thomson's statement in the House, might have been misled into believing that he had not used the HSU credit card for cash withdrawals in an unauthorised manner, and that he had not used cash from the HSU account for escort services.
- 1.75 The committee finds Mr Thomson's actions and words, in informing the House he would be making a statement on a future date and then making the statement, to be behaviour which was deliberate in nature, and demonstrated a sense of purpose or intention.
- 1.76 On meeting with the committee, and giving oral evidence, Mr Thomson maintained his stance that the statement was completely true when he made it on 21 May 2012, and it was what he believes still to be the truth.
- 1.77 The committee could find no evidence to support Mr Thomson's version of what took place in relation to himself or of his claims about the truth of his statement, and finds the explanation in the statement to be implausible. From all the circumstances, the committee believes it can draw the inference that Mr Thomson, the then Member for Dobell, in the

course of his statement to the House on 21 May 2012, deliberately misled the House.

- 1.78 Although the issue of intention is a difficult one, the committee considers that in making his misleading statement about matters which related to him directly and personally, in such formal and deliberate circumstances, a reasonable presumption arises of Mr Thomson's intention to mislead the House. There was no evidence to rebut this presumption.
- 1.79 The committee considers that the deliberate misleading of the House in the circumstances of this case would be likely to amount to an improper interference with the free exercise by the House of its authority or functions, and finds Mr Thomson's conduct in deliberately misleading the House constitutes a contempt of the House.

Punishment

- 1.80 The imposition of a punishment for a contempt of the House is a matter for the House. The penalty regime of section 7 of the Parliamentary Privileges Act would apply. Section 7 provides for the imposition of a term of imprisonment (up to six months) or a fine (up to \$5000 for an individual) for contempt. *House of Representatives Practice* also records that the House may punish a person guilty of contempt by means of a public reprimand or admonishment, exclusion from the precincts or requirement for an apology.
- 1.81 The committee acknowledges and endorses the consistently held view that the privilege and contempt powers of the House should be exercised sparingly. In this case, the committee acknowledges Mr Thomson's difficult personal situation in all the circumstances since the allegations about him first arose in the context of the HSU exit audit in 2007-8. These difficulties continued over a sustained period of pressure through various official investigations, reports and legal matters. In recommending punishment, the committee considers these difficulties to be a mitigating factor in what it now recommends. A finding of contempt by the House, and the condemnation that this would embody, in itself would be a very serious sanction. The committee considers that an appropriate penalty would be for the House to reprimand Mr Thomson for his conduct.
- 1.82 In accordance with the resolution of the House and the committee's procedures, the committee contacted Mr Thomson to invite him to respond in relation to the proposed penalty. Mr Thomson responded that he had received the committee's correspondence. No further response has been received to date.

Recommendation

Recommendation 1

- 1.83 The committee recommends that the House:
1. Find Mr Craig Thomson, the former Member for Dobell, guilty of a contempt of the House in that in the course of his statement to the House on 21 May 2012, as the then Member for Dobell, he deliberately misled the House; and
 2. Reprimand Mr Thomson for his conduct.

Final observations

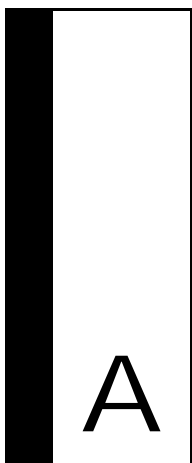
- 1.84 The committee considers that in making his statement to the House, which included incorrect and misleading matter, Mr Thomson might have adversely impacted the views of the Australian people. This adverse influence is likely to have extended, not only in relation to Mr Thomson as a member of Parliament but also in relation to all members of the House, undermining their standing in the community and thereby tending to weaken the authority of the House.
- 1.85 As members of Parliament, individual members are held to a high standard of behaviour. The committee considers that the preservation of high standards of behaviour is essential for protecting the institution of the House and its members.
- 1.86 A member's right to freedom of speech is an important privilege which enables the House to function properly. The Parliamentary Privileges Act confirms the exemption of members from legal action founded on what they say during proceedings, but not from their responsibility to appropriately exercise that right. If members' freedom of speech is to be respected by the community, then members must exercise responsibility when they draw on that privilege.
- 1.87 The committee reminds all members of the privilege afforded to them in making statements in the House. This privilege needs to be balanced with

the responsibility of members to ensure the accuracy and clarity of their statements in the House, to avoid making potentially misleading statements.

Mr Russell Broadbent MP

Chair

March 2016



Appendix A – Statement by Mr C Thomson

Mr CRAIG THOMSON (Dobell) (12:00): Madam Deputy Speaker. I seek leave to make a statement. Leave granted.

Mr CRAIG THOMSON: 'Go cut your wrists or, better still, hang yourself.' 'Go out the back, cut your throat –that's the only way.' 'Have you slashed your wrists yet?' 'You are dead. A bullet between the eyes will save taxpayers' money.' 'You have unleashed the lynch mob and you have fanned it and for that you're, ultimately, responsible.'

These are the types of emails, letters and phone calls that my family, my staff and I have received. Since these allegations were first raised I have consistently and on many occasions made it clear that I have done nothing wrong. I have, in fact, wanted to make a statement for some time but sought counsel, sought advice, from a variety of people—including legal advice—and took that advice not to make a statement. Can I say that is something that I probably regret in hindsight. I did not realise that this was going to go four years, but once that decision is taken, of course, then the next opportunity to speak really is when a report is concluded – and Fair Work have done that.

In making this statement I am very conscious that in the eyes of many of the public I have already been charged, convicted and sentenced. The public will hold these views because of the quite extraordinary media coverage which has taken place. I, like every member of this House, understand and value the importance of an independent and robust news media and the important place that it can play in our democracy. However, all of us who have regular dealings with the news media know that the news media can often get it wrong, and sometimes seriously so—particularly as today the media is dominated by self-important commentators, not reporters, and I will say a little bit more about

that later. So I think it is important to once again remind the House that I have not been the subject of any conviction, not even the subject of any legal proceedings; none of the allegations have been tested in any court or tribunal.

I am going to bore you a little bit now because I am going to talk a little bit about my history – my work history. One of the things that my friends say to me is, 'We read about this Craig Thomson; we don't know who that person is because we see a very different person – we know you in a very different way.' So I am going to take some time and talk about, firstly, the young industrial officer who joined the Health Services Union and worked there for 19 years. Can I say that, despite the coverage, 'unions' is not a dirty word. Unions are a very good thing and are very much part of this country's history and culture and have made enormous contributions to the wellbeing of ordinary Australians over many years.

My first job at the university was as an industrial officer and I used to look after university workers. Can I say that I still get regular letters of support from people like Richard Black at the University of Sydney, Ellis Skinner at the University of New England and Ted Davies at Macquarie University. I was very proud of the work that I did representing general staff at universities around the country. I am also very proud of a lot of the work that I have done at the union. I was able to personally prosecute, in the Industrial Relations Commission, the first ever award for radiographers working in private practice. I was responsible for the first national agreement with what was then the Mayne Health private hospital chain, later becoming Ramsay Health Care. I have spent a great deal of my time, both when I was at the New South Wales branch and nationally, looking after aged care workers and, in particular, looking at making sure that we can try and push for better staffing levels – minimum staffing levels – in aged care so that the elderly, the most vulnerable, are guaranteed some level of support and care in those places.

I am particularly proud of two issues, the first of which is negotiating the first ever staffing level agreement for ambulance officers in New South Wales. My friends the ambulance officers and paramedics on the Central Coast tell me, of course, that this agreement, which was only meant to last for 10 weeks because it was the first time it was there, is still in operation some 10 years after it came in. Guys, it does need to be updated and upgraded, but it is good that there is a floor that is there. The other issue that I am particularly proud of is that when I first joined the union there was a 17 per cent pay increase over three years for New South Wales public sector workers, particularly the cooks, the

cleaners – those most in need. Seventeen per cent over three years is a very big increase. They certainly deserved it and they certainly deserve more. So I have had nothing, can I say, but letters of support from many HSU members, both past and present.

One would think, given the media coverage and certainly from some of the emails that I have had, that the allegations against me were made while I was a member of parliament. Of course that is not the case. These are allegations that arise from my time at the Health Services Union many years ago. But it is worth talking about my wonderful electorate and the people who live there. Since 2007 we have been able to achieve some great things. It is important to point out that, in 2010, there was a swing to me in that seat based on the good work that we had been able to do in that electorate – a swing to me when there was a big swing against Labor in New South Wales. We have been able to achieve more than \$330 million in funding for my electorate since 2007. That is more money that has been spent on infrastructure in the last five years than in total for the whole time that that seat has existed, since 1984. There are a whole range of projects, and I will just list them briefly. The schools project, of course: over \$100 million. Trade training centres: \$13 million. The Apprentice Kickstart program. The Central Coast campus of the university – a campus that was brought about under a Labor government in the first place: \$20 million. Very importantly, the Mardi to Mangrove pipeline: \$80 million, making sure that the Central Coast was drought-proof. We got down to 13 per cent of our water supply. A Labor government made sure that those issues never happen again. Two brand new surf clubs. Major clean-up of Tuggerah Lakes: some \$20 million over five years. \$10 million for a centre of sports excellence. A GP superclinic that I know is often derided here, but can I tell you: the people in my electorate are very proud of having a GP superclinic, which has been used ever since it opened, some months after it was promised, on a temporary basis.

We have given money for netball courts so that Wyong can hold state championships for a first time. We have upgraded parks around the area. We have made sure that our parks have disability access for children. I fought and stood against opening the Wallarah coalmine and continue to be committed to making sure that that coalmine does not upset the pristine environment in which it was proposed to be built. And, of course, we now have the NBN rollout. So, for those of you who have only seen Craig Thomson through the eyes of some of the media glare, these are the things that have been occupying me every day, every night in my electorate – things that I am very proud of and things that I think stand my electorate in the Central Coast in a much better position than when I was first elected.

I want to now go to the HSU national office, which I moved down to and was elected to take over in 2002. I moved to Melbourne to be there because that was where the national office was at that stage. This was a union that had a very poor history of factional infighting. It had started, I think, with left against left, which became left against right, which became right against right. The only common practice was that the HSU was the battleground for these political fights.

When I took over as national secretary the debt levels in the national union were close to \$1 million. There was no accountability for the way in which money was spent. The rules of the union at that stage set out that the national council would meet only once every two years and that at that particular meeting you could have proxy votes. So half a dozen people would sit around once every two years and that was the accountability. It rarely had national executive meetings. They rarely met. It did not have budgets. The reason this was the case was, of course, because the union rules make sure that the national secretary has broad powers. Rule 32(n) says that 'between meetings of the national executive control and conduct' of the business is in the hands of the national secretary.

So, if you do not want to have transparency, you do not have meetings. If you do not want to be accountable, you do not have meetings. So what did I do when I went down there in relation to these issues? One of the first things I did was make sure the rules of the organisation were changed. I made the rules so that national executive meetings had to happen every four years. I changed the way in which a national council meeting took place. They became national conferences every year with rank and file delegates at which the finances of the union were presented and the auditor was available for questions. There was specific time set aside. I put into the rules a finance committee so that a finance committee had to meet and had to approve budgets. But even that I did not think was enough, because there was a very broad rule saying the secretary could still do whatever they needed to do. So at one of the very early executive meetings I set a delegation of how much the national secretary could spend without reference to those bodies. So we put further issues of transparency in place.

The reason I am saying these things is because, if your modus operandi was about ripping off an organisation, you would do none of that, because the rules enabled you – when I went there – to do whatever you liked and be virtually unaccountable. By putting those accounting practices in, that meant that there was accountability, and you would not do that if you were seeking to avoid scrutiny. Was it perfect? Were these A-1, benchmark accounting practices that you would put in place? Of course they were not, but we came from a position of absolute zero where there was nothing, where there were not meetings, and you have to start somewhere. So the HSU was a work in progress.

These were the things that were put in place.

You have to ask who was not happy with this. There were two large branches that were not happy with this, and those are the New South Wales branch and the Victorian branch of my former union. That is because they did not like this scrutiny. In fact, I was approached by the now national secretary, Kathy Jackson, and Michael Williamson, saying: 'What are you doing? Why don't you just collect your salary and do nothing?' 'And do nothing'—that was what they expected you to do in relation to these issues.

We will be coming to the Fair Work Australia report shortly, but the Fair Work report's allegations are largely based on allegations—I repeat, allegations—made by two people: Kathy Jackson and Michael Williamson. One of the issues with Fair Work Australia is the weight that has been given to those allegations. I raise these next points only in the context of the weight that Fair Work gave to those allegations. You have to look at what standing these people have if you give weight to the allegations. Kathy Jackson drives a union-paid-for Volvo. It is alleged she has child-care and gym fees paid for by the union. These are issues that I am raising that are on the public record; this is not something that I am seeking to use privilege for that is not already out there. She has had numerous overseas trips, none of which, as national secretary, I was aware visited any unions. Within weeks after I left, her salary almost doubled from the salary that I received, allegedly now being around some \$270,000. She sat on the board of HESTA, collecting board fees for many years, rarely attending meetings. But when the union decided the board fee should go to the union, she left the board. She got an \$84,000 golden handshake from her branch when they merged and formed the HSU East branch of the union, the branch that is in so much trouble and the subject of so many inquiries. She rarely attended national executive meetings, and when she did it was to have her name marked off and then she would leave.

That is the record of this person, someone who wants to address the HR Nicholls Society in relation to where she is. She may have had a conversion on the road to Damascus—and I will come to those sorts of things later— but this certainly is not someone who comes to this issue with clean hands. She is also accused, of course, most seriously—and again this was reported in the *Sydney Morning Herald* and is the subject of a police investigation—of paying money to contractors and then receiving it back privately with it being paid to her. She is entitled to the presumption of innocence in relation to those issues, but they are issues that she has to answer for. The other person is Mr Williamson. There has been a great deal of coverage following the release of the Temby report in relation to the activities there. These are the two people who primarily put those allegations.

The Fair Work report, can I point out, is the report of one man on the national office of the union. Its so-called findings amount to no more than assertions. I find it curious that after four years of work, \$1 million in external legal fees, the general manager of Fair Work Australia was not prepared to release the report publicly, apparently because she had a concern that it may be defamatory. She instead released it to a Senate committee so it would be protected by parliamentary privilege. Given that truth remains a defence to defamation in this country, this suggests that Fair Work Australia either does not consider the report to be accurate or considers it incapable of substantiation by admissible evidence or both. I think it should also be of concern, to any person who considers the effective and efficient regulation of Australia's industrial relations system is important, that Fair Work Australia has also announced it will now spend \$450,000 of taxpayers' money with a major accounting firm to investigate its own incompetence in relation to dealing with this matter.

Fair Work Australia itself makes the point, on page 133 at paragraph 33, that the general manager or his delegate is not a court and is not bound by the rules of evidence. Can I say that I also find it quite disturbing that the Senate committee, when presented with a 1,100-page report that Fair Work Australia was not prepared to stand by, spent half a day looking at it before they released it to the public. I think there are issues in relation to those processes and procedures that need to be questioned.

I have seen in many, many articles the word 'forensic' when people are describing the Fair Work report. The definition of forensic is: 'relating to or denoting ... scientific methods and techniques to the investigation of crime; relates to courts of law'. In its own words, Fair Work Australia said it is not bound by the rules of evidence.

As I said, it took four days for the Commonwealth DPP to say that this report was not forensic, that there was not a body of evidence. Rather than forensic, Mr Nassios, the delegate, was selective and biased. He was so biased, in fact, that I had to write to the general manager last year asking for his removal from this position. Mr Nassios had an outcome that he wanted to achieve and he was trying to link assertions. There was no body of evidence that supported his position.

This can be borne out by the witnesses that he did not speak to; more than half a dozen that we suggested should be spoken to. In fact, there are only four members of the union's finance committee and this is an investigation into the finances of the union. He only spoke to two of them. He took four years and could only get around to two of the finance members. One wonders what he was doing. I myself had only one interview with Fair Work Australia, close to two years ago. That was it: one interview, two years ago.

In relation to Fair Work Australia and the report, the opposition have made much, some months ago, although they seem to have changed their tune since the report has come down, about the competence or the interference in relation to the writing of the Fair Work report. We were regaled here daily at question time about what role the government played in interfering with this report and making sure that the member for Dobell was protected. I make it absolutely clear that I do not think I was done any favours by a report taking four years to get there. I am very surprised that that point was not made by anyone in the media over the four years. You continued to write the drivel that was coming from this side about some advantage to the Labor government in taking their time on a report. It is manifestly obvious that that is not the case.

I think the better questions, if you are looking at interference and the questions that need to be answered, relate to Ms Jackson's partner. Rarely has it been raised in the media that her partner is the second in charge of Fair Work Australia. He did not stand aside from the body that was investigating these issues. The main accuser's partner is second in charge. The questions Fair Work has to answer, the questions the deputy president has to answer, are: what influence did he have in relation to the writing of the report? What influence did he have in terms of the time line that it has taken? What relationship, if any, does he have with the Liberal Party? This is a person who has been accused in writing—and a letter has gone to the President of Fair Work Australia—of interference in that branch. So someone in the union has gone to the level of actually writing to the President of Fair Work Australia and saying, 'This person has interfered in the branch.' They are very serious accusations and they need to be addressed.

One of the other issues that I find curious is that there were two investigations: an investigation into the national office of the union and an investigation into the Victorian office of the union. In relation to the Victorian office, there were credit cards which showed expenditure on escorts and prostitutes for at least two officials. Yet it is very curious that when the Fair Work report came out on the Victorian branch there was barely a mention. There are certainly no allegations, no findings of wrongdoing. One has to question why, in an investigation by Fair Work where the second in charge of Fair Work Australia's partner, their

former husband, is the subject of that investigation, there is a different approach taken when it is looking at the national office. I also think it is passing strange that the delegate and DP Lawler are both on leave at the moment.

I want to go to the specific issues raised by Fair Work Australia. I will leave the one that I think most people are interested in until the end. That way I know that you are still going to listen. Many of the breaches in the Fair Work Act are because the delegate has misconstrued the rules of the organisation. He has construed the rules as saying that there was not approval for expenditure by the national secretary. That is despite the rules being very clear that there is. For example, he uses the issue of staff salary and the ability to appoint staff. It flies in the face of the rules, the law and, most importantly, the fact that these issues were in budgets that were approved on a quarterly basis by the union, every quarter that I was the national secretary. They were there, they showed the expenditure and they were approved. Can I say that, of the 150 allegations that deal with me, that deals with well over 100 in that broad position.

The second area that he raises, which is clearly an illogical argument, is that he says the national secretary was responsible for formulating policies in relation to a whole range of issues. There is nowhere in the law, in the regulations, in the legislation that says an individual in a trade union or any organisation is responsible for formulating these particular policies. If there is someone that is responsible then it is the union that is responsible. To pick out an individual at a particular point in time clearly is manifestly wrong in relation to a way in which you can construct these issues. But he then takes the great leap forward and says because there were not policies and there was behaviour in relation to these issues then that in itself is a breach, and that is clearly wrong.

The second area that he raises is in relation to travel and expenses. I note, of course, that the delegate travels business class and stays at five-star hotels in terms of his own travel. In reaching some conclusions in terms of the allegations about misuse of union money on travel and expenses, the delegate used the tax table to decide what was reasonable. There is a real argument as to whether that is appropriate in the first place, but you know what? He used the wrong tax table. If he had actually used the right tax table then there was no issue. So he did not even get that right when he was looking at what was appropriate.

In relation to spousal travel, we did not have a policy in relation to spousal travel. Should we have? Of course we should have. It would have been appropriate to do that. But the spousal travel was two return trips a year. Everyone who sits in this place gets far more family and spousal travel than I took in the five years that I was national secretary. So, if you want to gauge what is reasonable, then let's look at the ordinary test in relation to those issues.

The whole section in relation to the federal election I will come to later, because quite clearly the AEC report that was released last week blows a massive credibility hole in everything that Fair Work Australia did. While those areas have covered primarily almost every allegation that is there, there seems to be this mysterious thought that there was this extra pot of money that I could take cash withdrawals out from that was not accounted for by the union, that was somehow separate to everything else. This quite simply flies in the face of the facts that were there. We made it clear, and the evidence was clear, as was set out by the financial controller at the time when she was interviewed by Fair Work Australia, that cash withdrawals—this is what she said—were 'appropriately accounted for and imported into MYOB'. They were part of the union accounts—these accounts and budgets that went to the executive. Her replacement went on to say, 'Further, records for cash withdrawals were retained.' There is also evidence from the financial controller who was there some months after I left that that documentation was all there and present when she left. As I said, that was many months after I had been there. Are cash withdrawals going to get you a prize from the accounting college as being your best way of dealing with these issues? Probably not. But the issues with cash withdrawals were that it was the mode of spending not the accountability, not what it was spent on, not the receipts that were there—none of those issues are borne out by any of the evidence. The evidence, if someone were looking at the evidence and clearly Fair Work were not, was that they were accounted for. They were in the union's records and they were appropriately receipted. If they disappeared, then you need to look at explanations why—and I will come to that shortly.

Turning to credit cards and escorts, I have consistently from day one denied any wrongdoing in relation to these issues. I make it clear—and I hope I have already by painting a picture—that I had many enemies in the HSU, many enemies who did not like increased transparency, many enemies who preferred that there be no national office. I was the subject on numerous occasions of threats and intimidation. I had my door of my office graffitied. The national office shared an office with other Victorian branches of the Health Services Union.

There was, though, a particular threat that was made that I thought was just part of the routine threats that were constantly made in working in this environment. That was a threat by Marco Bolano in words to the effect that he would seek to ruin any political career that I sought and would set me up with a bunch of hookers. This was a threat that started in Kathy Jackson's office. The rant went right down the corridor and was witnessed by many people. It was then also the subject of a report. A letter was written to the Jacksons and to Michael Williamson complaining about this incident and putting, very importantly, this instance on record – on record when it occurred that there was this threat.

Later on, some years later, Michael Williamson said in front of a few witnesses, 'This is the way we deal with people in the Health Services Union when we have problems.' So we have the threat and, post facto, we have an admission. But Williamson went further. In the *Daily Telegraph*, a week ago on Saturday, he actually said he knew about this and it was commonplace in Victoria in relation to this union. So he made that absolutely clear. Of the seven occasions that are set out, three of them could not be me. There are alibis: on two occasions my being with other people, and on one occasion being in Perth and not being in Sydney for the month around the alleged incident.

I know that sitting up there we have a whole range of CSI journalists who think that they are the Inspector Clouseaus of the world – or perhaps that is how they really are – and they make these assumptions rather than report issues that are there. I want to try to help you with a couple of key areas that you have had difficulties with. The account details of my credit cards were known. They were reported. Everyone knew what my credit card account numbers were.

As for my drivers licence, can I say that there has been a deliberate and massive attempt to paint me in a different light by Fairfax by printing in the paper a copy of my drivers licence and making it appear as if a copy of that drivers licence was there on these occasions. That is not what the evidence is. The evidence is that my drivers licence number was written on three of those particular chits. Let us take a commonsense thing which we all know occurs. If you are asked for an ID and you have a photo ID, you hold it up. The person looks at your face. They look at the drivers licence and they say, 'Yes, that is you.' They do not then go and say that they need to write down details of this and put it there. That just does not happen. Can I suggest that of all places for it not to happen would be when you are seeking those sorts of services where, presumably, a degree of anonymity is what is being sought.

My drivers licence was also commonly available and on the records there at the union where it was needed for a variety of things including right-of-entry permits. What is interesting is that we have been informed that at these types of establishments they have to keep film footage of people who go in and out—for six years in New South Wales. I raised two years ago this issue with Fair Work Australia and said, 'Get the footage. See who was there on those days.' Fair Work Australia were not interested. It did not fit their story. Today I have spoken to the Victoria Police and I have urged them to go and get the records, get the footage from the cameras and see who was there. At the very least, they should be able to say that I was not there when they look at those records.

The most vexing thing for me and the most difficult thing in terms of making an explanation about these issues is—and can I say again: this is not a court of law and in this country we do actually have the presumption of innocence—explaining one's innocence and making out a case in relation to that, which for good reason is much more difficult and that is why we have that presumption at law in Australia. One of the things that I have difficulties in making an explanation about—and I am certainly not going to use parliamentary privilege to lie or change that—is in relation to phones and how records were on my phones. I do not have an explanation so that I can neatly say, 'This is what definitively happened. I know that this happens.' But that should not be unusual. What is important is that Fair Work Australia did not investigate any other scenario at all.

There are numerous scenarios as to how this could occur. For example, on many occasions, I would book all the hotel rooms at a particular conference that we would have. I do not know whether or not I did on these nights. I do not have access to those records. That is why we have the presumption of innocence. I cannot go back and say what actually happened there. But these things were not looked at by Fair Work Australia. They did not look at whether there was a bulk of rooms. Quite often I would book a bulk of rooms for a national conference or for a national executive meeting.

The second issue of course is in relation to phone cloning or various other issues as to how it is described. Identity theft in Australia and around the world is not new. It might be a shock to some people in the gallery to write about it, but it is certainly not a shock to those who deal in the law and who deal with this every day. I am going to read a very short extract from a lawyer who contacted me—a very senior barrister in New South Wales. He gives an example of a situation.

He says:

Drug dealer A rings on a mobile phone drug dealer B. The police have interception warrants on the phone of drug dealers A and B. Drug dealer A, while sitting in a coffee shop, makes the call to B and the call is lawfully intercepted. However, when the police ask the mobile carrier to provide a record the record shows the call did not emanate from phone A but from another phone – phone C.

This is something that the Federal Police and our police authorities know is a very common issue and something that can happen in relation to criminals and people acting outside the law. Certainly, if you are looking to set someone up, it is a very easy process. I have here 30 or 40 pages from various websites saying how easy it is. In three steps, you can have someone else's phone number on a different account. The issue, I am saying, is that these things were not looked at by Fair Work Australia.

One of the other issues is that it was said there was a phone call made from Bateau Bay to one of these escort services. I moved to Bateau Bay in 2009, which is four and a bit years after this alleged phone call took place. I was not even living on the Central Coast when this phone call took place. I do not know how that phone record is on my record. But, again, one would have thought that these would have been things that Fair Work would have looked at.

People might say, 'Well, this is a great conspiracy theory and it is just about escorts and those sorts of things,' but it is more than that. The current national secretary of the union is accused of destroying documents – documents that even Fair Work say were there when I left as the national secretary. She also took a deliberate strategy of lodging late things like AEC returns, so that people on that side of the parliament could raise accusations saying, 'There are all sorts of problems with Mr Thomson's electoral spending,' when quite clearly the AEC have said that is not necessarily the case at all – in fact, have said it is not the case.

The union settled with me. They paid my entitlements – which, for a period of time, they decided to freeze while they did an internal investigation into whether or not this was right. When they finished their investigation they not only paid me my full entitlements; they also paid me in relation to a defamation case that I had against them. Can I make it absolutely clear that the union have never written to me, have never commenced an action, have never said, 'Mr Thomson, you owe us money,' and they have never put anything in writing. I do

not even have an email saying, 'Mr Thomson, you have ripped off the union; you owe us this money.' I have not had one bit of correspondence from the union setting that out.

If a so-called whistleblower is uncovering corruption, the very first thing they would do is say, 'Give us back the money you took.' That is the very first thing they would do. The very last thing they would do is not write to the person that they accuse of that. I think it is an extraordinary thing that the so-called whistleblower's first action was to talk to the media—not to actually seek the return of the money, not to say that there has been some wrongdoing, but to talk to the media about assassinating my reputation.

If you look at the threats made about setting me up, the confirmation that it happens, the flimsy evidence that Fair Work have tried to put together in relation to that, the fact that someone has destroyed documents and that they have put in late lodgements, that they settled with me and paid me money afterwards and that they have never, ever asked me to repay a cent in relation to these issues, one can see a pattern, a very strong pattern, that this exercise is about getting someone, not anything else.

The other thing of course is that they got what they wanted. I remind the House that earlier in this speech I made the point that they said, 'Why don't you just take the salary and do nothing? Don't bring in these transparency issues.' And when I left, what happened? There is now no national office of the HSU. It has been taken over

—they have formed this super HSU East branch—and it does not exist. They got what they wanted. They set out to take these things away, and that is why the vast majority of the secretaries of the still existing branches of the HSU, who want to have a full-time office, do not support Kathy Jackson—because they know what has happened. But do not just take my defence in relation to this. What investigations have taken place, and what have they found? The New South Wales Police said:

The assessment follows a letter sent to the New South Wales Police Force by Senator George Brandis SC, raising a number of allegations in relation to the use of the corporate credit card provided to Mr Thomson by the Health Services Union.

They went

on to say:

There was no

evidence –

Not 'not

enough' –

to warrant a formal investigation by the New South Wales Police.

But they have had a further go at it, because these allegations seem to be on the rotisserie cycle of 'bring them up as much as you can'.

On 2 May this year, following a raid on HSU East by the police, Detective Superintendent Col Dyson, Commander of the New South Wales Fraud and Cybercrime Squad, was asked by one of the journalists if he had a copy of the Fair Work report. He said 'yes'. The only person who had been calling for the police to get a copy of that Fair Work report had been me. So he had a copy of the Fair Work report, and he made the comment that he had read it and the allegations were not of a criminal nature.

I think perhaps the most damaging investigation for this Fair Work report is by the AEC, released last week. They made a number of points. On page 3 they said:

Most of these comments – by Fair Work Australia –

have overlooked the specific requirements in sections 304, and 309 of the Electoral Act.

They are pointing out that the investigator did not even know what to look for in terms of the investigation.

At page 5 they point out that, under the cover of a letter to the AEC, Ms Jackson lodged these AEC returns late. They also point out that none of the returns was subject to any qualification, meaning that there was no qualification as to why she was late. There was no reason. She put no explanation into being late. There is a particular provision of the act, section 318, that specifically says that if you do not have access to the documents, if there is a problem with the documents, you can put them in late. She did not do that.

At page 9 the AEC points out that paragraphs 151 to 162 of the Fair Work Act refer to:

... postage expenses at the Long Jetty campaign office totalling \$9,574.17 that were incurred after May 2007. The Fair Work report says:

Mr Thomson ... as 'ALP Candidate' it seems probable that Mr Thomson purchased ... the ... stamps and ... envelopes for mail-out purposes associated with Mr Thomson's campaign for Dobell.

The AEC say:

The actual evidence to support this conclusion is not apparent ...

And they make the obvious point that it could well have been spent on the Your Rights at Work campaign, a campaign run by the unions right around the country to get rid of some of the most draconian industrial legislation in this country, of which one of the targeted seats was Dobell.

Page 11 of the AEC report says:

Such comments have overlooked the facts in the FWA Report which disclose that some of her duties –

'her' being one of the staff members who Fair Work says must have been used for my political purposes, were to work on the Your Rights at Work campaign. On page 11 of the report the AEC report says that, irrespective of the characterisation of a particular organisation in the Fair Work report, Fair Work have got it wrong. They are saying, irrespective of the way Fair Work did it, they have reached the conclusion that this particular body:

... was not an "associated entity" under the Electoral Act due to its activities and operations.

I think one of the things that I regret most about this issue in terms of the attacks made was an attack on an organisation called Dads in Education. This is an organisation that no longer exists. It used to make sure that dads would come along and read stories to their kids in the first week of Literacy Week in the schools. Our union made a donation to it. The conclusion that Fair Work Australia reached was that it must have been for my personal benefit, my personal gain. As the AEC points out, there is no evidence as to what publicity, what sponsorship arrangements – what the member for Dobell got out of that particular issue at all. I regret greatly that there has been any attention on what was a terrific organisation doing a great job, trying to make sure that fathers played a greater role in their kids' school education, particularly in an area like mine where we have a lot of commuters who do not have that opportunity.

The AEC report has destroyed the credibility of the Fair Work investigation. It took three weeks for the AEC to come up with the truth, to come up with the real reasons, whereas it has taken Fair Work Australia four years to muck around on an investigation that is clearly wrong.

I want to talk briefly about the separation of powers and the presumption of innocence. Members of this House have a clear obligation to uphold and respect the rule of law. I think it should be of great concern to all Australians that the Leader of the Opposition has said that I am not entitled to the presumption of innocence because I am clearly guilty. I think that the Leader of the Opposition's concept of guilt means trial and conviction by media, and it suggests that, if he were to become Prime Minister, populism rather than principle, assertion rather proof, would be the guiding principles of his government.

The statements and the conduct of a number of his senior colleagues also suggest that the rule of law under any future coalition government would be a discretionary concept, to be readily put aside if it served their base political objectives to do so. I say this looking at the number of MPs, current and past who are alive, who have had either criminal or civil charges brought against them and the treatment that they have had in the various parliaments around Australia. I am not going to go through the list but, can I tell you, it is many, many pages, including at least half a dozen of you sitting here. I am going to talk briefly about the media. There are many, many good people in the media. There are many good people who do a terrific job and I am going to mention some of those people, so that is probably going to be a blot on their CV for evermore – people like Mark Simkin from the ABC; Simon Benson from the *Telegraph*; Phillip Coorey from the *Sydney Morning Herald*; Paul Bongiorno from Channel 10;

Kieran Gilbert from Sky News; Latika Bourke, sitting there; and Laurie Oakes. People would have seen the Laurie Oakes interview. That was a very hard interview, but Laurie Oakes is someone that I respect and he gave the opportunity to put a case. That is what you expect from journalism.

What you do not expect from journalists is the 12 stories that have been written about me in the Fairfax media without coming to me for a comment, without seeking my side at all. What you do not expect is for Channel 7 reporters to be hovering underneath the bathroom window while my pregnant wife is having a shower. There is a great responsibility in reporting. You need to take that seriously.

I would like to read a couple of comments from Greg Barns, who wrote on the Drum:

That the presumption of innocence has been trashed by the media and those who feed them can be gleaned by the constant use of phrases and words which connote guilt.

But what 'scandal'? A scandal surely connotes that some facts have been established which the ordinary person would think constitutes outrageous or ...illegal conduct.

The Australian media is, like its American and British counterparts, obsessed with titillation, hounding individuals, and giving credence to any allegation made against a person who is in the spotlight.

These are things we all have to guard against, these are things you have responsibility for – and can I say you have not done a very good job.

The replacement of journalists with commentators: I make a reference to a commentator that is often described as being from 'the Labor side of politics', a person who was involved or was a player in relation to negotiations with myself and Fairfax over a defamation issue. A person who wants to be a commentator needs to make it clear that they are actually a participant in this process, they are not just a commentator; and to do otherwise is both dishonest and misleading and something that we need to guard against.

Can I say in relation to the Fairfax defamation issue, because a lot of stuff has been written about that and people have made comments, that I did not receive money from Fairfax in relation to that agreement and perhaps my use of language in saying it was a 'settlement' rather than an agreement could have been better done. Part of the agreement, though, was to withdraw the defamation action. It was an agreement. I did not go off and suddenly decide I should withdraw it. Why did I do it? I did it for two reasons. One, this was a minority government, it was just after the election, and issues of stability were important. I was advised, and I took the advice, that it would be in the best interests of the government if we could have these things dealt with. I was also advised that three weeks of front-page news while the case went ahead would not be good for me or my family. Can I say, in hindsight, I wish for just three weeks of front-page news in terms of this. Can I also say that was a mistake I made, in reaching that agreement, and that is a mistake that I do not intend to make again with these matters.

I have obviously got a little emotional here, so I am going to truncate the last bit of this. There are many, many people I would like to thank who have stood by me: family; friends; my staff, who are here; and the people of the Central Coast. For the first time, in the last few weeks I have felt very anxious and nervous about walking into shopping centres. That is what we do, but I have felt affected by that. But for the welcome, but for the understanding of my constituents it would be impossible. The effect that this has had over four years on my

health and mental health probably is evident. It is something that people need to be very conscious of when they go off on a witch-hunt, without evidence, based on just accusations.

This should never again happen. We should never be in this situation again where the rule of law is trashed completely by a parliament. What do you think you are doing here? Are we going to have parliament ruled by the mob? Are we setting ourselves up as some sort of junta, where a majority decision of a parliament can suddenly override anyone's rights? Is that the kind of Australia that you want? I was reminded by someone of a quote from *To Kill a Mockingbird*:

But there is one way in this country in which all men are created equal – there is one human institution that makes a pauper the equal of a Rockefeller, the stupid man the equal of an Einstein, and the ignorant man the equal of any college president. That institution, gentlemen, is a court ... Our courts have their faults, as does any human institution, but in this country our courts are the great levellers, and in our courts all men are created equal.

That applies in this country, and you have trashed that. What you have done is not just damage to an individual or their family. You have damaged democracy and you continue to damage democracy, and you should hang your head in shame for that. What it shows of the Leader of the Opposition, that man, is that not only is he unfit to be a prime minister; in my view, he is unfit to be an MP.



Appendix B – Clerk’s Memorandum dated 29 May 2012

Inquiry relating to whether the Hon Member for Dobell deliberately misled the House

MEMORANDUM BY THE CLERK OF THE HOUSE OF REPRESENTATIVES

The reference

On 22 May 2012 the House agreed to the following motion moved by the Member for Sturt:

That the following matter be referred to the Committee of Privileges and Members’ Interests:
Whether, in the course of his statement of 21 May 2012, the Honourable Member for Dobell deliberately misled the House.

The matter was raised in the House by the Member for Sturt on 22 May 2012, and the Member tabled a letter to the Speaker detailing his reasons for considering that the Speaker should grant precedence to allow a motion to refer the matter to the Committee of Privileges and Members’ Interests.

In responding later, the Deputy Speaker, reported a statement agreed by the Speaker, which noted that the matter was surrounded by conflicting views and concluded:

While it does not mean that a prima facie case has been made out in terms of the detail that Speakers have always required in relation to such allegations, the Speaker understands the concerns many members have about the matters raised by the Member for Sturt.

While in accordance with the practice of the House, precedence as of right to a motion for this matter to be referred to the Committee of Privileges and Members' Interests cannot be given, it is still open to the House itself to determine a course of action in relation to this matter.¹

The Member for Sturt then, by leave, moved the motion referred to above, which was agreed to by the House.

General provisions relating to privilege and contempt

A detailed explanation of the law and practice of the House relating to privilege and contempt is set out in *House of Representatives Practice*.² The nature of privilege is explained and the area of absolute privilege or immunity described, with particular reference to the *Parliamentary Privileges Act 1987*. Reference is also made to the power of the House to punish contempts and the following definition of contempt is quoted from May:³

... any act or omission which obstructs or impedes either House of Parliament in the performance of its functions, or which obstructs or impedes any Member or officer of such House in the discharge of his duty, or which has a tendency, directly or indirectly, to produce such results may be treated as contempt even though there is no precedent of the offence.

More information on this point is set out at pages 726-27 of *House of Representatives Practice*:⁴

Conduct (including the use of words) does not constitute an offence against a House unless it amounts, or is intended or likely to amount, to an improper interference with the free exercise by a House or committee of its authority or functions, or with the free performance by a Member of the Member's duties as a Member.⁵

In effect this provision sets a threshold: to be a contempt an action must amount to or be intended or likely to amount to improper interference with the free exercise by a House or a committee of its authority or functions or with the free performance by a member of the member's duties as a member etc.

¹ House of Representatives Debates, 22 May 2012, p 45.

² *House of Representatives Practice*, 5th edn, chapter 19, 'Parliamentary Privilege'.

³ Erskine May, *Parliamentary Practice*, 24th edn, p 251.

⁴ *House of Representatives Practice*, op cit, pp 726-27.

⁵ *Parliamentary Privileges Act 1987*, section 4.

Particular references relevant to the matter referred to the committee

May states

The Commons may treat the making of a deliberately misleading statement as a contempt. In 1963 the House resolved that in making a personal statement which contained words which he later admitted not to be true, a former Member had been guilty of a grave contempt [and see below for details of the case].⁶

There is a more extensive, and helpful, discussion of the issue of the deliberate misleading of the House in McGee.⁷ McGee notes that:

It is a contempt deliberately to mislead the House or a committee, whether by way of a statement, in evidence or in a petition ... The contempt can be committed by anyone taking part in parliamentary proceedings. It consists of the conveying of information to the House or a committee that is inaccurate in a material particular and which the person conveying the information knew at the time was inaccurate or at least ought to have known was inaccurate.⁸

McGee states that three elements need to be established when it is alleged a member is in contempt for deliberately misleading the House:

1. The statement must, in fact, have been misleading;
2. It must be established that the member making the statement knew at the time the statement was made that it was inaccurate; and
3. In making the statement the member must have intended to mislead the House.⁹

According to McGee, in order for a misleading of the House to be deliberate:

... there must be something in the nature of the incorrect statement that indicates an intention to mislead ... But where the member can be assumed to have personal knowledge of the stated facts and made the statement in a situation of some formality (for example, by way of personal explanation), a presumption of an intention to mislead the House will more readily arise.¹⁰

Finally, in relation to the standard of proof in such matters, McGee states it ‘is the civil standard of proof on a balance of probabilities *but, given the serious nature of the allegations, proof of a very high order*’¹¹ [emphasis added].

⁶ May, op cit, p 254, cited in *House of Representatives Practice*, op cit, p 729.

⁷ David McGee, *Parliamentary Practice in New Zealand*, 3rd edn, 2005, pp 653-54.

⁸ *Ibid*, p 653.

⁹ *Ibid*, p 653-54.

¹⁰ *Ibid*, p 654.

¹¹ *Ibid*, p 654.

Precedents

Although claims that members have deliberately misled the House have been raised as matters of privilege, no Speaker has accepted that a *prima facie* case has been made out and, as a result, precedence has never been given to a motion to refer such a matter to the Committee of Privileges and Members' Interests.

UK cases

The most famous case of deliberately misleading the House is the *Profumo case*. In relation to this case *House of Representatives Practice* describes it as follows:

Mr Profumo had sought the opportunity of making a personal statement to the House of Commons to deny the truth of allegations currently being made against him. Later he was forced to admit that in making his personal denial to the House, he had deliberately misled the House. As a consequence of his actions, he resigned from the House which subsequently agreed to a resolution declaring him guilty of a grave contempt.¹²

There is also a precedent from the House of Commons in respect of a member found to have misled a committee. In 1947 its Committee of Privileges reported on a complaint concerning Mr Garry Allighan MP. Mr Allighan, who was also a journalist, had written a newspaper article which had contained serious allegations about the conduct of unnamed members, including implications that members divulged information in return for benefits. The Committee of Privileges took evidence from Mr Allighan. It reported that Mr Allighan had been guilty of an aggravated contempt, stating, *inter alia*, that he had 'persistently misled the committee' and that he had given evidence which the committee had been 'quite unable to accept'. Mr Allighan was expelled by the House.¹³

Canada

In 2002 a minister was accused of deliberately making misleading statements in the House about the handing over of prisoners captured by Canadian troops in Afghanistan to the American forces. The Speaker ruled that the matter merited being considered by an appropriate committee because the House had been left with two versions of the event. He found a *prima facie* case of privilege and the matter was referred to the Standing

¹² *House of Representatives Practice*, *op cit*, p 729.

¹³ H.C. 138 (1947), p xi.

Committee on Procedure and House Affairs. The committee found that there was no evidence to support the allegations that the minister had deliberately misled the House.¹⁴

Queensland

The Queensland Ethics Committee (previously the Committee of Ethics and Parliamentary Privileges) has considered a number of allegations of deliberate misleading referred by the Speaker. While there have been some conclusions that statements have been factually misleading, no findings of contempt have been made. In assessing matters, the committee has made use of the three point test proposed by McGee (referred to earlier). The inability to demonstrate that there had been an intention to mislead has been the principal reason why no findings of contempt have been made.

The task before the committee

The committee does not have an easy task.

The three point test outlined by McGee that I have referred to earlier may commend itself to the committee. The satisfaction of these points would seem to be a necessary requirement for the committee to conclude that a possible contempt had been committed. In addition, for a finding of contempt to be made the action would need to meet the requirements of section 4 of the Parliamentary Privileges Act and amount to an improper interference with the free exercise by the House of its authority or functions.

The significant challenge for the committee is establishing to its satisfaction the evidence in relation to the three points referred to earlier. As I understand it, a number of the matters are complex, have been the subject of considerable investigation by a Fair Work Australia inquiry and are subject to differing views. To satisfy itself that a case has been made out, the committee may need to receive evidence from relevant witnesses and obtain relevant documents.

The committee may wish to identify the particular statements that give rise to concern and focus any consideration on those. This would make the process of evidence gathering less complex.

OTHER MATTERS

¹⁴ Audrey O’Brien and Marc Bosc, *House of Commons Procedure and Practice*, 2nd edn, 2009, p 86.

Committee procedures providing procedural fairness

I am sure the committee is aware of the procedures adopted by the House (on the recommendation of the committee) for the protection of witnesses before the committee (copy at attachment 1).

The procedures, amongst other matters, specify that the committee:

- must notify in advance a person who is the subject of proposed investigation of the specific nature of the allegation made against them, preferably formulated as a specific charge, or if this is not possible, of the general nature of the issues being investigated, in order to allow them to respond;
- ensure a person who is the subject of a proposed investigation should have all reasonable opportunity to respond;
- enable a person appearing before the committee to be accompanied by, and be able to consult, counsel;
- should take evidence in public, unless it is determined in the public interest to take evidence in camera;
- is able to appoint counsel to assist it; and
- must, if it has determined findings, or is to recommend penalties in relation to a person, give that person every reasonable opportunity to make written or oral submissions to the committee.

Implications of possible legal action

Media reports suggest that Fair Work Australia may pursue legal action in the Federal Court in relation to its report into the Health Services Union, including the matters concerning the Member for Dobell.

There are issues the committee may need to consider in relation to its inquiry if legal action is likely to be pursued:

1. *Restriction on the use of, or reference to, any evidence taken by the committee*

Article 9 of the Bill of Rights 1688 prevents proceedings of committees from being examined or questioned or used to support a course of action in a court. Article 9 is given explicit expression in section 16 of the Parliamentary Privileges Act which provides, *inter alia*:

- (3) In proceedings in any court or tribunal, it is not lawful for evidence to be tendered or received, questions asked or statements, submissions or comments made, concerning proceedings in Parliament, by way of, or for the purpose of:
 - (a) questioning or relying on the truth, motive, intention or good faith of anything forming part of those proceedings in Parliament;
 - (b) otherwise questioning or establishing the credibility, motive, intention or good faith of any person; or
 - (c) drawing, or inviting the drawing of, inferences or conclusions wholly or partly from anything forming part of those proceedings in Parliament.

- (4) A court or tribunal shall not:
 - (a) require to be produced, or admit into evidence, a document that has been prepared for the purpose of submission, and submitted, to a House or a committee and has been directed by a House or a committee to be treated as evidence taken in camera, or admit evidence relating to such a document; or
 - (b) admit evidence concerning any oral evidence taken by a House or a committee in camera or require to be produced or admit into evidence a document recording or reporting any such oral evidence;unless a House or a committee has published, or authorised the publication of, that document or a report of that oral evidence.

There is the potential for the restrictions imposed on the use of the evidence given to a committee to arise in respect of any subsequent court action.

2. *Arrangements for the production of committee records in a court*

If documents or other information are presented to a committee inquiry, there are mechanisms available to enable these documents to be produced in a court for any subsequent court action for the limited purposes that are permissible without the law of privilege being infringed. The traditional process by which this is done is the relevant parties petitioning or requesting that the House to grant leave for the documents or information to be produced in a court.

A relevant example was the inquiry conducted by the House Standing Committee on Aboriginal Affairs into the effects of asbestos mining on the Baryulgil community. During the course of the inquiry a number of documents were presented to the committee by the former mine manager. Some documents were published and others were held in camera. The Aboriginal Legal Service, which subsequently was pursuing claims for compensation on behalf of former mine workers, petitioned the House seeking to take possession of the

documents to be produced in the court and also be able to refer to the committee's report in court proceedings.

The matter was referred to the Aboriginal Affairs Committee for advice to the House. The committee concluded that there was significant public interest in the documents being available to the courts and noted the witnesses who had presented the documents consented to their release, so there was no question of protection of witnesses. The committee recommended the House agree to leave being granted as requested by the petitioners.

In making its recommendation, the committee received advice from the Attorney-General. The advice stated in part:

The requirement for leave of the House to be obtained before evidence of parliamentary proceedings, or documents in the custody of the Clerk of the House, can be used in Court proceedings exists to preserve the privilege of the House deriving from Art.9 of the Bill of Rights. The evidence given by witnesses to, and documents received in evidence by, a Parliamentary Committee are part of proceedings in Parliament which Art.9 provides are not to be impeached or questioned in any court or place out of Parliament. Witnesses who appear before Parliamentary Committees are entitled as a result of Art.9 to the protection of the House in respect of anything said by them in their evidence. This protection properly extends to documentary evidence tendered by those witnesses. But where, as here, the witnesses submitting the documents to the Committee are either actively seeking the leave of the House, or are at least consenting, to have the documents answerable to a subpoena issued out of a court, and the documents were not brought into existence for the purposes of the Committee's inquiry the question of protection of the witnesses is of very much less importance.

Moreover, the documents are part of proceedings in Parliament only because they were tendered to the Committee by witnesses. There seems to be no intrinsic need to deny them to a court hearing proceedings in which they are relevant. To do so could be seen as an attempt to pre-judge or to frustrate those court proceedings. There would appear to be strong public interest grounds (namely the interest of the proper administration of justice) for making the documents available. [Emphasis added.]¹⁵

Although the House of Commons (UK) and the Senate no longer require that permission must be given before records or reports of proceedings may be admitted in evidence in court proceedings, the House has not done so, although there is authority for the view that its permission is not necessary.¹⁶

¹⁵ Letter from Hon Lionel Bowen, Deputy Prime Minister and Attorney-General to Mr Allen Blanchard MP, Chair, Standing Committee on Aboriginal Affairs, 14 November 1986 at Appendix 12, House of Representatives Standing Committee on Aboriginal Affairs, *Certain documents tendered to the Committee during the Baryulgil community inquiry*, Canberra, 1986.

¹⁶ And see *House of Representatives Practice*, op cit, p 718; and Senate resolution 10, 25 February 1988.

3. *Sub judice convention*

Although it is recognised that the House can consider any matter that is in the public interest, the House imposes a restriction on itself where matters are awaiting or under the adjudication of a court. This self-imposed restriction, known as the sub judice convention, also applies to the taking of evidence by committees. The purpose behind the convention is to avoid any parliamentary proceedings exerting an influence on juries or prejudicing the position of parties and witnesses in court proceedings.

The particular restrictions are:

- As a general rule, matters before the criminal courts should not be referred to from the time a person is charged until a sentence, if any, has been announced; and the restrictions should again apply if an appeal is lodged and remain until the appeal is decided.
- As a general rule, matters before civil courts should not be referred to from the time they are set down for trial or otherwise brought before the court and, similarly, the restriction should again be applied from the time an appeal is lodged until the appeal is decided.¹⁷

The Chair of a committee, like the Speaker in the House, exercises a discretion as to whether the convention should apply to any circumstance. In the case of committees, two considerations apply which do not apply in the House itself. First, it is possible for a committee to deliberate in private and agree on an approach to be taken in respect of evidence. Secondly, unlike the House, a committee has the option of taking evidence in camera and thus avoiding any risk of prejudicing court proceedings.

Should any elements of the matters referred to the committee be brought before a court the committee will have ample opportunity to consider and make judgments about the competing considerations.

Bernard Wright
Clerk of the House

29 May 2012

¹⁷ *House of Representatives Practice*, op cit, p 506.



Appendix C – Resolutions of the House

Procedures for the protection of witnesses before the Committee of Privileges and Members' Interests

Resolution adopted 25 November 2009

That in considering any matter referred to it which may involve, or give rise to any allegation of, a contempt, the Committee of Privileges and Members' Interests shall observe the procedures set out in this resolution, in addition to any procedures adopted by the House for the protection of witnesses before committees. Where this resolution is inconsistent with any such procedures adopted by the House for the protection of witnesses, this resolution shall prevail to the extent of the inconsistency.

- (1) Any person who is the subject of proposed investigation by the committee must be notified in advance of the specific nature of the allegations made against them, preferably formulated as a specific charge, or if this is not possible, of the general nature of the issues being investigated, in order to allow them to respond.
- (2) The committee shall extend to that person all reasonable opportunity and time to respond to such allegations and charges by:
 - (a) making written submission to the committee;
 - (b) giving evidence before the committee;
 - (c) having other evidence placed before the committee; and
 - (d) having witnesses examined before the committee.

(3) Where oral evidence is given containing any allegation against, or reflecting adversely on, a person, the committee shall ensure that that person is present during the hearing of that evidence, subject to a discretion to exclude the person when proceedings are held in private, and shall afford all reasonable opportunity for that person, by counsel or personally, to examine witnesses in relation to that evidence.

(4) A person appearing before the committee may be accompanied by counsel, and shall be given all reasonable opportunity to consult counsel during that appearance.

(5) A witness shall not be required to answer in public session any question where the committee has reason to believe that the answer may incriminate the witness.

(6) Witnesses shall be heard by the Committee on oath or affirmation.

(7) Hearing of evidence by the committee shall be conducted in public session, except where the committee determines, on its own initiative or at the request of a witness that the interests of the witness or the public interest warrant the hearing of evidence in private session.

(8) The committee may appoint counsel to assist.

(9) The committee may authorise, subject to rules determined by the committee, the examination by counsel of witnesses before the committee.

(10) As soon as practicable after the committee has determined findings to be included in the committee's report to the House, and prior to the presentation of the report, a person affected by those findings shall be acquainted with the findings and afforded all reasonable opportunity to make submissions to the committee, in writing and orally, on those findings. The committee shall take such submissions into account before making its report to the House.

(11) If the committee determines to make a recommendation to the House on a penalty to be imposed on a person, the person affected shall be afforded all reasonable opportunity to make submissions to the committee, in writing and orally, in relation to the proposed penalty. The committee shall take such submissions into account before making its report to the House.

(12) The committee may consider the reimbursement of costs of representation of witnesses before the committee. Where the committee is satisfied that a person would suffer substantial hardship due to liability to pay the costs of representation of the person before the committee, or in the interests of justice, the committee may make reimbursement of all or part of such costs as the committee considers reasonable.

(13) A member who has instigated an allegation of contempt or who is directly implicated in an allegation, shall not serve as a member of the committee for any inquiry by the committee into that matter.

(14) Before appearing before the committee a witness shall be given a copy of this resolution.

Procedures of the House of Representatives for dealing with matters of contempt

Resolution adopted 25 November 2009

- (1) The House, in considering any matter which may give rise to a contempt of the House, shall observe the procedures set out in this resolution:
 - (a) for any motion that makes a finding of contempt or that imposes any sanction for contempt, seven sitting days notice must be given;
 - (b) if, in considering any matter that may give rise to a contempt, the House wishes to consider further evidence not previously provided to the Committee of Privileges and Members' Interests, the person or persons accused of contempt shall be given the opportunity to respond to that evidence;
 - (c) where the House proposes to impose a punitive penalty on a person or persons for contempt, the person or persons shall have the opportunity to address the House, either orally or in writing;
 - (d) where the Committee of Privileges and Members' Interests has made a recommendation for the imposition of a penalty on a person or persons for contempt, the House shall not impose a penalty which exceeds that recommended by the Committee;
 - (e) where the Committee of Privileges and Members' Interests concludes in a report to the House that there is no finding of contempt against a person or persons, the House cannot make any finding of contempt against the person or persons; and
 - (f) any members who initiated an allegation of contempt should not vote in any divisions on motions relating to any findings, or impositions of penalties, for those contempts; and
- (2) This resolution has effect and continues in force unless or until amended or rescinded by the House in this or a subsequent Parliament.

