



**House of Representatives
Standing Committee of Privileges**

**Report concerning the alleged threat or intimidation of a potential
witness in connection with an inquiry by the House of
Representatives Standing Committee on Family and Community
Affairs**

September 2001

The Parliament of the Commonwealth of Australia

Report concerning the alleged threat or intimidation of a potential witness in connection with an inquiry by the House of Representatives Standing Committee on Family and Community Affairs

House of Representatives
Standing Committee of Privileges

September 2001
Canberra

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Membership of the Committee

Chair Hon A M Somlyay MP

Deputy Chair Mr R W Sawford MP

Members Mr K J Andrews MP

Ms J Bishop MP

Mr M Danby MP

Hon D F Jull MP

Mrs M A May MP

Mr R McClelland MP

Hon L B McLeay MP

Mr P C Neville MP

Mr R C G Sercombe MP

Committee Secretariat

Secretary Mr David Elder

Research Officer Ms Catherine Cornish

Administrative Officer Ms Vicki Bradley



Terms of reference

On 7 September 2000 the Speaker referred to the committee the following matter for inquiry and report:

Whether Mr Peter Osborne was subject to threat or intimidation in connection with his involvement in the inquiry in the last Parliament by the Standing Committee on Family and Community Affairs into health information management and telemedicine.

Alleged threat or intimidation of a potential witness in connection with an inquiry by the House of Representatives Standing Committee on Family and Community Affairs

The complaint

- 1.1 This matter was raised on 7 September 2000 by Mr Wakelin, Chair of the House of Representatives Standing Committee on Family and Community Affairs (FCA Committee). Mr Wakelin's statement provides background information on the matter before it was referred to the Committee of Privileges (the Committee). A copy of Mr Wakelin's statement is at Appendix A.
- 1.2 On 3 December 1999, Mr Peter Osborne wrote to the FCA Committee alleging two possible breaches of privilege relating to public hearings conducted in April 1997 by that Committee during its inquiry into health information management and telemedicine. This Committee of Privileges inquiry relates to one of those allegations. The allegation is, in essence, that an officer of the Victorian Department of Human Services (DHS), Mr Osborne's supervisor at the time, threatened that Mr Osborne's employment might be terminated if he gave evidence—as a private citizen—at a public hearing conducted by the FCA Committee in April 1997. Mr Osborne alleged that the supervisor was instructed to make the threats by another senior officer of the DHS.

Family and Community Affairs Committee investigation

- 1.3 On 7 September 2000 Mr Wakelin stated that the FCA Committee had endeavoured to investigate the matter. It had written to the DHS inviting a response to the allegations. The Department responded with statements by the two officers against whom Mr Osborne had made the allegations. On 10 August 2000 the FCA Committee held a private meeting with Mr Osborne to enable him to expand on the allegations he had made and to respond to the statements to the FCA Committee by the DHS officers.
- 1.4 Mr Wakelin informed the House that the FCA Committee had not been able to reconcile the differences between recollections by Mr Osborne and the DHS officer of the meetings at which Mr Osborne's proposed appearance before the FCA Committee was discussed and the threats to Mr Osborne's employment were alleged to have been made by that officer (officer A). The response from officer A was, in essence, that she told Mr Osborne he could not give evidence at the hearing—as a representative of the department—and that Mr Osborne had not told her that he wished to give evidence in another capacity. The FCA Committee concluded that if Mr Osborne's recollections were correct, there had been a:

...potentially ...serious issue of privilege involved. It is central to parliamentary committee processes that witnesses are freely available to provide evidence to committees ... The committee considers that the matter cannot be determined without further investigation and believes it should be referred to the Privileges Committee for its consideration.¹

The reference to the Committee of Privileges

- 1.5 On 12 October 2000 the Speaker allowed precedence to a motion by Mr Wakelin and the House referred to the Committee of Privileges the following matter for inquiry and report:

Whether Mr Peter Osborne was subject to threat or intimidation in connection with his involvement in the inquiry in the last Parliament by the Standing Committee on Family and Community Affairs into health information management and telemedicine.²

1 H.R. Deb (7.9.2000) 20385

2 H.R. Deb. (12.10.2000) 21502; HVP 2000 145/15; see Appendix B to this report

Relevant law

1.6 Each House of the Parliament has the power to hold certain actions or omissions to be contempts and to punish them. A contempt is something that obstructs or impedes a House in the performance of its functions or which has a tendency to produce such results. An action may be a contempt even though it is not in breach of a particular right or a law.

1.7 Any consideration of an action that may amount to a contempt must be undertaken in the light of section 4 of the *Parliamentary Privileges Act 1987* (the Act). Section 4 provides a threshold test for a finding of contempt:

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.

1.8 The Act—in subsection 3(3)—provides that a reference to an offence against a House is a reference to a breach of the privileges or immunities, or a contempt, of a House or committees. There is no doubt that intimidation of, or discrimination against, witnesses before a House or a committee is recognised as amounting to contempt.

As well as being able to be punished as a statutory offence ..., intimidation, punishment, harassment of or discrimination against witnesses or prospective witnesses can be punished as a contempt and, technically, there is no prohibition on a person being punished for such a contempt as well as being prosecuted under the *Parliamentary Privileges Act*.³

1.9 Statutory protection of witnesses is provided in section 12 of the Act. Subsection 12(2) is relevant:

- (2) A person shall not inflict any penalty or injury upon, or deprive of any benefit, another person on account of:
 - (a) the giving or proposed giving of any evidence; or

³ See Harris IC, *House of Representatives of Practice*, 4 ed., 2001, pp.713-714 and Limon, Sir Donald and McKay, WR, eds, *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament*, 22 ed., 1997, pp.126-127.

- (b) any evidence given or to be given;
before a House or a committee.

(Penalties for the offences are provided.)

- 1.10 The memorandum to this Committee by the Clerk of the House of Representatives provides more detail on the relevant provisions and considerations relevant to the protection of witnesses before Committees. A copy of the memorandum is at Appendix C.
- 1.11 The Clerk raised the following issues for the Committee's possible consideration:
- whether Mr Osborne was threatened or intimidated in respect of his involvement with the inquiry of the FCA Committee; or whether an attempt was made to threaten or intimidate him and, if so, by whom;
 - whether the action or conduct complained of amounted to improper interference with the FCA Committee's authority and, if so, whether any penalty should be imposed; and
 - whether there was any adverse effect on Mr Osborne's employment and if so the nature and extent of such effect.

The inquiry

- 1.12 On 20 August 2001 the Committee conducted an in camera hearing to seek to clarify the written evidence. The Committee has not authorised publication of the written submissions or oral evidence to the inquiry although it notes that during the inquiry it authorised limited publication of various written submissions so that witnesses could respond to allegations and refutations made. In view of its findings the Committee considers there is nothing to be gained from allowing the names of witnesses (other than the name of the witness who made the allegations) or the evidence of any of the witnesses to be published. The Committee makes reference in its report to the specific evidence on which it has drawn to reach its conclusions.

Evidence to the Committee of Privileges

- 1.13 The Committee wished to obtain evidence from the parties of the words spoken to Mr Osborne by his supervisor, officer A, in March or April 1997, regarding his proposal to give oral evidence to the FCA Committee in April 1997. In conjunction with this, the Committee was keen to obtain

evidence of the capacity in which Mr Osborne was invited to give evidence at the public hearing and how that may have been communicated to, and responded to, by officer A and her senior officer, officer B.

- 1.14 Invitations to give oral evidence to parliamentary committees are normally issued by way of a letter of invitation. Such letters are usually sent after a Committee has received a written submission and seeks to obtain further evidence from the authors of the submission at a public hearing.
- 1.15 For the purposes of this inquiry, there were two relevant written submissions to the FCA Committee inquiry into health information management and telemedicine:
- a submission from the Victorian DHS (which was submitted in September 1996. Mr Osborne had not contributed to this submission). The FCA Committee received oral evidence from a senior DHS officer in respect of this submission on 15 April 1997; and
 - a submission with a covering letter dated 23 August 1996, signed by Mr Osborne, under the logo of a major business advisory firm (firm C). Mr Osborne's title on the letter is 'Strategic Consultant' with firm C. The first page of the submission begins 'The objective of this submission by the Victorian Government (Department of Human Services-Acute Health Division)', firm C, and two other entities; that is, the submission could be seen to be made on behalf of DHS as well as firm C and others. Mr Osborne made a substantial contribution to this 'collaborative' submission and had been employed for approximately two weeks by firm C to work on the submission. The records of the FCA Committee show that firm C was sent a letter of invitation to give evidence at the hearing in April 1997 but that evidence was not given. The evidence this Committee received from the partner of firm C to whom the letter was addressed is discussed at paragraphs 1.24 and 1.34.
- 1.16 Evidence was given to this Committee that neither the Victorian Government nor the DHS had endorsed the submission from firm C. It is not clear to the Committee how much was known of the submission (either its existence or contents) to officer A or to her supervisor at the time officer A is alleged to have threatened Mr Osborne's employment if he gave oral evidence. The Committee received evidence that this submission was formally received by the FCA Committee as coming from firm C, however, it appears that there was at least one other version of it

circulating under the title of a company of which Mr Osborne was managing director (company D).

- 1.17 At the time of the FCA Committee hearing in April 1997, Mr Osborne was employed under a six-month contract with the Victorian DHS. The records of the FCA Committee do not reveal any letter inviting Mr Osborne to give oral evidence. However, the records contain a form for witness identification listing Mr Osborne as representing the Department of Human Services, Acute Health. The Committee has not ascertained who completed the details on the form or submitted it to the FCA Committee.

Written submission from Mr Peter Osborne

- 1.18 Mr Osborne provided the Committee with a large quantity of written material but its major focus is on surrounding circumstances, including what he regarded as the motives for officer A and others wishing to prevent him giving evidence, rather than on the particulars of the relevant conversations with officer A. In relation to that conversation specifically, Mr Osborne stated:

In late March 1997, [officer A] threatened to terminate my temporary contract with the Department of Human Services unless I unconditionally withdraw as a Telemedicine Expert Witness to the Federal Inquiry in April 1997. ... fearful of immediately losing [sic] my part-time consulting contract with the Department, and particularly fearful of losing all my Telemedicine intellectual property... I agreed with her request and my company reluctantly withdrew as a scheduled witness to the Federal Inquiry and did not fax back the Witness declaration form to the Federal Parliament.

- 1.19 It is not clear from the written evidence provided by Mr Osborne that he was invited to appear before the FCA Committee, although he made this clear in his oral evidence (see below). Mr Osborne alleges that the DHS

under the Management of [officer B] ordered [officer A] in late March 1997 to carry out threats and intimidation against me and forced me to reluctantly ... withdraw as a Telemedicine expert [sic] witness to the Federal Inquiry, in a calculated manner, consciously aware their actions were unethical, illegal and in contempt of the Federal Inquiry.

Written submission from DHS Officer A

- 1.20 In her written submission to this inquiry, officer A stated that Mr Osborne, in March/April 1997 presented a document to her (the submission from

firm C) and said he wanted to present it at the FCA Committee hearing 'on the basis it was endorsed by the Department as a collaborative submission with [firm C]'.

Mr Osborne said he was an independent expert in telemedicine and had written the [firm C] submission. He said that as a departmental employee he was therefore qualified to represent both organisations as an independent expert. At no time did Mr Osborne tell me that he had a personal invitation to appear at the inquiry hearing or that he wished to appear before the Inquiry as the director of [company D].

- 1.21 Officer A submitted that she advised Mr Osborne that the Department had made a submission on behalf of the Victorian Government and that another, senior, officer would be representing the Department to speak to the Department's authorised submission. Officer A advised a supervisor, officer B, that Mr Osborne, without formal approval, had prepared a collaborative submission and he wished to speak to it... 'at the Inquiry on behalf of the Department'. Officer B instructed her to tell Mr Osborne 'that his collaborative report could not be presented as a Government-endorsed submission and that he could not appear on behalf of the Department'. Officer A stated she then informed Mr Osborne that he

could not represent the Department nor present his collaborative report as a Government-endorsed document. I emphasised that he was currently a temporary non-executive employee of the Department and that it was established practice for either the Secretary or the Director to appear at such forums to represent the Department. ...Mr Osborne became insistent and upset... He said he would appear anyway... I tried to explain to Mr Osborne the implications of a failure to comply with [officer B]'s instruction. ...I deny that I informed Mr Osborne that if he attended the Inquiry as a witness, his contract would be terminated, and I also specifically deny that I said anything to that effect to him.

- 1.22 Officer A also noted that at the time before the FCA Committee hearing Mr Osborne was not employed by DHS in connection with telemedicine activities.

Written submission from DHS Officer B

- 1.23 Officer B denied he instructed officer A to inform Mr Osborne that if he did appear as a witness his contract would be terminated and also denied

he gave officer A such an instruction. Officer B stated officer A told him that Mr Osborne wanted to appear as a representative of DHS. Mr Osborne was employed as a Senior Project Officer classified at VPS-5 level. 'He was not an appropriate person to represent the Department as he was not the senior officer responsible for either policy or operating in relation to telemedicine.' Officer B stated 'At no stage did [officer A] indicate to me that Mr Osborne wished to appear in his own capacity or representing his company [D].'

Written evidence from witness C, a partner in firm C

- 1.24 The Committee received a brief written submission from a partner in firm C, who had had dealings with Mr Osborne in respect of the submission by firm C, (the 'collaborative submission') to the FCA Committee inquiry. He stated that Mr Osborne was commissioned by firm C for approximately two weeks to assist in preparing a written submission to the FCA Committee inquiry. After this, Mr Osborne began work with the DHS, 'initially as a sub-contractor of [firm C], and then as an employee'.

Oral evidence from Mr Peter Osborne

- 1.25 Mr Osborne told the Committee that he had received an oral invitation to give evidence to the FCA Committee at its public hearing in April 1997 and that that was purely to give evidence on behalf of company D. 'I was appearing as the managing director of my company [D] which was doing a partnership deal with [C] to put a collaborative proposal together.' Mr Osborne said he did not complete the witness declaration form because he was called to speak to officer A about the inquiry.
- 1.26 Mr Osborne stated that he told officer A of the capacity in which he proposed to appear before the FCA Committee:
- I was representing the original submission that I had written. I had never met the Victorian government before 1996....I had written a submission as a company and I wanted to appear...I said "I am not representing the department..."
- 1.27 Mr Osborne asserts that officer A responded by saying to him, 'It's your choice. ... You will be putting at risk your terms of engagement with the department.'
- 1.28 By not focusing on the particulars of the allegations against DHS officers A and B, Mr Osborne's evidence did not assist the Committee to clarify the circumstances of the allegations.

Oral evidence from DHS officer A

1.29 In her evidence to this Committee, officer A said Mr Osborne had been clear about wishing to appear on behalf of the department, that he did not ask her about appearing in a private capacity.

He had a six-month project officer temporary contract with the department to do a specific job. He approached me. He said that he was an independent expert in telemedicine, which is what he always said, but he wanted to represent the department at the inquiry.

1.30 Officer A informed the Committee that she told Mr Osborne a senior officer was representing the Department at the FCA Committee hearing. Officer A said if Mr Osborne had asked to appear at the FCA hearing in a private capacity she would not have known what to do and would have sought advice. She also stated that if Mr Osborne had asked about appearing with the firm C submission she would have had to ascertain what the protocol was. 'I am very clear that he asked to represent the department, which is where I went through the departmental process and went to [officer B] just to confirm what I thought was protocol.'

1.31 As to her capacity to terminate Mr Osborne's contract officer A stated she never told Mr Osborne his contract would be terminated. 'For disobeying protocol within the department or the director's instructions, there would have been disciplinary action. I do not have the power to terminate his contract.'

Oral evidence from DHS officer B

1.32 Officer B, a supervisor of officer A, remembered a brief conversation with officer A in which she stated that Mr Osborne wished to appear as a representative of the department.

There is no doubt in my mind that that is what she said that he requested. She did say something along the lines of, "he wanted to appear as an independent expert representing the department," and I found that confusing—and I think I said so in my statement—but that was the end of it.

I basically said he could not do that, and the reason for that is standard protocol.

... I advised [officer A] that Mr Osborne could not appear on behalf of the department, and that should he do so there were potentially serious consequences.

- 1.33 In terms of the 'collaborative' submission to the inquiry from firm C and purportedly from the DHS, officer B told this Committee that he thought officer A mentioned the firm C document 'and I think that is what he was seeking in part to discuss—I thought he was seeking to discuss it—before the committee. But, again, what he wanted to do was to appear to represent some other work, but as a representative of and endorsed by the department.'

Oral evidence from firm C

- 1.34 The partner of firm C who had dealt with Mr Osborne in respect of firm C's 'collaborative' submission to the FCA inquiry gave evidence to this Committee that he did not remember being invited to give or not to give oral evidence to the FCA Committee. He told the Committee he was not aware that Mr Osborne was invited to give evidence nor did he recall Mr Osborne mentioning he had been threatened or asked to appear or not to appear before the FCA Committee. If firm C had been invited to give evidence, Mr Osborne would not have given evidence on behalf of the firm.

Summary of the evidence

- 1.35 The Committee was faced with a volume of complex and contradictory evidence. In addition, the Committee's task (and indeed that of the FCA Committee) was made more difficult by the delay between the time the threats were alleged to have been made and the time Mr Osborne raised the matter with the FCA Committee. Some witnesses before the Committee were understandably unable to recollect all relevant matters with great clarity or in great detail.
- 1.36 It appears that the communications between officer A and Mr Osborne were at cross purposes. While Mr Osborne is adamant that he proposed to give evidence in a personal capacity, or as a director of company D, but not on behalf of the department, officer A is equally adamant that Mr Osborne proposed to her that he give evidence as a DHS representative. Officer A saw the issue as a matter of protocol, as did officer B. Mr Osborne saw it as a matter of being denied his right to accept an invitation to appear before a parliamentary committee as a private citizen.

- 1.37 The Committee considers Mr Osborne's different and sometimes simultaneous roles, as a contractual employee of DHS, managing director of company D, and his part of a contractual relationship with firm C may have contributed to any confusion.
- 1.38 In addition, the Committee notes that departments have protocols as to the levels of officers who may give evidence to parliamentary committees and that this is a reasonable and proper means to ensure that committees receive evidence from those with the adequate capacity and authority to provide it.

Conclusions

- 1.39 From the evidence before it the Committee concludes that in her discussions with Mr Osborne regarding his proposed appearance before the FCA Committee, officer A's conduct amounted to an interference with the free exercise of the FCA Committee's authority and functions, in that a potential witness was deterred from giving evidence by what she told him. Officer A, whose advice to Mr Osborne was endorsed by Officer B, told Mr Osborne that he could not give evidence at the hearing, and suggested that if he did, the consequences would be serious. The Committee concludes that officer B's conduct also amounted to an interference with the free exercise of the FCA Committee's authority and functions in that he contributed to a potential witness being deterred from giving evidence.
- 1.40 The Committee notes the advice from the Clerk: section 4 of the Act refers to conduct that 'amounts, or is intended or likely to amount, to an improper interference...' 'Establishing that there was an intent to cause improper interference is not strictly necessary in determining whether a contempt has been committed'.
- 1.41 The Committee does not find that the conduct of either officer A or officer B amounted to an improper interference with the FCA Committee's authority and functions, as section 4 of the Act would require before a finding of contempt could be contemplated. The Committee is not satisfied that either officer A or officer B was conscious that Mr Osborne wished to appear in a capacity other than a departmental representative (whether as a private individual, or as a representative of a company) or

that either of them intended to deter Mr Osborne from giving evidence in any capacity other than as a representative of the DHS.

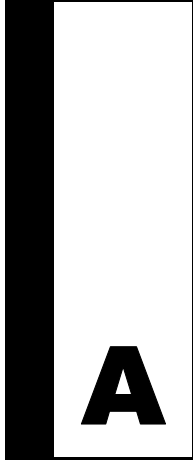
- 1.42 As there is no conclusion that the interference was improper, it does not fall to the Committee to consider a penalty or any adverse effects on Mr Osborne's employment. The Committee notes that Mr Osborne did not resign from the DHS until 29 March 1999. It also notes his description of the hardships he and his family have faced.
- 1.43 The Committee wishes to record its concern that a witness before a parliamentary committee has been subject to threats—albeit as the apparent result of confusion—and confirms its earlier statements regarding the importance of witnesses being able to give evidence freely to parliamentary committees. Interference with witnesses or potential witnesses has a grave potential to diminish the quality and range of evidence that is provided to parliamentary committees. The Committee will deal seriously with any matters that are referred to it following allegations of interference with witnesses or prospective witnesses before committees.

Recommendation

Recommendation 1

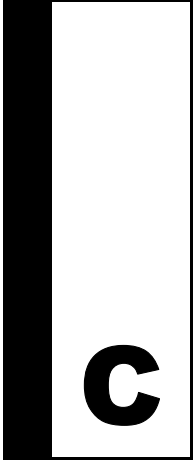
- 1.44 **That the Victorian Government, and indeed all governments, ensure that the managers and staff of their departments and agencies are advised of the rights and responsibilities of witnesses before parliamentary committees. In particular departments/authorities should ensure that the advice and procedures to implement that advice take careful note of the distinction between staff appearing as representatives of the department /authority and appearing in a private capacity.**

Hon Alex Somlyay MP
Chair
September 2001



Appendix A

Statement by Mr B Wakelin MP to the House on 7 September 2000



Appendix C

Clerk's Memorandum

