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The Parliament of the Commonwealth of Australia

**Report concerning the alleged threats to Mr Latham MP and  
Mr Murphy MP**

House of Representatives  
Standing Committee of Privileges

February 2005  
Canberra

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## **Membership of the Committee**

**Chair**            Mr Cameron Thompson MP

**Deputy Chair**   Ms Anna Burke MP

**Members**        Mr Bob Baldwin MP

                      Mrs Trish Draper MP

                      Mrs Joanna Gash MP

                      Mr Luke Hartsuyker MP

                      Mr Bob McMullan MP

                      Mr Daryl Melham MP

                      Ms Tanya Plibersek MP (Representative of Deputy  
                      Leader of the Opposition)

                      Hon Roger Price MP

                      Mr Alex Somlyay MP (Representative of Leader of the  
                      House)

## **Committee Secretariat**

**Secretary**            Mr David Elder

**Research Officer**    Ms Claressa Surtees

**Administrative Officer**   Ms Laura Gillies





## **Terms of reference**

On 2 December 2004 the House referred to the committee the following matter for inquiry and report:

The question of whether, in telephone calls to a member of staff of the Leader of the Opposition and to the Member for Lowe, Ms Christine Jackman of the *Australian* newspaper made threats that amount to an improper interference in the Leader of the Opposition's and the Member for Lowe's performance of their duties as Members of the House.





## **Alleged threats to Mr Latham MP and Mr Murphy MP**

### **The complaint**

- 1.1 This matter was raised by the then Leader of the Opposition (Mr Latham MP) and by the Member for Lowe (Mr Murphy MP) in the House on 2 December 2004 (see Hansard extract at Appendix A).
- 1.2 Mr Latham told the House that a senior member of his staff had received a threatening telephone call from Ms Christine Jackman, a journalist with the *Australian* newspaper. Mr Latham alleged that Ms Jackman issued a number of threats that were an attempt to unreasonably influence his conduct as a member in that they were trying to force him to take action in relation to one of his parliamentary colleagues, the Member for Lowe.
- 1.3 Mr Murphy indicated to the House that he also had had a call on 2 December 2004 from Ms Jackman that he considered had intimidated him as a member of the House.

### **Reference to the Committee of Privileges**

- 1.4 Having considered this matter, the Speaker agreed to give precedence to a motion for the matter to be referred to the Committee of Privileges (see Hansard extract at Appendix B). The Speaker noted that:

Attempts to influence members in their conduct as members by threats or to molest any member on account of his or her conduct in the parliament are contempts, and so also is any conduct having a tendency to impair a member's independence in the future performance of his or her duty.

1.5 The Speaker indicated that, while the matter lacked some detail as to the nature of the improper interference, such matters are serious issues.

1.6 On 2 December 2004 the House referred to the Committee the following matter:

The question of whether, in telephone calls to a member of staff of the Leader of the Opposition and to the Member for Lowe, Ms Christine Jackman of the *Australian* newspaper made threats that amount to an improper interference in the Leader of the Opposition's and the Member for Lowe's performance of their duties as Members of the House.

## Relevant law

1.7 The Committee received a memorandum from the Clerk of the House setting out the relevant law relating to this matter (a copy of the memorandum is at Appendix C).

1.8 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 obstructs or impedes a Member in the discharge of his or her duty, 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.

1.9 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.

1.10 The intimidation of Members in the performance of their duties as Members can be a contempt.

1.11 *House of Representatives Practice* states:

To attempt to influence a Member in his or her conduct as a Member by threats, or to molest any Member on account of his or her conduct in the Parliament, is a contempt. So too is any conduct having a tendency to impair a Member's independence in the future performance of his or her duty, subject, since 1987, to the provisions of the Parliamentary Privileges Act<sup>1</sup>.

1.12 *May* states:

To attempt to intimidate a Member in his parliamentary conduct by threats is also a contempt... Actions of this character which have been proceeded against include impugning the conduct of Members and threatening them with further exposure if they took part in debates; threatening to communicate with Members' constituents to the effect that, if they did not reply to a questionnaire, they should be considered as not objecting to certain sports; publishing posters containing a threat regarding the voting of Members in a forthcoming debate; informing Members that to vote for a particular bill would be regarded as treasonable by a future administration; summoning a Member to a disciplinary hearing of his trade union in consequence of a vote given in the House; and threatening to end investment by a public corporation in a Member's constituency, if the Member persisted in making speeches along lines of those in a preceding debate<sup>2</sup>

and:

Conduct not amounting to a direct attempt improperly to influence Members in the discharge of their duties but having a tendency to impair their independence in the future performance of their duty may be treated as a contempt. An example of such a case is the Speaker's ruling that a letter sent by a parliamentary agent to a Member informing him that the promoters of a private

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1 *House of Representatives Practice*, 4th Edition, Canberra, 2001, p. 711.

2 *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament*, 23 Edition, London, 2004, p. 146.

bill would agree to certain amendments provided that he and other members refrained from further opposition to the bill constituted (under the procedure then in force) a *prima facie* breach of privilege<sup>3</sup>.

1.13 The Clerk raised the following issues as being relevant to the Committee's consideration of this case:

- there would need to be consideration of what is meant by the 'free performance by a member of the member's duties as a member'. While 'free performance' could be understood relatively easily from its literal interpretation as being unconstrained by improper means, the term 'member's duties as a member' is more difficult. The Clerk noted that the duties of a member could extend to the exercise by the Leader of the Opposition of duties as Leader in relation to members of the Opposition;
- in assessing whether alleged threats amounted to contempt, the threats would need to be regarded as an 'improper interference' in the free performance of a member's duties;
- in assessing 'improper interference' regard would have to be had to the knowledge and intentions of those involved;
- it was important to consider any alleged threats in the context of the robust exchange which takes place, and is expected to take place, between the media and politicians in a democratic society; and
- the resignation of Mr Latham both as Leader of the Opposition and as a member of the House, did not remove the complaint as there was a matter of principle which would impinge on the rights of all members. Also one of the complainants remains a member of the House.

## The inquiry

1.14 On the basis of the statutory declarations provided by Mr Byres and Mr Murphy, the Committee accepts that telephone conversations with Ms Jackman took place on 1 and 2 December 2004.

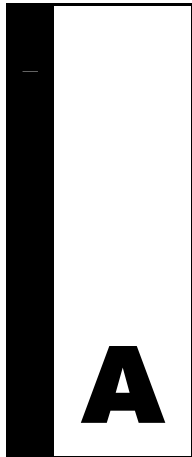
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- 1.15 The Committee notes, from the evidence provided by Mr Latham and Mr Murphy, that Ms Jackman was seeking an apology from Mr Murphy in relation to statements Mr Murphy had made to the House, to which Ms Jackman took offence.

## **Conclusion**

- 1.16 On the evidence placed before it the Committee concludes that the alleged threats made by Ms Christine Jackman in telephone conversations with Mr Glenn Byres (in Mr Latham's office) and Mr Murphy do not amount to an improper interference with either Mr Latham or Mr Murphy in the free performance of their duties as members. The conversations should be seen in the context of the robust exchange that occurs between media representatives and parliamentarians in an open, democratic society.
- 1.17 The Committee cautions that there is a need for the media to be conscious, in their exchanges with members of Parliament, not to allow there to be an appearance that they may wish to influence members, by any means, in the free performance of their duties as members.

**CP Thompson MP**  
**Chair**  
**February 2005**



## Appendix A

**Matter raised by the then Leader of the Opposition (Mr Latham MP)  
and by the Member for Lowe (Mr Murphy MP) in the House on  
2 December 2004**

### PRIVILEGE

Mr LATHAM (Werriwa—Leader of the Opposition) (1.50 p.m.) —Mr Deputy Speaker, I wish to raise a matter of privilege. Yesterday a senior member of my staff received a threatening telephone call from Ms Christine Jackman, a journalist with the *Australian* newspaper. She issued a number of threats in an attempt to unreasonably influence my conduct as a member of parliament, trying to force me to take action against one of my parliamentary colleagues, the member for Lowe. I regard the suggested action as totally unnecessary and improper. As per *House of Representatives Practice*, page 711, I believe that privilege has been breached with regard to myself and my colleague. *House of Representatives Practice* states:

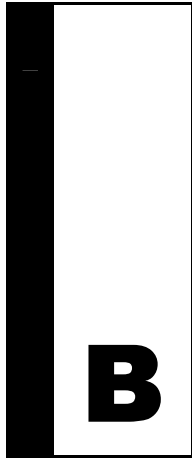
To attempt to influence a Member in his or her conduct as a Member by threats, or to molest any Member on account of his or her conduct in the Parliament, is a contempt ... So too is any conduct having a tendency to impair a Member's independence in the future performance of his or her duty, subject, since 1987, to the provisions of the Parliamentary Privileges Act.

I ask you, Mr Deputy Speaker and, through you, the Speaker, to consider the Jackman contempt. I believe that privilege has been breached in relation to myself and the member for Lowe.

## PRIVILEGE

Mr MURPHY (Lowe) (1.51 p.m.) —I wish to raise a matter of privilege. I feel intimidated following a telephone conversation I had this afternoon between 12.10 p.m. and 12.40 p.m. with Ms Christine Jackman, a journalist with the *Australian* newspaper. Mr Speaker, you will recall that last Tuesday evening at 9 p.m. I made a speech in the House of Representatives concerning an article written by Ms Jackman and Mr Cameron Stewart in last weekend's *Australian* about the Leader of the Opposition and a letter from the director of the media unit of the Leader of the Opposition on Tuesday to the *Australian* in response to the weekend article. Ms Jackman called to complain about my speech. I told her that I stood by what I said in this House. In the course of my conversation with Ms Jackman, she made threats against the Leader of the Opposition. I told her that I would not be intimidated in that way. I regard this as a breach of privilege as per the earlier statement made by the Leader of the Opposition.

The SPEAKER —Order! As the Leader of the Opposition and the member for Lowe have both raised very serious matters, I will reserve this matter for further consideration and will report back at the earliest opportunity.



## **Appendix B**

### **Reference of inquiry to Committee of Privileges**

#### **PRIVILEGE**

The SPEAKER (4.27 p.m.) —Earlier today the Leader of the Opposition and the member for Lowe raised with me a complaint of breach of privilege in relation to their performance of their duties as members. The basis of the complaint is a claim that a journalist, Ms Christine Jackman, from the *Australian* newspaper, in telephone calls to a staff member of the Leader of the Opposition and to the member for Lowe, issued a number of threats that were intended to influence them in their conduct as members.

As the Leader of the Opposition noted, attempts to influence members in their conduct as members by threats or to molest any member on account of his or her conduct in the parliament are contempts, and so also is any conduct having a tendency to impair a member's independence in the future performance of his or her duty. Assessment of whether a matter amounts to a contempt is subject to the provisions of the Parliamentary Privileges Act 1987.

In this case, while there is some lack of detail of the nature of any improper interference, I am nevertheless satisfied that, if the facts are as alleged, a serious issue is involved in connection with the performance of their duties by the Leader of the Opposition and the member for Lowe. I am satisfied that the matter has been raised at the earliest opportunity and, accordingly, I am prepared to allow precedence to a motion on this matter.



## PRIVILEGE

Mr LATHAM (Werriwa—Leader of the Opposition) (4.28 p.m.) —I move:

That the question of whether, in telephone calls to a member of the staff of the Leader of the Opposition and to the Member for Lowe, Ms Christine Jackman of the Australian newspaper made threats that amount to an improper interference in the Leader of the Opposition's and the Member for Lowe's performance of their duties as Members of the House be referred to the Committee of Privileges.

Question agreed to.



# C

## **Appendix C**

### **Clerk's Memorandum**

#### **INQUIRY CONCERNING MR LATHAM MP and MR MURPHY MP**

##### **The reference**

On 2 December 2004 the House agreed to the following motion:

the question of whether, in telephone calls to a member of the staff of the Leader of the Opposition and to the Member for Lowe, Ms Christine Jackman of the *Australian* newspaper made threats that amount to an improper interference in the Leader of the Opposition's and the Member for Lowe's performance of their duties as Members of the House.

The matter was raised in the House on 2 December 2004 by Mr Latham and Mr Murphy.

Mr Speaker responded to the matter later in the day, stating that he was prepared to allow precedence to a motion.

##### **The Task before the Committee**

The Committee will need to inform itself as to the relevant parliamentary law and precedents. It would then need to consider the facts in this particular matter.

Having gone as far as it can in seeking to ascertain the facts the Committee would then need to reach some conclusions as to the matter. It would presumably consider the question of intent, although I note that the terms of section 4 of the *Parliamentary Privileges Act 1987* make it clear that it is not technically necessary to establish an intent to cause improper interference. Technically at least, it would seem to be sufficient, in terms of the Act, to establish that certain conduct amounted or was intended or likely to amount to improper interference.

### **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*<sup>1</sup>. 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*<sup>2</sup>.

... 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 a contempt even though there is no precedent of the offence.

More information on this point is set in *House of Representatives Practice*<sup>3</sup>.

Section 4 of the *Parliamentary Privileges Act 1987* provides:

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.

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.

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<sup>1</sup> *House of Representatives Practice*, 4<sup>th</sup> Edition, Canberra, 2001.

<sup>2</sup> *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament*, 23<sup>rd</sup> Edition, London, 2004, p. 128.

<sup>3</sup> *Reps Practice*, pp. 710-13.

## Particular references relevant to the present inquiry

*House of Representatives Practice* states

### *Attempted intimidation of Members*

To attempt to influence a Member in his or her conduct as a Member by threats, or to molest any Member on account of his or her conduct in the Parliament, is a contempt. So too is any conduct having a tendency to impair a Member's independence in the future performance of his or her duty, subject, since 1987, to the provisions of the Parliamentary Privileges Act<sup>4</sup>.

*May* states:

To attempt to intimidate a Member in his parliamentary conduct by threats is also a contempt... Actions of this character which have been proceeded against include impugning the conduct of Members and threatening them with further exposure if they took part in debates; threatening to communicate with Members' constituents to the effect that, if they did not reply to a questionnaire, they should be considered as not objecting to certain sports; publishing posters containing a threat regarding the voting of Members in a forthcoming debate; informing Members that to vote for a particular bill would be regarded as treasonable by a future administration; summoning a Member to a disciplinary hearing of his trade union in consequence of a vote given in the House; and threatening to end investment by a public corporation in a Member's constituency, if the Member persisted in making speeches along lines of those in a preceding debate<sup>5</sup>.

and:

Conduct not amounting to a direct attempt improperly to influence Members in the discharge of their duties but having a tendency to impair their independence in the future performance of their duty may be treated as a contempt. An example of such a case is the

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<sup>4</sup> *Reps Practice*, p. 711.

<sup>5</sup> *May*, p. 146.

Speaker's ruling that a letter sent by a parliamentary agent to a Member informing him that the promoters of a private bill would agree to certain amendments provided that he and other members refrained from further opposition to the bill constituted (under the procedure then in force) a *prima facie* breach of privilege<sup>6</sup>.

### **Precedents**

There have been no exact precedents for the present matter in so far as the House of Representatives is concerned.

The closest precedent of which I am aware is the famous Browne/Fitzpatrick case. In May 1955, the then Member for Reid, Mr Morgan, raised a matter of privilege that an article published in a newspaper circulating in his electorate impugned his personal honour as a Member of Parliament and was a direct attack on his integrity and conduct as a Member of the House. The matter was referred to the Committee of Privileges for investigation and report. A number of subsequent articles in the same newspaper were also referred to the Committee. The articles contained allegations that Mr Morgan was involved in an immigration racket in the mid-1940s.

In evidence given to the Committee (now publicly available as a result of the release of the evidence by the House in December 2000), Mr Fitzpatrick, the owner of the newspaper, admitted that the purpose of publishing the material had been to prevent Mr Morgan from speaking in Parliament about certain matters. Mr Fitzpatrick also admitted that he had instructed a journalist with the newspaper, Mr Browne, to 'get stuck into Morgan' in retaliation for matters that Mr Morgan had raised in the House. Mr Browne did not admit that the purpose of the articles was to intimidate Mr Morgan. However, he did indicate that adverse inferences about Mr Morgan could be drawn from the content of the articles and that those inferences related to Mr Morgan's current duties as a Member.

The Committee reported on 8 June 1955 and found that Fitzpatrick and Browne were guilty of a serious breach of privilege by publishing articles intended to influence and intimidate Mr Morgan in his conduct in the House and in deliberately attempting to impute corrupt conduct as a Member against him, for the express purpose of discrediting and silencing him. The Committee recommended that the House should take appropriate action. Subsequently, and after having heard Mr Fitzpatrick and Mr Browne at the bar of the House, the House passed resolutions imposing gaol sentences on each of them.

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<sup>6</sup> *May*, p. 147.

It is important to note that in this case the finding of a ‘breach of privilege’ (a contempt) arose from the view that there had been an improper interference with Mr Morgan in his duties as a Member.

### Contempt

Whilst the area of absolute privilege is strictly limited, the House has the power to punish contempts - that is, the power to act to protect itself, its committees and its Members from actions which, whilst they may not breach any particular right or immunity, are held to obstruct or impede the House, a committee or a Member. This power enables the House to protect itself and its Members against actions which may not breach any privilege or immunity but which have the potential to seriously obstruct or impede.

In the Commonwealth Parliament such actions must be tested against the provisions of section 4 of the Parliamentary Privileges Act. To be a contempt an action affecting an individual Member must be found to amount to or be intended or likely to amount to an improper interference with the free performance by the Member of the Member’s duties as a Member.

### **Free performance by a member of the member’s duties as a member**

The House has given us no guidance as to what is meant by ‘free performance by a member of the member’s duties as a member. I consider that the first part of this phrase (...free performance...) does not present particular difficulties. The literal interpretation of the term, in context, would seem to be properly characterised as meaning ‘independent’ and ‘not subject to special regulation or restriction’ - but not ‘unrestrained’, ‘loose’ or ‘informal’<sup>7</sup>; perhaps ‘unconstrained by improper means’.

The term ‘member’s duties as a member’ is more difficult. The House has not defined it. Members clearly perform a wide range of tasks, from those unquestionably forming part of ‘proceedings in Parliament’ (such as speaking in debates, asking questions, voting and participating in committee meetings), to participating in other parliamentary functions (delegations, for example), to party activities (including the leadership of parties) and to actions in their electorates or in connection with assistance to and representation of constituents<sup>8</sup>.

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<sup>7</sup> Macquarie Dictionary, p. 702.

<sup>8</sup> *Reps Practice*, pp. 131-33.

The work of Members in these diverse activities is implicitly recognised in that official support is given by way of facilities etc. Nevertheless, in ordinary language 'duties' has a different meaning to 'tasks'. The Macquarie Dictionary lists three relevant meanings<sup>9</sup>.

- 'that which one is bound to do by moral or legal obligation';
- 'the binding or obligatory force of that which is morally right, moral obligation'; and
- 'action required by one's position or occupation, office, function....'.

The exercise of the responsibilities of the Leader of the Opposition in relation to members of the Opposition could be seen as falling within the performance of his or her duties as a Member. Nevertheless, the Committee should be alert to the dangers of allowing the flexibility enjoyed in respect of findings of contempt to allow a *de facto* extension of the scope of parliamentary privilege.

### **Assessment of Complaint**

#### Possible contempt

The more difficult question for the committee is whether the alleged threats made by Ms Jackman ought to be treated as a contempt. In measuring the complaint against the requirements of section 4 of the 1987 Act, the committee would need to consider the extent to which the action complained of could be regarded as improper interference, what the term 'free performance of a Member's duties' means and whether the term 'a Member's duties as a Member' encompasses the responsibilities of Mr Latham and Mr Murphy which, it is alleged, have been interfered with.

It is difficult to know precisely how the words 'improper interference with the free performance by a Member of the Member's duties as a Member' should be interpreted. The explanatory memorandum to the Parliamentary Privileges Bill in 1986 does not help on this point, and, in particular, as to what might be regarded as 'improper' and what the 'free performance of a Member's duties as a Member' might mean. The terms need to be looked at in context. The Joint Select Committee on Parliamentary Privilege recommended in 1984 the adoption of resolutions by each House to spell out what might be regarded as contempts. Under a heading 'Improper influence of Members' the committee proposed the following formulation:

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<sup>9</sup> Macquarie Dictionary, p. 556.

A person shall not by fraud, intimidation, force or threat of any kind, by the offer or promise of any inducement or benefit of any kind, or by other improper means, influence a Member in his conduct as a Member, or induce him to be absent from a House or a committee.

The term ‘threat of any kind’ seems very broad. The Committee would need to consider the nature of any alleged threats within the context of the robust exchange that could be expected in a democratic society between the media and members of parliament. In this regard the Committee would presumably wish to have regard to the circumstances of the alleged actions and the knowledge and intentions of those involved. As indicated, technically it would seem that under section 4 of the *Parliamentary Privileges Act 1987* an action could be found to be a contempt even if it had not been the intention of a person to interfere improperly with the free performance by a Member of the Member’s duties as a Member.

#### **Effect of Mr Latham’s resignation**

A valid question, in light of Mr Latham’s recent resignation as a Member of the House, is whether a matter of privilege that has been raised remains current when the member who is the complainant leaves the Parliament before the matter has been finalised. I am not aware of similar instances where this has arisen.

The particular circumstances of the matter of privilege that has been raised could be relevant to the question of whether the Committee would still wish to proceed with its investigation after the complainant Member departed, or how it chooses to proceed. Nevertheless, as a generalisation, if a breach of privilege or a contempt has occurred, the fact that the complainant departs the Parliament does not remove the original infringement. Privilege exists to protect the Parliament and its processes, and an infringement impinges, as a matter of principle, on the institution and its Members. From this perspective, any infringement on an individual should be regarded as an infringement of the protection owed to the institution of Parliament and its Members.

I also note, in this particular case, that there is another complainant, Mr Murphy, who remains a member of the House.

IC HARRIS

Clerk of the House

7 February 2005