

**THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA**

**THE SENATE**

**COMMITTEE OF PRIVILEGES**

**POSSIBLE PENALTY OR INJURY TO A WITNESS**

**BEFORE THE EMPLOYMENT, EDUCATION AND TRAINING  
COMMITTEE**

**(51ST REPORT)**

**FEBRUARY 1995**



## MEMBERS OF THE COMMITTEE

Senator Baden Teague (**Chairman**) (South Australia)  
Senator the Honourable Margaret Reynolds (**Deputy Chairperson**) (Queensland)  
Senator Bruce Childs (New South Wales)  
Senator John Coates (Tasmania)  
Senator Christopher Ellison (Western Australia)  
Senator Jim McKiernan (Western Australia)  
Senator Bob Woods (New South Wales)

The Senate  
Parliament House  
CANBERRA ACT 2600



## CONTENTS

	<b>Page</b>
<b>Introduction</b>	<b>1</b>
<b>Background</b>	<b>1</b>
<b>Conduct of inquiry</b>	<b>4</b>
<b>Comment</b>	<b>6</b>
<b>Finding</b>	<b>6</b>

### **Appendices**

· Appendix A

Letter to Senator the Honourable Michael Beahan,  
President of the Senate,  
dated 12 May 1994 from Senator Winston Crane.

· Appendix B

Statement by Senator the Honourable Michael Beahan,  
President of the Senate,  
dated 30 May 1994.

· Appendix C

Statement by Senator the Honourable Gareth Evans,  
Minister for Foreign Affairs,  
dated 31 May 1994.

· Appendix D

Speech by the Honourable John Howard, MP  
(Member for Bennelong), House of Representatives,  
dated 3 May 1994.

- Appendix E

Statement by the Honourable Stephen Martin, MP  
Speaker of the House of Representatives,  
dated 4 May 1994.

- Appendix F

Submission from the Honourable Laurie Brereton, MP  
Minister for Industrial Relations,  
dated 26 July 1994.

- Appendix G

Submission from Mr R P Boland,  
Director (Industrial Relations), MTIA,  
dated 22 July 1994.

- Appendix H

Submission from Mr A C Evans, Chief Executive, MTIA,  
dated 22 July 1994.

**POSSIBLE PENALTY OR INJURY TO A WITNESS  
BEFORE THE EMPLOYMENT, EDUCATION AND TRAINING  
COMMITTEE**

**Introduction**

1. On 31 May 1994 the following matter was referred to the Committee on the motion of Senator Crane:

Whether Mr Roger Boland was subjected to any penalty or injury, or deprived of any benefit, on account of evidence given by him to a Senate committee, and, if so, whether any contempt was committed.

**Background**

2. In a letter to the President, dated 12 May 1994, raising the question referred to the Committee as a matter of privilege, Senator Crane drew attention to a report from the *Australian Financial Review* of 29 March 1994 which alleged that Mr Roger Boland, the director of industrial relations for the Metal Trades Industry Association, was penalised on account of his evidence before the then Senate Standing Committee on Employment, Education and Training in relation to the Industrial Relations Reform Bill 1993. The press report alleged that the Minister for Industrial Relations, the Honourable L J Brereton, had overturned a proposal to appoint Mr Boland to the position of Vice-President, Enterprise Bargaining, Australian Industrial Relations Commission, because Mr Boland had been critical of government policies in evidence to the Employment, Education and Training Committee on 11 November 1993.

3. Senator Crane advised the President that he had raised the possible question of privilege with the Employment, Education and Training Committee under Resolution 1(18) but that the majority of the Committee declined to investigate the matter.

4. In his ruling on the matter, the President advised the Senate that he had had regard to the criteria contained in Privilege Resolution 3(a) and (b), which refer to improper acts which tend substantially to obstruct the Senate and its committees in the performance of their functions and to the lack of any remedy other than the Senate's contempt power to determine whether any act might be regarded as a contempt. After referring to this Committee's 42nd Report, which emphasised the seriousness with which the possible interference with or molestation of a witness must be taken, the President concluded that the matter should be given precedence, and invited Senator Crane to give a notice of motion accordingly.

5. While indicating on 31 May that the Government would not oppose Senator Crane's motion, the Leader of the Government, Senator Gareth Evans, made the following remarks:

[O]n behalf of the Minister for Industrial Relations, Mr Brereton, I wish to make clear for the record from the outset the points that Mr Brereton will be relying on before the privileges committee. They are as follows.

Firstly, Mr Roger Boland was never the preferred candidate of the government for appointment as vice-president, enterprise bargaining division, of the AIRC. Secondly, at no stage, either before or after Mr Boland's appearance at the Senate committee, was there any commitment given or intent to appoint Mr Boland to this position. His name was put forward by the MTIA and he was one of many candidates considered by the government.

Thirdly, the assertion by the honourable member for Bennelong (Mr Howard) that the Minister for Industrial Relations indicated to Mr Boland that he was a 'plum for the job' were words never used by the minister. Fourthly, as Mr Boland was never the preferred candidate for appointment, it is totally false for the member for Bennelong to assert that he had either been punished or dumped as alleged in the House on 3 May, and subsequently by Senator Crane.

Fifthly, to the contrary, Mr Boland's employer, Mr Bert Evans, chief executive of the MTIA, was specifically advised that Mr Boland was considered suitable for appointment as a deputy president of the AIRC, but not as the



vice-president, enterprise bargaining. Mr Evans advised that Mr Boland had rejected an earlier government offer of appointment as a deputy president and was only interested in becoming vice-president, enterprise bargaining. This consultation with Mr Evans in fact followed Mr Boland's appearance before the Senate committee. Mr Evans was advised that Mr Boland would continue to be considered favourably as a candidate for a deputy president's position. Accordingly, it is quite false to assert that he was penalised for his comments at the Senate committee.

Sixthly, Mr Bert Evans and Mr Roger Boland completely endorse these points that have been made on Mr Brereton's behalf. These are the points that will be made on Mr Brereton's behalf if the matter is referred to the privileges committee. I have no doubt that, as a result, the complaint will be found to have no substance.

6.It may be noted that the matter had also been raised in the House of Representatives by the Honourable John Howard on 3 May 1994, on the ground that it involved a member of that House. The Speaker declined to give the matter precedence because, he stated, while the allegations might involve a member of the House of Representatives they concerned a committee of the Senate. He concluded that, as the allegations did not go to the powers, privileges and immunities of the House of Representatives, its committees or its members, he was not willing to allow precedence to a privilege motion.

### **Conduct of inquiry**

7.The Committee, having noted the tenor of the discussions in both Houses, wrote to the Minister for Industrial Relations and Minister for Transport, the Honourable L J Brereton, M.P., Mr Roger Boland, Director of Industrial Relations, Metal Trades Industry Association of Australia and Mr A C (Bert) Evans, Chief Executive of the Association, inviting them to make submissions on the matter, drawing their attention specifically to the statement made on behalf of the Minister by the Leader of the Government in the Senate and seeking their written confirmation of the points made in that statement.

8. All three responded with comprehensive submissions, confirming in substance the points made in Senator Evans' statement. These submissions, and all other documents referred to in this report, are included as appendices.

9. The Minister's submission in effect reiterated the points made by Senator Evans, and concluded as follows:

I am sure that when the Committee [of] Privileges examines all the submissions on this issue, the allegations first raised by the Member for Bennelong, Mr Howard, and subsequently by Senator Crane, will be found to be totally false.

10. While Mr Boland indicated that evidence before the Senate Employment, Education and Training Committee had been referred to in discussions with the Minister, he went on to state categorically that:

I do not regard myself as having been punished or prejudiced in any way by the Minister or anyone else as a consequence of my evidence before the Senate Committee.

11. He pointed out that his criticism of the enterprise bargaining process on behalf of the MTIA was well known to the Minister prior to 11 November 1993 when he gave evidence to the Senate Committee:

The evidence I gave was merely one episode in a series of statements or submissions made by me on behalf of MTIA since 1991 critical of the manner in which the Government has sought to decentralise industrial relations.

The Government has not been entirely successful in bringing about change through enterprise bargaining and in my opinion they obviously saw the appointment of a Vice President of the Bargaining Division as critical to making enterprise bargaining work under the new legislation. I accept from the Government's perspective and that of the Minister that appointing me to the

position would have been, and would have been seen as, quite incongruous.

In conclusion I again state categorically that I do not regard myself as having been punished or prejudiced in any way by the Minister or any other individual or organisation as a consequence of my evidence to the Senate Committee on 11 November 1993.

Mr Boland's submission also described the circumstances of his contact with the author of the article, and with the Honourable John Howard and Senator Crane.

12. Mr Bert Evans gave a detailed description of the dealings between MTIA and the Minister on the question. Mr Evans indicated that the terms of Mr Brereton's statement to the Senate were discussed and cleared with him, but does point out that, contrary to Senator Evans' sixth point, quoted above, Mr Boland was not aware of the content of Mr Brereton's statement.

13. In the light especially of Mr Boland's categorical denial that he regards himself as having been penalised or injured as a consequence of his giving evidence to the Employment, Education and Training Committee, the Committee of Privileges concludes that it should not make a finding that a contempt has been committed.

### **Comment**

14. The documents attached to this report are a valuable source of information on the question before it, and provide an instructive case-study of how possible questions of contempt can arise. In the Committee's view, and as stated both by the President and in the letter from Senator Crane, any question of molestation of a witness must be taken seriously. As Mr Boland's statement indicates, the Minister did mention his giving evidence to the Senate Committee in the context of a possible appointment as Vice-President of the Bargaining Division of the Australian Industrial Relations Commission and as such required the investigation. The Committee accepts, however, Mr Boland's interpretation of that remark as the Minister's illustration of a well-known MTIA attitude to the Industrial Relations Reform Act and enterprise bargaining, and not as a threat to penalise or injure him on account of his having given that evidence to the Senate committee.

### **Finding**

15. The Committee of Privileges has concluded that, following its examination of the submissions placed before it by the Minister for Industrial Relations, the Honourable Laurie Brereton, M.P., and Mr Roger Boland and Mr A C Evans of the Metal Trades Industry Association, it does not find that a contempt has been committed.

**Baden Teague**  
**Chairman**