

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

COMMITTEE OF PRIVILEGES

**POSSIBLE PENALTY OR INJURY TO A WITNESS BEFORE THE
STANDING COMMITTEE ON INDUSTRY, SCIENCE, TECHNOLOGY,
TRANSPORT, COMMUNICATIONS AND INFRASTRUCTURE**

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CHAPTER ONE — BACKGROUND TO THE CASE

Introduction

2.1 On 18 November 1993 the following matter was referred to the Committee of Privileges on the motion of the Chairman of the Standing Committee on Industry, Science, Technology, Transport, Communications and Infrastructure (Senate Industry Committee), Senator Bruce Childs:

Whether Dr Philip Nitschke was threatened with, or was subjected to, any penalty or injury on account of his evidence to the Standing Committee on Industry, Science, Technology, Transport, Communications and Infrastructure, and, if so, whether any contempt was committed by any action taken in relation to Dr Nitschke.ⁱ

2.2 On considering the matter, the then President of the Senate, Senator the Honourable Kerry Sibraa, gave precedence on 27 October 1993 to a motion by Senator Childs that the matter be referred, and Senator Childs gave notice accordingly. After several postponements of the notice of motion, the matter was referred to the Committee of Privileges, after debate, on 18 November.ⁱⁱ

Basis of reference to Committee

2.3 On 20 July 1993, Dr Philip Nitschke appeared before the Senate Standing Committee on Industry, Science, Technology, Transport, Communications and Infrastructure and gave evidence on behalf of the Medical Association for the Prevention of War (MAPW). The Committee had been scheduled to hear evidence on behalf of the Northern Territory Government in respect of its inquiry into disaster management. On hearing of the Committee's visit to Darwin, MAPW made a brief last minute submission on the preparedness of Royal Darwin Hospital (RDH) for any nuclear disaster. The submission was presented by Dr Philip Nitschke representing MAPW. Dr Nitschke also gave oral evidence and answered Committee questions in respect of the matter. Dr Nitschke was at the time employed as a Resident Medical Officer at the RDH.

2.4 A brief account of the Senate Industry Committee's hearings was given on the ABC news at six o'clock that evening, and again at seven o'clock. The transcript of both reports was similar and was introduced as follows:

A Senate Committee has asked a Darwin doctor for information about how Darwin might prepare itself for a possible nuclear accident. Geoff Rodoreda reports, Dr Philip Nitschke from the Medical Association for the Prevention of War, says Darwin hospital would still be unable to deal with such an incident.ⁱⁱⁱ

2.5 On that same evening, that is, 20 July 1993, the Minister for Health and Community Services, the Honourable Mike Reed, issued a press statement, responding to the news item. In the statement the minister defended the RDH's approach to responding to radiation accidents. He went on to criticise Dr Nitschke's "continued attacks on Royal Darwin Hospital" and concluded with the following statement:

If Dr Nitschke does not like the situation, I have no doubt that RDH will be able to scrape by without him.^{iv}

2.6 According to Dr Nitschke, "almost immediately" he was contacted by journalists and asked about the content of the release. On 21 July the ABC asked him to respond to the allegation that statements made to the inquiry were inaccurate.^v

2.7 At the time the Senate Industry Committee was taking evidence, recruitment procedures were in train at RDH for appointments of Resident Medical Officers for the following year. The procedures for recruitment were described to the Committee of Privileges as follows:

First stage — Applications were called internally and interviews conducted with existing RMOs.

Second stage — In the meantime, on the assumption that there would be a shortfall in RMO applications internally, advertisements were also placed interstate and overseas. These applicants were considered in the second round of interviews following interviews with internal applicants.

Third stage —At the third stage — which, in 1993, occurred in November — unsuccessful applications were again considered in the light of the known shortfall and further offers were made if applicable.

2.8The above suggests a structured approach to filling vacancies and to the methodology of appointments. However, while interviews were held and assessments made, it is clear to the Committee that the relatively sophisticated interview processes which are now in place, and which the Committee initially believed were operating at the time of the Senate Industry Committee hearing, were in fact not developed until September 1993. It also appears from evidence that the "first round" processes were regarded as very much a formality for those doctors who were willing to take a position at the hospital. In particular, according to evidence the position for which Dr Nitschke specifically applied, that is, as RMO in the accident and emergency section of the hospital, was notoriously difficult to fill, and furthermore it was unknown for a doctor who did not have other impediments, such as unavailability to work full-time, to be refused a first round position.^{vi}

2.9Dr Nitschke was interviewed on the afternoon of 21 July, less than 24 hours after his late afternoon appearance before the Senate Industry Committee.^{vii} On the morning that Dr Nitschke's interview was to be held, Dr David Douglas, the General Manager of RDH, had a routine meeting with Mrs Lyn Schmidt, the Human Resources Manager of the hospital, and Dr Pauline Wilson, the then Medical Superintendent. In the course of that meeting, he made known that he had concerns about Dr Nitschke.^{viii} Mrs Schmidt interviewed Dr Nitschke; her co-interviewer was Dr Vino Sathianathan, the Deputy Medical Superintendent. Dr Nitschke discovered through a letter dated 31 August that he had not been offered a first-round appointment.^{ix}

2.10On 14 August 1993, Dr Nitschke wrote to the Secretary of the Senate Industry Committee, returning the proof copy of his evidence of 20 July and drawing attention to the minister's press statement. In that letter Dr Nitschke stated that "it [the press statement] has certainly disadvantaged me and made my position here more precarious".^x

2.11In response to a letter of 24 August from Senator Childs, the Chairman of the Senate Industry Committee, seeking further clarification from Dr Nitschke

and received by that Committee on 9 September, Dr Nitschke advised as follows:

The press release was a direct result of the senate enquiree [sic]. Almost immediately, I found myself being contacted by journalists and asked about the content of the release. The ABC on the 21st July asked me to respond to the allegation that statements made to the enquiry were inaccurate. They also drew attention on air to the comment that the minister had made that suggested that there was some question about my future in the hospital.

This has now been followed up with the official notification that I have not been selected for employment for the 1994 year. Such a decision is without precedent, as medical contracts have always been renewed when the applicant indicates a willingness to continue at the hospital. At my interview for the '94 year held on July 22nd, I requested work in the Accident & Emergency department for that year, I have now worked continuously at the hospital for four and a half years, and am currently the most senior resident medical officer at RDH. Medical staffing levels are hard to maintain at the hospital, especially in the unpopular Accident and Emergency department.

It is generally accepted now by the other medical staff at the hospital that this failure to renew my yearly contract is a Departmental response either to the minister's press release or some subsequent directive from his office. No explanation for the decision has been provided by the hospital.

It is my belief that the minister's press release and the subsequent developments represent clear evidence of the adverse effects of speaking to the Senate enquiry and I am hopeful that the Committee may be able to consider the evidence and take some appropriate action.^{xi}

2.12The Senate Industry Committee considered the matter and, as indicated at paragraph 1.2 above, notice of motion to refer it to the Senate Committee of Privileges was given on 27 October. As also indicated, the Senate formally debated the question on 18 November. On 3 November Dr Nitschke's application for a 1994 RMO position was reassessed by a selection committee, consisting of Dr Sathianathan and Mrs Schmidt, supplemented by Dr Wilson, formerly Medical Superintendent, but by this time Specialist

in Post-Acute Medicine, and Dr Dale Fisher.^{xii} The selection criteria used by this selection panel were set out in Attachment 9 to a submission to this Committee by Dr David Douglas, General Manager of RDH at the time.^{xiii}

2.13 Dr Nitschke was not recommended by the selection committee, with Dr Wilson dissenting. However, the then Medical Superintendent, Dr Alan Walker, recommended Dr Nitschke's reappointment on Monday, 8 November 1993. Despite opposition from senior administrative colleagues within RDH, with whom Dr Douglas had discussed the proposed appointment,^{xiv} Dr Douglas, as General Manager, accepted the recommendation. Dr Douglas told the Committee that in reaching his decision he balanced two elements - the value of Dr Nitschke "as a pair of hands" and "the disruptive effect of appointing him".^{xv}

2.14 Dr Walker advised Dr Douglas in a memorandum of 10 November that an oral offer of appointment had been made to Dr Nitschke,^{xvi} and wrote to Dr Nitschke, confirming the offer, on 12 November 1993. Dr Douglas in turn advised the Senate Industry Committee accordingly on 12 November, in the following terms:

Further to my letter of 3 November 1993 I wish to advise that Dr Nitschke has now been offered a position as a Senior Resident Medical Officer. This offer is consistent with the three stage process previously described.

Dr Nitschke has not yet notified the hospital of his decision on whether he will accept this offer. We have allowed him two (2) weeks to make his decision.^{xvii}

2.15 Dr Nitschke claims that he first heard of the job offer on Friday evening, 12 November, on an ABC news broadcast, and after Dr Douglas had sent his letter to the Senate Industry Committee, informing it that the offer had been made. Dr Nitschke apparently regarded his discussions with Dr Walker as preliminary only^{xviii} and not constituting a formal offer, and appears not to have received the letter from Dr Walker on that day. The formal written offer of appointment, including a contract, was made on 18 January 1994. Dr Nitschke did not take up the offer and at the time this Committee began its inquiries he was completing postgraduate qualifications in obstetrics and gynaecology, which he had begun at RDH, at a South Australian hospital.

Professional backgrounds of the persons involved

2.16 Dr Nitschke graduated from Sydney University with a Ph.D in physics, and worked as a park ranger for some time in the Northern Territory where, the Committee discovered during its hearings in Canberra on 18 August, he had differences with Mr Reed before Mr Reed entered the NT Legislative Assembly. According to Dr Nitschke, while he (Dr Nitschke) was working in the Territory on Aboriginal settlements, Mr Reed was a junior ranger in the Northern Territory Department of Conservation. Subsequently, Dr Nitschke spent five years working as a ranger in the same organisation. Mr Reed, by that stage, was a senior ranger.^{xix}

2.17 Mr Reed became a political candidate and, in 1987, was elected to the Northern Territory Legislative Assembly. Dr Nitschke had also had a career change, training in medicine at the University of Sydney. He then sought and received a contract appointment in January 1989 as a Resident Medical Officer at RDH following completion of his degree. Dr Nitschke's contract with RDH was renewed regularly, and at the time he gave evidence to the Senate Industry Committee he was working half-time as a RMO in accident and emergency and half-time as a clinical photographer. Supervisors' quarterly assessments of Dr Nitschke's performance at the hospital, made available to the Committee of Privileges, indicated that his work at all times prior to his interview on 21 July 1993 was regarded as satisfactory, and by one of his supervisors as exemplary.

2.18 Dr Douglas commenced duty as General Manager of the hospital on 9 March 1993. He had previously been Medical Superintendent at the Alice Springs Hospital for a three month period, from December 1992 to March 1993, but had not worked in the Northern Territory until then. Before coming to the Territory he had worked as a rural general practitioner in the Pilbara of Western Australia and then in central Victoria. He trained as a medical administrator and has had more than twenty years of medical and hospital experience.^{xx}

Dr Nitschke's public statements

2.19 In evidence before the Committee on 27 October 1994, Dr Nitschke outlined a pattern of events which in the Committee's view give a fair summary of what happened to him in the course of 1993. The first event occurred on 3 March 1993, when Dr Nitschke addressed the Trades and Labour Council. This address was reported on ABC television, showing Dr Nitschke supposedly in

the grounds of the Royal Darwin Hospital and identifying him as a doctor at the hospital. This incident was the subject of a passionate letter from the minister, Mr Reed, to the ABC pointing out that Dr Nitschke did not represent the hospital's views. Dr Nitschke advised this Committee that he had not been in the hospital grounds when interviewed.^{xxi} The ABC subsequently apologised to the minister for the misrepresentation.^{xxii} In the meantime, Dr Nitschke was "counselled" about the matter, on 4 March.^{xxiii} This incident occurred before Dr Douglas took up his position as General Manager of the hospital.

2.20 The second incident also occurred in March 1993, when Dr Nitschke, as spokesperson for the Medical Association for the Prevention of War (MAPW), spoke out against the visit of the USS *Houston* to Darwin. His expression of views to the media caused great disquiet to the senior management of RDH and he was vigorously reminded of the guidelines governing all public servants.

2.21 In particular he was reminded of General Orders, Section 30, Sub-section H:

30/H/1 - Definition of Public Comment

Public comment consists of any public speaking engagement and includes speaking at public meetings, on radio or on television whether as a scheduled speaker or on an impromptu basis. It also includes public written expression in books, notices, letters or articles in the press or posters, leaflets and similar terms, and the publication of articles or papers in professional or similar journals.

...

30/H/3 - Public comment - policy

The general policy to be accepted throughout the Service is as follows:

(a) Employees must refrain from making public comment which may convey the impression that they are not prepared to wholeheartedly implement the policies of the elected government in a way which gives maximum expression to the letter and spirit of those policies.

...

(d) Employees must observe the spirit as well as the letter of the general policy expressed above.

30/H/4 - Objectives of the policy

The philosophical objectives of the policies stated in these Orders are based upon the concept of Public Service neutrality. They are intended to maintain the identity of a politically unbiased and impartial Public Service. These policies are not intended to restrict the democratic rights of public servants as individual citizens to make public comment on any issue, except where such personal behaviour interferes with the standing of the Public Service or where it compromises the employee's ability to work or to be seen to be working to implement Government policies.

30/H/5 - Points for consideration

In making public comment or in considering whether to do so, individuals will ultimately have to be guided by their own good sense, judgement and integrity. Before making any comment publicly, employees should be guided by the following points:

(a) Those whose responsibility it is to provide advice to Government must avoid comment which could be controversial and must take care not to abuse their position by the release of information acquired in their role as trusted employees.

(b) Employees must be careful that all the relevant facts are known so that a dishonest, incomplete, distorted or misleading statement is not made. This could have serious effects on the efficiency of the Government, particularly where outside organisations may, as a result, be less willing to provide information to the Government and where considerable time or expense may be wasted in clarifying an inaccurate statement. In addition, irresponsible statements are likely to promote a tightening up of procedures and restriction of access to information so that efficiency is inhibited.

(c) No impression must be conveyed that comments are being made on behalf of the Public Service, a Department, etc, unless the

employee has been specifically authorised to do so by the Department Head.

- (d) Personal attacks on members of the Government or other public servants, directly or indirectly, must not be made under any circumstances.
- (e) Employees must be mindful not only of what is said or written, but how it could be interpreted by the public at large, particularly when engaging in impromptu debate.
- (f) Where an employee wishes to contribute a speech or article to a learned society for the purpose of advancing a particular branch of knowledge, Departmental clearance must be obtained for the release of information not already publicly available.^{xxiv}

2.22 Until the time of the two incidents in March 1993 Dr Nitschke seems to have had a harmonious relationship with the hospital administration. It appears to be at this point that differences between Dr Nitschke and the RDH and the NT Department of Health began to emerge.

2.23 Subsequently, a statement was issued on behalf of the Northern Territory Health Department, acknowledging inadequacies in the RDH protocols for dealing with nuclear ship visits and recognising Dr Nitschke's contribution to drawing attention to the inadequacies. The statement, released to the media on 15 April 1993, was signed by Dr Lynton Stephens on behalf of the Resident Medical Officers' Association at RDH, Dr Malcolm Dunjey, Chief Health Officer from the Department of Health and Community Services, and Dr Vino Sathianathan, Deputy Medical Superintendent on behalf of the medical administration at RDH.^{xxv}

2.24 The third incident occurred early in July 1993, when Dr Nitschke was invited to give a lecture sponsored by the Northern Territory Branch of the Public Health Association on 2 July 1993. His address, entitled "Public health and private conscience: whistleblowing and its impact on health", was given to the Menzies School of Health Research. Dr Nitschke, in the course of his address gave "personal examples of previous whistleblowing".^{xxvi} Two of the examples he chose were his attempts to implement action within RDH on nuclear protocols and on needle exchange. He mentioned them both during

his address and in a follow-up interview with a radio journalist from the ABC.^{xxvii}

2.25A news item on the seminar, dealing with needle exchange, was broadcast on the weekend of 3-4 July.^{xxviii} The Minister for Health and Community Services, Mr Reed, who was based in Katherine, heard the item.^{xxix} Dr Nitschke was asked by Dr Pauline Wilson, Medical Superintendent at RDH, to explain his action in addressing the seminar without discussions with senior administrators of the RDH.^{xxx} He provided his explanation to Dr Wilson by letter dated 10 July.^{xxxi} This explanation was supplemented by a letter from the Public Health Association, NT Branch, outlining the circumstances of his address and indicating its disappointment that the RDH had begun an investigation of him.^{xxxii} Dr Wilson advised Dr Nitschke in writing that she found his explanation satisfactory.^{xxxiii}

2.26 This conclusion had important consequences for the management of the hospital, in that advice was sought from Mr Ted Rayment, Assistant Secretary, Human Resources Management of the Department of Health and Community Services, as to whether Dr Nitschke should be disciplined, by failure to renew a six month contract for the last half of 1993, to which the hospital management was committed, for speaking without approval. Mr Rayment indicated that it would be inappropriate in the light of Dr Wilson's acceptance of Dr Nitschke's explanation.^{xxxiv} The contract was renewed in accordance with the commitment, but a covering letter from Dr Douglas, as General Manager, indicated that he was not satisfied with Dr Nitschke's explanation.^{xxxv}

Activities in the minister's office

2.27 In the meantime, the relevant minister, the Honourable Mike Reed, having heard the ABC radio report on Dr Nitschke's criticisms of the needle exchange policy at RDH, issued a spirited defence of the hospital's approach. The minister's statement was issued on Monday morning, 5 July. The statement concluded as follows:

Dr Nitschke seems to have difficulty coming to grips with the fact that public health policy is not set by him, but by the Territory Government and the Health and Community Services Department.

If Dr Nitschke cannot cope with this simple fact of life, he has the option of considering going into private practice.^{xxxvi}

2.28 The statement was prepared by the minister's press secretary, Mr Russell Ball.

On the morning of 5 July, before the needle exchange statement was issued, the ABC broadcast a further news item, also based on Dr Nitschke's Friday evening address, concerning nuclear preparedness. Mr Ball sought information on the subject from RDH for possible inclusion in a further media statement. However, such a further statement was not prepared because the first statement attracted little attention, and a decision was made within the minister's office not to pursue the matter further at that time.^{xxxvii} Dr Nitschke was not aware of the minister's statement on the needle exchange matter.^{xxxviii} Information received from RDH, in the form of a "flash brief" prepared by Mr Len Scott, Acting General Manager, in the absence on leave of Dr David Douglas, was retained in the minister's office.^{xxxix}

2.29 Dr Nitschke then appeared before the Senate Industry Committee on 20 July.

Following an all-day cabinet meeting on that day, the minister and Mr Ball listened, as was their custom, to the 6.00pm radio news bulletin on the ABC. The bulletin included an item on the Darwin hearings of the Senate Industry Committee "in which Dr Nitschke was identified with Royal Darwin Hospital and was deeply critical of it. [Mr Ball] then showed the minister the flash brief of 5 July which demonstrated Dr Nitschke's allegations to be untrue".^{xl} Mr Ball prepared a media statement rebutting Dr Nitschke's claims. This was cleared by the minister and issued through the office facsimile machine at approximately 7.50pm that evening.

2.30 All the transcripts of relevant ABC news items provided by Mr Ball state that Dr Nitschke made his comments before "a Senate Committee".^{xli} The minister's statement, on the other hand, does not mention any such committee, concentrating solely on the fact of Dr Nitschke's criticism of RDH's ability to respond to radiation incidents. The statement used all the points raised in the flash brief some two weeks earlier and concluded with the following words:

If Dr Nitschke does not like the situation, I have no doubt that RDH would be able to scrape by without him.^{xlii}

2.31 Mr Ball explained to the Committee of Privileges that the reason that the Senate Industry Committee was not referred to in the statement was that neither the minister nor he had registered that the Senate Committee had

been mentioned in the news item.^{xliii} The references to the Senate Committee occurred at the very beginning of the news broadcast. It might be thought that prudence would dictate that a press statement would be withheld until a transcript was received or a tape of the item was checked before the statement was prepared. Mr Ball explained, however, that fast production and release without checking the news item was the normal *modus operandi* in the minister's office, particularly after normal working hours.

2.32 The Committee considers plausible Mr Ball's explanation of the reasons why account was not taken of the Senate Committee proceedings. Dr Nitschke had been a thorn in the side of the minister and the department since the whole question of nuclear powered ships arose in March 1993. Mr Ball gave evidence that the minister wished that he and his office had intervened on the question of nuclear preparedness when it first arose, rather than leaving it to the department and the RDH.^{xliv} Mr Ball suggested that the matter had been badly handled, and led to a determination within the minister's office that this should not occur again. Thus, when Dr Nitschke's views were publicised on the ABC early in July, it was the minister who took the initiative, putting out one press statement on 5 July, and signifying his willingness to put out a further statement. Ultimately he decided not to, on the ground that the issue appeared to have, at that time, died. Yet only a fortnight later the minister and Mr Ball heard Dr Nitschke again being reported as criticising the RDH on its state of preparedness in the case of nuclear disaster.

2.33 Mr Ball indicated that the minister was anxious to rebut the matters raised as quickly as possible; because the "flash brief" had been sent from RDH to him so recently, and in view of the fact that the proposed press statement was to be prepared outside normal working hours, Mr Ball felt confident in preparing the statement without further checking with the department or the hospital for information. As noted, he produced, cleared and issued the statement at 7.50 p.m. — less than two hours after first hearing the report.

2.34 The minister's rebuttal was included in reports on ABC radio early the following morning, 21 July. Dr Nitschke was asked by the ABC to respond to the minister's comments and the ABC drew attention on air to the comment that the Minister had made that suggested that there was some question about Dr Nitschke's future in the hospital.^{xlv} The minister's statement was also reported in the *Northern Territory News* on the morning

of 22 July.^{xlvi} The newspaper report noted, without referring to the hearings of the Senate Committee, that Dr Nitschke could not be contacted for comment.

The activities of Dr Douglas

2.35 On 19 July, Dr David Douglas returned to duty after a two week holiday in Kakadu National Park. He was briefed on general hospital matters by Mr Len Scott, as Acting General Manager in his absence, who drew Dr Douglas's attention in particular to publicity concerning Dr Nitschke's Public Health Association talk to the Menzies School.^{xlvii} It appears that Mr Scott also indicated the minister's interest in the matter and explained that he had provided the "flash brief" to the minister's office on 5 July for possible use at that time. However, for reasons stated in paragraph 1.28 above, no press statement on this topic was issued.^{xlviii} The flash brief was finally used on the night of 20 July, as the basis of the minister's press statement following the ABC radio report on Dr Nitschke's statement to the Senate Industry Committee. As previously noted (paragraph 1.34), the minister's statement was reported on ABC radio on 21 July and in the *Northern Territory News* of 22 July.

2.36 Dr Nitschke was interviewed for a 1994 RMO position on the afternoon of 21 July. What next followed remains unclear. Evidence was given by both Mrs Schmidt and Dr Sathianathan that, before the interview, each had serious reservations about Dr Nitschke's reappointment, and Dr Sathianathan indicated that she had received an intimation from Dr Wilson that Dr Douglas did not wish Dr Nitschke to be offered a contract at this stage.^{xlix} Mrs Schmidt, too, acknowledged that Dr Douglas had made his views known to her, and to Dr Wilson, at a routine meeting on the morning of 21 July.^l

2.37 Following interviews, Dr Nitschke's interview assessment was marked "To D/W GM and Med. Supt." which the Committee was informed was intended to mean "To discuss with General Manager and Medical Superintendent". No recommendation was made in the meantime.^{li} However, both Dr Sathianathan and Mrs Schmidt claimed in evidence that each had independently determined, after interview, that Dr Nitschke should not have his contract renewed, primarily because they did not regard him as capable of working as a member of a team.^{lii} In evidence, Dr Sathianathan indicated that she had discussed the outcome of the interview briefly with Dr Wilson.

Dr Wilson in turn interpreted Dr Sathianathan's comments as meaning that a decision had been made not to reappoint Dr Nitschke. She therefore considered that she had no further role in this process, on the basis that it was a *fait accompli* determined by Dr Douglas.^{liii}

2.38 Dr Douglas and Dr Sathianathan, on the other hand, appear not to have believed that a decision had been made. In a corridor conversation with Mrs Schmidt sometime in mid-August, Dr Douglas was informed that an offer of appointment was not going to be made. He suggested to Mrs Schmidt that Dr Nitschke should formally be notified of this. Mrs Schmidt suggested to Dr Wilson that she (Dr Wilson) should convey the decision to Dr Nitschke. Dr Wilson refused, on the grounds that she had not participated in the decision and did not agree with it. Mrs Schmidt therefore wrote a letter, dated 31 August, to Dr Nitschke advising him of the decision.^{liv}

2.39 In the meantime, as part of a commitment made earlier in the year to appoint Dr Nitschke as a full-time RMO in the obstetrics and gynaecology section of the hospital to enable him to complete obstetrics and gynaecology qualifications, Dr Douglas wrote a letter to Dr Nitschke offering him a six month contract. That letter, dated 30 July 1993, but in fact written and received on or about 8 August, was as follows:

In accordance with the agreement entered into with you at our meeting on 14 April 1993, I now enclose a contract offering employment under Section 29 of the Public Sector Employment and Management Act.

I believe that on or about the 5 July 1993, you again made public comments about hospital services. I believe those comments were contrary to the agreement reached at our April meeting. Despite this episode, the hospital will fulfil the commitment it gave you regarding your employment throughout 1993.

I wish to remind you that, pursuant to Clause 4 of the attached contract, your appointment is subject to the general conditions of employment as contained in the Public Sector Employment and Management Act, its Regulations, the By-Laws and Employment Instructions made thereunder. I draw your attention specifically to Employment Instruction No 13 on public comment by public servants and refer to your agreement to abide by those requirements at all times in the future.^{lv}

2.40 Employment Instruction No. 13 included the following provisions in respect of public comment:

8. PUBLIC COMMENT

8.1 Meaning of Public Comment

"Public comment" includes public speaking engagements (including comments on radio and television), expressing views in a letter to the press or in books or in notices or where it is reasonably foreseeable that publication or circulation of the comment will flow to the community at large.

8.2 Public Comment on Government Matters

Except where required by law, or as authorised by the responsible Chief Executive officer, an employee must not make public comment on Government matters in an official capacity.

8.3 Circumstances in which Public Comment is Inappropriate

While employees, as members of the community, have the right to make public comment and enter into public debate on political and social issues, there are some circumstances in which public comment is inappropriate. These include:

- the implication that the public comment, although made in a private capacity, is in some way seen to be an official comment of the Government or of the employee's Agency;
- where an employee is directly involved in advising on or directing the administration or implementation of Government policy and the public comment would compromise his or her ability to continue to do so in an efficient and professional manner; and
- where public comment, regardless of the connection (or lack of connection) with an employee's normal duties, amounts to criticism sufficiently strong or persistent to give rise to the public perception that the employee is not prepared to implement or administer the policies of the government of the day as they relate to his or her duties.

2.41 Dr Douglas explained in evidence that, given his disquiet about Dr Nitschke's activities, he was anxious not to create an expectation by Dr Nitschke that he would be offered a further contract the following year.^{lvi} Dr Douglas' letter was drafted by a legal officer within the department.^{lvii} A feature of the letter was that it made no reference to Dr Nitschke's public statement of 20 July 1993, nor to the minister's media statements of 5 and 20 July 1993.

2.42 It was at about the time of the offer of the six-month contract that Dr Nitschke wrote his letter, dated 14 August 1993, to the Senate Industry Committee.^{lviii} He did not appear to be aware at that time that his contract was not to be renewed — and indeed no decision appears formally to have been made — but he was, nonetheless, justifiably apprehensive about his future at RDH. His failure to be appointed in the first round was advised to him in a letter dated 31 August, more than a fortnight after he wrote to the Senate Industry Committee.^{lix} He received the letter on about 3 September, opening it in front of colleagues in the Resident Medical Officers' lounge.^{lx}

The Horn and Arnold reports

2.43 When it became publicly known that Dr Nitschke had not been given a first round offer of appointment, it appeared to enrage a substantial proportion of the Resident Medical Officers at RDH who threatened industrial action unless the matter was subject to independent review.^{lxi} Dr Douglas, as General Manager of the hospital, initiated an inquiry into the appointment process, which was conducted by an officer of the Public Service Commission, Mr Bob Horn. The Horn inquiry was generally regarded by the RMOs as unsatisfactory and an administrative whitewash, and did not have the intended effect of removing the threat of industrial action.

2.44 In order to avert any such action, the RDH arranged for an inquiry by a medical officer, unconnected to the Northern Territory, to be undertaken. Dr Peter Arnold, from the NSW Branch of the Australian Medical Association, was invited to examine the recruitment processes leading to the non-renewal of Dr Nitschke's contract. Agreements, including confidentiality clauses relating to the release of Dr Arnold's report, were signed by the relevant parties in the presence of Dr Rod Brown, at that time a doctor at RDH, who subsequently made a number of submissions on the matter to this Committee. The signatories to the agreement were: Mr Ted Rayment, representing "the Northern Territory of Australia", Dr Nitschke, Dr Arnold,

and Dr Paul Bauert on behalf of the Australian Medical Association (NT Branch). The full agreement is at pages 264-267 of Volume 2, *Submissions and Documents*.

2.45 After taking extensive evidence between Monday, 18 October and Thursday, 21 October 1993, from a substantial number of persons, and following examination of many documents, Dr Arnold prepared preliminary findings, conclusions and recommendations which were read to a joint meeting of all those involved on 22 October. Copies of the draft report were handed to them for correction and return, and were subsequently shredded. Dr Arnold took the comments into account in preparing what he regarded as his final report, which was sent to Dr Bauert on 27 October. Dr Bauert distributed copies to relevant persons. On receipt of this report, Mr Horn threatened to take action for defamation if the report was published, and Dr Douglas and Dr Sathianathan objected to the public release of the report.^{lxii} Subsequently, the findings and recommendations of the report were tabled in the Northern Territory Legislative Assembly by the Opposition Spokesperson on Health and Community Services, Ms Maggie Hickey.^{lxiii}

2.46 The Committee observes at this point that the full report by Dr Arnold, when finally made available to it, constituted the most lucid account of what had occurred at the RDH in respect of Dr Nitschke's appointment, and the Committee has drawn upon it in establishing the background in which the events giving rise to the matter of privilege occurred. The Committee suggests that it is a pity that the difficulties involved in releasing the report, caused by reactions of senior officers at the hospital and in the Northern Territory administration, exacerbated the problems which had given rise to the review in the first place.

2.47 The Committee was given access by counsel representing the NT Government at its first hearing in this Inquiry to a second version of the Arnold report, which had numerous deletions from what in fact had been the report which had been sent by Dr Arnold from Sydney and distributed to relevant parties on 27 October 1993. Accordingly, the Committee wrote to Dr Arnold asking for clarification of certain matters, and also seeking that Dr Arnold give evidence, if required, at committee hearings which it decided to hold at Darwin (see paragraphs 1.53-1.56 below). Dr Arnold's written responses were sufficiently clear and complete that the Committee did not find it necessary to receive further evidence from him. The Committee's questions

and Dr Arnold's responses are at pages 299-305 of Volume 3, *Submissions and Documents*.

2.48 Dr Arnold explained to the Committee that the reason for the two versions of the final report were as follows:

There were indeed, two versions, in the light of Mr Horn's upset that I had included reference to his report, intended as a courtesy to him but which he regrettably saw as a slur.

As my references to his report had been intended merely for clarification of the differences in our conclusions, and as none of his comments had had any bearing on my reaching my conclusions, I had no hesitation in removing those references from a second version of the report.

As Mr Horn still declined to agree not to sue for defamation, I sought legal advice from the AMA's solicitors, Messrs Tress, Cocks and Maddox, in Sydney. I then widely publicised my and the AMA's refusal to let the document, even in its revised version, be published.^{lxiv}

The reasons for the AMA's not publishing his review were "because Mr Horn refused to withdraw his threat of legal action".

Dr Nitschke's departure from Royal Darwin Hospital

2.49 While the controversy surrounding his failure to be reappointed continued, Dr Nitschke was by this stage pursuing obstetrics and gynaecology practical experience within that section of the hospital in accordance with the contract dated 30 July 1993. As Dr Nitschke put it to the Committee, however, it was not surprising that his experience and the quality of his work were unsatisfactory. Although there was conflicting evidence as to the nature of his performance, it is generally acknowledged that it would not have been possible for him to perform to his full potential in the atmosphere in which he was working at that time.

2.50 As previously mentioned (see paragraphs 1.13-1.15), on 8 November the new Medical Superintendent, Dr Alan Walker, recommended that Dr Nitschke should be appointed as a Resident Medical Officer for the 1994 year, and this was agreed to by Dr Douglas. A formal contract was conveyed to Dr Nitschke

on 18 January 1994, signifying the offer of appointment. Ultimately Dr Nitschke declined the appointment and left RDH in February 1994. Following his completion of his obstetrics and gynaecology course at a South Australian hospital, he returned to live in the Northern Territory.

Conduct of inquiry

Written submissions sought

2.51 In accordance with its normal practice, the Committee wrote to Dr Nitschke, to the Senate Industry Committee, to the relevant minister, the Honourable Mike Reed, and to Dr David Douglas, General Manager of the Royal Darwin Hospital, seeking submissions on the matter.

2.52 The minister did not make a submission to the Committee, but the Committee subsequently received a submission from Mr Russell Ball, the minister's press secretary at the relevant time. Mr Ball's submission, and other submissions received in response, together with an exchange of correspondence between the minister and the Committee of Privileges and other documents provided by the Senate Industry Committee and parties involved in the matter, are contained in four volumes of documents presented with this report, together with the transcripts of hearings held in Canberra on 18 August and in Darwin on 27 and 28 October 1994. All these documents should be read in conjunction with this report, as they indicate both the climate leading to Dr Nitschke's complaint to the Senate Industry Committee and the complexities of the issues involved.

Public hearings

2.53 After having examined the matter, and following exchange of submissions between the relevant parties, the Committee of Privileges determined that it should undertake public hearings in Canberra to receive oral evidence from Dr Nitschke, Mr Russell Ball, who at the relevant time was press secretary to the minister, and Dr David Douglas. The Committee also intended to invite Dr Nitschke, Dr Douglas or Mr Ball to suggest other witnesses from whom the Committee could receive submissions or hear evidence at the 18 August hearing. The indicative procedures for the meeting were incorporated in the *Hansard* transcript at pages 3-5.

2.54 The day before the hearing, seven further submissions were received from the NT Government Solicitor by the Committee Secretariat and were summarised and distributed to those members who were available to receive them. The Committee as a whole was unable to consider and receive the submissions as evidence until shortly before the hearing. As a consequence, the Committee could not give Dr Nitschke access to the submissions until the Committee itself had considered them. Thus, neither the Committee nor Dr Nitschke had sufficient opportunity to evaluate the material contained in the submissions. In view, however, of the numbers of persons who were present for the hearing, a decision was made to proceed with it, with the agreement of all invited witnesses, despite the acknowledged disadvantages for Dr Nitschke.

2.55 After Dr Nitschke completed his evidence and the Committee had examined him, it became clear that there was a dispute between Dr Nitschke and counsel for the Northern Territory Government as to the nature and content of the Arnold report, which, as indicated at paragraph 1.46 above, was vital in assisting the Committee to ascertain what had occurred. Accordingly, the Committee adjourned, to enable both the Committee members and Dr Nitschke to examine the two versions of the report which were before the Committee and to examine further the additional submissions. Upon examination of the documentation, the Committee concluded that it would be unfair to continue to take evidence and, despite the protestations made by counsel on behalf of Northern Territory officers, concluded the hearings. The Committee undertook to hold further hearings in Darwin. These were subsequently arranged for 27 October 1994, and 28 October if required. Before the hearings began, the Committee considered a request on behalf of the Northern Territory officers that the hearings be held in Canberra but determined to hold them in Darwin.

2.56 The nature of the evidence in Darwin was such that the Committee found it necessary to conduct its hearings over the two scheduled days. All members of the Committee attended all proceedings on 27 October and, with the agreement of witnesses and counsel for the Northern Territory Government, six of the seven Senators heard evidence on the morning of 28 October. The seventh Senator has made a detailed examination of the transcript of those hearings.

Witnesses and counsel

2.57 At the hearings in Canberra on 18 August 1994, the witnesses for the Northern Territory Government were represented by Mr Colin McDonald. They were accompanied by several other officers. Dr Nitschke, in contrast, represented himself, unaccompanied by legal counsel. The Committee, too, conducted its proceedings without assistance from counsel.

2.58 At the Darwin hearings, the principal witnesses for the Northern Territory Government, and officers who had made submissions, were again represented by counsel, this time by Mr David Kirby QC. Dr Nitschke again appeared without legal assistance, although at these hearings he was accompanied by, and the Committee heard evidence from, Dr Lynton Stephens and Dr Rod Brown, both of whom as RMOs were closely involved in the events surrounding Dr Nitschke's failure to be offered a contract in the first round of RDH appointments for 1994.

2.59 In the light of evidence that the Committee received at its Darwin hearings, the Committee itself sought oral evidence from both Dr Pauline Wilson, Medical Superintendent at the relevant time, and Mrs Lyn Schmidt, Human Resources Manager, who considered Dr Nitschke's application, with Dr Sathianathan, in the first and third rounds.

2.60 At the end of its hearings in Darwin, the Committee gave both Dr Nitschke and counsel representing the Northern Territory Government a brief opportunity to make closing statements, in accordance with the procedures the Committee adopts for all hearings of this nature. In the event, time constraints limited both persons' rights to make such extensive oral presentations as they desired. Accordingly, the Committee invited both Dr Nitschke and Mr Kirby to submit written statements to it. These statements, both of which the Committee found valuable during its deliberations, are included in Volume 4 of the *Submissions and Documents* accompanying this report.

Costs of legal representation

2.61 So far as legal representation is concerned, the Committee draws attention to its 35th Report,^{lxv} tabled on 1 December 1991, which outlines its concerns about the potential imbalance between persons with access to unlimited legal advice and funds and persons whose only access to legal advice is through their own pockets or through the limited access to reimbursement provided by Privilege Resolution 2(11), as follows:

The Committee may recommend to the President the reimbursement of costs of representation of witnesses before the Committee. Where the President is satisfied that a person would suffer substantial hardship due to liability to pay the costs of representation of the person before the Committee, the President may make reimbursement of all or part of such costs as the President considers reasonable.

2.62 That resolution requires the President to be strict in administering the reimbursement provision, and the Committee has felt itself obliged to assist the President in making the determination. The Committee's policy, as outlined in the 35th Report, is very restrictive. The Committee has also noted in the 35th Report that, given the methods by which it operates, the requirement for legal representation is in practice limited.^{lxvi} It acknowledges, however, the inevitability, recognised by Privilege Resolution 2(4) which gives all witnesses before the Committee a right to be assisted by counsel, that those witnesses would choose to exercise that right if it were in practice available to them. When funding is open-ended in respect of one of the parties, as in the present case, this can lead to a perception of structural unfairness. In the event, however, even though Dr Nitschke did not have the benefit of counsel, the Committee believes that its procedures ensured that his case was not disadvantaged. The Committee emphasises that there is in practice no need for legal representation in these cases and draws attention to its own obligation to protect the rights of all persons who appear before it.

CHAPTER TWO — CONCLUSIONS AND FINDINGS

Introduction

3.1 The first chapter of this report goes into some detail about the events of 1993. This detailed outline is supplemented by the considerable amount of documentation tabled with the report. In addition, the Committee has had access to the Royal Darwin Hospital's personal file on Dr Nitschke and a file, compiled by the Solicitor for the Northern Territory, of media comments, and other public documents, about Dr Nitschke and the public statements by and about him in recent years. Following Senate consideration of this report, the Committee intends to seek authority from the Senate to return the original documents to the Northern Territory Government.

3.2 What all the documents reveal is what has become for the Committee a familiar pattern of organisational behaviour when an organisation is faced with public criticism from one of its own officers. This element of the inquiry will be discussed further below. Given the amount of material and the climate which led to the reference of the matter, the Committee is first required to distil the elements which it must consider in the context of any possible contempt of the Senate.

Matters for determination

Arising from the hearing of 18 August 1994

3.3 The matters which the Committee must determine were set out by Senator Ellison in the following exchange between Senator Ellison and Dr Nitschke on 18 August:

Senator ELLISON — I just want you to particularise, if you would, your complaint. The situation is that you are saying that there was a threat of penalty or injury and that furthermore you were subjected to penalty or injury.

Dr Nitschke — Yes.

Senator ELLISON — So that we have two limbs to your complaint.

Dr Nitschke — Yes.

Senator ELLISON — On the first one, am I correct in understanding that the threat came in the form of Minister Reed's press statement?

Dr Nitschke — I perceived Minister Reed's press statement to be a threat, yes. That is my answer to that.

Senator ELLISON — So, when we look at that aspect of the complaint, that is the act complained of?

Dr Nitschke — Yes, the production and distribution of the press release.

Senator ELLISON — And then the actual penalty or injury was the failure to be re-employed in the first round. Is that right?

Dr Nitschke — Yes. The subsequent interference with the selection process and the rejection in the first round would have been the tangible evidence of the injury.

Senator ELLISON — What injury did that cause to you?

Dr Nitschke — The failure to be reappointed in the first round.

Senator ELLISON — In the first round.

Dr Nitschke — Not to have spent the rest of 1993 battling this case. It developed and deteriorated, some of you will be aware, into a very ugly situation in the latter stages, which is very typical of whistleblowing incidents, I now find out ...

Senator ELLISON — Did you lose employment?

Dr Nitschke — Eventually it was impossible for me to continue doing obstetrics. I was given a job but I could not pursue my chosen role as obtaining an obstetric qualification in that hospital because of the trouble that flowed on. I had to come south to South Australia to complete my training in obstetrics, which I did in the first three months of this year.

Senator ELLISON — What about the third round, when, I take it, you were successful?

Dr Nitschke — As I said, they gave me a job back in the third round in the Accident and Emergency Department.

Senator ELLISON — That was November last year?

Dr Nitschke — The decision was made around about November, yes.

Senator ELLISON — Did that rectify any injury that you had suffered previously, or loss?

Dr Nitschke — No, because by that stage the situation had deteriorated to such an extent that I was embroiled in these questions about my suitability as a doctor and in general within the obstetric unit. So what we had then was a flow-on effect to the point where the obstetric department realised that I could no longer work in that department. It was said I had a job in the Accident and Emergency Department, true, but that I could not and was not allowed to work within the obstetric department in the latter months of 1993.

Senator ELLISON — Finally, I take it that you are asking the Senate committee to draw an inference from the subsequent events after your giving evidence to the committee that in fact you were penalised for giving that evidence?

Dr Nitschke — Yes.

Senator ELLISON — You are not relying on any direct evidence to the effect that someone said to you, "You are being penalised because of the evidence"?

Dr Nitschke — No-one has said that.

Senator ELLISON — So that is the position there. You are saying that this is an irresistible inference to be drawn.

Dr Nitschke — I am saying that the defence which has been brought up, that there was no knowledge of the Senate inquiry and that had no effect on the subsequent decision, is implausible, absolutely implausible. No-one is denying that the press statement by Minister Reed was a response to giving evidence to the Senate. I see that as a threat and I see that and the subsequent actions of the general manager being an enactment of that threat.

Senator ELLISON — You are saying there is no question of proficiency because that was cleared up in the Arnold and Horn reports.

Dr Nitschke — Yes.

Senator ELLISON — And what is more, there is no question of your speaking out improperly because you did so under the one hat as representing a body of doctors and in the other situation at an academic lecture.

Dr Nitschke — That is right.^{lxvii}

Arising from the hearings of 27 and 28 October 1994

3.4 When the hearings resumed in Darwin on 27 October, Dr Nitschke responded further to the matters raised by Senator Ellison by placing what had happened to him in the context of four events. The first event, which occurred on 3 March 1993, began, in Dr Nitschke's words, "a pattern of what happened in the Northern Territory Health Department whenever media comment was made".^{lxviii} As Dr Nitschke put it:

The first event was a media report of a statement given to the Trades and Labour Council gathering. [3 March 1993]. Event No. 2 was the media attention when the *Houston* came into town and the strife that was caused at the hospital. [24 March 1993]. Event No. 3 was the repercussions within the department of health when I spoke to an academic gathering at the Menzies School. [Address given 2 July 1993. ABC reports 3-4 and 5 July 1993].

The fourth event was Dr Nitschke's giving evidence to the Senate Industry Committee on 20 July 1993.

3.5 Dr Nitschke then went on to outline his perception of threats and penalties made to and imposed on him as a consequence of his giving evidence to a Senate Committee. This Committee quotes his evidence in full as follows because it bears directly on the determinations it is required to make in reaching its findings on this matter. As Dr Nitschke acknowledges:

It is important to determine today whether there were threats and penalties imposed on me because I spoke to the Senate. This was spelled out quite clearly by Senator Ellison last hearings when he identified clearly what was the threat and what was the penalty. Looking back over the transcript of the proceedings in Canberra, it seems to me that I may have been less than clear there about what were the threats and what were the

penalties. So let me take this opportunity to be absolutely clear about this particular point.

I will show today that there is no doubt that the press release by Minister Mike Reed was associated with the evidence given by me to the Senate standing committee. I will also show that, implied in that press release, is a threat to my future employment and the effect of that press release was to incur me a penalty at that point. Irrespective of whether nothing else had happened other than the distribution of that press release, there were penalties incurred. You cannot have the Minister for Health saying my ideas were typically irrational and irresponsible and that the Darwin hospital may well get by without me, without having it affect my professional standing within the medical community. That is exactly what happened at the Royal Darwin Hospital. It also affected my professional standing within the community of Darwin. That is a consequence entirely associated with the distribution and publication of that press release. That was the first set of penalties.

The second set of penalties flowed from that press release and occurred some short time — we are talking days — later when the general manager of the hospital saw fit to interfere with the selection process and make it impossible, as subsequent time showed, for me to continue as a medical officer at the Royal Darwin Hospital. This was a second and perhaps most specific set of penalties to the one identified when Senator Ellison was talking about this in Canberra. That was the rejection in the first round.

Let us not be under any illusion that a rejection in the first round is something trivial and that it happens all the time: "Don't worry, you will get one in the third round." A first round rejection at the Royal Darwin Hospital to someone who was interested in working in accident and emergency medicine, and who is Australian registered, has never happened in the history of the hospital. It was a significant event. That significant event had important repercussions. It is no good saying, "We gave him a job later in round three" — coincidentally two days before the Senate referred it to the privileges committee. It is no good bringing that up because, if you try to tell any group of medical institutions that you received a first round rejection at Royal Darwin Hospital, they would say, "What the hell is

wrong with this person. It has never happened." That was a very significant penalty.

I would like to refer to what I described as a third round of penalties. Some evidence has been produced already and certainly most of the information that Ted Rayment has managed to dredge up refers to this. I will explain to the committee why it was that we were quite anxious to bring Jean Lennane, the psychiatrist, to give evidence. I will just outline why. She has done quite a deal of work on what she would describe as the natural history of whistleblowing events. I am well aware that the senators are familiar with the outline. It is as though all institutions follow the same blueprint. She has written extensively on this. In her particular case, she has looked closely at what happens in the medical environment, and that is relevant, of course, here. It is as if every institution follows the same plan and the same tactics are adopted.

When I first talked to her in Sydney, she used the example of a dog that has been whipped and that eventually turns and bites. I have referred to it in my communication with the Senate. The point about that is that you cannot use the fact that the dog turned and bit to justify your original whipping of that dog and you cannot use the fact that the dog bit you as an example or reason as to why the dog should be put down. That is typical in whistleblowing incidents and it is exactly what happened in this case.

I will refer occasionally today to the post-whipping phase. What we are talking about here is the period that took place eventually after the first round rejection because, for quite some time — and I will give you great detail — I was harassed, as every other whistleblower is harassed by the institution that is so desperate to keep the thing under wraps. Eventually, when one turned around and bit, they said, "Well, he is not much of a doctor." They produced quite a deal of material to demonstrate that to you today, all of that taking place well after November and well into the post-whipping phase. They said, "He is not much of a doctor; we had better get rid of him. Well, we will not only get rid of him, we will give him a job in accident and emergency to comply with the letter or the requirements that we have undertaken."

The reality is that it was impossible to continue in the obstetrics and gynaecology department — impossible! Some vague suggestions that I resigned of my own free will do not stand up to scrutiny. We have got some evidence — and I produced it luckily — to show exactly what happened there. This is relevant in one sense — I had to leave the territory to continue and to complete my obstetrics and gynaecology. It could not be done in Darwin. Everyone agrees with that — not because I would not work in the obstetrics department — it just could not be done. Alan Walker, the acting medical superintendent, at that stage, did everything he could to get me to Alice Springs — not possible. So I had to leave to complete my obstetric training in South Australia.

The point I am making is that these are penalties, very real penalties that flowed on, but they are tertiary penalties. They are penalties that have occurred after a lot of interaction with the department. And the department will try and use a lot of the interaction, a lot of things that have happened in that final phase, to justify the decision that eventually I should leave and go south to complete my training. It has to be seen in the understanding of the dynamics of a whistleblowing event. But I would say at this stage and at the outset, that they nevertheless represent real penalties associated with the original statement to the Senate in Darwin last year.^{lxix}

In the Committee's view this is an accurate analysis of what the Committee is required to consider.

Events leading to possible contempt

3.6 In determining its view on this matter, the Committee concentrated on the following events:

19 July 1993

Dr David Douglas, General Manager of RDH, returns to duty after a fortnight's leave in Kakadu National Park. Dr Douglas is briefed by Mr Len Scott, Acting General Manager on a rotational basis during the absence on leave of Dr Douglas, that on 2 July Dr Nitschke had given an address on whistleblowing which had resulted in media coverage of the RDH policy on both needle exchange and preparedness for nuclear disaster. Mr Scott indicates that he briefed the minister's office in a "flash brief" on the nuclear disaster element, and expresses his discomfiture at what had occurred. Mr Scott also tells Dr Douglas that Dr Wilson, having sought a written explanation from Dr Nitschke about the publicity surrounding his address, has expressed her satisfaction with that explanation.

20 July 1993

Dr Nitschke gives evidence at approximately 4pm on behalf of MAPW to the Senate Industry Committee. The evidence is critical of the preparations and protocols of RDH in the event of a nuclear disaster. At 7.50pm, after the minister hears a 6pm radio report of Dr Nitschke's criticism of the hospital's state of preparedness in the event of a nuclear incident, he authorises the release of a media statement rebutting Dr Nitschke's claims. The statement does not refer to the Senate Committee hearing.

21 July 1993

Dr Douglas lets the Medical Superintendent, Dr Pauline Wilson, and the Human Resources Director, Mrs Lyn Schmidt, know of his concerns about reappointing Dr Nitschke to an RMO position. Mrs Schmidt interviews Dr Nitschke, with Dr Vino Sathianathan, that afternoon. Dr Wilson has let Dr Sathianathan know of Dr Douglas's views. Dr Nitschke is not offered an RMO position in RDH for 1994 after this first round of interviews.

Basis of possible contempt

3.7 Under the terms of Privilege Resolution 3(c), the Committee is required to establish (a) whether an act could be regarded as a contempt and (b), if so, whether the act was knowingly committed. In the present case, the Committee examined whether Dr Nitschke had been threatened or penalised by any person as a result of his having given evidence to a Senate Committee. In considering this question, the Committee has had to establish (a) whether the press statement issued by the minister constituted a threat; (b) if so, whether that threat was made as a result of Dr Nitschke's evidence to the Senate Industry Committee; and (c) whether that threat, having been made, was in fact carried out either by the minister or by other persons acting on his behalf or under his instructions. A further question which the Committee was required to answer was, even if the minister had not made a threat, whether any person inflicted a penalty or injury upon Dr Nitschke independently, as a consequence of his having given evidence to the Senate Industry Committee.

3.8 At first sight, given the timing of the events surrounding Dr Nitschke's appearance before the Senate Industry Committee, it appeared likely that a question of contempt was involved. The Committee continues to emphasise the grave obligation on the Senate and its committees to ensure the protection of witnesses.

Media statement as possible threat

3.9 The Committee noted that the language used in Mr Reed's press statement was colourful and robust. Evidence from Mr Ball, the minister's then press secretary, corroborated the Committee's impression.^{lxx} Even before examining a series of the minister's media statements, of which these two formed a part, the Committee itself had cause to note Mr Reed's adversarial approach to matters with which he was involved, as his correspondence with this Committee indicates.^{lxxi} The Committee noted that in both media statements affecting Dr Nitschke, issued a fortnight apart, the minister had concluded with personal references to Dr Nitschke and to the possibility of his not being obliged to continue in the employment of the RDH.

3.10 It is not surprising that, on being apprised on 21 July of the media statement, Dr Nitschke felt threatened by it. He also told the Committee in evidence that he was concerned at the defamatory nature of the statement and sought

legal advice as to whether it was actionable. He heeded the advice not to take the matter further legally.^{lxxii}

3.11 While this Committee regards the press statement as threatening to Dr Nitschke, it notes that the statement was not out of keeping with Mr Reed's ministerial outbursts about the person he regarded as a troublemaker. Assuming, however, that the Committee were to find that Dr Nitschke had been threatened by the minister with the loss of his position, the next question for the Committee would be whether that threat was as a result of his giving evidence to the Senate Industry Committee. Evidence from the press statement suggests that this was not the case. No mention was made in the statement of the Committee hearing, and Mr Ball stated in evidence to the Committee of Privileges that neither he nor the minister registered that Dr Nitschke's comments were made in evidence to the Senate Industry Committee. Their concern, rather, was that he had again criticised the RDH and that the criticism received media attention. For the reasons explained at paragraphs 1.31 to 1.33, the Committee accepts Mr Ball's explanation as to why neither he nor the minister noted that Dr Nitschke's comments had been made before a Senate Committee.

Whether the threat was carried out

3.12 The question whether the threat was carried out by other persons on behalf of or under the instructions of the minister is difficult to answer. The coincidence of timing between the issue of the minister's press statement and the action taken not to reappoint Dr Nitschke raised the Committee's serious concern. However, evidence was consistently given by Dr Douglas, who made his reservations about the reappointment known both to Mrs Lyn Schmidt and Dr Wilson on the morning of 21 July, that he was unaware either that the minister had issued his press statement of 20 July concerning Dr Nitschke, or that Dr Nitschke had responded to the statement. Indeed Dr Douglas maintains that on 21 July he was quite unaware that Dr Nitschke had appeared before the Senate Industry Committee. All evidence indicates that there was no communication between the minister and his office on the one hand, and the department and RDH administration on the other, about questions of appointment of officers to the hospital. On the contrary, the evidence indicates that the minister was anxious not to interfere with any appointment processes.

3.13 Nevertheless, the Committee was of the opinion that knowledge of the minister's views about Dr Nitschke as a disruptive influence within the hospital, as expressed so trenchantly such a short time before Dr Nitschke's reappointment was to be considered, would be sufficiently influential as to ensure that a responsible manager would not cause himself and his organisation unnecessary difficulties. The Committee was therefore astonished to learn that Dr Douglas was not aware of either the press statement of 20 July or Dr Nitschke's reaction to it, and thus explored the matter in detail with Dr Douglas in the course of its hearings.^{lxxiii}

What Dr Douglas knew at the relevant time

3.14 Dr Douglas explained to the Committee that he was not a regular or frequent listener to the broadcast media, preferring instead to read newspapers.^{lxxiv} He took the view that if matters impinged on his administration he would soon hear about them through official channels. Dr Douglas stated that he was unaware of the media attention given to Dr Nitschke's address to the Menzies School of Research because he was, accompanied by his family, camping in Kakadu National Park and did not become aware of the media attention until Mr Scott's briefing. So far as the Senate Industry Committee hearings were concerned, he advised the Committee of Privileges that he was unaware that the Industry Committee was taking evidence on nuclear preparedness or that Dr Nitschke had given evidence, as a representative of MAPW, on 20 July.^{lxxv}

3.15 He declared before the Committee of Privileges that he discovered that Dr Nitschke had appeared before the Senate Industry Committee only in the second week of September, when notified in a letter, dated 8 September 1993, from the Medical Association for the Prevention of War.^{lxxvi} He also declared that he had received a copy of the minister's press statement of Tuesday, 20 July, "in at least the subsequent week"^{lxxvii} after he had made his comments concerning Dr Nitschke's reappointment. He stated that he took little notice of the statement, assuming that it related to the events of early July about which Mr Len Scott had briefed him on 19 July, on his return from leave.^{lxxviii}

3.16 It may be surprising to some people involved in politics, and to a media activist like Dr Nitschke, to discover that not all citizens live, breathe, or are dependent on the oxygen of the media. Thus, it might be regarded as difficult to accept that a senior manager of an organisation which had been in the

media spotlight did not become, or was not made, quickly aware that one of his staff had made a public appearance before a Senate Committee, had attracted media attention and had precipitated a media statement from the responsible minister. There is, however, no evidence before the Committee that Dr Douglas had any knowledge of these events at the relevant time.

3.17 The Committee has therefore been unable to establish the necessary connection between Dr Nitschke's appearance before the Senate Industry Committee and the events surrounding his first-round failure to be offered a contract which would lead to a conclusion that a contempt of the Senate was involved. The Committee has therefore concluded that the failure to reappoint Dr Nitschke in the first round did not derive from the fulfilment by the hospital administration of a threat made by the minister in response to Dr Nitschke's giving evidence to the Senate Industry Committee. The Committee has also concluded that the RDH administration did not independently punish Dr Nitschke for giving evidence to the Senate Industry Committee.^{lxxix}

General attitude to parliamentary privilege

3.18 It would be reassuring for the Committee and the Senate to believe that parliamentary privilege is clearly understood by every person who encounters a Senate committee and is aware of the Senate's contempt powers. Experience indicates, however, that this is generally not the case. Many of the Committee's previous reports have criticised the lack of knowledge of persons, even at the most senior levels of government, of the rights, obligations and protections imposed by the Constitution and the Parliamentary Privileges Act and by parliamentary resolutions.

3.19 Some observers may suggest a machiavellian conspiracy from time to time to punish an officer because that officer gave evidence, but to do so without reference to committee proceedings in an attempt to circumvent contempt powers. On this suggestion, by issuing threatening press statements while at the same time not referring to Senate committee proceedings, a minister could ensure that these threats were not tied to the giving of evidence to Parliament. Similarly, a public service manager could punish an employee without directly relating that punishment to the giving of evidence to Parliament, thus ensuring a protection against the Parliament determining the action to be a contempt.

3.20 The Committee, having considered these possibilities, has concluded in this case that ignorance of parliamentary privilege at senior levels of the Northern Territory public service is comparable to that of senior levels of the Commonwealth public service. The Committee has concluded that the omission of any reference to Senate committee proceedings was not because of knowledge of parliamentary privilege or of efforts to circumvent the contempt powers of the Senate. Rather, no evidence is available to the Committee of Privileges to enable it to conclude that the minister and his staff, who prepared and issued the minister's press statement, and the relevant officers involved in the RDH first round selection processes, knew that Dr Nitschke had appeared before the Senate Industry Committee.

Failure to reappoint Dr Nitschke in the first round

- 3.21 The Committee wishes to make it clear that it has concluded that the decision not to reappoint Dr Nitschke in the first round was not made solely on the grounds of merit. The Committee was constantly reminded of the administration's perception of the duty of RDH staff, which could be summarised as "don't rock the boat". The Committee acknowledges the legitimate concerns expressed at the senior levels of the hospital administration that there could be a lack of public confidence because of media reporting of supposed shortcomings at RDH, and accepts the good faith of Dr Douglas in trying to minimise the damage he feared Dr Nitschke's comments were causing. It appears to the Committee, however, that the overriding concern of senior RDH administrators was Dr Nitschke's perceived disloyalty. This was expressed in terms such as a failure to conform to public service guidelines in respect of private activities which derived from his work at the hospital, and failure to be part of the corporate team.
- 3.22 The issue of the truth or otherwise of Dr Nitschke's outspoken comments was not a primary consideration of the managers. For example, when he first spoke out about the lack of RDH protocols in the event of a nuclear disaster, he was reminded of the public service code of conduct. That his comments had validity appeared not to be an issue with the RDH administration at the time. It must be emphasised that the validity of his claim was acknowledged, as evidenced by the apology issued on behalf of the NT Government and the hospital in April 1993 (see paragraph 1.23 above).
- 3.23 Dr Nitschke was well qualified to act on behalf of the Medical Association for the Prevention of War and was committed to placing that organisation's views on the public record. Dr Nitschke's external activities did not appear to have an impact on his work for the first four years or more at the hospital. His professional difficulties, which he freely acknowledged in evidence to the Committee, appear to have begun in the last few months of 1993, when he was under extreme pressure brought about by the sequence of events following his public expressions of concern. He obviously had a significant measure of support from his Resident Medical Officer peer group, in that their concern about his failure to be reappointed as an RMO following first-round interviews in July 1993 led to unprecedented threats of industrial action.

3.24 This Committee acknowledges that Dr Nitschke was a willing user of the media to publicise the cases he was arguing, and that his public statements caused anxiety for the hospital administration, who were concerned to ensure public confidence in the hospital.^{lxxx} In this connection it should be pointed out that Dr Nitschke's statements were seen as newsworthy primarily because of his qualifications as both a Ph.D in physics and a doctor at the hospital which, given the 15 April 1993 apology by the Northern Territory Government and RDH, had been tardy in preparing appropriate protocols to deal with any nuclear catastrophe. However, regardless of the provocation perceived by the hospital administration, and their anxieties about his contacts with the media, in the Committee's view the failure to reappoint Dr Nitschke was a draconian overreaction to what was in fact a minor disturbance to the smooth running of the hospital, and was likely to have had the effect of heightening public disquiet about the hospital's preparedness for such a nuclear event. The Committee of Privileges takes this opportunity again to point out that all public servants have the civil right to participate in matters of community interest provided that their private participation is not in conflict with statutory obligations.^{lxxxi}

Professionalism of senior staff

3.25 While the Committee believes there was an administrative failure in respect of the first round non-appointment of Dr Nitschke, some officers within the hospital were sensitive to, and were prepared to place a high priority on, the professional needs of RDH. In this regard, the Committee was favourably impressed by both Dr Pauline Wilson, who at all stages considered, on grounds of Dr Nitschke's professional competence, that he should have been reappointed to an RMO position, and by Dr Alan Walker, who succeeded her as Medical Superintendent. Dr Walker's views, conveyed to Dr Douglas on 8 November in the face of considerable and known opposition at senior levels, led Dr Douglas, with some reluctance, to offer Dr Nitschke a contract. In fairness it must be acknowledged, too, that ultimately Dr Douglas put his judgement as to the medical requirements for the hospital ahead of the other pressures he was clearly under and ultimately accepted the advice of his medical rather than administrative staff.

3.26 The Committee finds it disturbing that the professional judgment of some senior medical staff could so nearly have been overridden by general administrators within the hospital, who were concerned more with the

activities of the person they perceived as disloyal than with the hospital's significant need for competent medical staff.

3.27 The Committee wishes to acknowledge, in addition to the senior medical staff mentioned above, the positive contribution to the attempted resolution of what was clearly a difficult matter made by Mr Ted Rayment, from the Department of Health and Community Services, whose role as a mediator was patient and surprisingly successful for a long period. The contribution by Dr Peter Arnold, too, must be acknowledged. The inquiry conducted by Dr Arnold was timely and professional and his conclusions sound. It is a pity that the potential effectiveness of this inquiry was completely undermined by the threats of senior public servants to take legal action in respect of some of the comments, thus causing Dr Arnold and the AMA to withhold publication and continuing the disquiet within the Resident Medical Officer ranks at the hospital.

Comment

3.28 As the Committee has suggested throughout this report, the present inquiry has fallen into a pattern of inquiries which the Committee has been undertaking on a regular basis since the passage of the *Parliamentary Privileges Act 1987* and the Senate Privilege Resolutions of 1988. The Committee has been constantly concerned that persons who have expressed private opinions, or acted on behalf of an external organisation, with some perceived detriment to their employing body, or who have drawn attention to disturbing features of that body's organisational arrangements, have been penalised by the employing body, sometimes resulting in ill health or job loss.

3.29 In the course of several of its inquiries, the Committee has had cause to comment on a pattern of behaviour developed by institutions to deal with perceived troublemakers. Features have included:

- (1) a good, even impeccable, performance record of the person in question until he or she places the organisation in the spotlight;
- (2) creation of a dossier of behaviour from then on, including derogatory comments on matters such as the person's dress and appearance, relationships with others, and temperament;

- (3) attempts to suggest that improper or inappropriate behaviour has been of long standing, even though there are no records to indicate this — and, indeed, there are often references to indicate precisely the contrary; and
- (4) inadequacies of administrative procedures and processes, and carelessness with the truth when called publicly to account for behaviour inimical to the interests of the perceived transgressor.

3.30 The Committee's views on these matters were stated in its 50th Report, tabled on 8 December 1994.^{lxxxii} That report drew attention in particular to, and supported, the Senate Select Committee on Public Interest Whistleblowing, chapter five of which is reproduced in that report. Furthermore, the Committee included in the 50th report what appears to be a seminal article by Dr Jean Lennane entitled "'Whistleblowing' — a health issue", which was published in the *British Medical Journal* of 11 September 1993, pp. 667-70.

3.31 Dr Nitschke asked that Dr Lennane be called to give evidence as to the consequences for him of the circumstances surrounding his "punishment" by the RDH and the health administration of the Northern Territory. Dr Nitschke suggested that, although he did not regard himself as a whistleblower in the currently understood sense of the word, the consequences for him were comparable to those experienced by whistleblowers and therefore asked the Committee to seek expert advice from Dr Lennane. The Committee acknowledged the similarities between Dr Nitschke's situation and that of whistleblowers, but decided not to hear evidence from Dr Lennane, making it clear that it was aware, both from its own experience and from the account given by the Whistleblowing Committee of Dr Lennane's published views, of the consequences for persons ostracised by an organisation.

3.32 These consequences were best evidenced, in Dr Nitschke's case, by what he designated the third level of penalties deriving from the events surrounding the release of the press statement. As he acknowledged, his behaviour by the time he was undertaking his obstetrics and gynaecology placement at RDH was less than desirable. As he put it — drawing on an analogy made by Dr Lennane — a dog that has been continually whipped eventually turns and bites.^{lxxxiii} He explained, and the Committee acknowledges as an experience common to most whistleblowers, that he was harassed "as every other whistleblower is harassed by the institution that is so desperate to

keep the thing under wraps".^{lxxxiv} The circumstances of the time led to his departure from the RDH. This in turn has led, again as typical of whistleblowers, to a loss of income and stress placed on relationships. As this Committee observed in its 50th Report, these are harsh penalties indeed.

Conclusions

3.33 The sequence of events leading ultimately to Dr Nitschke's departure from the Royal Darwin Hospital has, in the Committee's view, been most unfortunate both for Dr Nitschke himself and for other persons involved in this difficult matter. Having examined the matters in detail, however, the Committee has not been able to establish sufficient connection between Dr Nitschke's appearance before the Senate Industry Committee and his failure to be offered a contract following first round consideration of Resident Medical Officer appointments to the RDH for 1994, and subsequent events, to make a finding that any contempt of the Senate was involved.

3.34 That Dr Nitschke was threatened and penalised is demonstrably the case, but this followed the aggressive reaction by the Minister of Health and the hospital administration to a series of Dr Nitschke's public statements made in the four month period March to July 1993. The evidence received by the Committee leads to the conclusion that the forum in which the last of those statements was made, that is, the Senate Industry Committee, was not known to the minister or to the hospital administration.

3.35 The Committee hopes that its conduct of this Inquiry and the observations of this Report have been worthwhile for those persons who were involved in this controversy. It would be especially worthwhile if a remedy were to follow from those who have punished Dr Nitschke for exercising what should be his right as a citizen, as a representative of a community organisation and as an informed professional to state publicly his medical opinions. The Committee appreciated the unequivocal apology proffered by Dr Douglas to Dr Nitschke in the course of its hearings on the matter.^{lxxxv} It also noted, however, that Dr Nitschke suffered financial penalty because of what happened to him.

Findings

3.361. The Committee of Privileges finds as follows:

- (a) That a statement issued by the Minister for Health and Community Services, the Hon. Mike Reed, on Tuesday, 20 July 1993, could be regarded as constituting a threat to Dr Philip Nitschke, in that the concluding comments of that statement, as outlined at paragraph 1.5, suggested that he should not continue to be employed at the Royal Darwin Hospital;
- (b) that Dr Philip Nitschke was penalised by the Royal Darwin Hospital through the failure to offer him a contract for 1994 as a Resident Medical Officer following the first round of interviews for such appointments in July 1993, such a penalty being exacerbated by a series of subsequent stressful incidents, culminating in his departure from the hospital early in 1994;
- (c) that the threat was not made and penalties were not imposed in consequence of Dr Nitschke's appearance before the Senate Standing Committee on Industry, Science, Technology, Transport, Communications and Infrastructure on Tuesday, 20 July 1993, on the ground of the evidence that neither the minister and his staff nor relevant officers of the Royal Darwin Hospital were aware that Dr Nitschke had given evidence before that Committee.
2. Accordingly, the Committee of Privileges has determined that no finding of contempt be made.

Baden Teague
Chairman

ENDNOTES

- i. *Journals of the Senate*, 18 November 1993, p. 812.
- ii. Senate *Hansard*, 18 November 1993, pp. 2580-3098.
- iii. *Submissions and Documents*, Vol. 2, pp. 145-6.
- iv. *Submissions and Documents*, Vol. 1, p. 5.
- v. *Submissions and Documents*, Vol. 1, p. 9.
- vi. See, for example, *Submissions and Documents*, Vol. 1, p. 88.
- vii. Dr Nitschke suggested throughout his evidence that he had been interviewed on 22 July. Dr Vino, however, asserted that Dr Nitschke was interviewed on 21 July (Transcript, p. 315), and in his final submission, of 28 January 1995, p. 11, Dr Nitschke also refers to 21 July as the day of the interview.
- viii. Transcript, pp. 158, 179-80 (Douglas), 335-6 (Vino), 404-5 (Wilson), 417-8 (Schmidt).
- ix. Transcript, p. 111.
- x. *Submissions and Documents*, Vol. 1, p. 3.
- xi. *Submissions and Documents*, Vol. 1, p. 9.
- xii. *Submissions and Documents*, Vol. 1, p. 46.
- xiii. *Submissions and Documents*, Vol. 1, p. 59.
- xiv. Dr Douglas discussed the proposed appointment with the hospital administrative manager (responsible for finance), the operations manager (responsible for general services) and the Director of Nursing (Transcript, p. 187-8), as well as the Medical Superintendent, Dr Walker, who had recommended the appointment of Dr Nitschke. Dr Douglas also sought advice from Dr John Edgar, Assistant Secretary for Hospital Services within the Department of Health and Community Services (Transcript, p. 213).
- xv. Transcript, p. 181.
- xvi. *Submissions and Documents*, Vol. 3, p. 367.
- xvii. *Submissions and Documents*, Vol. 1, p. 40.
- xviii. Transcript, pp. 106-7.

- xix. Transcript, p. 21.
- xx. Transcript, p. 175.
- xxi. Transcript, pp. 112-3.
- xxii. Transcript, p. 270.
- xxiii. Transcript, pp. 41-3.
- xxiv. *Submissions and Documents*, Vol. 2, pp. 203-4.
- xxv. *Submissions and Documents*, Vol. 1, pp. 104-5.
- xxvi. *Submissions and Documents*, Vol. 1, p. 13.
- xxvii. *Submissions and Documents*, Vol. 1, p. 11.
- xxviii. *Submissions and Documents*, Vol. 2, p. 134.
- xxix. *Submissions and Documents*, Vol. 2, p. 134.
- xxx. *Submissions and Documents*, Vol. 2, p. 218.
- xxxi. *Submissions and Documents*, Vol. 2, p. 219.
- xxxii. *Submissions and Documents*, Vol. 1, p. 13.
- xxxiii. *Submissions and Documents*, Vol. 2, p. 206.
- xxxiv. Transcript, pp. 184 and 354.
- xxxv. *Submissions and Documents*, Vol. 2, pp. 206-7.
- xxxvi. *Submissions and Documents*, Vol. 2, p. 143.
- xxxvii. Transcript, p. 273.
- xxxviii. Transcript, p. 158.
- xxxix. Transcript, p. 273.
- xl. *Submissions and Documents*, Vol. 2, p. 138.
- xli. *Submissions and Documents*, Vol. 2, pp. 145-7.

- xlii.*Submissions and Documents*, Vol. 1, p. 5.
- xliii.Transcript, p. 274.
- xliv.Transcript, p. 271.
- xlv.*Submissions and Documents*, Vol. 1, p. 9.
- xlvi.*Submissions and Documents*, Vol. 2, p. 154.
- xlvii.Transcript, p. 193.
- xlviii.Transcript, p. 273.
- xlix.Transcript, p. 316.
- l.Transcript, p. 428.
- li.*Submissions and Documents*, Vol. 3, p. 355.
- lii.*Submissions and Documents*, Vol. 2, p. 163; Transcript, pp. 323, 420-1.
- liii.Transcript, p. 405.
- liv.*Submissions and Documents*, Vol. 1, p. 37.
- lv.*Submissions and Documents*, Vol. 1, p. 55.
- lvi.Transcript, pp. 184-5.
- lvii.*Submissions and Documents*, Vol. 2, p. 207.
- lviii.*Submissions and Documents*, Vol. 1, p. 3.
- lix.*Submissions and Documents*, Vol. 1, p. 37.
- lx.Transcript, p. 25.
- lxi.*Submissions and Documents*, Vol. 1, p. 89.
- lxii.Transcript, pp. 215-6.
- lxiii.Transcript, pp. 27-8.
- lxiv.*Submissions and Documents*, Vol. 3, p. 300.

lxv.Parliamentary Paper No. 467/1991.

lxvi.Paragraph 39, page 15.

lxvii.Transcript, pp. 35-7.

lxviii.Transcript, p. 91.

lxix.Transcript, pp. 91-4.

lxx.Transcript, p. 292.

lxxi.*Submissions and Documents*, Vol. 1, pp. 75-83.

lxxii.*Submissions and Documents*, Vol. 1, p. 25.

lxxiii.Transcript, pp. 180-1; pp. 200-3.

lxxiv.Transcript, p. 192.

lxxv.Transcript, p. 177.

lxxvi.Transcript, p. 177.

lxxvii.Transcript, p. 180.

lxxviii.Transcript, p. 203.

lxxix.Transcript, p. 335.

lxxx.Transcript, p. 207.

lxxxi.Senate Committee of Privileges 42nd report, p. 26, para. 2.29 (Parliamentary Paper No. 85/1993).

lxxxii.Parliamentary Paper No. 322/1994.

lxxxiii.Transcript, p. 93.

lxxxiv.Transcript, p. 93.

lxxxv.Transcript, pp. 216-7.