

MATTERS OF PUBLIC INTEREST

Positron Emissions Topography Review

Senator HUMPHRIES (Australian Capital Territory) (12.51 p.m.)—I rise today to supplement some comments that I made during a debate on 26 June concerning a report of the Senate Standing Committee on Community Affairs into a matter relating to the positron emissions topography review of 2000. This report was presented after quite a long but informal inquiry by the community affairs committee in June. At that point, the time available for debate of committee reports was limited and therefore there were fewer opportunities to put things on the record. I want now, though, to supplement the comments that I made on that occasion.

Unfortunately, this inquiry was not only about the particular process that was used in 2000 to make a decision about the extent of public funding via Medicare for this, at that stage, new technology of PET but was also a process that led to the reputations of a number of academics and public servants being examined and, in some cases, very critically attacked by witnesses during the hearings.

Just to refresh the Senate's memory about this—as if there were members who are interested in following this issue—the inquiry took some two years and conducted three public hearings. There were at least eight private meetings of the committee and there were many hundreds of documents considered in an attempt to trace the events that had taken place during the year 2000 during this particular technical process of considering the extent of public funding for PET in Australia at that time.

The question that the committee faced at the end of the day was why certain changes had been made to a report of a committee—a so-called supporting committee—charged with the review of the effectiveness, clinically and in cost terms, of this new technology. It was part of a process whereby a number of technical committees considered the effectiveness of that technology before a decision was made by the Medical Services Advisory Committee and a recommendation then made to the minister for health. Now, the chair of that supporting committee, Professor Richard King, who was then and is now a respected clinician and academic, had the task of preparing the report of his supporting committee to present to the next committee up the line in this process—a so-called steering committee. Professor King made a number of editorial changes to the document that he was charged with producing and in doing so he made changes that, as he put it to the committee, would allow the document to be read logically.

A number of those changes were obviously straightforward and quite editorial in nature but one particularly attracted the attention of a number of academics, and particularly a number of doctors. The change was to include the word 'potentially' before the words 'clinically effective' in making, in effect, a recommendation by the committee to the MSAC board. Senators who examined this evidence during the inquiry took very different views of the significance of the change that was made by Professor King. The view that I took on hearing that evidence was that Professor King had made a logical and entirely innocent decision to make the findings of one part of the report consistent with the conclusions that were reached unanimously in another part of the report.

This report was, in due course—as all the parties to it were well aware—to be published. The question that I think needs to be asked in examining the motives that Professor King might have had for making those changes is: if Professor King

had the intention of perpetrating an act of deception, would he not be displaying a level of foolishness—somewhat inconsistent with his senior academic and clinical standing—in tampering with a document that he knew was going to be published? I think the answer to that question is that he would not have done that. And that lends support to the view that his intentions in making those changes were editorial, not conspiratorial. I am quite confident that any ordinary person examining dispassionately the single word which Professor King chose to add to that report—that is, the word 'potentially'—would have great difficulty in understanding what all the fuss, which took so much of the time of a Senate committee, was subsequently about it .

Of course it is the case that others who were part of this process took a very different view of that evidence. Professor Rodney Hicks and Dr Robert Ware from Tasmania believed that a conspiracy was afoot to deny Australians access to this new technology. That was a view also taken by Senator Milne, who was a participating member of that inquiry. Senator Milne's view—she spoke in the debate on 26 June, as well—was:

I think there was a deliberate change to this report. I do not believe it was editorial ... I think there was a political agenda to change the report with respect to funding, at the expense of cancer patients.

Those allegations were made by Senator Milne, and also by Dr Ware and Professor Hicks, under parliamentary privilege. The allegations that were made in the course of those comments were, it has to be said, very serious. They were directed principally at Professor King, who was the chair of the supporting committee, and also at Professor Brendon Kearney, who was the chair of the steering committee. They were also directed, at least in the case of Dr Ware's comments, at officers in the Department of Health and Ageing right up to and including the secretary of that department. Certainly Dr Ware made a number of very serious allegations under parliamentary privilege. In evidence at one hearing, Dr Ware and a colleague of his, Mr Read, made serious allegations of criminal conduct. The committee subsequently declined to allow those allegations to be published but they are still, of course, on the public record.

I want to make a number of comments about the totality of the evidence that was received by the committee. Firstly, it is important to state on the record that the committee did not find that the allegations either of conspiracy or other criminal conduct were substantiated. The comments by Senator Milne were her reading of the evidence, not the views of the committee as a whole. Secondly, there was, in my view, no substantiation of any of the claims that were ever made to the committee with respect to conspiracy. No documentation was offered to show that documents had been deliberately altered. No evidence was tendered to show that anyone had been instructed to ignore evidence or reach a predetermined conclusion about the effectiveness of this new technology.

There was certainly some evidence before the committee of sloppy process that was used in some respects. The process whereby reports were prepared and then handed up the line to superior committees lacked something in terms of precision. I note that MSAC has since corrected the process whereby that occurs and new guidelines are in place. There was certainly some lack of attention to detail by some public servants in the department, and that was referred to particularly during estimates committees hearings subsequently. All of this amounts, in my view, to much less than some kind of gigantic conspiracy to deprive the Australian people of access to this new technology. Evidence that the technical process was manipulated to hold back the advent of PET is entirely circumstantial.

I think that in those circumstances it is important to record an apology to Professor King and Professor Kearney with respect to the evidence that was produced before the inquiry. As I said, very serious allegations were made about them. These people were acting as part of an internal review process designed to produce a considered and careful judgement about a particular technology. There is absolutely no evidence that either man was involved in a conspiracy, and I want to put on record my strong view that they are undeserving of the opprobrium that the inquiry inevitably must have attached to their role in that process.

It is also important to observe that an allegation was effectively made that, because MSAC in 2000 failed to recommend that there should be unrestricted access to this new PET technology—and today in 2008 we are well aware that PET has great potential as a form of medical imaging to reveal the existence of diseases and problems—MSAC or its subordinate committees had in some way failed to do their job back in 2000. That is a process of reverse deduction which I do not think can be substantiated. The fact is that, in 2000, the expert opinion on this was sharply divided. There was no unanimity, even in the supporting committee, about whether the technology was going to be as effective as some suggested that it could be.

I think it is important to make an observation here about the comments that Senator Milne made on 26 June that the supporting committee had endorsed the unrestricted use of PET technology. She said:

... what happened was, even though the doctors said it was safe and clinically effective, the result was that the Commonwealth funding was restricted ...

If senators have any doubt about that, I want to direct them to another part of the report of the committee which was not the subject of any dispute or disagreement. It reads as follows:

Based on the results of the NHMRC Clinical Trials Centre's evaluation and the clinical experience of Committee members, the MSAC Supporting Committee concludes that there is insufficient evidence of PET's clinical or cost effectiveness with respect to the six indications reviewed to warrant unrestricted MBS funding.

So here is a clear and undisputed statement by the committee as a whole that there is insufficient evidence of PET's clinical or cost effectiveness at that time. It was on the basis that the committee had formed that view that Professor King, as he told the committee, subsequently modified the rest of the document to reflect that finding. He felt that it was inconsistent on the one hand to say that there was insufficient evidence of clinical or cost effectiveness and on the other hand to say that the committee found that PET was clinically effective. Accordingly, he modified the document to say it was 'potentially' clinically effective. In my view—obviously not the view of some other witnesses to this parade—that was a perfectly logical and satisfactory explanation as to why the document was changed.

When confronted with a choice between a conspiracy and the innocent failings of human judgement, I think we would all do well to very much err on the side of the latter, and I have no doubt that in this case that is what occurred. It is a matter of record that PET is now much more widely available and is supported through public funding around Australia. That is a very good development, but I am reluctant to attribute errors or blame to those who, eight years ago, were not able to perceive as clearly as we can today, with 20/20 vision, how effective PET was going to become.

We spent a great deal of time on this inquiry—I am not sure it was entirely justified by the result in terms of the public policy that we came to—and I think it is important, as we conclude the process, to put on the record very clearly that there is absolutely no reason to impugn the reputations of Professor Richard King, Brendon Kearney or, for that matter, the public servants who were part of the process in producing this report and subsequent reports to the Senate on those matters.