

The Senate

Committee of Privileges

Matters arising from the Economics
Legislation Committee Hearing on 19 June
2009 (referred 24 June and 12 August 2009)

142nd Report

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Chapter 1

Introduction

Matters covered by this report

1.1 This report deals with two inquiries referred to the committee by the Senate in June and August 2009, both relating to matters arising out of the hearing of the Economics Legislation Committee on 19 June 2009 into the Car Dealership Financing Guarantee Appropriation Bill 2009 (also known as the OzCar scheme).

Possible adverse action against a witness in consequence of his evidence

1.2 On 24 June 2009, on the motion of Senator Heffernan, the Senate referred the following matter to the Committee of Privileges for inquiry and report:

Whether any adverse action was taken against Mr Godwin Grech in consequence of his evidence before the Economics Legislation Committee on 19 June 2009, and, if so, whether any contempt of the Senate was committed in that regard.¹

In giving precedence to this matter on 23 June, the President of the Senate, Senator the Honourable John Hogg, stated that both the Senate and the Privileges Committee had always taken extremely seriously any suggestion that a witness had been threatened or intimidated in respect of their evidence before a Senate Committee, and that every case raised had been referred to the Committee of Privileges for inquiry.² Some particulars of the alleged adverse actions against Mr Grech were contained in correspondence from Senator Heffernan, tabled in the Senate on 24 June 2009. These actions were described as follows:

I believe the witness, Mr Godwin Grech, a senior Treasury official who appeared at last Friday's Senate Economics hearing in Parliament House has been threatened, and publicly and privately intimidated for his evidence.

I believe the political backgrounding provided to the media is highly prejudicial and this contributes to intimidation of the witness.³

... I note that this morning the Australian Federal Police (AFP) has raided the home of the witness, Mr Godwin Grech, the senior Treasury official

1 *Journals of the Senate*, 24 June 2009, p. 2173.

2 *Senate Debates*, 23 June 2009, p. 4064–65.

3 Letter to the President from Senator the Hon. Bill Heffernan, dated 22 June 2009.

who appeared at last Friday's Senate Economics hearing in Parliament House.

I understand the action by the AFP is clearly a consequence of evidence given by this witness. Regardless of the merit or demerit of the evidence given, this would be a contempt of the Senate and I am of the view, that any witnesses who appear before Senate committees are entitled to protection from intimidation and threats of any nature.⁴

Possible false or misleading evidence to, or improper interference with, a committee hearing

1.3 The second, related matter was referred by the Senate in August 2009 on the motion of the Leader of the Government in the Senate, Senator the Honourable Chris Evans. Similar terms of reference had been proposed earlier by Senator the Honourable Joseph Ludwig, and granted precedence, but were rejected by the Senate on 25 June 2009, only the third such defeat of a motion to refer an allegation of contempt to the committee.⁵

1.4 In the meantime, the Auditor-General had presented a report on the Motor Dealer Financing Assistance scheme, including a lengthy statement by Mr Grech⁶ who also provided a statement to a national newspaper published on the day the Auditor-General's report was presented to the Senate. In these statements, Mr Grech admitted to fabricating the email at the centre of the OzCar controversy, an email already declared by the AFP to be concocted. The email was allegedly from a Prime Ministerial adviser to Mr Grech, seeking assistance for a particular car dealer known to the Prime Minister and the Treasurer. Mr Grech claimed that he had received such an email though no trace of it had been found.

1.5 Subsequently, the Senate agreed to refer the following matters to the committee on 12 August 2009:

In relation to the hearing of the Economics Legislation Committee on 19 June 2009 on the OzCar Program:

(a) whether there was any false or misleading evidence given, particularly by reference to a document that was later admitted to be false;

(b) whether there was any improper interference with the hearing, particularly by any collusive prearrangement of the questions to be asked and the answers to be given for an undisclosed purpose,

and, if so, whether any contempt was committed in that regard.⁷

4 Second letter to the President from Senator the Hon. Bill Heffernan, dated 22 June 2009.

5 *Journals of the Senate*, 25 June 2009, pp. 2194–95.

6 *Representations to the Department of the Treasury in Relation to Motor Dealer Financing Assistance*, Report No. 1 2009–10, presented to the Senate out of sitting on 4 August 2009.

7 *Journals of the Senate*, 12 August 2009, pp. 2278–79.

Correspondence from Senator Evans raising the matter of privilege included the following matters:

... You will be aware of published reports that indicate a highly unusual set of circumstances surrounding this hearing including:

- Various claims surrounding an email purportedly sent from the Prime Minister's office to a senior Treasury official (later admitted by that official to be a false document).
- An agreement between Mr Turnbull, a Senator and a witness to create an inquiry specifically tailored for the purpose of delivering predesigned questions and answers in order to bring about a predetermined outcome.

These circumstances raise the issues of whether false or misleading evidence was given to the committee, and whether the committee, the Senate and the public were misled as to the nature of the hearing.⁸

Background to the inquiries

1.6 These inquiries are amongst the most challenging ever conducted by the committee because of the nature of the allegations and the persons involved in the events giving rise to the references. In the circumstances, a brief account of the background to the inquiries is warranted.

1.7 Late in 2008, as the global financial crisis took hold, two major providers of wholesale floorplan finance to car dealers announced that they would be quitting the Australian market. This action was expected to have a major impact on car dealers who could struggle to secure alternative finance to fund their showroom vehicles. On 5 December 2008, the Prime Minister and Treasurer announced that a Special Purpose Vehicle, also known as OzCar, would be established to assist in restoring confidence to the market. A trust was created in January 2009 and a program manager selected to administer funds provided by the four major banks from the issuing of securities. The Commonwealth Government would provide a guarantee to securities issued by the scheme with less than a AAA credit rating. A bill, the Car Dealership Financing Guarantee Appropriation Bill 2009, was drafted to appropriate money to fund any claims made on the government's guarantee.⁹ Mr Godwin Grech was the Treasury official chosen to oversee the implementation of the policy. He reported to his senior officers in Treasury, Mr David Martine and Mr Jim Murphy.

1.8 Mr Grech subsequently alleged that the Prime Minister and the Treasurer (or their offices) had made representations on behalf of a particular car dealer in Queensland who had lent the Prime Minister an ageing utility to use for electorate

⁸ Correspondence, dated 10 August 2009, tabled in the Senate on 11 August 2009, *Journals of the Senate*, pp. 2221–22.

⁹ Economics Legislation Committee, *Car Dealership Financing Guarantee Appropriation Bill 2009*, June 2009, pp. 3–6.

business.¹⁰ Thus the affair became known in the media as 'Utagate' and the Opposition pursued the Prime Minister and Treasurer over allegations of political interference and of misleading Parliament, some of the most serious allegations that can be made against ministers. It later emerged that Mr Grech had provided information to Mr Turnbull and Senator Abetz and had shown them a copy of an email which was subsequently revealed to be fabricated. There is no suggestion that any one other than Mr Grech was aware of this fact at the time. The information was used in questions in the House and in Senate committee hearings. Mr Turnbull and Senator Abetz subsequently admitted to having been misled by Mr Grech.

Conduct of the inquiries

1.9 In these circumstances, the work of the committee was very difficult. Allegations of misconduct had been made against the most senior ministers in the Government and were being prosecuted by the Leader of the Opposition and the Deputy Opposition Leader in the Senate. The second of the committee's terms of reference was initially rejected by the Senate, was opposed on its reappearance in a revised form in August 2009, and was then agreed only on the narrowest of margins. The committee has endeavoured, however, to approach these inquiries in the same non-partisan way that it has approached all of its other inquiries.¹¹ It has attempted to establish the facts of the matters by its usual means and to apply its critical faculties in the interests of protecting and preserving the integrity of the Senate and its processes.

1.10 The committee was also conscious that there were two parallel inquiries taking place. The first inquiry, by the Auditor-General, was completed before the committee received its second terms of reference and caused no difficulties, procedural or otherwise. The second inquiry, by the AFP, into possible criminal offences, was a different matter. The instigation of the AFP investigation was itself an action potentially quite adverse to Mr Grech and possibly taken against him as a consequence of his evidence to the Economics Legislation Committee, and therefore a focus of this committee's inquiry. This matter is explored in chapter 3, along with the instigation of a code of conduct inquiry by the Department of the Treasury (later discontinued because Mr Grech resigned from his employment). On the other hand, the committee was conscious of the potential difficulty posed by a parliamentary inquiry into matters that may be the subject of an eventual criminal prosecution. It has taken steps to navigate around such matters to avoid placing any relevant material beyond the ability of either the prosecution or defence to use in any legal proceedings. This matter is covered further in chapter 5.

1.11 A third difficulty encountered by the committee was Mr Grech's state of health and his capacity to respond to the allegations made against him. This matter is covered further in paragraphs 1.18 – 1.21 below.

10 Economics Legislation Committee, *Committee Hansard*, 19 June 2009, pp. E37–38

11 This approach is documented in the committee's 125th Report, *Parliamentary privilege: Precedents, procedures and practice in the Australian Senate 1966–2005*, PP No. 3/2006.

1.12 As is usual in any inquiry into a possible contempt of the Senate, the committee commenced its inquiries by contacting persons who the committee was immediately aware may be affected by the reference, advising them of the terms of reference and inviting written submissions. Thus the committee wrote to the following in respect of its first terms of reference into possible adverse actions taken against Mr Grech in consequence of his evidence to the Economics Legislation Committee:

- Mr Godwin Grech;
- Mr David Martine (Mr Grech's supervisor in Treasury who was the senior Treasury official at the hearing on 19 June 2009);
- Dr Ken Henry, Secretary, Department of the Treasury;
- Mr Mick Keelty, Commissioner, AFP;
- Senator Annette Hurley, Chair, Economics Legislation Committee;
- Senator the Honourable Bill Heffernan (who raised the matter of privilege);
- Mr Alistair Jordan, Chief of Staff to the Prime Minister;
- Mr Chris Barrett, Chief of Staff to the Treasurer;
- Mr Chris Kenny, Chief of Staff to the Leader of the Opposition.

Aware of extensive media coverage of the hearing and its conclusion, including footage of Mr Grech and Mr Martine walking along corridors of Parliament House, catching a lift and leaving the building via the ministerial entrance, the committee also wrote to the Usher of the Black Rod for details of the policy on filming and photography in Parliament House and information about any inquiry being conducted into the behaviour of the press at and after the hearing. The committee also sought from the Economics Legislation Committee details of any decisions taken by the committee in relation to press coverage of the hearing.

1.13 As a result of information provided in the AFP's initial submission, the committee wrote to Mr Roger Wilkins, Secretary, Attorney-General's Department, seeking information about the instigation of the AFP inquiry. On the basis of information provided by Mr Wilkins, the committee then wrote to Mr Terry Moran, Secretary, Department of the Prime Minister and Cabinet, about the same matter.

1.14 The committee's letter to Mr Grech, despatched to him by person to person mail at his workplace, was returned as Mr Grech was on leave from the department and was reported to be in hospital receiving treatment in a psychiatric facility. Unfortunately, although it was marked 'Personal and Confidential', the letter had apparently been opened by Treasury security staff. Senior Treasury officers then took appropriate steps to return it to the committee.

1.15 In relation to its second terms of reference, involving possible false or misleading evidence to, or improper interference with, a committee hearing, the committee wrote again to the Chair of the Economics Legislation Committee, the Commissioner of the AFP and the Secretary to the Department of the Treasury,

seeking any further submissions on the new terms of reference. Given the extensive statements by Mr Grech to the Auditor-General's inquiry and to *The Australian* on 4 August 2009, the committee also decided to approach Mr Grech again. It sought advice from the Treasury Department on a contact address and wrote to Mr Grech through his solicitor, seeking his input on both terms of reference. The committee received a response from Mr Grech's solicitor on his behalf. Finally, the committee also wrote to Senator Abetz and Mr Brad Stansfield (Chief of Staff to Senator Abetz). See chapter 5 for the reasons the committee chose not to write to Mr Turnbull.

1.16 A list of submissions to the committee's inquiries is in Appendix One.

1.17 The committee thanks all those who provided submissions, several of them very detailed and requiring considerable resources to produce. These efforts to assist the committee are appreciated. The committee's usual practice is to make public all material submitted to it, at an appropriate stage of an inquiry, unless there are compelling reasons not to publish the material in whole or in part. Persons making submissions are advised of this and have the opportunity to submit any claims for particular material not to be published. All material provided to the committee that has been referred to in the body of the report or in footnotes has been published in volumes tabled in the Senate accompanying the report, unless otherwise indicated. Many of the documents provided to the committee with submissions were highly contentious. The committee's approach to publication of this material is outlined in chapter 5.

1.18 As the committee gathered information, it became clear that there were several matters that it wished to raise with Mr Grech directly. In relation to the first terms of reference, there was a question of whether Mr Grech had been the subject of any pressure from other persons in relation to his evidence to the Economics Legislation Committee, either following its estimates hearing on 4 June 2009 or in relation to its hearing on the OzCar bill on 19 June 2009. In relation to the second terms of reference, there was evidence that misleading evidence had been given and that there may have been improper interference with the operations of the Economics Legislation Committee. These were matters that, in the interests of natural justice, needed to be put to Mr Grech to enable him to give his version of events.

1.19 In normal circumstances, the committee would have held a public hearing and proceeded to call witnesses, including Mr Grech, to give sworn evidence. The committee's procedures for public hearings¹² would also have allowed witnesses, or their legal representatives, to examine one another. Mr Grech remained in hospital throughout the inquiry and, according to his solicitor, was declining in health.¹³ In these circumstances, the committee did not consider it appropriate to subject Mr

12 Published in Appendix F to the committee's 125th Report, *Parliamentary privilege: Precedents, procedures and practice in the Australian Senate 1966–2005*, PP No. 3/2006.

13 Submission by John Wilson, Williams Love & Nicol, on behalf of Mr Grech, dated 28 August 2009.

Grech to a public hearing, and determined instead to put a series of written questions to him. The committee did so in October 2009, being careful to confine its questions to matters relating to proceedings in parliament and therefore within its exclusive jurisdiction.¹⁴ Mr Grech's solicitor responded that Mr Grech did not wish to put anything further to the committee in relation to this matter, that he remained seriously ill and that it was distressing for him to revisit these matters, such distress in turn having a negative impact on his health. It was also claimed that several of the matters raised by the committee were relevant to inquiries by the AFP and, in the circumstances, Mr Grech preferred not to say anything further.¹⁵

1.20 Aware by this stage that Mr Grech had resigned from his employment and was therefore no longer subject to disciplinary proceedings under the *Public Service Act 1999*, and also aware of Mr Grech's extensive statements to the Auditor-General and *The Australian*, the committee resolved to seek evidence of Mr Grech's medical condition, indicating to his legal representative that the committee intended to proceed with its report whether or not the medical evidence was forthcoming and could make adverse comment on any failure to support the claim of incapacity made on Mr Grech's behalf by his legal representative.¹⁶

1.21 The committee had also indicated to Mr Grech's legal representative that it intended to make available to him any adverse evidence and any parts of the draft report referring to that evidence or drawing conclusions from it. Two weeks after the committee's request for evidence of Mr Grech's medical condition, nothing had been provided so the committee then set a deadline for receipt of the report.¹⁷ The report was provided on 16 November 2009. This was within the deadline but by this time the committee's report was at an advanced stage of preparation. The report stated that Mr Grech was not medically fit to participate in the inquiry.

1.22 As discussed in chapter 5, Mr Grech's medical unfitness to participate in the inquiry leaves the committee in the unsatisfactory position of being unable to arrive at conclusions on important aspects of its terms of reference. Without being able to hear from Mr Grech in response to particular allegations and assertions made by other parties to the inquiry, the committee cannot be satisfied that the allegations are sufficiently established. To conclude otherwise would be a breach of the principles of natural justice to which this committee adheres. These matters are discussed further in paragraphs 5.5 – 5.8.

14 Correspondence from the committee secretary on behalf of the committee to Mr Grech, dated 9 October 2009.

15 Correspondence from John Wilson, Williams Love & Nicol, on behalf of Mr Grech, dated 19 October 2009.

16 Correspondence from the committee chair to Mr John Wilson, Williams Love & Nicol, dated 29 October 2009.

17 Correspondence from the committee secretary to Mr James Macken, Williams Love & Nicol, dated 13 November 2009.

Role of the committee

1.23 It has long been recognised that the role of the Committee of Privileges is primarily an inquisitorial one. When the Senate refers a possible contempt for inquiry, it is the committee's role to establish the facts. Initially, it may not be clear whether there are particular suspects or, indeed, particular allegations. In the course of its inquiry the committee may become aware of matters that were not contemplated in the initial documentation raising the matter of privilege, but which are relevant to the terms of reference nonetheless. This is one reason why terms of reference are usually framed in broad terms.

1.24 Over the course of an inquiry, particular allegations or suspects may emerge. These are tested to establish what happened. The final step in the process is to consider whether particular acts (or omissions) may constitute a contempt. In undertaking this task, the committee has regard to the list of possible contempts in Privilege Resolution 6 but is not limited to those particular contempts or to the expression of them in the resolution.¹⁸ Pursuant to section 4 of the *Parliamentary Privileges Act 1987*, any conduct may constitute an offence against a House (that is, a contempt) if it amounts, or is intended or likely to amount, to an improper interference with the free exercise by a House or committee of its authority or functions, or with the free performance by a member of the member's duties as a member.

1.25 The committee also has regard to Privilege Resolution 3 (Criteria to be taken into account when determining matters relating to contempt):

The Senate declares that it will take into account the following criteria when determining whether matters possibly involving contempt should be referred to the Committee of Privileges and whether a contempt has been committed, and requires the Committee of Privileges to take these criteria into account when inquiring into any matter referred to it:

- (a) the principle that the Senate's power to adjudge and deal with contempts should be used only where it is necessary to provide reasonable protection for the Senate and its committees and for senators against improper acts tending substantially to obstruct them in the performance of their functions, and should not be used in respect of matters which appear to be of a trivial nature or unworthy of the attention of the Senate;
- (b) the existence of any remedy other than that power for any act which may be held to be a contempt; and
- (c) whether a person who committed any act which may be held to be a contempt:

18 On this issue, two submissions, probably drawing on the same legal advice, dwelt on differences in expression between the terms of reference and the list of possible contempts in Privilege Resolution 6 but made no substantive point about the differences in expression: Treasury submission, dated 12 August 2009, paragraphs 88–90, 103–104; AFP submission, dated 10 August 2009, paragraphs 56–61.

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- (i) knowingly committed that act, or
 - (ii) had any reasonable excuse for the commission of that act.

Structure of the report

1.26 This report is structured as follows:

- In chapter 2, the committee provides a chronology of relevant events as it has been able to establish them through submissions or through material on the public record.
- In chapter 3, the committee analyses possible adverse actions taken against Mr Grech involving the conduct of the media, the instigation of a criminal investigation by the AFP, and the initiation of disciplinary proceedings by his department, and whether these actions were taken in consequence of Mr Grech's evidence.
- In chapter 4, the committee considers the issues of possible false or misleading evidence to, or improper interference with, the hearing of the Economics Legislation Committee on 19 June 2009. The committee also considers whether there was any attempt to improperly influence Mr Grech in respect of his evidence to the Economics Legislation Committee, or any action (or inaction) by his department in relation to his health that affected his ability properly to give evidence to the committee.¹⁹
- In chapter 5, the committee discusses a number of procedural issues that arose during the inquiry.
- In chapter 6, the committee presents its conclusions.

19 These matters were raised by Senator Heffernan after the publication of the Auditor-General's report, in correspondence to the President dated 7 August 2009, and were referred to the committee by the President to consider in the context of its existing inquiry. The committee subsequently received further terms of reference and considered that the matters raised by Senator Heffernan were more appropriately considered under those second terms of reference.

Chapter 2

Chronology of relevant events

2.1 In this chapter, the committee sets out the chain of relevant events as it has been able to establish it through submissions and through material on the public record.

2.2 When the OzCar scheme was announced in December 2008, Mr Grech was given responsibility for coordinating the implementation of the scheme under the supervision of Mr David Martine and Mr Jim Murphy.¹ This work is described in the report of the Auditor-General, *Representations to the Department of the Treasury in Relation to Motor Dealer Financing Assistance* (Report No. 1 2009–10).

February–May 2009

2.3 On 18 February 2009, Mr Grech sent a list of possible questions to be asked at Senate estimates about the OzCar scheme, and another matter, to a member of Mr Turnbull's staff.² Additional estimates hearings were to be held in the week beginning 23 February, having been rescheduled from earlier in the month. According to his response to the Auditor-General, Mr Grech had been hospitalised on 1 February and had almost three weeks off work.³ He returned to work on 16 February.⁴ It was on 19 February that Mr Grech alleges he received an email from the Prime Minister's office regarding Ipswich car dealer John Grant.

2.4 In an email to a prominent former staffer to the Howard Government late in May, Mr Grech sought to be made known to Senator Abetz as a political sympathiser.⁵ Shortly afterwards, Mr Grech made contact with Senator Abetz's office

1 Treasury submission, dated 12 August 2009, paragraphs 15 and 16.

2 AFP submission, dated 11 September 2009, attachment, email from Mr Grech to Paul Lindwall.

3 Australian National Audit Office, *Representations to the Department of the Treasury in Relation to Motor Dealer Financing Assistance*, Report No. 1 2009–10, p. 98.

4 Treasury submission, dated 24 September 2009, paragraph 65.

5 AFP submission, dated 11 September 2009, attachment, email from Mr Grech to Arthur Sinodinos, dated 25 May 2009; Treasury submission, dated 18 August 2009, attachment, email exchange between Mr Grech and Arthur Sinodinos, dated 25 May 2009. Mr Sinodinos subsequently told the AFP that he did not recall making contact with Senator Abetz in response to the email. AFP correspondence, dated 12 November 2009, attaching a copy of Mr Sinodinos's witness statement and attachments.

and emailed a list of questions for Senate estimates on the OzCar scheme to a member of Senator Abetz's staff.⁶

June 2009

Senate Estimates hearings and their aftermath

2.5 The Economics Legislation Committee held Budget estimates hearings in the week commencing 1 June 2009 and Mr Grech gave evidence on the OzCar scheme on 4 June. Senator Abetz asked a series of questions, some of which bore a resemblance to the draft questions emailed by Mr Grech to Senator Abetz's office.⁷ Mr Grech indicated that there had been representations from the Prime Minister's office and the Treasurer's office in relation to particular dealers. The provision of details was taken on notice.

2.6 After the estimates hearing and apparently at their request, Mr Grech met with the Treasurer's Chief of Staff, Mr Chris Barrett, and other members of the Treasurer's staff who queried his evidence about representations made by the offices of the Treasurer and the Prime Minister. Mr Grech volunteered that he had received an email from Dr Andrew Charlton, Prime Minister's office, regarding John Grant on or around 19 February. According to Mr Grech, Mr Barrett said he would check with the Prime Minister's office and get back to Mr Grech, but did not get back to him.⁸ Mr Barrett informed the committee that he specifically asked Mr Grech on this occasion whether he might not have mistaken this approach with another from Dr Charlton in relation to a different dealer, thereby providing Mr Grech with time and opportunity to clarify the situation. Mr Barrett also informed the committee that Mr Grech had offered to 'delete – or lie about the existence of – an email regarding John Grant', but was counselled by Mr Barrett and his colleagues not to do so.⁹

2.7 Subsequently, Mr Grech searched for the email from Dr Charlton but could not find it and claimed that he thought either he or the Information Technology (IT)

6 Senator Abetz, submission dated 26 August 2009, attachment, OzCar: Possible questions; Treasury submission, dated 18 August 2009, attachment, OzCar: Possible questions.

7 Economics Legislation Committee, *Committee Hansard*, 4 June 2009, pp. E34–43, 54; Treasury submission, dated 12 August 2009, paragraphs 17, 18 and 198; Treasury submission, dated 18 August 2009, attachment, email from Mr Grech to Brad Stansfield, dated 31 May 2009, attaching possible questions for estimates; AFP submission, dated 11 September 2009, attachment, email from Mr Grech to Brad Stansfield, dated 31 May 2009, attaching possible questions for estimates.

8 Australian National Audit Office, *Representations to the Department of the Treasury in Relation to Motor Dealer Financing Assistance*, Report No. 1 2009–10, p. 95; statement by Mr Grech published in *The Australian*, 4/8/2009; Treasury submission, dated 12 August 2009, paragraph 51.

9 Submission from Mr Chris Barrett, dated 27 October 2009. Mr Barrett advised the committee that he included this information in his statement to the AFP. The AFP subsequently provided a copy of the statement to the committee.

area of the Treasury Department had deleted it. In his statement published in *The Australian* on 4 August 2009, Mr Grech described what happened next:

It is at this point that I made an error of judgement. Rather than preparing a note for file recording the discussion I had with Barrett, including setting out what I thought the Charlton e mail contained, I decided to create a record of exchange as an e mail that set out what I recollected the original e mail contained.

Although the e mail was not an 'original', I thought that it would help having a record in the form that it appeared if or when the original could be located.

Although the exact words of the e mail record of exchange may not have been spot on after 4 months, I was confident that the sentiment of the exchange was accurate – a position that I still believe today.¹⁰

2.8 On 5 June 2009, Mr Grech sent the recreated email from his Treasury email account to his personal email account.¹¹ Later that day, he emailed Mr Turnbull from his personal email account and suggested that the OzCar bill be referred to a Senate committee for inquiry as a way of bringing his evidence to light. Mr Grech stressed the importance of himself being the only Treasury witness at the inquiry. He also suggested a meeting with Mr Turnbull 'and perhaps Abetz (no staffers) – to show you the various e mails I have. This may help you decide how strong you may want to push'.¹²

2.9 Following the estimates hearing, Senator Abetz lodged a Freedom of Information request with the Treasury Department for copies of any documents regarding John Grant involving the Treasury Department and any of a number of other bodies including the offices of the Prime Minister, Treasurer and Assistant Treasurer, and the Department of the Prime Minister and Cabinet. The request was received on 10 June and searches conducted primarily by Mr Grech located no email regarding John Grant from the Prime Minister's office.¹³

The Sydney meeting — 12 June 2009

2.10 Over the next few days Mr Grech and Mr Turnbull communicated by email and phone and a meeting was arranged in Sydney on 12 June 2009. Mr Grech had

10 Also see Treasury submission, dated 12 August 2009, paragraph 51; Treasury submission, dated 24 September 2009, paragraph 31.

11 Treasury submission, dated 18 August 2009, attachment, the false email as created and as emailed to Mr Grech's private email account; AFP submission, dated 10 August 2009, and attachment, the false email as created and as emailed to Mr Grech's private email account.

12 Senator Abetz, submission dated 26 August 2009, attachment. The email is reproduced in full in chapter 4.

13 Treasury submission, dated 12 August 2009, paragraphs 20 and 21; Treasury submission, dated 24 September 2009, paragraph 39.

asked for the meeting to be 'very private. We must not meet in PH'.¹⁴ The meeting took place on the afternoon of Friday 12 June in the office of Mrs Turnbull in Sydney. As well as Mr Grech and Mr Turnbull, Senator Abetz and his Chief of Staff, Mr Stansfield, were also present. Mr Grech gave an account of the OzCar situation and representations made on behalf of Mr Grant. He showed those present a copy of the alleged email from Dr Charlton and notes of its content were taken. Mr Grech was insistent that no copies be taken and he took back the circulated copy. He later stressed that he never authorised the publication, quotation or distribution of the email which was subsequently revealed to have been fabricated.¹⁵ Mr Grech also provided Mr Turnbull with a list of possible questions to be asked of the Prime Minister and Treasurer.¹⁶

2.11 On the Sunday following the Sydney meeting, Mr Grech again emailed Mr Turnbull suggesting further strategies for the Senate committee inquiry into the OzCar bill. For example, he suggested that Ford Credit be called as a witness before Treasury and noted that if Treasury were scheduled to appear on Friday afternoon it would likely diminish press coverage. It is not clear whether he thought the latter was desirable or not. Mr Grech also promised to supply questions as a guide for Senator Abetz to ask of Ford Credit.¹⁷

Contact with the journalist, Steve Lewis

2.12 On Monday 15 June, Mr Grech received a call from the managing director of Ford Credit who was concerned because a senior journalist had been asking questions about John Grant. Mr Grech later called Mr Turnbull from his home. He asserts that it 'was agreed that it would be a good idea if I spoke to the journalist off the record and on an in confidence basis setting out the story as I understood it'.¹⁸

2.13 According to a joint press release issued by Mr Turnbull and Senator Abetz on 4 August 2009, Mr Grech did indeed phone Mr Turnbull but it was stated that it was Mr Grech who suggested that he speak to the journalist himself. He requested the journalist's telephone number and Mr Turnbull subsequently provided it.¹⁹

14 AFP submission, dated 11 September 2009, attachment, email from Mr Grech to Mr Turnbull, dated 6 June 2009.

15 Statement by Mr Grech, published in *The Australian*, 4 August 2009. Also see paragraph 2.68.

16 Senator Abetz, submission dated 26 August 2009, attachment, OzCar: Possible questions; Treasury submission, dated 18 August 2009, attachment, OzCar: Possible questions; AFP submission, dated 11 September 2009, attachment, OzCar: Possible questions; statement by Mr Grech published in *The Australian*, 4 August 2009.

17 AFP submission, dated 11 September 2009, attachment, email from Mr Grech to Mr Turnbull, dated 14 June 2009.

18 Statement by Mr Grech published in *The Australian*, 4/8/2009.

19 Senator Abetz, submission dated 26 August 2009, attachment, Joint press release; Treasury submission, dated 31 August, attachment, copy of SMS message from Mr Turnbull to Mr Grech.

2.14 On 16 June, Mr Grech phoned journalist Steve Lewis and spoke for 45 minutes on the OzCar scheme and his allegations of political interference. Mr Grech read out to Mr Lewis the contents of the alleged email from Dr Charlton.²⁰ Later that evening, Mr Grech sent Mr Turnbull an email describing his conversation with Steve Lewis and suggesting that he provide Mr Lewis with some material for publication on Friday before the hearing that would put the focus on unanswered questions about the relationship between the Prime Minister, the Treasurer and John Grant, in Mr Grech's words, 'playing it up a little'.²¹ (The bill had been referred earlier that day by the Senate to the Economics Legislation Committee for inquiry — see below.)

2.15 Mr Turnbull emailed Mr Grech agreeing with his approach to provide Mr Lewis with material and Mr Grech subsequently emailed Mr Lewis setting out a suggested 'teaser' for the coming Friday, including 'key questions' about the OzCar scheme. Mr Grech gave Steve Lewis permission to use his name in any article (as having refused to comment) but insisted that it not stray beyond the 'teaser' and, in particular, 'what I raised with you the other day remains strictly background, off the record and not for publication'.²² Mr Grech later forwarded to Mr Turnbull a copy of what he had sent to Mr Lewis.²³

2.16 Mr Grech made several calls to Mr Lewis over the period 16–18 June 2009.²⁴ The committee has been provided with no evidence that, in any of these calls, Mr Grech relaxed his instructions about reference to the email subsequently revealed to have been fabricated.

2.17 The annual Federal Parliamentary Press Gallery midwinter ball was held on the evening of 17 June in the Great Hall of Parliament House. Following extensive media coverage of an incident at the ball involving a conversation between Mr Turnbull and Dr Charlton in which the possibility was raised that there was documentary proof that the Prime Minister had misled Parliament in respect of John Grant, Mr Grech sent an email to the Treasurer's Chief of Staff, Mr Chris Barrett, and senior officers in Treasury regarding calls he had been receiving from Mr Lewis who

20 Steve Lewis, 'Snitch the source of his own demise', *Daily Telegraph*, 5/8/2009, p.9; statement by Mr Grech published in *The Australian*, 4/8/2009; Treasury submission, dated 12 August 2009, paragraph 51; Treasury submission, dated 18 August 2009, and attachment, list of numbers called from Mr Grech's office and mobile phones and Blackberry.

21 AFP submission, dated 11 September 2009, attachment, email from Mr Grech to Mr Turnbull, dated 16 June 2009.

22 AFP submission, dated 11 September 2009, attachment, email from Mr Turnbull to Mr Grech, dated 17 June 2009; Steve Lewis, 'Snitch the source of his own demise', *Daily Telegraph*, 5/8/2009, p.9; Treasury submission, dated 18 August 2009, attachment, copy of the 'teaser' document.

23 AFP submission, dated 11 September 2009, attachment, email from Mr Grech to Mr Turnbull, dated 17 June 2009.

24 Treasury submission, dated 31 August 2009, attachment, list of numbers called from Mr Grech's office and mobile phones and Blackberry.

was seeking information about any instructions Mr Grech had received from the Treasurer's office regarding John Grant. Mr Grech said that he told Mr Lewis that he would respond to the Senate committee, not the press. He was subsequently advised by his supervisor, Mr Martine, that it was normal practice to refer media calls on sensitive issues to the Treasurer's office.²⁵

2.18 On Friday, 19 June 2009, front page articles by Steve Lewis appeared in the *Courier Mail* and the *Daily Telegraph* describing allegations that the Prime Minister had misled Parliament over assistance provided to John Grant.²⁶ Mr Grech sent an email to his departmental secretary, Dr Henry, his senior officers, Messrs Martine and Murphy, Mr Barrett and others explaining his contact with Steve Lewis. He indicated that he had denied to Lewis the existence of any communication between the Prime Minister's office and Treasury regarding John Grant. He also referred erroneously to that day's hearings on two occasions as 'estimates'.²⁷

OzCar bill referred to Senate Economics Legislation Committee for inquiry

2.19 On Monday, 15 June 2009, the first sitting day after the Sydney meeting, Senator Abetz gave notice of a motion to refer the Car Dealership Financing Guarantee Appropriation Bill 2009 to the Economics Legislation Committee for inquiry and report by 23 June and 'in undertaking its inquiry, the committee hear evidence from relevant bodies and individuals, including the Department of Treasury, about the operation and management of the proposed OzCar scheme'.²⁸ The motion was agreed to without debate the following day.²⁹

2.20 With a reporting date on the Tuesday of the following sitting week, the last sitting week before the winter adjournment, the committee scheduled a hearing for Friday, 19 June. Witnesses from the Motor Trades Association of Australia, Ford Credit and the Department of the Treasury were invited to appear.³⁰

25 Treasury submission, dated 12 August 2009, paragraphs 23 and 24; Treasury correspondence, dated 7 October 2009, attachment, email from Mr Grech to various Treasury officers, dated 18 June 2009.

26 Steve Lewis, 'Now the wheels fall off — Rudd forced to defend aid for car dealer mate / Utegate: Heat on PM over help for car dealer mate', *Courier Mail*, 19 June 2009 and 'Car deal: PM in spin — Tailgate: New claims Rudd misled MPs over mate', *Daily Telegraph*, 19 June 2009.

27 Treasury submission, dated 12 August 2009, paragraphs 25 and 110; Treasury submission, dated 18 August 2009, attachment, email from Mr Grech to various Treasury officers, dated 19 June 2009.

28 *Journals of the Senate*, 15 June 2009, p.1993.

29 *Journals of the Senate*, 16 June 2009, p.2047.

30 Report of the Economics Legislation Committee, *Car Dealership Financing Guarantee Appropriation Bill 2009*.

2.21 In his email to Mr Turnbull on 5 June 2009 suggesting the inquiry, Mr Grech advised that it was 'important that any inquiry involve only me from Treasury'.³¹ No reason was given for this claim, and Mr Grech was to be disappointed in his aspiration. As he subsequently told Mr Turnbull when informing him about the material he had sent to Steve Lewis, 'Swan's office told me tonight that whilst they want me to appear on Friday – I must be accompanied by my bosses (probably David Martine and/or Jim Murphy). Chris Barrett has instructed that I say nothing or very little' (*emphasis in original*).³² Mr Grech then suggested strategies to deal with the presence of his supervisors. This email was dated 17 June 2009 and Mr Barrett informed the committee that he had no contact with Mr Grech on the evening of 17 June 2009.³³

2.22 On the evening of 18 June 2009, Mr Murphy, Mr Martine and Mr Grech met to discuss Treasury's appearance before the Economics Legislation Committee the following day. Also that evening, Mr Grech called Mr Barrett who he said had not got back to him after the post-estimates hearing meeting on 4 June. According to Mr Grech, Mr Barrett suggested that Mr Grech had confused John Grant with someone else in referring to an email from Dr Charlton.³⁴ Mr Barrett's advice to the committee was that this conversation had occurred on 4 June 2009 after the estimates hearing. Of the conversation on 18 June, Mr Barrett said:

He told me he was certain he had received an email from Andrew Charlton of the Prime Minister's office, but that if he was pushed at the Senate Committee for a "yes" or "no" answer, he would lie. Assuming by this that Mr Grech would deny the existence of the email, I said in response: "my view is you have to tell the truth and let the cards fall where they may".³⁵

2.23 On the morning of the hearing, Mr Grech also alleges that he received a message to call Mr Murphy in Sydney urgently. Mr Grech alleges that Mr Murphy said 'if you are asked any questions in the Senate this afternoon about John Grant and the Prime Minister or the PMO you should simply say that you've confused the Grant call with some other case' and 'It is very important that you do not make any

31 Senator Abetz, submission dated 26 August 2009, attachment, email from Mr Grech to Mr Turnbull, dated 5 June 2009.

32 AFP submission, dated 11 September 2009, attachment, email from Mr Grech to Mr Turnbull, dated 17 June 2009.

33 Submission from Mr Chris Barrett, dated 27 October 2009.

34 Australian National Audit Office, *Representations to the Department of the Treasury in Relation to Motor Dealer Financing Assistance*, Report No. 1 2009–10, p. 95; statement by Mr Grech published in *The Australian*, 4/8/2009.

35 Submission from Mr Chris Barrett, dated 27 October 2009. Mr Barrett made a note of this conversation, included an account of it in his statement to the AFP and provided them with a copy of the note. The committee has been provided with a copy of the statement and note.

trouble'.³⁶ This version of events is disputed by Mr Murphy who stated that the phone call on the morning of the hearing did not deal in any substantive way with the question of Mr Grech's evidence to the committee.³⁷

Initial searches for the email

2.24 Searches for the alleged email from Dr Charlton to Mr Grech ostensibly began when Treasury received Senator Abetz's Freedom of Information request on 10 June (see above, paragraph 2.9). These searches were carried out primarily by Mr Grech. No such email was found.

2.25 Extensive reporting of an incident at the Press Gallery ball between Mr Turnbull and Dr Charlton suggested that such an email may indeed exist. On the evening following the ball, and after discussion between Treasury and the Treasurer's office, searches were conducted of Treasury email logs for any email from Dr Charlton to Mr Grech concerning John Grant. None was found.³⁸

2.26 It was subsequently stated by the Prime Minister that 'exhaustive searches' had been conducted of Dr Charlton's computer and email systems and no such email had been found. In any case, Dr Charlton denied having sent such an email.³⁹

2.27 Early on the morning of the hearing, Mr Martine requested Treasury IT to broaden its searches to look for any emails sent by Dr Charlton to Mr Grech up to the end of March 2009.

2.28 Later that morning, various Treasury staff met to consider the results of the IT searches. IT staff revealed that there had been a problem with the back-up email log on 20 February which meant that there may be a gap in Treasury's records. Subsequent analysis, however, concluded that the lack of external email logs on what turned out to be a weekend did not compromise the integrity of the data in relation to emails sent and received during this period.⁴⁰

36 Australian National Audit Office, *Representations to the Department of the Treasury in Relation to Motor Dealer Financing Assistance*, Report No. 1 2009–10, pp. 96–97, and see note 99 which cites Mr Murphy's testimony to ANAO refuting this; Treasury submission, dated 31 August 2009, p.3.

37 Treasury submission, dated 24 September 2009, paragraphs 53–60.

38 Treasury submission, dated 12 August 2009, paragraphs 22 and 109; Australian National Audit Office, *Representations to the Department of the Treasury in Relation to Motor Dealer Financing Assistance*, Report No. 1 2009–10, p. 96.

39 Press conference by the Prime Minister, 19 June 2009, transcript at www.pm.gov.au/node/5097.

40 Treasury submission, dated 12 August 2009, paragraphs 22 and 111, and footnote 11; Australian National Audit Office, *Representations to the Department of the Treasury in Relation to Motor Dealer Financing Assistance*, Report No. 1 2009–10, p. 96; statement by Mr Grech published in *The Australian*, 4 August 2009.

The committee hearing

2.29 The Economics Legislation Committee held its hearing on the Car Dealership Financing Guarantee Appropriation Bill 2009 on the afternoon of Friday, 19 June 2009. The Hansard record of the hearing, which is included in the volumes of documents presented with this report, speaks for itself, but some excerpts of the hearing are set out in the following paragraphs. Witnesses from Ford Credit and the Motor Trades Association of Australia gave evidence, followed by officers of the Department of the Treasury, Mr David Martine and Mr Godwin Grech. Two hours had been set aside by the committee to hear Treasury's evidence. Mr Martine commenced with an opening statement that alluded to media reports suggesting the existence of correspondence between the Prime Minister's office and Treasury regarding John Grant. Mr Martine informed the committee that available records had been searched 'to the best of our ability' but the correspondence had not been found. Mr Martine also referred to representations that had been made in respect of Mr Grant by the Treasurer's office and noted that this correspondence had been tabled earlier in the hearing.⁴¹

2.30 The hearing became quite heated as the subject of the alleged email was explored. Mr Martine reiterated on many occasions the outcome of the search for the alleged correspondence. He answered many questions on Mr Grech's behalf in relation to the alleged correspondence, which Senator Abetz insisted that Mr Grech answer. There were heated exchanges between committee members and the chair, and Mr Grech appeared to become increasingly distressed when questioned about the alleged correspondence. At one point, despite the chair's intervention to protect him, Mr Grech insisted on explaining his position to the committee, conveying his distress at seeing the articles published by Steve Lewis that morning and the natural assumption his colleagues would make that he was the source. His statement that he was in a position that no public servant should find him or her self in was subsequently broadcast repeatedly on news and current affairs programs and aroused concern in many quarters for his welfare.⁴²

2.31 During the hearing, Mr Grech indicated that he believed he had seen an email from the Prime Minister's office regarding John Grant but qualified this with a statement that his 'recollection may well be totally false or faulty'.⁴³ He also answered questions from Senator Cameron about his contact with the journalist, Steve Lewis, and asserted that contact had been initiated by Mr Lewis.

2.32 Additional television cameras were present in the hearing room from the commencement of the hearing and appear to have increased in number during Mr Grech's evidence, joined by still cameras, all operating very close to the committee

41 Economics Legislation Committee, *Committee Hansard*, 19 June 2009, p. E16.

42 Economics Legislation Committee, *Committee Hansard*, 19 June 2009, p. E37.

43 Economics Legislation Committee, *Committee Hansard*, 19 June 2009, p. E38.

and witness tables.⁴⁴ After the hearing had been adjourned, the cameras moved in on Mr Grech and Mr Martine and continued to film. The final frames of the official coverage of the hearing show the chair noticing this behaviour and beginning to speak to the camera operators. Subsequent footage shown on news and current affairs programs indicates that the chair's intervention was ignored, as cameras crowded Mr Grech and Mr Martine and followed them out of the hearing room, into a lift, down corridors and out through the ministerial entrance of Parliament House. Footage in the lift shows a strong light being shone on Mr Grech's face.

After the hearing — the events of Friday evening

2.33 After the hearing, Mr Grech and Mr Martine returned to work. In light of his ordeal before the committee and his pursuit by the media, Treasury officers checked on Mr Grech's welfare and arranged contact with a counsellor through the department's employee assistance program. Senior Treasury officers, including the Secretary, Dr Henry, offered comfort and support to Mr Grech. In particular, Mr Martine checked on Mr Grech through the evening and remained in contact with him by email and phone over the weekend, offering practical support in view of the media presence at Mr Grech's home.⁴⁵

2.34 Meanwhile, in the Department of the Prime Minister and Cabinet, the Secretary, Mr Terry Moran, aware of Mr Grech's evidence that afternoon that he believed he had seen a short email from the Prime Minister's office regarding John Grant, asked his IT staff to undertake a thorough search of the email records of the department and the Prime Minister's office. The results were known by around 6.45 pm. They indicated no evidence of an email from Dr Charlton to Mr Grech in the period 16 to 22 February that met Mr Grech's description of the alleged email. Mr Moran was confident of the search results because of relatively recent changes to the department's IT system and informed the Prime Minister accordingly.⁴⁶

2.35 Mr Moran suggested to the Prime Minister that the Auditor-General should investigate and report on the matter.

2.36 Evening news and current affairs programs carried extensive reports of Mr Grech's evidence and the gravity of its implications for the Prime Minister and Treasurer.

2.37 Around 7.30 pm, the Prime Minister held a press conference and announced that no email matching the description given by Mr Grech had been found. He referred to allegations made that evening by Steve Lewis who claimed to be in

44 The DVD of the Economics Legislation Committee hearing on 19 June 2009 indicates up to eight television and still camera operators present. There were also sound technicians carrying microphones on booms. See plates 2 – 4.

45 Treasury submission, dated 12 August 2009, paragraphs 29–35.

46 Mr Terry Moran, submission dated 16 September 2009.

possession of an email from Dr Charlton to Mr Grech (referred to as 'the public servant') but stated that extensive searches by his office and the Departments of the Prime Minister and Cabinet, and Treasury, had found no such email. Dr Charlton had also denied sending any such email. In answering a journalist's question, the Prime Minister concluded that the email was false. The Prime Minister also announced that he had decided to refer the matter to the Auditor-General because questions of integrity had been raised.⁴⁷

2.38 Earlier that evening, Steve Lewis had advised the Prime Minister's press secretary by email that he was proposing to publish details of the alleged email from Dr Charlton to Mr Grech in the next day's *Daily Telegraph*. He later asked questions about it at the press conference where the Prime Minister expressed the view that the email must be false.⁴⁸

Saturday 20 June 2009

2.39 Details of the email were duly published on Saturday 20 June and there was extensive media reporting of Mr Grech's evidence and its implications.

2.40 Overnight, Mr Moran had reflected on the results of the various searches for the email and the denials of the Prime Minister and Dr Charlton of any knowledge of such a communication. It occurred to him that the email had been fabricated and that Mr Grech may have been one of the victims of that fabrication. Further, if that were the case, an inquiry by the Auditor-General may not be 'the appropriate method of inquiry into the matter'.⁴⁹

2.41 Between 10 and 11 am Mr Moran phoned Mr Roger Wilkins, Secretary, Attorney-General's Department, and raised his concern that the email was fabricated. He asked Mr Wilkins to examine whether, if that were the case, any offence might have been committed and, if so, to take the appropriate action.⁵⁰

2.42 Mr Wilkins then had a conversation with the Attorney-General who agreed that it would be desirable to obtain preliminary legal advice on possible criminal offences that may have been committed if the email were found to be a fabrication. Around 11 am, he asked a senior officer of the department, Mr Geoff McDonald, to prepare preliminary legal advice which was provided to Mr Wilkins around midday.⁵¹

47 Press conference by the Prime Minister, 19 June 2009, transcript at www.pm.gov.au/node/5097.

48 Steve Lewis, 'Utegate timing off and muffler shot', *Daily Telegraph*, 4 July 2009, p.13; Press conference by the Prime Minister, 19 June 2009, transcript at www.pm.gov.au/node/5097.

49 Mr Terry Moran, submission dated 16 September 2009.

50 Mr Terry Moran, submission dated 16 September 2009; Mr Roger Wilkins, submission dated 28 August 2009, paragraph 5(c) and attached chronology.

51 Mr Roger Wilkins, submission dated 28 August 2009, paragraphs 5(d) and (e) and attached chronology.

2.43 Between 12.30 and 12.45 pm Mr Wilkins, Mr McDonald and another departmental officer, Ms Sarah Chidgey, discussed the process for referring matters to the AFP. Between 1 and 2 pm, Ms Chidgey drafted a letter of referral and cleared it with Mr McDonald and then with Mr Wilkins. During this time, Mr Wilkins spoke again to the Attorney-General advising him that referral of the matter to the AFP was the 'best course of action'. He also spoke to the then AFP Commissioner, Mr Mick Keelty, who indicated that the AFP would investigate.⁵²

2.44 Ms Chidgey finalised and despatched the letter of referral by email after she had ascertained the appropriate person in the AFP to send it to. The letter was received by Commander Justine Saunders at 2.19 pm. Commander Saunders subsequently contacted Ms Chidgey who provided what further information she had about the allegations.⁵³

2.45 The Prime Minister held a press conference during the afternoon at which he reiterated actions taken to search for the alleged email, and concluded that it was false. He announced that the Secretary of the Attorney-General's Department had referred the matter to the AFP.⁵⁴

2.46 Meanwhile, on that Saturday morning, Dr Henry was also concerned about the provenance of the alleged email and the source of the material published by Steve Lewis. He spoke to Mr Chris Barrett and Mr Jim Chalmers from the Treasurer's office and Mr Martine and Mr Di Giorgio of his department. At approximately 1.40 pm he phoned Ms Deirdre Gerathy (General Manager, Corporate Services Group) and asked her to arrange a search of Mr Grech's emails for any sent to Steve Lewis in the preceding week.⁵⁵

2.47 Ms Gerathy arranged for Treasury IT to search Mr Grech's email account and to give her access to check his inbox and sent items. This check revealed items of concern which Ms Gerathy then discussed with Dr Henry. These items raised the possibility of wrongdoing by Mr Grech and it was agreed that the matter would be discussed with Treasury's internal lawyer on the following Monday.⁵⁶

2.48 Mr Martine, unaware of these developments, including the material discovered on Mr Grech's computer, but having discussed the situation with Ms

52 Mr Roger Wilkins, submission dated 28 August 2009, chronology; AFP submission, dated 10 August 2009, paragraph 8 and attached timeline.

53 Mr Roger Wilkins, submission dated 28 August 2009, chronology; AFP submission, dated 10 August 2009, paragraph 9 and attached timeline.

54 Press conference by the Prime Minister, 20 June 2009, transcript at www.pm.gov.au/media/interview/2009/interview_1085.cfm.

55 Treasury submission dated 12 August 2009, paragraphs 37 and 38.

56 Treasury submission dated 12 August 2009, paragraphs 39 and 40.

Gerathy, spoke to Mr Grech on Sunday afternoon and conveyed the advice that it would be best for Mr Grech to take the following week off.⁵⁷

2.49 Around 7 pm that evening, Dr Henry learned of the Prime Minister's announcement of the AFP inquiry. He thereupon phoned Commissioner Keelty to request that the AFP investigation also include emails in Treasury's IT system. Dr Henry then informed Ms Gerathy of his request to the AFP. Ms Gerathy was subsequently contacted by the AFP. She outlined what searches had been done, described the suspicious emails that had been found and arranged to meet AFP officers at the Treasury building the following morning.⁵⁸

The AFP inquiry — search warrant obtained and executed

2.50 Between 10 am and 12 noon on Sunday 21 June 2009, AFP officers attended the Treasury building in Parkes and were given the results of preliminary searches of Mr Grech's email account. After the AFP officers and Ms Gerathy left the building, Treasury IT officers continued working on the recovered deleted files and found the false email whereupon AFP officers returned to Treasury and were given hard copies.⁵⁹ Access to Mr Grech's Treasury IT account was stopped.⁶⁰

2.51 That evening, Commander Saunders obtained from Ms Chidgey a copy of Mr McDonald's advice on possible criminal offences and Commissioner Keelty phoned Dr Henry to inform him that the AFP had sufficient material to support an application for a warrant to search Mr Grech's home.⁶¹

2.52 The AFP prepared an application for a warrant to search Mr Grech's home based on advice from Treasury IT that the false email had been sent from Mr Grech's Treasury account to his personal account. However, the information supplied to obtain the warrant also included reference to Mr Grech's committee evidence. A warrant was issued at 9.30 pm by a magistrate.⁶²

57 Treasury submission dated 12 August 2009, paragraphs 35 and 115.

58 Treasury submission dated 12 August 2009, paragraphs 41 to 43; AFP submission, dated 10 August 2009, paragraph 17 and attached timeline.

59 Treasury submission dated 12 August 2009, paragraphs 44, 46 and 47; AFP submission, dated 10 August 2009, paragraphs 18 and 19 and attached timeline.

60 Treasury submission dated 12 August 2009, paragraph 48. Access to his Treasury-issued Blackberry was stopped the following day and unescorted access to the Treasury building was also limited.

61 Mr Roger Wilkins, submission dated 28 August 2009, chronology; AFP submission, dated 10 August 2009, paragraph 22 and attached timeline; Treasury submission dated 12 August 2009, paragraph 49.

62 AFP submission, dated 10 August 2009, paragraphs 23–27, attached timeline and other attachments, including the warrant application.

2.53 On Monday 22 June 2009, *The Australian* and *Daily Telegraph* published intrusive articles about Mr Grech's health and medical history, the appearance of his home and the opinions of his neighbours.

2.54 At 8 am, AFP officers arrived at Mr Grech's home to execute the warrant but were unable to raise him. After consulting Treasury officers about Mr Grech's possible whereabouts and wellbeing, and arrangements for welfare assistance, the AFP officers gained access to Mr Grech's home. Mr Grech was present and the AFP officers searched his computer and, at his request, interviewed him. Before departing, the AFP officers activated Mr Grech's welfare support arrangements, liaised with Treasury's employee assistance provider and contacted the ACT Mental Health Assessment and Treatment Team (MHCATT). Officers of MHCATT arrived at Mr Grech's home and informed the AFP that their further assistance would not be required. AFP officers left the premises, having earlier removed certain items.⁶³

2.55 After the execution of the warrant, the AFP issued a media release stating, in the following terms, that the email had been fabricated:

Having regard to the public interest in this matter, the AFP can confirm in relation to the investigation of matters referred to it by the Attorney-General's Department on Saturday 20 June 2009, that a preliminary forensic investigation of computers located at a premises in Calwell and at the offices of the Department of the Treasury has been undertaken.

Preliminary results of those forensic examinations indicate that the e-mail referred to at the centre of this investigation has been created by a person or persons other than the purported author of the e-mail.

A 42-year-old Calwell man has been interviewed by the AFP in relation to this matter and it will be alleged that the interview is consistent with preliminary forensic advice.

As the investigation is continuing, the AFP does not intend to make any further comment at this stage.⁶⁴

2.56 Later that afternoon, the AFP assisted MHCATT officers to gain access to Mr Grech's home again for the purpose of ensuring his wellbeing.⁶⁵

2.57 A second search warrant was executed by the AFP on 22 July 2009 and further items seized.⁶⁶

63 AFP submission, dated 10 August 2009, paragraphs 29–34, attached timeline and record of interview with Mr Grech; Mr John Wilson, submission on behalf of Mr Godwin Grech, dated 28 August 2009.

64 AFP submission, dated 10 August 2009, paragraphs 46–48 and attached timeline; Commissioner Keelty provided an explanation for this unusual action at a press conference on 30 June 2009 (AFP submission, paragraph 49).

65 AFP submission, dated 10 August 2009, attached timeline.

Response of the Department of the Treasury

2.58 According to Treasury's submissions, Mr Grech's wellbeing was also a focus of Treasury officers on Monday 22 June 2009. Treasury's General Manager, Human Resources, Ms Henderson, met with Dr Henry to discuss Mr Grech's leave arrangements, his access to the department's employee assistance provider and to arrange an update from the AFP regarding Mr Grech's welfare. Ms Henderson had subsequent discussions with Mr Martine, Ms Gerathy and the Deputy Public Service Commissioner, Ms McGregor, who had raised concerns with Dr Henry about Mr Grech's wellbeing. Updates were subsequently received from the AFP.⁶⁷

2.59 Later in the afternoon, a senior Treasury officer, Mr David Parker, contacted MHCATT to inform them about other serious matters concerning Mr Grech that were yet to be revealed in public. These were the matters that would subsequently become the subject of a code of conduct inquiry. Ms McGregor contacted Mr Grech and passed on to Treasury officers the information that he was considering admitting himself to hospital.⁶⁸

2.60 That evening, according to Dr Henry, Mr Grech phoned Dr Henry and told him what had happened after the estimates hearing on 4 June and how he had decided to 'reproduce' the email he claimed to have received from Dr Charlton. He also told Dr Henry that he had read out the email to Steve Lewis on the phone on 16 June.⁶⁹ Mr Grech's account of his recreation of the email is in his statement to *The Australian* on 4 August 2009, set out in paragraph 2.7.

2.61 Mr Grech was subsequently admitted to a mental health facility later that evening.⁷⁰

2.62 Treasury officers continued to engage in various consultations and inquiries regarding Mr Grech's welfare and wellbeing.⁷¹

66 AFP submission, dated 10 August 2009, paragraphs 81–85 and attachment, letter from AFP, dated 24 July 2009, informing the committee of the second search warrant; Mr John Wilson, submission on behalf of Mr Godwin Grech, dated 28 August 2009.

67 Treasury submission dated 12 August 2009, paragraphs 52, 53 and 55; AFP submission, dated 10 August 2009, attached timeline.

68 Treasury submission dated 12 August 2009, paragraphs 54 and 56.

69 Treasury submission dated 12 August 2009, paragraph 51; Treasury submission, dated 24 September 2009, paragraph 15.1.

70 Treasury submission dated 12 August 2009, paragraph 57; AFP submission, dated 10 August 2009, attached timeline.

71 Treasury submission dated 12 August 2009, paragraphs 58–61 and 116; AFP submission, dated 10 August 2009, paragraph 39

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Code of conduct inquiry by the Department of the Treasury

2.63 In view of the material found on Mr Grech's computer, Treasury considered taking action against Mr Grech for breaching the Australian Public Service Code of Conduct. As part of its consideration, Treasury sought legal advice on the scope of parliamentary privilege to ensure that any action it took against Mr Grech did not trespass on the privileges of the Senate.⁷² The material found on Mr Grech's computer included numerous communications with people connected to the Liberal Party,⁷³ and documents which showed Mr Grech to be behaving in a politically partisan fashion against the Government and in support of the Opposition.

2.64 On 17 July 2009, Treasury's Acting Secretary, Dr Gruen, wrote to Mr Grech's lawyers indicating that he intended to consider suspending Mr Grech on the basis that he may have breached the code of conduct. Dr Gruen provided particulars of the alleged breaches and copies of the material Dr Gruen was intending to consider. Before despatching this letter, Treasury officers contacted MHCATT to inform them of the impending correspondence.⁷⁴

2.65 Dr Gruen wrote again to Mr Grech's lawyers on 22 July 2009 indicating that he intended to delay considering suspending Mr Grech in view of a further personal leave application from Mr Grech and his continued hospitalisation.⁷⁵ This decision was reversed, however, following the events of 4 August 2009 (described below). Dr Gruen then indicated he intended to proceed with the suspension of Mr Grech and Dr Ian Watt was appointed to determine whether Mr Grech had breached the code of conduct.⁷⁶ Dr Gruen signed an instrument of suspension, suspending Mr Grech from duties without remuneration, on 21 August 2009.⁷⁷

4 August 2009 — three significant publications

2.66 The Auditor-General's report on *Representations to the Department of the Treasury in Relation to Motor Dealer Financing Assistance* was published on 4 August by presentation to the Senate out of sitting. The report contained a 35 page response by Mr Grech to the matters covered.

72 Treasury submission dated 12 August 2009, paragraph 63.

73 For a list of these emails, see Treasury submission, dated 24 September, paragraph 21.

74 Treasury submission dated 12 August 2009, paragraphs 63 and 64; Mr John Wilson, submission on behalf of Mr Godwin Grech, dated 28 August 2009. The Auditor-General's draft report was also forwarded to Mr Grech on this date.

75 Treasury submission dated 12 August 2009, paragraph 65; Mr John Wilson, submission on behalf of Mr Godwin Grech, dated 28 August 2009.

76 Treasury submission dated 12 August 2009, paragraphs 66 and 67; Mr John Wilson, submission on behalf of Mr Godwin Grech, dated 28 August 2009.

77 Mr John Wilson, submission on behalf of Mr Godwin Grech, dated 28 August 2009.

2.67 The publication of the report had been anticipated by the publication of a statement by Mr Grech in *The Australian* that morning, together with an interview giving his version of events and the reasons for his actions. In his statement, Mr Grech made much of the claim that he had not authorised anyone to publish details of the fake email and that it had been published without his permission or agreement.

2.68 It was these two publications that prompted Dr Gruen to reconsider his decision to delay considering Mr Grech's suspension.

2.69 The third publication was a joint media release by Mr Turnbull and Senator Abetz at a press conference at which copies of three documents provided by Mr Grech were distributed (2 lists of questions and Mr Grech's email to Mr Turnbull of 5 June).⁷⁸ In their joint press release, Mr Turnbull and Senator Abetz gave an account of their dealings with Mr Grech and stressed that it was Mr Grech who initiated the contact. They stated that they had accepted and acted in good faith on the information he provided. The statement disputed Mr Grech's reasons for acting as he did and drew attention to Opposition statements supporting the passage of the bill, made before Mr Grech's approach to Senator Abetz's office. They also disputed Mr Grech's accusation against the Opposition including the suggestion that Mr Grech was pressured to make statements concerning Mr Grant.

11 August 2009 — an apology

2.70 At the first meeting of the Senate after the publication of the Auditor-General's report, Senator Abetz made the following statement:

A lot has been said and written about my involvement in what has now become known as the OzCar affair. I have already publicly apologised, but I wanted to take this very first opportunity in the Senate to repeat that apology and in addition apologise for any perceived reflection on the Senate. I also want to briefly deal with the three assertions made against me: that I pressured a witness; that I misled a Senate hearing; and that I scripted a witness's evidence. All three assertions are wrong.

First, as the joint statement I made with the Leader of the Opposition on 4 August makes clear, the witness volunteered his information. When the witness approached us we listened because he was a person with direct knowledge of the matters in question.

The second assertion is that I misled the Senate on 19 June by suggesting that a journalist had told me about the now known to be fake email and its contents. The simple fact is that a journalist did tell me this. He said he had been contacted by the witness, who had shared his information including the contents of the email. The journalist then shared that information with me. As the joint statement made clear, the witness had previously shown me the email. Both statements are true; they are not mutually exclusive.

78 Senator Abetz, submission dated 26 August 2009, attachment, Joint press release. Transcript of press conference at www.liberal.org.au/news.php?Id=3511.

Having received information from two separate sources it is quite appropriate to rely solely or partially on just one of those sources without exposing the other.

He denied allegations that he had pressured a witness, misled a Senate committee hearing or scripted a witness's evidence.⁷⁹

7 October 2009

2.71 It was reported that Mr Grech had left the public service.⁸⁰

79 *Senate Debates*, 11/8/2009, p.4420.

80 For example, Paul Maley, 'Email fraudster Grech parts company with Treasury', *The Australian*, 7 October 2009, p. 1.

Chapter 3

Possible adverse actions taken against Mr Godwin Grech

Scope of the inquiry

3.1 The protection of persons providing information to the Senate and, in particular, of witnesses before parliamentary committees, is regarded by the committee as constituting the single most important duty of the Senate (and therefore of the committee as its delegate) in determining possible contempts.¹

3.2 In raising this matter of privilege, Senator Heffernan identified the following possible adverse actions taken against Mr Grech in consequence of his evidence to the Economics Legislation Committee:

- political backgrounding provided to the media for the publication of prejudicial articles; and
- the execution of a search warrant by the AFP on Mr Grech's home.

In the course of the inquiry, the committee identified the following additional possible adverse actions:

- harassment by the media at the conclusion of the hearing;
- the instigation of the AFP inquiry; and
- the instigation of disciplinary action by the Treasury Department for alleged breaches of the Australian Public Service Code of Conduct (including the suspension of Mr Grech from duties without remuneration).

3.3 Each of these actions is considered in this chapter.

Harassment by the media at the conclusion of the hearing

3.4 On the evening of 19 June 2009, many television viewers watched close-up footage of Mr Grech giving evidence to the committee, followed by close-up footage of him (and his supervisor, Mr Martine) leaving the committee room, travelling in a lift and walking along corridors. Mr Grech and Mr Martine were followed out of the building by the cameras. The crush of people in the lift meant that the cameras, lights and sound booms were very close to Mr Grech's face. Still photographs appeared in newspapers and other media over the weekend. These images were repeated many times over the coming days and weeks. Still images from some of this footage (and from the official broadcast) are reproduced at the end of this chapter.

1 Committee of Privileges, 125th Report, *Parliamentary privilege: Precedents, procedures and practice in the Australian Senate 1966–2005*, p. 46. For an account of the committee's previous experience of such cases, see pp. 46–56.

Rules governing the broadcasting of committee proceedings

3.5 One set of rules applies to the broadcasting of committee proceedings and another to filming and photography in Parliament House generally (considered below). The Senate's resolutions on the broadcasting of Senate and committee proceedings relevantly provide as follows:

2 Radio and television broadcasting of committee proceedings

The following rules apply in relation to radio and television broadcasting, including rebroadcasting, of the proceedings of a committee.

(1) Recording and broadcasting of proceedings of a committee may occur only in accordance with the authorisation of the committee by a deliberate decision of the committee.

...

(3) A committee may determine conditions, not inconsistent with these rules, for the recording and broadcasting of its proceedings, may order that any part of its proceedings not be recorded or broadcast, and may give instructions for the observance of conditions so determined and orders so made. A committee shall report to the Senate any wilful breach of such conditions, orders or instructions.

...

(5) Recording and broadcasting of proceedings of a committee shall not be such as to interfere with the conduct of those proceedings.

(6) Where a committee intends to permit the broadcasting of its proceedings, a witness who is to appear in those proceedings shall be given reasonable opportunity, before appearing in the proceedings, to object to the broadcasting of the proceedings and to state the ground of the objection. The committee shall consider any such objection, having regard to the proper protection of the witness and the public interest in the proceedings, and if the committee decides to permit broadcasting of the proceedings notwithstanding the witness's objection, the witness shall be so informed before appearing in the proceedings.²

When committees authorise the broadcasting of their proceedings, the House Monitoring Service records and transmits the proceedings and media organisations may take a 'feed' from this transmission. In addition, committees by resolution may authorise the presence of additional cameras or sound recorders and may impose conditions on the broadcasting or recording of their proceedings. They may give instructions for the observance of these conditions, and they must report to the Senate any wilful breach of the conditions or instructions. Such broadcasting or recording must not interfere with the conduct of the committees' proceedings.

2 Resolution 2, Broadcasting of Senate and committee proceedings in *Standing Orders and other orders of the Senate*, June 2009, pp. 159–60.

3.6 The committee sought from the Economics Legislation Committee details of its decision to allow additional cameras to film the hearing, the names of the media organisations (or cameramen) it permitted to film and details of the conditions under which filming was permitted. The chair of the committee, Senator Hurley, responded on behalf of the committee on 27 July 2009 with the following information:

As regards the filming of the hearing, no unusual arrangements were made. A press photographer asked before the hearing if it was OK to take photographs and after informally checking with the Committee I agreed. Other photographers and camerapeople came in as the hearing progressed, particularly in the latter stages of Mr Grech's testimony. These did not seek the Committee's approval. At no stage during the hearing did a witness or senator make an objection. As is usual practice, the Secretariat moved away any photographers seeking to take pictures from behind senators that could have included documents or laptop screens. It has never been the Committee's practice to compile lists of media organisations present.

There was objectionable behaviour by the media at the conclusion of the hearing. Photographers and camerapeople surrounded Mr Grech at the conclusion of his evidence and followed him through the corridors and out of Parliament House. One press photographer later apologised to the Secretary, saying words to the effect that "things had gotten out of hand".

The Committee has previously had significant media attendance at its hearings without undue interference to either Committee members or witnesses. Its processes in dealing with the media do not therefore cater for the extreme circumstances that occurred on 19 June 2009.³

3.7 Senator Hurley also advised the committee that she had written on behalf of the Economics Legislation Committee to the President of the Federal Parliamentary Press Gallery, Mr Phillip Hudson, complaining about the behaviour of the media at and after the hearing. In that letter, a copy of which was provided to the committee, Senator Hurley referred to flagrant breaches of the Presiding Officers' Guidelines for Filming and Photography after the hearing and to the harassment of a witness. She pointed out to Mr Hudson the availability of the official 'feed' and provided him with copies of the guidelines and the Senate's broadcasting resolutions, drawing attention in particular to paragraph (6) of Resolution 2 (reproduced above). Senator Hurley advised Mr Hudson that her committee may be 'more sympathetic in future to any application by a witness for the exclusion of the media at a public hearing'.⁴

3.8 The committee also asked for copies of the minutes of the Economics Legislation Committee showing its decision to authorise the televising of the hearing on 19 June. Like most committees, the Economics Legislation Committee agreed, at

3 Submission by Senator Annette Hurley, Chair, Economics Legislation Committee, dated 27 July 2009.

4 Submission by Senator Annette Hurley, Chair, Economics Legislation Committee, dated 27 July 2009, attachment, letter to Mr Phillip Hudson, undated.

the first meeting after its establishment in May 2009, to a general resolution (to apply to all its public hearings) in the following terms:

That the committee authorises the recording and re-broadcasting of its public proceedings in accordance with the rules contained in the order of the Senate concerning the broadcasting of committee proceedings.

3.9 When providing these minutes to the committee on 21 September 2009, Senator Hurley also commented as follows:

If there are requests from photographers or camera operators on the day of the hearings, the Committee's practice is to have an informal agreement among all senators present at the meeting whether to allow cameras at that hearing. It has not been our practice to require each operator to ask permission or to have a private meeting of the committee.⁵

Inspection of the minutes of the hearing on 19 June confirmed that no formal decisions were taken with respect to the attendance of additional cameras and sound recordists.⁶

3.10 It is incumbent on all Senate committees to apply the relevant parts of the Broadcasting Resolutions, the purpose of which is to ensure proper processes are undertaken for the authorisation of audio, audiovisual and photographic recording of committee proceedings and their broadcasting and rebroadcasting. Failure to apply the resolutions undermines the fundamental principle that the Senate and its committees control their own proceedings. It is also potentially detrimental to witnesses. The protection of witnesses should be a paramount consideration in the operations of all committees. Although the chair has the primary responsibility for the conduct of proceedings, the duty to apply the resolutions rests with the whole committee. Chairs should not permit additional cameras into a hearing room without a decision of the committee and without consulting witnesses. It is not necessary to convene a private meeting for this purpose, but it is necessary for there to be formal, minuted decisions. Had the Economics Legislation Committee made orders in respect of additional cameras and had those orders been breached, there may have been a basis to consider whether any contempt had been committed. In this case, however, there were no such decisions and no effective regulation of the additional camera and sound operators. Without them, this committee cannot consider the actions of the camera operators and photographers during the hearing as a possible contempt.

3.11 If any committee experience substantiates the need for and rationale of these procedures, it is the hearing of the Economics Legislation Committee on 19 June 2009 which was effectively overrun by the media. When there is intense political interest in a matter being examined by a committee, there is perhaps a temptation to relax the

5 Senator Annette Hurley, Chair, Economics Legislation Committee, correspondence dated 21 September 2009.

6 Submission by Senator Annette Hurley, Chair, Economics Legislation Committee, dated 27 July 2009, attachment, minutes of hearing on 19 June 2009.

rules, but it is on these occasions that the clear application of the resolutions is needed most. When the resolutions are applied, there is clarity for all parties: witnesses' rights are protected; reasonable boundaries are set for the media; and the committee concerned remains in control of its proceedings.

3.12 That is not to say that media attention was unwelcome to Mr Grech, although it was probably greater than he expected and, by its overwhelming nature, was an additional source of pressure on the day of the hearing. Nonetheless, it appears to the committee that he may have encouraged the media attention he ultimately received, particularly by providing to journalist, Steve Lewis, a 'teaser' for publication on the morning of the hearing. Mr Grech did not at any time seek the protection of the committee from the encroaching cameras, and it appeared to the committee chair, 'in hindsight that Mr Grech drew out the questioning for maximum theatre and effect'.⁷ However, this does not excuse the conduct of the media at and after the hearing which was excessive, inappropriate and in contravention of the rules.

3.13 The committee has taken the relatively unusual step of including in its report images from the hearing and its aftermath to provide examples of inappropriate conduct. In one example, a still shot taken from near the end of the official recording of the proceedings shows **eight** still or television camera operators lined up alongside the committee table (Plate 2). Another, from a few minutes earlier, shows operators crowding to the end of the witness table where one operator is actually leaning on the table to take close-up shots of Mr Grech and another is about to join him (Plate 1). Further examples are referred to in the next section. The Economics Legislation Committee had an obligation to protect the witnesses against this kind of pressure, by applying the resolutions and setting out appropriate ground rules for the camera and sound operators to observe. It would also have been open to the committee, if the proceedings became disorderly, to insist that any further footage of the hearing be taken from the official 'feed' provided by the Department of Parliamentary Services.

3.14 The committee does not wish to single out the Economics Legislation Committee for criticism. Different committees have had different approaches to the application of the resolutions in the past. There has been no uniformity of application, with some committees having a more relaxed approach than others. For this reason, the committee considers there would be value in the examination by the Chairs' Committee (established under standing order 25(10)) of model practices for handling the media at committee hearings. These practices might include consideration of and guidance on:

- reasonable conditions that committees might apply to media applications;
- uniform procedures for media organisations to apply for permission to film and for consideration of applications;

7 Submission from Senator Hurley, 27 August 2009.

- circumstances in which the Usher of the Black Rod should be notified of potential difficulties with hearings in Parliament House in order to ensure that the appropriate protection can be provided to witnesses;
- inclusion of information on the procedures on the Senate website and provision of information to the Press Gallery.

3.15 On a related matter, there would also be value in the Chairs' Committee considering what information is provided to witnesses ahead of a hearing. It is a requirement that witnesses be provided with a copy of Privilege Resolution 1 (Procedures to be observed by Senate committees for the protection of witnesses). Because the Broadcasting Resolutions contain additional protections for witnesses, the Chairs' Committee may wish to consider whether prospective witnesses should also be provided with a copy of Broadcasting Resolution 2 as a standard committee practice.

Guidelines issued by the Presiding Officers for filming and photography in Parliament House

3.16 If the committee hearing was an uncomfortable experience for Mr Grech on account of the number of cameras present (apart from any other possible reason), what happened next was worse (see paragraph 3.4).

3.17 The committee sought information from the Usher of the Black Rod on the rules for filming and photography in Parliament House and about any inquiry being conducted into the behaviour of the press at and after the hearing. The committee also asked to see any relevant CCTV footage. The Usher of the Black Rod provided this information on 26 June 2009. Black Rod informed the committee that the President had asked him to investigate the matter on 22 June and that he had subsequently sought an explanation from the President of the Federal Parliamentary Press Gallery, Mr Phillip Hudson.⁸ Black Rod provided to the committee on 23 July a copy of Mr Hudson's response.⁹ Shortly thereafter, the President of the Senate advised the committee that, in view of the committee's inquiry, he would not be pursuing the matter, pending the outcome of the inquiry.¹⁰

3.18 The Presiding Officers have issued *Guidelines for Filming and Photography and General Media Rules in Parliament House and its Precincts*. The guidelines apply to all filming, photography and sound recording in Parliament House, including by members of the Press Gallery and by members of the broadcasting staff of the Department of Parliamentary Services (DPS). Each House has resolutions regarding the broadcasting of its proceedings and separate guidelines for still photography in the chambers.

8 Mr Brien Hallett, Usher of the Black Rod, submission dated 26 June 2009.

9 Mr Brien Hallett, correspondence dated 23 July 2009, attachment. letter from Mr Phillip Hudson, dated 21 July 2009..

10 Senator the Honourable John Hogg, President of the Senate, correspondence dated 28 July 2009.

3.19 For the purpose of this inquiry, relevant provisions of the guidelines are as follows:

4. Filming of parliamentary proceedings

...

Parliamentary committees

- (f) Filming and/or sound recording of a parliamentary committee requires the consent of the individual committee concerned. For approval, contact the committee secretary to the particular committee. Filming and/or sound recording of a parliamentary committee following a suspension or an adjournment of proceedings is not permitted.

...

5. General guidelines for Press Gallery members

Areas "off limits" to the Press

...

- (c) Filming, photography and sound recording is not permitted in any corridor, except the corridor of the Press Gallery itself, without explicit approval from the relevant Presiding Officer.

(emphasis added)

Footage of the hearing and its aftermath from the official DPS coverage, and that of additional camera operators, shows the following acts:

- filming continued after the adjournment of the committee hearing (Plates 3 – 6);
- just before the official coverage ended, the chair, standing, started to speak to the photographers, and asked them to please move out of the way so that the witnesses could ... (*coverage ends*); (Plate 5)
- camera and sound operators gathered around Mr Martine and Mr Grech, ignored the chair and flanked them out of the committee room (Plates 4 – 6);
- filming occurred in corridors, including in the ministerial wing (Plate 8);
- filming continued in the lift (Plate 7).

3.20 In his explanation to the Usher of the Black Rod, Mr Hudson accepted that members of the Press Gallery breached the rules on 19 June 2009 and he expressed regret that this had happened. Mr Hudson sought to explain the breach by alluding to the extraordinary events of that day and the multiplicity of rules applying to Gallery members:

The events at the hearing of the Economics Legislation Committee hearing on Friday June 19, 2009 were extraordinary by any measure. It is not every day the Prime Minister is effectively accused of misleading the Parliament by a senior officer of The Treasury. This testimony threatened to bring down the Government.

The public and the Parliament could not allow vital questions and answers to be left hanging. The events that followed the testimony in the corridors were exceptional but caused by exceptional events. The media were merely seeking to provide an opportunity for this nationally important matter to be clarified.

We are respectful of the Parliament. We strongly believe we were doing our job as servants of the public and would have been derelict not to have sought to clarify this dramatic testimony.

It brings into stark focus the daily difficulties we face with the multiplicity of rules governing our ability to do our job at Parliament House: different rules for each chamber, different rules for the corridors, different rules for the public areas, different rules for offices.¹¹

3.21 In the committee's view, the guidelines and the relevant resolutions are brief, simple, clear, reasonable and proportionate. Moreover, after two hours of testimony it is difficult to conceive what further clarification the press imagined Mr Grech could have provided, particularly without the benefit of parliamentary privilege.

3.22 There is no doubt that the guidelines were flagrantly breached. The question for the committee, however, is whether, in breaching the guidelines, the media representatives may also have committed a contempt. As noted in paragraph 3.2, conduct does not constitute a contempt unless it amounts, or is intended or likely to amount, to an improper interference with the free exercise by a House or committee of its authority or functions, or with the free performance by a member of the member's duties as a member. It could be argued that this type of harassment of a witness immediately after his testimony may not only be harmful to the wellbeing of a witness unused to such attention, but may also have a significant deterrent effect on the willingness of other prospective witnesses to expose themselves to the possibility of similar treatment. In this regard, such acts, which are clearly in consequence of the witness's evidence, may constitute an interference with the free exercise by a committee of its functions. For such acts to be contempts, however, there must be an **improper** interference with the committee. In past cases, the committee has regarded culpable intention as necessary to a finding of contempt.¹² In this case, it does not believe that the zealotry of the camera operators equates to an intention to cause any harm to Mr Grech or the operations of the Economics Legislation Committee, and thus there are no grounds for a finding of contempt.

3.23 The committee recommends that the President of the Senate now consider an appropriate response to the admitted breaches of the guidelines. The committee draws to the President's attention for consideration (along with the Speaker) the following possibilities:

11 Mr Brien Hallett, correspondence dated 23 July 2009, attachment, letter from Mr Phillip Hudson, dated 21 July 2009.

12 See paragraph (c) of Privilege Resolution 3.

- making access to a Parliament House pass by a member of the Press Gallery conditional on an explicit undertaking to comply with the Presiding Officers' Guidelines on filming and photography in Parliament House and its precincts;
- including in tenancy licences for media organisations an explicit requirement for licensees to be responsible for adherence to the guidelines by all their employees or contractors who operate in Parliament House.

The AFP inquiry, including the execution of a search warrant

3.24 Rumours about an alleged email indicating the Prime Minister's office made representations on behalf of John Grant (notwithstanding that the Prime Minister had strongly denied this in the House of Representatives) were circulating in the week before the hearing on 19 June. Several events which suggested a document may exist are described in paragraphs 2.10 to 2.18.

3.25 Searches for the email began in the Prime Minister's office after the incident at the ball (see paragraphs 2.17 and 2.26). General searches, primarily by Mr Grech, had been undertaken the previous week in response to a Freedom of Information request from Senator Abetz to the Department of the Treasury. Following widespread reporting of the incident at the Press Gallery ball and discussion of its implications by senior Treasury officers on the evening of 18 June, systematic searches were done by Treasury IT staff and were widened the following morning. By the time that Mr Martine and Mr Grech gave evidence to the Economics Legislation Committee that afternoon, Mr Martine was able to inform the committee that searches had been conducted 'to the best of our ability' and no trace of the alleged email had been found.¹³

3.26 Finally, having become aware of Mr Grech's evidence, the Secretary of the Department of the Prime Minister and Cabinet, Mr Terry Moran, ordered fresh searches of the email records of his department and the Prime Minister's office. No trace of the alleged email was found.¹⁴

3.27 The committee has examined the train of events leading to the AFP inquiry very carefully. With all searches having found no evidence of the alleged email, and Mr Moran having confidence in his department's IT systems, the Prime Minister concluded at his press conference on the evening of 19 June that the email must be false. Overnight Mr Moran's reflections on the search results led him to conclude that the alleged email could be a fabrication and that there may be criminal offences involved. His initial thought was that Mr Grech was a victim of the fabrication. It was these conclusions that led Mr Moran to contact the Secretary of the Attorney-General's Department, Mr Roger Wilkins, on the morning of Saturday 20 June and set

13 Economics Legislation Committee, *Committee Hansard*, 19 June 2009, p. E16; see chapter 2, paragraphs 2.25–2.29.

14 See chapter 2, paragraph 2.35.

in train the exploration of possible criminal offences that led to Mr Wilkins referring the matter to the AFP.¹⁵

Was the AFP referral an adverse action?

3.28 It appears to the committee that the AFP referral had two elements. The first element was the formal referral by Mr Wilkins following the examination of possible criminal offences by officers of his department. This action occurred at the suggestion of Mr Moran. The second element was the request by Dr Henry, made on the evening of Saturday 20 June, for the AFP to examine suspicious material that had been discovered earlier that day in Mr Grech's Treasury IT account.¹⁶

3.29 Mr Moran's initial thought was that Mr Grech may have been a victim of the fabrication. In this sense, his initiation of processes that led to the AFP inquiry was for Mr Grech's protection. Mr Wilkins confirmed this view in his submission to the committee as follows:

I am aware of the importance of considering questions of collateral or incidental purpose in considering questions of contempt. It is therefore important to reiterate that there was no intention to penalise or intimidate Mr Grech. Indeed, at the time it appeared possible that Mr Grech had been the unwilling recipient of a fabricated document.¹⁷

The initial referral of matters to the AFP cannot, therefore, in the committee's view, be regarded as an action adverse to Mr Grech.

3.30 The suspicious material discovered by Ms Gerathy in Mr Grech's email account on Saturday 20 June raised the possibility of wrongdoing by Mr Grech. This material revealed behaviour that appeared at least to be contrary to the Code of Conduct set out in the *Public Service Act 1999*. It was on the basis of the conduct disclosed by this material that Dr Henry asked the AFP to include the Treasury IT systems in its inquiry. This element of the referral, focusing on possible wrongdoing by Mr Grech, was necessarily an adverse action. Ultimately, it was this element of the referral that led to the location of the material that the AFP used as the basis to apply for a warrant to search Mr Grech's home.

Was the AFP referral in consequence of Mr Grech's evidence?

3.31 Mr Grech was invited to provide a submission to the committee on both terms of reference. He chose to do so through a legal representative, Mr John Wilson, Willams Love & Nicol, Lawyers. Mr Wilson suggested that the execution of a search warrant by the AFP was an adverse action and that its proximity to Mr Grech's evidence strongly suggested that it was an action taken in consequence of that

15 See chapter 2, paragraphs 2.38–2.42.

16 See chapter 2, paragraphs 2.47–2.50.

17 Mr Roger Wilkins, submission dated 28 August 2009, paragraph 12.

evidence. As Mr Wilson conceded, however, he was not in possession of all the facts leading to the AFP's application for a search warrant and invited the committee to find out '*precisely* what went on, who was involved, what emails, letters or other documents passed between whom, and who said or did what in the goings on between 4.08 p.m. on Friday 19 June 2009 and whatever time it was that the first search warrant was obtained on Sunday 21 June 2009'.¹⁸

3.32 Mr Grech's evidence attracted enormous publicity because, if true, it literally threatened to bring down a Prime Minister. It was not the only evidence of the alleged email but it was the culmination of several days' speculation and it came straight from the person alleged to have received it.

3.33 Although the Prime Minister had declared it to be false the previous evening, the terms of the alleged email were published by Steve Lewis on Saturday 20 June. The terms of the email were now in the public arena, including details of the alleged sender as well as the recipient, although official searches had failed to locate it. Pressure was on to find the truth.

3.34 It may well be that Mr Grech's evidence drew matters to a head and intensified the need for action of some kind to provide answers to the serious questions that had been raised about the integrity of the Prime Minister and Treasurer. That Mr Grech's evidence was foremost in the minds of those researching the possible basis for a referral to the AFP is suggested by the terms of Mr Wilkins' formal referral letter to the AFP which begins as follows:

Dear Commissioner

On 19 June 2009, an official from the Department of the Treasury gave evidence to the Senate Standing Committee on Economics that it was his recollection that a staff member in the Prime Minister's Office had sent him an email about a Queensland car dealership, John Grant Motors, in the context of the OzCar Scheme.¹⁹

However, Mr Wilkins was also aware of media articles quoting the text of the alleged email. In explaining to the committee the terms of his letter to Commissioner Keelty, Mr Wilkins made the following submission:

My decision to refer the matter to the AFP was based on the possibility, raised by the conversation with Mr Moran, that the email may have been a fabrication and the preliminary legal advice that it was possible that offences may have been committed under the Criminal Code.

18 Mr John Wilson, submission on behalf of Mr Godwin Grech, dated 28 August 2009, paragraph 18.

19 AFP submission, dated 10 August 2009, attachment, letter of referral, dated 20 June 2009; Mr Roger Wilkins, submission dated 28 August 2009, attachment, letter of referral, dated 20 June 2009.

Mr Grech's evidence about the email to the Economics Legislation Committee formed a part of the background to the referral, but was not the reason I referred the matter to the AFP. The opening paragraph of my letter to Commissioner Keelty, which made reference to Mr Grech's evidence, was intended to provide context and assist in identifying the email to which the allegations related.²⁰

3.35 The committee accepts Mr Wilkins' submission on this matter but points out that, on the face of it, the letter creates the impression that Mr Grech's evidence was the starting point for the referral. Indeed, it was for this reason that the committee, having received a copy of the referral letter from the AFP, sought a submission from Mr Wilkins.

3.36 Unfortunately, this impression was reinforced by the AFP which, as noted by Mr Wilson on behalf of Mr Grech, cited Mr Grech's evidence to the committee in the information that formed part of the AFP's search warrant application:

- a) On Friday 19 June 2009, Mr Godwin Grech, the Principal Advisor to the General Manager of the Financial System Division of Treasury, appeared before the Senate Standing Committee on Economics. Mr Grech was to give evidence relating to the Commonwealth Government's OzCar Scheme.
- b) Whilst giving evidence, Mr Grech stated that he recalled receiving an email on 19 February 2009 from the Prime Minister's Office. Mr Grech recalled that the email related to a Queensland car dealer, John Grant. The email detailed an interest from the Prime Minister in the assistance of the OzCar Scheme to Mr Grant. These comments and some media interest resulted in calls for the Prime Minister and Federal Treasurer to resign their positions.²¹

3.37 The apparent strong link between Mr Grech's evidence and the referral of the alleged email to the AFP was addressed by Commissioner Keelty in his submission to the committee as follows:

11. At the time of receiving the referral the AFP had a general understanding that:
 - a. there was widespread and intense political, media and public interest in allegations that the Prime Minister and Treasurer had sought to assist John Grant Motors to obtain funding through the OzCar scheme and that they had misled Parliament about these matters;
 - b. News Ltd had published articles which quoted the text of an alleged email from Dr Andrew Charlton to Mr Grech (the email); and

20 Mr Roger Wilkins, submission dated 28 August 2009, paragraphs 5(a), 6 and 7.

21 Mr John Wilson, submission on behalf of Mr Godwin Grech, dated 28 August 2009, paragraph 9; AFP submission, dated 10 August 2009, attachment, search warrant application (not published).

c. Mr Grech had given evidence about the email to the Economics Legislation Committee on 19 June.

12. Against that background, AGD's advice (confirmed in the referral letter) that:

a. there were allegations that the email had not been sent by the individual in the Prime Minister's Office or that a document purporting to be such an email had been concocted; and

b. criminal offences may have been committed in relation to it,

caused the AFP to consider that it was not just appropriate, but clearly in the public interest, to investigate whether any such criminal offences had been committed.

13. As such, the AFP decided on 20 June 2009 that it would commence a criminal investigation.

14. I emphasise that the AFP's concern was the investigation of possible criminal offences relating to the email, not the investigation of any evidence which Mr Grech may have given to the Economics Legislation Committee. Although Mr Grech's evidence to the Economics Legislation Committee formed part of the relevant factual background, the AFP:

a. did not consider that evidence to be admissible as proof of any element of an alleged criminal offence and was therefore conscious of the limitations of any future use of that evidence during the criminal investigation process; and

b. did not otherwise hold or form a view about the accuracy or appropriateness of Mr Grech's evidence.

As such, the AFP was not influenced in any way by the fact or content of Mr Grech's evidence when making its decision to act upon the referral from AGD and commence a criminal investigation.

15. In this regard I note that the letter of referral stated at the outset that evidence had been given by a Treasury official to the Senate Standing Committee on Economics about his recollection of having received an email about John Grant Motors from the Prime Minister's Office. As noted above, the AFP was generally aware of this from the intense media reporting at the time.

16. As such the AFP understood that this paragraph in the referral letter was an introductory one which was intended to do no more than to outline background information about the email.²²

The committee thanks the AFP for this explanation.

3.38 In previous cases involving possible penalties against a witness on account of their evidence to a Senate committee, this committee has found that a contempt was committed only in those cases where a direct and causal link could be established

22 AFP submission, dated 10 August 2009, paragraphs 11–16.

between the giving of evidence and the imposition of the penalty.²³ Causation has been described in law as a 'central organizing concept' which, in tort law, provides a means of analysing questions of liability and fault.²⁴ In philosophy and the natural sciences, causality also provides a framework for analysis of physical and metaphysical phenomena or relationships. Causation may be strictly linear, or an event may have multiple causes. In either case, causes may be divided into such categories as 'remote' and 'proximate'. The proximate cause in law is regarded as the dominant, principal, substantial or real cause. The proximate cause is not necessarily the link in the chain nearest in time to the outcome. Taking these principles as a guide, the question for the committee is whether Mr Grech's evidence to the Economics Legislation Committee was the proximate or principal cause of the AFP inquiry.

3.39 Taking into account the evidence of the AFP, Mr Moran and Mr Wilkins, about the chain of events that led to the AFP investigation, the committee is satisfied that Mr Grech's evidence to the Economics Legislation Committee on 19 June was part of the sequence of events leading to the investigation, but it was not the principal cause. Public revelations about the alleged email, through reporting of the incident at the Press Gallery ball and through the revelations of Steve Lewis, combined with the failure of intense searches of the relevant IT systems to locate the email, were the principal factors that caused the referral. If the AFP's inquiry was not carried out as a direct consequence of Mr Grech's evidence, then elements of that inquiry, including the execution of search warrants on two occasions, were also not adverse actions **in consequence** of Mr Grech's evidence.

Disciplinary action initiated by the Department of the Treasury

3.40 As has been described in chapter 2, the immediate reaction of Treasury officers when Mr Grech returned from giving evidence was one of concern for his wellbeing after a torrid experience in front of the committee and afterwards at the hands of the media.

3.41 According to Dr Henry, the publication of the alleged email on the morning of Saturday 20 June aroused his suspicions about Steve Lewis's sources. Given that Mr Grech had sent two emails to senior Treasury officers the previous week about his contact with Steve Lewis, Dr Henry, after discussions with senior Treasury officers and members of the Treasurer's staff, decided to investigate Mr Grech's email traffic for evidence of his dealings with Steve Lewis the previous week. As noted in chapter 2, Dr Henry asked Ms Gerathy to carry out the search which yielded incriminating material that, at least, suggested possible breaches of the Public Service Code of Conduct by Mr Grech. On learning that the matter had been referred to the

23 See the committee's 125th Report, *Parliamentary privilege: Precedents, procedures and practice in the Australian Senate 1966–2005*, PP No. 3/2006, pp. 46–56.

24 For example, by Ernest J Weinrib, 'The Special Morality of Tort Law' (1989) 34 **McGill Law Rev** 403 at 404.

AFP, Dr Henry contacted the AFP to request the inquiry include material found in Treasury IT systems.²⁵

3.42 Evidence that Mr Grech had fabricated the email on his Treasury work station and forwarded it to his personal email address was found on Sunday 21 June, and the AFP continued its investigation accordingly.²⁶

3.43 In the meantime, Treasury had discovered a large amount of incriminating material concerning the provision of information by Mr Grech to members of the Opposition and the pursuit of political interests with persons associated with the Liberal Party. Moreover, Mr Grech made admissions to Dr Henry on 22 June that he had fabricated the email and had read it to Steve Lewis. Later interrogation of Mr Grech's office landline, mobile phone and Blackberry records revealed contact with Opposition members and with Steve Lewis over the relevant period.²⁷

3.44 In order to demonstrate to the committee that there were ample grounds for taking disciplinary action and that Mr Grech's evidence to the committee was not a factor in that decision, the Treasury Department provided the committee with a copy of all the incriminating material it had located on Mr Grech's computer. Treasury also listed possible breaches of the Code of Conduct:

The following represents a broad description of concerns which have arisen to this point in relation to Mr Grech:

- a. whether, on or about 5 June 2009, Mr Grech may have forged an email purporting to be an email from the Prime Minister's adviser Andrew Charlton and forwarded it to his home email, contrary to section(s) 13(1), 13(5), 13(8), and/or 13(11) of the Code;
- b. whether on or about 12 June 2009, Mr Grech may have disclosed the contents of a forged email to the leader of the opposition, Mr Malcolm Turnbull, and expressly or impliedly represented the contents to comprise information contained in an official record, contrary to section(s) 13(1), 13(3) and/or 13(11) of the Code;
- c. whether on or about 12 June 2009, Mr Grech may have used a Treasury Cabcharge to attend a private meeting with Mr Turnbull (and others) during business hours, contrary to section(s) 13(1), 13(8) and/or 13(11) of the Code;
- d. whether, on or about 16 June 2009 Mr Grech may have disclosed to Steve Lewis, confidential information obtained in connection with his employment, contrary to section(s) 13(1), 13(4), 13(6), (11) and 13(13);

25 See chapter 2, paragraph 2.49.

26 See chapter 2, paragraphs 2.50–2.52.

27 Treasury submission, dated 18 August 2009, all attachments; Treasury submission, dated 12 August 2009, paragraph 51; Treasury submission, dated 31 August 2009, attachment, list of numbers called from Mr Grech's office and mobile phones and Blackberry.

e. whether, on or about 16 June 2009, Mr Grech may have disclosed the contents of a forged email (see above) to reporter Steve Lewis, and expressly or impliedly represented the contents to comprise information contained in an official record, contrary to section(s) 13(1), 13(3) and/or 13(11) of the Code;

f. whether, between 19 June and 22 June 2009, Mr Grech gave conflicting accounts of his dealings with Mr Steve Lewis to the Secretary to the Treasury, such that either or both of those accounts may not have been the truth, contrary to section(s) 13(1) and/or 13(11) of the Code;

g. whether, between December 2008 and June 2009, Mr Grech may have dealt with Credit Suisse in a manner inconsistent with his obligations as a public servant by:

– disclosing confidential information to Credit Suisse officials, including on 8 May 2009, giving Credit Suisse advance notice of a tender;

– proposing to enter, or entering, an improper arrangement with Credit Suisse in relation to fees for providing services to the Commonwealth in relation to the Ozcar program; and/or

– inappropriately promoting Credit Suisse and its role in the Ozcar program within Treasury and to the Prime Minister and Treasurer by reason of his personal relationship with a Credit Suisse official,

contrary to section(s) 13(1), 13(7), 13(10) and/or 13(11) of the Code of Conduct and/or Public Service Regulation 2.1;

h. whether, on 13 May 2009, Mr Grech may have dishonestly informed other Treasury staff that an email sent to a Credit Suisse official disclosing the list of invitees to tender to provide services to Treasury had not been received by that official, contrary to section 13(1) of the Code of Conduct;

i. whether, between September 2008 to June 2009, Mr Grech may have disclosed confidential Treasury information and information about his dealings with Ministers to third parties (including to KPMG and Credit Suisse) contrary to Public Service Regulation 2.1 and/or section 13(6) of the Code of Conduct;

j. whether, between September 2008 to June 2009, Mr Grech may have used the Treasury IT system to prepare overtly party political material, contrary to section 13(8) of the Code of Conduct;

k. whether during May 2009, Mr Grech may have provided greater assistance to a Holden car dealer than he provided to other car dealers who sought assistance from, or were referred for assistance to, Treasury; because the principal of the dealership was a significant donor to the Liberal Party, contrary to sections 13(1), (7), (8), (10) or (11) of the Code of Conduct;

l. whether, on 10 November 2008, Mr Grech may have used Treasury letterhead to write a letter to the Western Bulldogs Football Club (a club he

apparently supports) in order to assist the club, contrary to section(s) 13(6), 13(7) and/or 13 (10) of the Code of Conduct.²⁸

On the basis of this material, the committee does not dispute Dr Henry's submission that disciplinary action was not taken against Mr Grech in consequence of his evidence to the Economics Legislation Committee. Some of this material is considered further in the next chapter and the committee's approach to publication of it is described in chapter 5.

3.45 The committee also notes that the Treasury Department took the precaution of obtaining legal advice on the scope of parliamentary privilege to ensure that the taking of disciplinary action would not involve a possible contempt. In outlining the particulars of possible breaches of the Code of Conduct, the Treasury Department's submission also identified matters it did not intend to pursue because of their connection with proceedings in parliament as defined in section 16 of the Parliamentary Privileges Act 1987.²⁹ The committee believes that the Treasury Department has correctly distinguished matters it would not have been appropriate to pursue through the disciplinary process. The committee also notes that disciplinary action ceased because of Mr Grech's resignation.

'Backgrounding' of the media

3.46 The final adverse action examined by the committee was whether background information detrimental to Mr Grech's interests was provided to the media. In the words of Senator Heffernan who raised this as a matter of privilege, 'I believe the political backgrounding provided to the media is highly prejudicial and this contributes to intimidation of a witness'.³⁰

3.47 Although Senator Heffernan did not provide any particulars of this political 'backgrounding',³¹ the committee has assumed that he was referring to 'backgrounding' of journalists that may have led to various articles published in News Ltd papers on the morning of 22 June 200, including:

- 'Public servant "an ill man"', Paul Maley and Siobhain Ryan, *The Australian*, p.1;
- 'Private man at centre of storm', Alison Rehn, *Daily Telegraph*, p.4.

These articles published details of Mr Grech's medical condition and contained interviews with his neighbours. While highly intrusive, the articles are not

28 Treasury submission, 12 August 2009, paragraph 69.

29 Treasury submission, dated 12 August 2009, paragraphs 71–76.

30 Correspondence to the President from Senator the Honourable Bill Heffernan, dated 22 June 2009, tabled in the Senate on 24 June 2009.

31 There were no further details on this matter in Senator Heffernan's submission to the committee, dated 22 July 2009.

unsympathetic to Mr Grech who was depicted as a hard working public servant, devoted to his job despite an apparently serious medical condition.

3.48 Nevertheless, the committee wrote to the Chiefs of Staff of the Prime Minister, the Treasurer and the Opposition Leader to see whether they could cast any light on this issue on behalf of all staff in those offices. According to their replies, staff in the Opposition Leader's office did not have any 'contact with Mr Grech in relation to his evidence' and staff in the offices of the Prime Minister and Treasurer neither 'sought [nor] caused any adverse action to be taken against Mr Grech in consequence of his evidence'.³²

3.49 Dr Henry advised the committee that 'Treasury did not authorise, nor is it aware of, any backgrounding of journalists by its employees on this matter'.³³ Likewise, Commissioner Keelty informed the committee about the nature and extent of the AFP's contact with the media on this matter. In addition to a press release on 22 June 2009 after the execution of the search warrant, and a press conference on 30 June to explain this action, the AFP had made preparations for media contact on 20 June 2005 by formulating brief talking points that were used to respond to 'individual and ad hoc' media inquiries. Commissioner Keelty was not aware of 'any other information having been provided to the media by any person within the AFP and nor did I authorise the provision of any information to the media beyond that described below'. He continued:

41. I note that the comments made by the President of the Senate on 23 June 2009 about the question of 'backgrounding' the media were focussed on the provision of information which was 'prejudicial to Mr Grech' in that it gave rise to reports concerning 'Mr Grech's alleged illness and his reliability as a witness'. I emphasise that I have not provided, or authorised the provision of, any information to the media concerning:

- a. Mr Grech's health; or
- b. Mr Grech's reliability as a witness (whether as a witness before a Senate committee or as a person interviewed by the AFP).³⁴

3.50 Thus the committee was not able to discover any evidence that the alleged 'backgrounding' had indeed occurred.

3.51 By the time the articles referred to above appeared in the press, the Prime Minister had announced two inquiries into these matters, by the Auditor-General and by the AFP, and there had been a great deal of reporting on these developments. While it can be argued that Mr Grech became a public figure only because of his

32 Mr Chris Kenny, Chief of Staff to the Leader of the Opposition, submission dated 30 June 2009; Mr Alister Jordan, Chief of Staff to the Prime Minister, submission dated 29 July 2009; Mr Chris Barrett, Chief of Staff to the Treasurer, undated submission, received 31 July 2009.

33 Treasury submission, dated 12 August 2009, paragraph 5.

34 AFP submission, dated 10 August 2009, paragraphs 40–41.

evidence to the Economics Legislation Committee, the story was already much bigger because of subsequent developments and because the email Mr Grech claimed that he thought he recalled could not be found.

3.52 Consequently, despite its differences with the media in the past, principally over the issue of unauthorised disclosure of committee proceedings,³⁵ the committee on this occasion chose not to approach individual journalists and ask them about their sources for these articles.

3.53 On 5 August 2009 Steve Lewis published details of his contact with Mr Grech in a story entitled 'Snitch the source of his own demise', justifying the revelation of his source as being in the public interest, given that Mr Grech had now admitted to lying to him.³⁶ With this information now on the public record, the committee did not consider it necessary to contact Steve Lewis.

3.54 There is another issue, partly involving the media, and that is the extent to which Mr Grech came under pressure in respect of his evidence, when the possible existence and nature of a document, going to whether the Prime Minister made representations on behalf of John Grant, began to emerge. By the time he gave evidence on 19 June, Mr Grech had already found it necessary on two occasions to try to explain his contact with Steve Lewis to his senior officers. The issue of pressure on Mr Grech in respect of his evidence is dealt with further in chapter 4.

Conclusions

3.55 The committee's conclusions on each of the matters discussed in this chapter are summarised in chapter 6.

35 See the committee's 125th Report, *Parliamentary privilege: Precedents, procedures and practice in the Australian Senate 1966–2005*, PP No. 3/2006, pp. 40–46.

36 *Daily Telegraph*, 5 August 2009, p. 9.



Plate 1 – Camera operators at the witness table (paragraph 3.12) (DPS)



Plate 2 – At least eight still or television camera operators alongside the committee table (paragraph 3.12) (DPS)



Plate 3 – Filming continues after the adjournment of the committee hearing
(paragraph 3.19) (DPS)



Plate 4 – Filming continues after the adjournment of the committee hearing
(paragraph 3.19) (DPS)



Plate 5 – Just before the end of the official coverage, the Chair asks the media to move out of the way (paragraph 3.19) (DPS)



Plate 6 – Camera operators and sound recordists flank the witnesses out of the committee room (paragraphs 3.4, 3.19) (ABC)



Plate 7 –Filming continues in the lift and bright lights are shone on Mr Grech's face (paragraphs 3.4, 3.19) (TEN)



Plate 8 Filming continues in corridors
(paragraphs 3.4, 3.19) (TEN)

Chapter 4

Possible false or misleading evidence to, or improper interference with, a committee hearing

Scope of the inquiry

4.1 The terms of reference require the committee to examine the following matters:

- (a) whether there was any false or misleading evidence given, particularly by reference to a document that was later admitted to be false; and
- (b) whether there was any improper interference with the hearing, particularly by any collusive prearrangement of the questions to be asked and the answers to be given for an undisclosed purpose.

4.2 In the course of the inquiry, the committee received from the President of the Senate further correspondence from Senator Heffernan alleging certain conduct in relation to Mr Grech. Senator Heffernan drew attention to information in Mr Grech's response to the Auditor-General suggesting that there may have been an attempt to improperly influence Mr Grech in respect of his evidence to the Economics Legislation Committee. Senator Heffernan also raised the issue of Mr Grech's health and the pressure he was allegedly working under and whether, by allowing Mr Grech to testify, the Treasury Department failed to respond adequately to the requirement of the Economics Legislation Committee for information, which resulted in an interference with the free exercise of its authority within the meaning of paragraph (1) of Privilege Resolution 6.¹

4.3 The committee considers that these matters, which may be characterised as improper interference with a witness in respect of his evidence, and improper interference with a committee, are better dealt with in this chapter since they are clearly not actions in consequence of Mr Grech's evidence.

False or misleading evidence by reference to a document later admitted to be false

4.4 During the hearing of the Economics Legislation Committee on 19 June 2009, Senator Abetz asked whether the Prime Minister's office had made any representations on behalf of John Grant or his firm, Ipswich Central Motors. Mr Martine reiterated his opening statement that a search of records in the Treasury Department had failed to locate any evidence of any such communication.² There followed an attempt by

1 Senator the Honourable Bill Heffernan, correspondence to the President of the Senate, dated 7 August 2009.

2 *Committee Hansard*, p. E32.

Senator Abetz to ask Mr Grech whether he had seen any such communication, an attempt which was parried by Mr Martine and the committee chair, Senator Hurley, indicating that the question had been answered. Disputation followed with other members of the committee joining in.³ Senator Abetz then indicated that a 'person, a journalist in fact', had suggested to him that there was a communication from the Prime Minister's office along lines which Senator Abetz read out to the committee:

The Prime Minister has asked if the car dealer financing vehicle is available to assist a Queensland dealership, John Grant Motors, who seem to be having trouble getting finance. If you could follow up on this as soon as possible, that would be very useful.⁴

4.5 Mr Martine again took the question, reiterating Mr Grech's evidence that there had been no phone calls from the Prime Minister's office on this matter and his own evidence that there was no trace of a document to that effect. Further disputation followed and Senator Abetz again asked the question directly of Mr Grech. In response to the question, Mr Grech spoke of his distress at seeing the articles published by Steve Lewis that morning and the natural assumption his colleagues would make that he was the source. In an apparently distressed state, Mr Grech insisted on continuing:

But it was my understanding that the initial contact I had with respect to John Grant was from the Prime Minister's office. As David [Mr Martine] has said, we have, and our IT people have, undertaken in the last 24 hours as diligent a search as possible to trace, locate through our backups and emails, which may or may not have existed, and we just cannot find it. But, and I do not hide from this, it was certainly my understanding that the original representation with respect to Mr Grant came from the Prime Minister's office. But what did I do with that representation? I did nothing with it because the Treasurer's office got onto me, and you have seen the email exchanges that emanated from that intervention. That is all I can say.⁵

4.6 Senator Abetz again asked Mr Grech whether he had seen a document of the nature previously described by Senator Abetz, and Mr Grech replied:

My recollection may well be totally false or faulty, but my recollection—and it is a big qualification—but my recollection is that there was a short email from the PMO to me which very simply alerted me to the case of John Grant, but I do not have the email.⁶

When Senator Abetz asked again whether it was similar to the email he had read out, further disputation followed. Senator Abetz raised the name, Andrew Charlton, and asked whether he had sent the email. Again, disputation followed amongst committee

3 *Committee Hansard*, pp. E32–E34.

4 *Committee Hansard*, p. E35.

5 *Committee Hansard*, p. E37.

6 *Committee Hansard*, p. E38.

members, with Mr Martine insisting that Mr Grech was unsure about the email and Senator Abetz insisting on an answer from Mr Grech.⁷ Finally, Mr Grech indicated that he deferred to 'the seniority of Mr Martine on that issue'.⁸

Was this evidence false or misleading?

4.7 The committee sought submissions on this issue from the Economics Legislation Committee as a whole, and/or from individual members. It also sought submissions from Senator Abetz, his Chief of Staff, the AFP, the Treasury Department and from Mr Grech.

The Economics Legislation Committee

4.8 Although the issue of representations from the offices of the Prime Minister and the Treasurer consumed a substantial part of the hearing, there was only brief mention of it in the committee's report:

1.5 In addition to questions regarding the bill, a number of questions were asked in relation to actions taken on behalf of individual car dealers. There was extensive questioning of Treasury officers regarding representations from Members of Parliament. These questions related to which Members of Parliament made representations and what actions were taken as a result. They dealt with procedure rather than the substance of the Bill.⁹

4.9 In reply to this committee's invitation, only Senator Hurley, Chair of the Economics Legislation Committee, provided a response, as an individual member of the committee. In relation to this particular issue, Senator Hurley wrote:

Clearly Mr Grech misled the Committee on p38 of the hansard when he said "...but my recollection is that there was a short email from the PMO to me which very simply alerted me to the case of John Grant, but I do not have the email."

We now know that Mr Grech did have the (faked) email, and media reports state that Senator Abetz had seen it. If that is so, I would say that Senator Abetz misled the Committee by not then disclosing that he had seen that email. If the Committee had been in full possession of the facts, it might have been able to establish very quickly that the email had been faked. As it was, Senator Cameron was interrupted by me in his line of questioning about the involvement of the journalist, Mr Steve Lewis, that might have resulted in Mr Grech revealing the pressures under which the email was created. That line of questioning was cut short, with Senator Abetz's

7 *Committee Hansard*, pp. E38–43.

8 *Committee Hansard*, p. E43.

9 Economics Legislation Committee, *Car Dealership Financing Guarantee Appropriation Bill 2009*, June 2009, p. 1.

encouragement (pE44), because I believed Mr Grech was distressed and exhausted.¹⁰

Senator Abetz

4.10 In his submission to the committee, Senator Abetz reiterated the content of his statement to the Senate of 11 August 2009 and his joint statement with the Leader of the Opposition on 4 August 2009 and informed the committee 'that my questioning of Mr Grech about a particular email was pursued as a result of information received from Mr Grech and accepted by me in good faith'.¹¹

4.11 Senator Abetz then submitted that he was not a witness at the hearing and therefore gave no evidence. On this basis, he submitted, his participation was not covered by this term of reference.

4.12 Generally speaking, the questioning and commentary provided by senators at any committee hearing is not evidence, although senators may sometimes give evidence *as witnesses*. There may be occasions, however, when examining the question of whether false or misleading evidence has been given, that this committee may need to have regard to the proceedings of the subject committee as a whole, or to the conduct of senators before or after the hearing. To give an extreme example, a senator may be a party to the conduct of a witness who, with the senator's encouragement, knowingly gives false evidence to a committee. In that situation, the senator's conduct would fall within the terms of reference of an inquiry into that false or misleading evidence. It does not necessarily follow, therefore, that because a senator does not give evidence, his or her conduct is not covered by such terms of reference. But, for reasons which will become more apparent as this chapter proceeds, such is not the case here.

4.13 It is not disputed that Senator Abetz met with Mr Grech and was aware of the material that Mr Grech proposed to put before the Economics Legislation Committee in evidence. However, Senator Abetz told the Senate that he listened to Mr Grech 'because he was a person with direct knowledge of the matters in question'.¹² He believed the material to be authentic and his questions at the hearing were premised on the belief that the material was authentic. The committee does not dispute that Senator Abetz was acting in good faith on the basis of information provided to him by a source he did not doubt.

The committee notes Senator Abetz's statement that he had been told about the terms of the email by a journalist. It is also the case that information was provided in the Joint Press release of 4 August 2009 to the effect that Mr Grech showed the email to Mr Turnbull and Senator Abetz at the Sydney meeting on 12 June. However, as

10 Senator Annette Hurley, submission dated 27 August 2009.

11 Senator the Honourable Eric Abetz, submission dated 26 August 2009.

12 Senator Abetz, statement to the Senate, *Senate Debates*, 11 August 2009, p. 4420.

Senator Abetz pointed out in his statement to the Senate on 11 August 2009, these accounts are not mutually exclusive and both were true.

Mr Stansfield

4.14 Mr Stansfield (Senator Abetz's Chief of Staff) was not a participant in the inquiry and therefore had no information for the committee on this aspect of its terms of reference.¹³ He did inform the committee that he was unaware the email was false until the AFP's media statement on Monday 22 June 2009 revealed it to be so. The committee does not dispute that this is the case.

The AFP

4.15 The committee invited the AFP to provide it with any further information on its second terms of reference but the information provided by the AFP was almost exclusively relevant to part (b) of these second terms of reference and will be addressed below.

The Treasury

4.16 In Treasury's submission, 'it would be open to the Committee of Privileges to conclude that Mr Grech was an unreliable and untrustworthy witness' who appeared to have given false and misleading evidence to the hearing:

... Treasury is of the view that false or misleading evidence appears to have been given at the hearing by Mr Grech. Whether the evidence Mr Grech gave in respect of the fake email was deliberately false or merely based on a genuine or mistaken belief arises for consideration. Treasury is of the view that the evidence points to Mr Grech knowingly and deliberately misleading the Senate.¹⁴

4.17 It was Treasury's view that it was 'inherently implausible' that Mr Grech received an email from Dr Charlton making representations on behalf of John Grant:

- a. the very suggestion of misplacement or deletion of any email from the PMO (let alone one of this character) is somewhat far-fetched, bearing in mind the information technology system in place within the Treasury. Indeed, when Mr Grech did receive an email from the PMO's office in respect of Hunter Holden on 17 April 2009, he actioned it within 20 minutes;
- b. given Mr Grech's political leanings, it strains credulity to suggest that he somehow inadvertently misplaced or deleted the particular email in question. Had Mr Grech received any such email he would have understood its potential significance and would have 'handled' it accordingly;

13 Mr Brad Stansfield, submission dated 28 August 2009.

14 Treasury submission, dated 31 August 2009, p. 4; Treasury submission, dated 24 September 2009, paragraph 4.

- c. if Mr Grech had misplaced or deleted the email, as asserted by him, one would expect an inquiry to be made by him to the IT area of the Treasury in order to locate it. No such inquiry was ever made.
29. The profound misgivings which arise as a result of the above factors are magnified when regard is had to his own accounts about the matter. The key passages in his evidence to the Committee were as follows:
- ...it was certainly my understanding that the original representation with respect to Mr Grant came from the Prime Minister's office. But what did I do with that representation? I did nothing with it because the Treasurer's office got onto me...
- ...my recollection may well be totally false or faulty, but my recollection - and it is a big qualification - but my recollection is that there was a short email from the PMO to me which very simply alerted me to the case of John Grant, but I do not have the email.
30. Mr Grech has subsequently given three accounts about the creation of the fake email and the genuineness of his belief that the email he created on 5 June 2009 was a reproduction of an email he had received from Dr Charlton but could no longer locate.
31. These versions of events were given to the ANAO, Dr Henry and the Australian newspaper. They are broadly consistent in making a claim that as a result of questioning by staff in the Treasurer's office on 4 June 2009, Mr Grech volunteered that he had received a representation from the PMO in relation to John Grant. Following the conversation he went back to his office to search for an email from Dr Charlton in relation to John Grant. When none could be found he made a record which he believed accurately reflected the email he had received. From then on he held a genuine belief that he had received such a representation and so gave the answers which he did based on that genuine belief on 19 June 2009.
32. There are however significant problems with this version of events.
33. First, Mr Grech gave evidence on 4 June 2009 to Senate Estimates that he had received only one representation from the PMO in relation to Ozcar. His evidence was as follows:
- Senator Abetz - How many representations have been made by the Prime Minister's office for dealerships and how many by the Treasurer's office?
- Mr Grech - I think there has only been the one case from the PMO.
34. While Mr Grech did not name the dealer, it was well known to Mr Grech and the PMO's office that a representation had been made by Hunter Holden and referred to Treasury by the PMO. The Prime Minister gave an answer to this effect during question time on both 4 June 2009 and 15 June 2009. Mr Grech had personally responded to

an email from Dr Charlton in relation to Hunter Holden and had included reference to Hunter Holden in a comprehensive briefing on OzCar that Mr Grech prepared for the Prime Minister on 21 April 2009. According to Mr Grech's account given to the ANAO, he specifically mentioned this briefing note to the Prime Minister when he met with him on 7 May 2009.

35. Accordingly, it appears unlikely that on 4 June 2009 Mr Grech held any genuine belief that he had received a representation in relation to John Grant Motors from Dr Charlton. He testified to Senate Estimates that he thought he had received only one representation from the PMO in relation to Ozcar which was a truthful and accurate answer. He had received only one and it was in relation to Hunter Holden. (If, contrary to that view, Mr Grech did on 4 June hold a genuine belief that he had received a second representation from Dr Charlton then it would be open to conclude that his evidence to the Senate Estimates on that day was intentionally false and misleading.)
36. On the following day Mr Grech appears to have used the email which constituted the one representation he had received from the PMO's office, concerning Hunter Holden, and which had been referred to in his evidence in Senate Estimates the previous day, to create a second representation in relation to John Grant Motors.
37. When the sequence is looked at in this way, it is, in Treasury's submission, most unlikely that Mr Grech genuinely believed he was re-creating an authentic record at the time, or believed he had received any representation from the PMO in relation to John Grant when he gave evidence on 19 June 2009.
38. There are other aspects of the matter which also suggest that Mr Grech never held an honest belief that he had received a representation in relation to Mr Grant from the PMO in February. First, Mr Grech claims that following the Prime Minister's answers in question time on 4 June 2009, he raised with the Secretary that the Prime Minister may have misled the House if he inferred that he did not know what had happened with the Hunter Holden representation. This strongly suggests that at that time Mr Grech did not believe he had received a representation from the PMO concerning John Grant. If he had such a belief, one would expect him to also raise with the Secretary the fact that the Prime Minister had stated categorically to the House in his answer, that 'neither I nor my office have ever made any representations on [John Grant's] behalf', and advise the Secretary that the answer was false.
39. Secondly, on 11 June 2009 Mr Grech, in response to an FOI request from Senator Abetz, provided a bundle of documents to the Treasury in-house legal counsel with a signed cover note indicating that this was the extent of the documentation. There were no emails from the Prime Minister's office in the bundle. Shortly prior to producing this bundle Mr Grech did raise in conversation with his supervisor, the possibility that he may have received an email from Dr Charlton in relation to John Grant which he did not action and subsequently

deleted. Mr Grech was advised to search for any such document as it was covered by the FOI request. Ultimately though, Mr Grech signed off as complete a bundle which did not include any email from Dr Charlton relating to John Grant. If Mr Grech believed that the email he had created on 5 June 2009 was an authentic reproduction of an email actually received, Treasury submits that he would have either disclosed the existence of the email he had created as part of the FOI document search or sought IT assistance in tracking down the genuine version of the email. He did not take either of these steps.

40. Thirdly, Treasury email records show that Dr Andrew Charlton raised the case of another car dealership, Hunter Holden, with Mr Grech (copied to the Treasurer's office) on 17 April 2009. Mr Grech responded to this email within 20 minutes, but makes no mention in his response to Dr Charlton about the apparent referral by him two months earlier of the case of John Grant Motors – a referral which according to Mr Grech he had not responded to at that stage. From this point (and not from February 2009), Mr Grech starts to copy Dr Charlton into some emails to the Treasurer's Office on car dealership representations.

41. There is only one document which might suggest that Mr Grech believed that he had received an email from the PMO. It is a document created on 11 June 2009, the day before Mr Grech met with the Leader of the Opposition and Senator Abetz. The document is a series of possible questions which the Leader of the Opposition has confirmed Mr Grech supplied to him. The Leader of the Opposition asked a question very similar to the second dot point in the House on 15 June 2009. The question proposed by Mr Grech was:

My question is to the Prime Minister. Prime Minister, having had another week to reflect on the representations of Mr John Grant, do you stand by your statement of 4 June 2009 to this House that neither you, or any member of your Office, made any representations on behalf of Mr John Grant to the Treasurer, the Treasurer's Office, Treasury or any other party?

42. In italics, after the question, Mr Grech noted:

If he stands by the original answer - he will have misled the Parliament again

43. Two possible explanations for this statement suggest themselves. The first is that Mr Grech genuinely believed that the Prime Minister had misled the House in stating that his office had never made any representations on behalf of Mr John Grant to the Treasury. This however seems unlikely. In Mr Grech's email of 5 June 2009 to the Leader of the Opposition (and released publicly by the Leader of the Opposition), Mr Grech writes that

Swan is probably more exposed than Rudd

44. If, as Mr Grech now claims, he had an honest and genuine belief that representations had come from the PMO to Treasury, in circumstances where the Prime Minister had specifically denied such

representations to the House, then the Prime Minister would be more exposed having specifically misled the House.

45. The second, and more likely, explanation is that Mr Grech wanted the Leader of the Opposition to pursue the issue in the belief that Mr Grech had received a representation from the PMO's office.¹⁵

4.18 Treasury's view is that the objective facts point to a conclusion that such an email was never sent. The committee has set out Treasury's submission on this point fully. It is aware that it contains many adverse reflections against Mr Grech. For this reason, Treasury's submission and the relevant parts of the report were provided to Mr Grech's legal representative for any response. Had Mr Grech chosen to respond to the committee, his response would have been equally fully set out.

Mr Martine

4.19 Treasury submitted that no evidence given by Mr Martine was false or misleading:

Indeed in light of what is now known, it is clear that Mr Martine's conduct at that hearing was exemplary and assisted greatly in ensuring that the Committee was accurately apprised of the most reliable evidence available concerning communications from the Prime Minister's office in relation to the OzCar scheme. Indeed, Mr Martine's actions may have helped to mitigate any attempts by Mr Grech to mislead the committee.¹⁶

4.20 A different view was expressed by Senator Eggleston, Deputy Chair of the Economics Legislation Committee, who regarded attempts by Mr Martine and the committee chair, Senator Hurley, 'to dissuade Mr Grech from answering questions as improper conduct interfering with the capacity of a witness to give evidence to the Committee and accordingly I formally request that this issue be considered by the Committee in the general context of this matter'.¹⁷ Mr Martine, as the senior Treasury officer present, was obliged to answer the committee's questions if he felt he was in a better position to provide those answers, provided that his intervention did not constitute improper interference with the ability of a junior officer to respond to questions from the committee. That is not to say that there may not be cases where such a high level of intervention by an officer in relation to questions asked of a junior officer is objectionable, but the committee is satisfied in this particular case that there was no improper conduct by Mr Martine. Similarly, the committee does not accept Senator Eggleston's criticism of Senator Hurley's chairing of the hearing.

15 Treasury submission dated 24 September 2009, paragraphs 28–45.

16 Treasury submission dated 31 August 2009.

17 Senator Alan Eggleston, correspondence dated 11 August 2009.

Mr Grech

4.21 Mr Grech's initial response to the terms of reference was provided via a legal representative whose only comment on this aspect of the terms of reference was as follows:

As to paragraph (a) of the second matter, Hansard records what Mr Grech said at the hearing.

I submit that Mr Grech's first answer on page E 38 of Hansard speaks for itself and is a complete answer to the issue before the Committee.¹⁸

4.22 Mr Grech's first answer on page E 38 was as follows:

My recollection may well be totally false or faulty, but my recollection—and it is a big qualification—but my recollection is that there was a short email from the PMO to me which very simply alerted me to the case of John Grant, but I do not have the email.

In his statement to the Auditor-General, Mr Grech gave several reasons for his response to the Economics Legislation Committee:

When I appeared before the Senate Committee on Friday 19 June 2009, there were FIVE key reasons why I could not give the Senate a definitive response ruling out the possibility that the PMO had first raised the case of John Grant with me. Those reasons are as follows:

(1) It was⁹⁸ [See footnote 86.] and remains my genuine recollection that I had received an e mail from Andrew Charlton of the PMO regarding John Grant on or around 19 February 2009.

(2) I had stated this directly to the Treasurer's Chief of Staff, Mr Chris Barrett, at a meeting that I attended with him at his request on Thursday 4 June 2009. I told Mr Barrett – in the company of Andrew Thomas and Amanda Robbins from the Treasurer's Office that it was my belief that I had received an email from Andrew Charlton raising Mr Grant's case on or around 19 February 2009. Mr Barrett said that he would check and get back to me. He did not get back to me. Rather, what happened was that two weeks later on the evening of 18 June 2009 I called Mr Barrett. During the course of our conversation Mr Barrett said words to the effect of, 'You must have confused Grant with someone else in referring to a possible email from Andrew Charlton'.

(3) The Treasury IT team undertook a search of the Treasury e mail system, including back up servers, on 18 June 2009 and on the morning of 19 June 2009. Although they could not find any e mails from Andrew Charlton to me for the months of February and March 2009, the SES Band 2 officer with responsibility for IT, Ms Deidre Gerathy, informed Mr David Martine and me on the morning of 19 June 2009 – just a couple of hours before we were due to appear before the Senate – **that for some**

18 Mr John Wilson, submission on behalf of Mr Godwin Grech, dated 28 August 2009, paragraphs 43–44.

unexplained reason the Treasury back up servers failed to work on 3 critical days in February 2009 – one of which was Friday 20 February 2009.

Mr Martine and I were told clearly and without qualification by Ms Gerathy and her IT team that this meant that if I had received an e mail from Andrew Charlton on Friday 20 February 2009 and it had been deleted that same day – Treasury IT would not be able to trace it.

Given that Andrew Thomas from the Treasurer's Office initiated contact with me about Mr Grant later that same day, i.e. 20 February 2009, it then occurred to me that, rather than the explanation for me not being able to locate an email from Mr Charlton about Mr Grant being that (as I had hitherto been surmising) it had been received by me on 19 February 2009 and then deleted by me because Mr Thomas's approach on the same subject on that day had overtaken the matter, the reason that I had not been able to locate the Charlton email was that it was, in fact, sent on 20 February 2009.

(4) At around 11.30am on the morning of Friday 19 June 2009, I received a message from the personal assistant to the Deputy Secretary of Treasury, Mr Jim Murphy, to call Mr Murphy in Sydney urgently.

I called Mr Murphy and he said, 'If you are asked any questions in the Senate this afternoon about John Grant and the Prime Minister or the PMO you should simply say that you've confused the Grant case with some other case'. Mr Murphy also said, 'It is very important that you do not make any trouble'.⁹⁹

(5) Just prior to my and Mr Martine's appearance before the Senate Committee, the Treasurer's Office, presumably with the authority of the PMO, agreed to release most of the e mails relating to John Grant, the Treasurer's Office, the Treasurer and me to the Committee. Both Mr Martine and I were surprised by this move, and I saw it as an attempt by the PMO to seek to divert attention away from any possible involvement of the PMO in the John Grant case.

In themselves, these factors did not mean that there was a Charlton e mail on John Grant buried somewhere in the system, but they did mean that I could not responsibly go into the Committee that afternoon and hold my hand on my heart and say that there was definitely no e mail from Charlton.

Footnote 99 to the ANAO report was as follows:

⁹⁹ ANAO explicitly asked Mr Murphy about the lead-up to evidence given to the Senate Committee on 19 June 2009. In this respect, Mr Murphy testified to ANAO that:

- he, Mr Martine and Mr Grech met on the evening before the hearing at which Mr Murphy said to Mr Grech that: 'Look, there's obviously a discrepancy here. You said you thought you saw an email. No-one can find the email. We know it's not in the Treasury. We checked the systems. Look, are you sure you're not confused? You know, there's lots of traffic. Are you sure you're not confused?'; and 'You say what you want to say. You're the one who has to give the evidence. But are you sure you have not confused yourself? So just take that on board because

if you are saying one thing and we can't find a record of it, well, something's awry. We can keep checking, but something is awry.'; and

- Mr Grech 'was never told by us to say anything other than what he thought because he is the only one who really knew'.¹⁹

Mr Grech also addressed this matter in his statement published in *The Australian* on 4 August 2009:

There were three key reasons why I would never agree to release my record of exchange:

1. It was only a record and I could not be 100 per cent certain that there was a genuine exchange;
2. I was never going to mislead the Senate or perjure myself to the Senate; and
3. releasing the record of exchange would have immediately resulted in me being the subject of all attention – which I never wanted.

Despite the enormous pressure I was under, and my absolute determination to complete OzCar – I held firm and did not mislead the Senate.

The developments on the morning of 19 June 2009, especially the advice that Mr Martine and I were given about the failure of the Treasury IT back up servers on 20 February put me in an even more difficult situation.

Given that Mr Martine and I were being told that if I had received an e mail from Andrew Charlton on the 20th of February – and I had deleted it that day, it could not be traced, I then believed that it was indeed possible that my general recollection of the Charlton e mail was correct but that it had come in on the 20th rather than the 19th.

This meant that I could simply not go into the Senate that afternoon and put my hand on my heart and swear before the Senate that I had never received an e mail from the PMO on Mr Grant. It was – and remains- my recollection that there was an e mail. But we could not find [it].

4.23 The committee received submissions disputing aspects of Mr Grech's account, including from Mr Barrett and Treasury on behalf of Mr Martine and Mr Murphy, but received no further submissions from Mr Grech or his legal representatives on this matter.

Was there any other false or misleading evidence?

4.24 As well as giving false and misleading evidence based on a non-existent and fabricated email, Treasury submits that Mr Grech also gave false or misleading evidence on two other matters.

¹⁹ Australian National Audit Office, *Representations to the Department of the Treasury in Relation to Motor Dealer Financing Assistance*, Report No. 1 2009–10, p. 97n.

4.25 The first was in relation to questions from Senator Joyce about the level of attention John Grant received relative to other dealers:

25. Mr Grech may also have mislead [sic] the Committee in the following passage of his evidence:

Senator Joyce - I have just one question. Mr Grech, how many other dealers did you give the level of attention and the level of advocacy that you gave to Mr Grant? Would you, if we asked for it, be able to table the emails and the replies and the correspondence to prove the case?

Mr Grech - In answer to your question, Senator, I will not deny the fact that the case of Mr Grant was -

Senator Joyce - Special?

Mr Grech - It was labour-intensive.

Senator Joyce - It was very labour-intensive, I suggest?

Mr Grech - It was labour-intensive.

26. There is little evidence that Mr Grant's case was in fact labour intensive in either relative or absolute terms. The ANAO report concludes that only moderate assistance was given to John Grant. On Mr Grech's account to the ANAO, his assistance consisted of:

- a) discussing the limited options available with Mr Grant and the Treasurer's office on 20 February 2009;
- b) raising the matter with Ford Credit at a meeting on 23 February 2009;
- c) taking a call from Mr Grant on the afternoon of 23 February 2009; and
- d) making a further call to Mr Grant on 27 February 2009.²⁸

27. A description of this as "labour intensive" in circumstances where the Committee was exploring whether political pressure was applied to Mr Grech to increase his assistance was, in Treasury's submission, a misleading answer. Treasury considers that the answer was probably deliberately misleading.²⁰

4.26 The second matter related to questions asked by Senator Cameron regarding Mr Grech's dealings with Steve Lewis:

Following evidence to the Committee by Mr Grech that he had spoken to journalist Steve Lewis on four occasions the day before the Committee hearing, Mr Grech was asked by Senator Cameron how many times he had spoken to journalist Steve Lewis in the previous 12 months. Mr Grech responded:

'I don't know the guy',

²⁰ Treasury submission dated 24 September 2009, paragraphs 25–27.

When asked whether he initiated any of the phone calls, Mr Grech answered:

'No'.

Mr Grech then said:

'He approached me. I did follow up on one occasion just to clarify a point that he was making but he approached me'.

Senator Cameron then asked: 'You indicated earlier in your evidence that you were surprised to see the reporting in relation to Mr Lewis's report. Is that because you had denied the existence of any correspondence between the Prime Minister's department and Mr Lewis [sic] to Mr Lewis? Is that the position you put to Mr Lewis?' Mr Grech replied:

'That is correct'.

On 22 June 2009, Mr Grech gave a very different version of events to me in a telephone conversation he initiated. Mr Grech advised me that he had rung Mr Lewis on 16 June 2009 and when Mr Lewis asked about the email Mr Grech read out to him the contents of the email which Mr Grech had prepared himself and which represented that there was correspondence between Mr Grech and the Prime Minister's office.

Further, on 5 August 2009 Mr Lewis published an article in the *Daily Telegraph* which gives a very different account of his dealings to the one given by Mr Grech to the Committee. According to that article, Mr Grech initiated the contact with Mr Lewis, Mr Grech volunteered information about the Ozcar scheme and, importantly, Mr Grech asserted to the journalist that the Prime Minister's office had made representations on Mr Grant's behalf.

This version, given by Mr Lewis, is broadly consistent with the version of events given by Mr Grech to me on 22 June 2009. It is largely inconsistent with the tenor of the evidence he gave to the Committee which could, based on this information, properly be described as misleading. Indeed, a finding that it was deliberately false may be open.²¹

Moreover, Treasury provided the committee with copies of SMS and phone records for Mr Grech which showed him receiving on his Treasury Blackberry details of Steve Lewis's phone number on 15 June 2009. Calls to this number were made from Mr Grech's office landline on 16 June (3 calls), 17 June (1 call) and 18 June (3 calls). A further call to that number was made on 18 June from Mr Grech's Treasury mobile phone.²² Treasury observes that this material is incomplete in a number of respects:

It does not include any information on telephone calls received [*emphasis in original*] by Mr Grech's mobile or blackberry from the telephone number

21 Treasury submission dated 31 August 2009, attachment setting out Mr Grech's evidence regarding his contact with Mr Lewis.

22 Treasury submission dated 31 August 2009, attachment, list of numbers called from Mr Grech's office and mobile phones and Blackberry.

which was the source of the above SMS message or from Mr Lewis. Optus and Telstra advise that they would need a subpoena (or some other compulsive instrument) to extract that information. This would be a matter for the Committee of Privileges to pursue should it wish to do so.

It does not include any information on telephone calls made from or received by Mr Grech's landline, blackberry or mobile numbers to any other persons possible involved in a relevant prearrangement.²³

For example, Mr Lewis, in his article in the *Daily Telegraph* on 5 August 2009, refers to a 45 minute phone call he received from Mr Grech on 16 June 2009 from a Treasury phone prefix 6263 (Mr Lewis does not give the extension number).

4.27 The committee was also provided by the AFP with copies of correspondence between Mr Grech and Mr Turnbull that confirmed that Mr Grech contacted Steve Lewis, gave him details of the email and subsequently provided him with a 'teaser' as the basis of a story to be published by Steve Lewis on the morning of the hearing.²⁴

4.28 On the basis of this evidence, the committee is of the view that Mr Grech's evidence to the Economics Legislation Committee was untrue or misleading in the following respects:

- His reference to the case of John Grant as being 'labour intensive' does not accord with the description given by Treasury of the work he did on that case, compared with work the committee is aware he did on the case of Hawkesbury Valley Holden involving multiple emails and phone calls.
- His account of his dealings with Steve Lewis is not consistent with the version given by Steve Lewis in his *Daily Telegraph* article on 5 August 2009 and is also incompatible with the record of phone calls to Steve Lewis's number from Mr Grech's Treasury office, mobile and Blackberry numbers.
- In telling the committee that he had a recollection of an email from the Prime Minister's office regarding John Grant, false or faulty though his recollection may have been, Mr Grech did not disclose that he had recreated a record of the email that he asserts he believed existed.

See paragraphs 1.22 and 5.5 to 5.8 for a discussion of the consequences of Mr Grech's medical incapacity to participate in the inquiry on the committee's ability to reach conclusions.

23 Treasury submission, dated 31 August 2009, p. 3.

24 AFP submission dated 11 September 2009, attachments, emails between Mr Grech and Mr Lewis and Mr Grech and Mr Turnbull, dated 16 and 17 June 2009. Also see chapter 2, paragraph 2.13–2.16.

Collusive pre-arrangement of questions and answers for an undisclosed purpose

4.29 In a response to this committee's first terms of reference (see chapter 3), the chair of the Economics Committee, Senator Hurley, alluded to:

... allegations that one of the opposition committee participants (Sen Abetz) had met with one of the witnesses to discuss the nature of the evidence to be given. If these allegations are correct then the manipulation of the committee proceedings that resulted would inevitably have impacted on the media response.²⁵

The question for the committee is whether there was any pre-arrangement of questions and answers for the hearing and, if so, whether this constituted an improper interference with the hearing of the Economics Legislation Committee on 22 June 2009.

4.30 It is a matter of record that Mr Grech met with Mr Turnbull, Senator Abetz and Senator Abetz's Chief of Staff, Mr Stansfield, in Sydney on Friday, 12 June 2009. At the meeting, Mr Grech gave an account of the OzCar situation and representations made on behalf of Mr Grant. He showed those present a copy of the alleged email from Dr Charlton and notes of its content were taken. Mr Grech also provided Mr Turnbull with a list of possible questions to be asked of the Prime Minister and Treasurer.²⁶ Further discussion of the hearing took place in correspondence between Mr Grech and Mr Turnbull and Mr Grech also promised to supply questions as a guide for Senator Abetz to ask of Ford Credit.²⁷

4.31 The meeting and, indeed, the committee inquiry itself, was suggested by Mr Grech in an email to Mr Turnbull on 5 June 2009, as follows:

Malcolm

Perhaps one way of getting me before a Committee to give evidence is to refer the OzCar Guarantee Bill, which is scheduled for Senate consideration in just over a week, to a Committee Inquiry.

Although we will be silly not to allow the Bill through, a short Committee inquiry could be useful.

But it is important that any inquiry involve only me from Treasury.

25 Submission by Senator Annette Hurley, Chair, Economics Legislation Committee, dated 27 July 2009.

26 See chapter 2, paragraphs 2.11–2.12; Senator Abetz, submission dated 26 August 2009, attachment, OzCar: Possible questions; Treasury submission, dated 18 August 2009, attachment, OzCar: Possible questions; AFP submission, dated 11 September 2009, attachment, OzCar: Possible questions; statement by Mr Grech published in *The Australian*, 4/8/2009.

27 AFP submission, dated 11 September 2009, attachment, email from Mr Grech to Mr Turnbull, dated 14 June 2009.

Once this gets more momentum, they may try to stop me from appearing and send up one of my bosses instead.

I am the only person in Treasury to have worked on OzCar – quite remarkable really given that they normally allocate teams of about 10 people to such projects; but I have carried this on my own from the very start.

My point is that you will be on firm ground if you demand that only I appear.

I am happy for you to start using my name in Parliament or in media interviews when pressing for this.

In your interview with the ABC this morning, you referred to a Treasury official. I am OK for you to refer to me publicly to make it clear who you are after.

Also, with Swan daring you to haul up the relevant Treasury staff for investigation in Parliament on Thursday – you can simply dare him to follow through with his 'offer'.

I really do believe there is meat in this one.

Swan is probably more exposed than Rudd. Sure he disclosed the fact that he was making representations for Grant – but what is not appreciated is what I did – with the approval of the TO and Swan – in trying to get finance for Grant. Ford Credit and the subsequent decision by ERC to allow Ford Credit to participate in OzCar – with Swan as ERC chair – is relevant to all of this.

Perhaps we should talk to sort out next steps.

Also, I am happy to meet with you and perhaps Abetz (no staffers) – to show you the various e mails [sic] I have.

This may help you decide how strong you may want to push.

Let me know what you want to do.

Godwin

5 June 2009²⁸

4.32 Senator Abetz, who provided a copy of this email to the committee, stated to the committee that there was no collusive prearrangement of either the questions to be asked at the hearing or the answers to be given. Senator Abetz wrote that he met with Mr Grech 'in the same way as committee members frequently meet with witnesses before committee hearings'.²⁹

It should be noted that no document containing proposed questions and answers for the hearing on 19 June 2009 has ever been located. This is consistent with Senator

28 Senator Abetz, submission dated 26 August 2009, attachment, email from Mr Grech to Mr Turnbull, dated 5 June 2009.

29 Senator Abetz, submission dated 26 August 2009.

Abetz's submission that there was no collusive prearrangement of questions or answers.

4.33 Senator Abetz also quoted advice from the Clerk of the Senate to the Leader of the Opposition in the Senate, Senator Minchin, as follows:

There is nothing to prevent a Senator or other person discussing a witness's evidence with a witness before a hearing ... but serious privilege issues could arise if a conversation contained any element of influencing, or attempting to influence, a witness in respect of the witness's evidence.³⁰

Senator Abetz stated to the committee that:

... prior to the Economics Legislation Committee hearing on 19 June I had no such conversation with any witness. Dealing specifically with the various examples given by the Clerk, I can assure the Committee:

- I offered no inducements and made no threats in relation to the evidence to be given;
- I did not rehearse or script the evidence to be given by any witness;
- I did not coach any witness as to the evidence to be given;
- I did not suggest to any witness that particular evidence should be given, or that particular evidence should be withheld, or that evidence should be given in a particular way;
- I did not suggest to any witness that the evidence should be changed in any way; and
- I did not suggest to any witness that evidence should be given that could be false or misleading.³¹

Senator Abetz also submitted to the committee that, in relation to the phrase 'undisclosed purpose' in the terms of reference, '[a]t no stage, to my knowledge, has any Senator been required to "disclose" the "purpose" of their questions'.³²

4.34 The fact that questions asked by senators may often have a political motive is commonplace and unremarkable. Senators have an important role in holding governments to account. As noted by the Clerk of the Senate:

Free states work through party politics. The ultimate safeguard against the misuse of power by a government is the ability of its opponents and rivals to find out about, and draw attention to, its mistakes and misdeeds.

30 Senator Abetz, submission dated 26 August 2009.

31 Senator Abetz, submission dated 26 August 2009.

32 Senator Abetz, submission dated 26 August 2009.

Accountability is not a refined process which operates on a refined plane, above sordid politics.³³

4.35 In the joint press statement of 4 August 2009, Senator Abetz and Mr Turnbull said of the Sydney meeting:

9. The meeting was held on 12 June. Present were Mr Grech, Mr Turnbull, Senator Abetz and Senator Abetz's Chief of Staff. Mr Grech spoke freely and naturally, and neither Senator Abetz nor Mr Turnbull had any reason to doubt the truth of what this senior and well respected public servant had to say.
10. Mr Grech began by stating that on 19 February 2009 he had received an email from Andrew Charlton in the Prime Minister's Office seeking assistance from OzCar for John Grant Motors. He showed Senator Abetz and Mr Turnbull a copy of the email. It appeared to have been received by Mr Grech at his Treasury account at 2.01 pm on 19 February and there was no reason to suspect that it was not genuine. Senator Abetz and Mr Turnbull took an abbreviated note of its contents but did not take a copy of it.
11. At the meeting Mr Grech told Senator Abetz and Mr Turnbull about his conversations with Mr Swan's office, Mr Grant, and Ford Credit, the substance of which is now on the public record.
12. At that meeting Mr Grech provided Senator Abetz and Mr Turnbull with a further list of possible questions to the Prime Minister and Treasurer concerning OzCar (attached and marked "C").
13. Neither Mr Turnbull nor Senator Abetz had any reason to doubt the truth of what Mr Grech had told them.³⁴

4.36 The joint press statement was made partly to respond to allegations made by Mr Grech in *The Australian* that morning. In that statement Mr Grech had implied that Opposition interest in John Grant had led him to agree to meet Mr Turnbull and Senator Abetz in Sydney on 12 June because he was fearful that the Opposition 'may seek to use the John Grant drama to delay or frustrate the Bill with the consequences being blamed in part at least on both the Government and then me'.³⁵ This and further claims in Mr Grech's statement are contradicted by the terms of Mr Grech's email to Mr Turnbull of 5 June, quoted in full above. They were also disputed in the joint press statement.

4.37 In his submission to the committee, Mr Stansfield (Senator Abetz's Chief of Staff) confirmed the substance of Senator Abetz's statement to the Senate on 11 August 2009 and the joint press statement of 4 August 2009, and informed the

33 Harry Evans, 'Senate estimates hearings and the government majority in the Senate', Address to the National Press Club, 11 April 2006.

34 Senator Abetz, submission dated 26 August 2009, attachment, Joint press release.

35 Godwin Grech, statement published by *The Australian*, 4 August 2009.

committee that neither he nor Senator Abetz had any conversations with any witness of the kind referred to by the Clerk in his advice to Senator Minchin.³⁶

4.38 It was Treasury's submission that, in view of the extent and nature of the contact between Mr Grech and members of the Opposition, principally Mr Turnbull:

... it may even be that the reason for the *Car Dealership Financing Guarantee Appropriation Bill 2009* being referred to a Senate Committee was specifically, and for no other reason, to facilitate Mr Grech giving answers in relation to what representations he had received from the Treasurer's and the Prime Minister's office.³⁷

4.39 The committee is satisfied that there was no inappropriate pre-arrangement of questions and answers for the hearing. The Treasury submission nevertheless raises (albeit in a speculative manner) the question of why the bill was referred to the Economics Legislation Committee at all. It does appear to the committee that Mr Grech initiated the sequence of events which resulted in the referral of the bill to the committee. Mr Grech urged that course upon Mr Turnbull and Senator Abetz. There is no evidence that either man took Mr Grech at anything other than face value in acting in good faith on the information provided by him.

4.40 This then raises difficult issues for senators who receive information from a great many sources, a question of general interest to all senators. The free flow of information is vital to the Senate's ability to conduct inquiries into matters of public policy and administration. It is a corollary of the great principle of freedom of speech in parliament. But as this case shows, senators cannot always rely on information being provided to them in good faith. There will be occasional instances, like this one and like the situation encountered by the committee in its 72nd Report,³⁸ where senators need to exercise caution. Where the information is a leak from an unauthorised source, senators need to be circumspect about the motives of the leaker.

Was there an improper interference with the hearing?

4.41 The committee received only one submission on this point, from the Chair of the Economics Legislation Committee, Senator Hurley, on her own behalf. Senator Hurley considered that the hearing on 19 June was:

... at least a gross misuse of the committee process. If the proceedings were the subject of prior scripting, it is clear that Mr Grech could have been asked, and dealt with, the email early in the hearings. It seems to me that in

36 Mr Brad Stansfield, submission dated 28 August 2009.

37 Treasury submission dated 24 September 2009, paragraph 49.

38 Committee of Privileges, 72nd Report, *Possible improper action against a person (Dr William de Maria)*, PP No. 117/1998. For a summary of this report, see the committee's 125th Report, pp. 158–59.

hindsight that Mr Grech drew out the questioning for maximum theatre and effect.³⁹

Senator Hurley had strong criticism of her Opposition colleagues on the committee:

Committee members do meet with witnesses from time to time to discuss matters relating to the Committee inquiry generally. They might then build up a line of questioning that leads to an answer they clearly expect. They often, but not always, refer to the fact they have had a meeting with the witness.

The difference in this case is that the Liberal opposition had information from a leaked source that they could have made public in a number of ways, especially through parliamentary processes. Instead they chose to make a partial revelation through a committee hearing that was not strictly relevant to the topic and in a way that deceived the majority of committee members. The Committee, in good faith, made time available to question a matter that seemed to be in the public interest to explore. The good intentions of the Committee were exploited by the Liberal participants at the hearing who chose to collude with a witness to produce an outcome that had much more to do with providing fodder for the media than getting information for the public good. That is, the Liberal members used the Committee as a way of releasing information, rather than getting information, while maintaining the deception that they had no more knowledge of the matter than other committee members.⁴⁰

4.42 No other members of the committee responded to this committee's invitation. It is apparent from Senator Hurley's comments that the Economics Legislation Committee had made provision, in the public interest, for exploring this controversial matter by scheduling two hours for the Treasury witnesses compared with half an hour for the other witnesses, even though the expected evidence was not likely to be directly relevant to the bill.

4.43 What was not known at the time to Senator Abetz was that the information he was exploring to establish whether there had been improper interference in the OzCar scheme by the Prime Minister and the Treasurer was based on a forged document. While the inquiry itself was undoubtedly a legitimate use of Senate procedures to explore a matter of possible misfeasance, it was based, unbeknown to all but Mr Grech, on a falsified document. In this sense, there was an improper interference with the hearing of the Economics Legislation Committee on 19 June 2009 and the chief agent of that improper interference was Mr Grech. However, without having the opportunity to speak to Mr Grech, it is difficult for the committee to take any further the issue of whether any contempt was committed. As previously noted, it is not suggested that Senator Abetz misled the committee.⁴¹

39 Senator Annette Hurley, submission dated 27 August 2009.

40 Senator Annette Hurley, submission dated 27 August 2009.

41 See paragraphs 4.12 – 4.13.

4.44 Whether the committee should nonetheless find that a contempt was committed in this regard is considered in chapter 6.

Possible interference with Mr Grech in relation to his evidence

4.45 After the publication of the Auditor-General's report on 4 August 2009, the suggestion was raised by Senator Heffernan that Mr Grech had been placed under pressure in respect of his evidence. Senator Heffernan wrote to the President of the Senate who referred the correspondence to the committee to consider in the context of its initial terms of reference. Having received further terms of reference on 12 August 2009, the committee considered that these matters were more appropriately considered in the context of its second terms of reference. This is because the matters raised by Senator Heffernan were more closely related to the theme of possible interference with a committee (through possible interference with a witness) than to the theme of possible adverse actions taken against a witness in consequence of his evidence.

Was Mr Grech placed under pressure in respect of his evidence?

Mr Murphy

4.46 Senator Heffernan quoted a reference by Mr Grech in his statement to the Auditor-General to an alleged telephone call from Mr Jim Murphy, Executive Director (or deputy secretary), Markets Group, Treasury. According to Mr Grech:

At around 11.30am on the morning of Friday 19 June 2009, I received a message from the personal assistant to the Deputy Secretary of Treasury, Mr Jim Murphy, to call Mr Murphy in Sydney urgently.

I called Mr Murphy and he said, 'if you are asked any questions in the Senate this afternoon about John Grant and the Prime Minister or the PMO you should simply say that you've confused the Grant case with some other case'. Mr Murphy also said, 'It is very important that you do not make any trouble'.⁴²

Senator Heffernan concluded that:

The alleged conversation between the Deputy Secretary of the Treasury and Mr Grech raises the issue whether a witness before a Senate committee was urged by another person to give false and misleading evidence. Resolution No. 6 of the Senate Privilege Resolutions ... If Mr Grech's statement is correct, there was at least an attempted conspiracy to have false evidence given to a Senate committee.⁴³

42 Australian National Audit Office, *Representations to the Department of the Treasury in Relation to Motor Dealer Financing Assistance*, Report No. 1 2009–10, pp. 96–97.

43 Senator the Honourable Bill Heffernan, correspondence to the President of the Senate, dated 7 August 2009.

4.47 On 11 August 2009, after the President of the Senate had made a statement giving precedence to the committee's second terms of reference, Senator Heffernan, by way of a question to the President, repeated these allegations in the Senate:

Mr President, can I seek an explanation about a letter I sent to you on the matter of what I think are allegations of criminal perjury raised by a Treasury official coaching the witness before he appeared at the committee. Will that be dealt with under the previous privileges matter or under my privileges matter? This is about a Treasury official, according to the Audit Office, according to the witness, making allegations that he was coached that, 'If you change your evidence, say you forgot or you were confused if they approach this matter in the committee.' I think that is a matter of criminal conspiracy.⁴⁴

The committee notes that, in his correspondence to the President, Senator Heffernan did not refer to the qualifying footnote appended to Mr Grech's allegation in the Auditor-General's report:

⁹⁹ ANAO explicitly asked Mr Murphy about the lead-up to evidence given to the Senate Committee on 19 June 2009. In this respect, Mr Murphy testified to ANAO that:

- he, Mr Martine and Mr Grech met on the evening before the hearing at which Mr Murphy said to Mr Grech that: 'Look, there's obviously a discrepancy here. You said you thought you saw an email. No-one can find the email. We know it's not in the Treasury. We checked the systems. Look, are you sure you're not confused? You know, there's lots of traffic. Are you sure you're not confused?'; and 'You say what you want to say. You're the one who has to give the evidence. But are you sure you have not confused yourself? So just take that on board because if you are saying one thing and we can't find a record of it, well, something's awry. We can keep checking, but something is awry.'; and
- Mr Grech 'was never told by us to say anything other than what he thought because he is the only one who really knew'.⁴⁵

4.48 The committee sought a response from Mr Murphy which Treasury provided on his behalf and with his approval.⁴⁶ Treasury conceded that the matter was indeed a serious one if, as acknowledged by Senator Heffernan, Mr Grech's statement was correct. Treasury noted the Auditor-General's qualification of Mr Grech's statement in footnote 99 in the report and submitted that Mr Grech's statement was false for the following reasons:

44 *Senate Debates*, 11 August 2009, p. 4418.

45 Australian National Audit Office, *Representations to the Department of the Treasury in Relation to Motor Dealer Financing Assistance*, Report No. 1 2009–10, p. 97n.

46 Owing to a family bereavement, Mr Murphy was on leave at the time the committee sought his response. Treasury submission dated 24 September 2009, covering letter.

53. First, Mr Murphy denies the allegation made by Mr Grech. In his evidence to the ANAO, Mr Murphy confirms that he met with Mr Grech on the evening before the hearing and said to Mr Grech ...”You say what you want to say. You’re the one who has to give the evidence. But are you sure you have not confused yourself?”. According to Mr Murphy, the call on the morning of the 19th did not deal with question of Mr Grech's evidence to the committee in any substantive way. There is no reason to question his version of the telephone call. Mr Grech, on the other hand, has revealed himself through the material obtained by Treasury from Mr Grech's IT system and released publicly by others, to be a person who is likely to be dishonest and who has had little regard for his duties as a public servant.
54. Secondly, it is clear from other evidence that there was no reason for Mr Murphy to make such a call and speak in the terms alleged by Mr Grech. At 5.45am on the morning that this conversation is alleged to have occurred, Mr Grech had circulated an email, the recipients of which included Mr Murphy. In that email Mr Grech said in respect of a telephone call from journalist Steve Lewis:
- Lewis wanted me to confirm that there had been 'correspondence' and 'communication' between the PMO and Treasury on Grant. I denied that there was any communication. He persisted and asked 'Are you sure?'. I again denied any communication...When Lewis called the fourth time at around 8.00pm, he again asked about the PMO communication. I again denied it....At estimates today, I plan on playing with a straight bat and saying it as I understand the true facts to be'.
55. In these circumstances, where Mr Grech six hours earlier, specifically disavowed that he had any communication with the PMO in relation to John Grant and had confirmed that his evidence would be that there was no communication between the PMO and Treasury, there is simply no reason for Mr Murphy to make a call of the kind described by Mr Grech to ask him to change his evidence.
56. Thirdly, the allegation by Mr Grech is contained in a document, authored by Mr Grech for the purpose of justifying his own conduct and casting it in the best possible light. In order to do so he makes many implausible statements in an attempt to justify or explain his own conduct.⁴⁷

Treasury then gives examples of these implausible statements and concludes:

59. When these factors are considered, the explanation offered by Mr Grech looks like a self serving and disingenuous attempt to explain away improper conduct. The allegations against Mr Murphy, in Treasury's submission are in the same category; an attempt by Mr

47 Treasury submission, dated 24 September 2009, paragraphs 53–56.

Grech to direct attention away from his own misconduct by false statements.

60. For these reasons, it is Treasury's submission that the Committee should find that Mr Murphy did not make the statements attributed to him by Mr Grech and was not involved in any attempt or conspiracy to have false evidence given to a Senate committee.⁴⁸

4.49 In respect of the inconsistency between Mr Grech's allegation about Mr Murphy and the account of events given by Treasury, the committee does not dispute Treasury's account.

Mr Barrett

4.50 Another possible source of pressure is suggested by Mr Grech in an email to Mr Turnbull on the night of the Press Gallery ball. Mr Grech forwarded a copy of his communication to Steve Lewis of a 'teaser' for possible publication before the hearing and added:

Swan's office told me tonight that whilst they want me to appear on Friday – I must be accompanied by my bosses (probably David Martine and/or Jim Murphy). Chris Barrett has instructed that I say nothing or very little. (*emphasis in original*)⁴⁹

4.51 The committee put this allegation to Mr Barrett who responded in detail, including in his submission to the committee material that he had provided under oath to the AFP.⁵⁰ Mr Barrett informed the committee that he had no contact with Mr Grech on this date (17 June 2009) but that on two occasions when he had discussed with Mr Grech the issue of representations from the Prime Ministers' office on behalf of John Grant:

I note in passing that in both of these conversations Mr Grech appeared to offer political staff (and a Departmental Liaison Officer) an opportunity to acquiesce in his lying to a Senate Committee. When seen in the broader context of facts now known in the public domain, this appears to point to a pattern of behaviour.⁵¹

In respect of the inconsistency between Mr Grech's allegation about Mr Barrett and the account of events given by Mr Barrett, the committee does not dispute Mr Barrett's account.

48 Treasury submission, dated 24 September 2009, paragraphs 59–60.

49 AFP submission, dated 11 September 2009, attachment, email from Mr Grech to Mr Turnbull, dated 18 June 2009.

50 See paragraphs 2.6 and 2.22–2.23.

51 Submission from Mr Chris Barrett, dated 27 October 2009.

Was there any other possible source of pressure before the hearing in relation to Mr Grech's evidence?

4.52 As noted in paragraph 3.24, there were rumours circulating in the week leading up to the hearing concerning the existence of documentary evidence that the Prime Minister's office had made representations on behalf of John Grant. The reporting of these rumours, together with the reporting of the incident at the Press Gallery ball, may in itself have been a source of pressure on Mr Grech. In chapter 2, the committee recorded two occasions during that week when Mr Grech had emailed senior officers in Treasury and ministerial staff to explain his contact with Steve Lewis, including at 5.46 am on the day of the hearing. However, it is clear from the evidence provided to the committee that Mr Grech had not been approached by Steve Lewis. Rather, it was Mr Grech who called the journalist after discussing his approach with Mr Turnbull in email exchanges. Mr Grech was in this position because he had extensive email contact with a number of individuals associated with the Liberal Party, in which he offered strategic and policy advice both to Mr Turnbull directly and to other individuals associated with the Liberal Party. There was no evidence that Mr Grech had any official role in the Liberal Party.

4.53 From his position as a Senior Executive Service officer in Treasury, Mr Grech was working in support of the Opposition and against the Government, although, as he emailed to an acquaintance, he knew he was taking considerable personal risk in doing so.⁵² The hearing of the Economics Legislation Committee provided an opportunity for Mr Grech to publish his allegations under parliamentary privilege. He had stressed to those to whom he had disclosed the contents of the email (later demonstrated to have been a fabrication) that the information was not for publication or attribution, despite a willingness to have his name used in the press in related contexts.⁵³ As the hearing approached, the potential consequences of Mr Grech's actions, and the possibility that he would be revealed as the source of the email, now known to members of the Opposition and the media, must have been increasingly apparent to him. These factors are likely to have been the source of considerable pressure. However, while this pressure may have had a bearing on the capacity of Mr Grech to give evidence, it is clear that these stressors were attributable to Mr Grech's own actions.

4.54 The committee asked Mr Grech about any pressure he may have been under and sought a written response but, as noted in paragraph 1.19, Mr Grech did not wish to put anything further to the committee. The committee therefore has no basis on which to make any further examination of this allegation.

⁵² Treasury submission, dated 18 August 2009, attachment, email from Mr Grech to (name redacted), dated 7 November 2008.

⁵³ AFP submission, dated 11 September, attachment, email from Mr Grech to Mr Turnbull, dated 5 June 2009.

Was Mr Grech in a fit state to give evidence?

4.55 A second matter raised by Senator Heffernan in his correspondence to the President of the Senate dated 7 August 2009 was 'the treatment of Mr Grech by the Treasury Department before he gave his evidence to the Committee':

According to the Audit Office report and the statement provided to the Audit Office by Mr Grech, Mr Grech was suffering from serious health problems and extreme work pressure at the time of his evidence to the Senate Committee.

I believe that this raises the question of whether adverse treatment of a witness which could impair the ability of the witness to properly give evidence to a Senate Committee may also be treated as a contempt. I believe that it would be open to the Senate to regard such treatment of a witness as a contempt. If the facts are as stated by Mr Grech, the Department allowed him to represent the Department as a principal witness at a hearing concerning a significant government program. Although the Department knew of his difficult state of health and the work pressure under which he was operating. This could well be regarded by the Senate as a failure to adequately respond to the requirement of a Senate Committee for information, and an interference with the free exercise of a Senate Committee of its authority within the meaning of paragraph (1) of Privilege Resolution No. 6.

In view of the above information and the way that this may have influenced the behaviour and evidence given by the witness to the Senate Economics Legislation Committee on 19 June 2009, it is likely that these actions may have directly influenced the nature of evidence received and the obvious adverse actions by the media, the public and officials towards Mr Grech as a consequence of his evidence.⁵⁴

4.56 Treasury provided a response to this suggestion which is reproduced in full as follows:

62. While the formulation of an allegation of contempt in this way is novel, Treasury accepts that it is possible as a matter of theory that a prospective witness may be the subject of adverse treatment by a third person such that he is unable to properly give evidence to a Senate Committee, and thus the third party is guilty of contempt.
63. Mr Grech's case is not such a case.
64. Treasury does not accept that Mr Grech suffered from any physical or mental condition which prevented him from giving proper assistance to the Senate Committee. Treasury has not seen any evidence which suggests that Mr Grech was suffering from any ailment which prevented him, had he wished to, from providing the Committee with honest and rational assistance in relation to the Ozcar program.

54 Senator the Honourable Bill Heffernan, correspondence to the President of the Senate, dated 7 August 2009.

65. Senior Treasury management were aware of the physical health condition of Mr Grech. However, at no point did Mr Grech raise concerns that his physical health condition would compromise his ability to perform his work duties. On the contrary, during the period leading up to the Senate Inquiry, Mr Grech actively sought higher level positions within the Treasury, particularly at the General Manager level. He also agreed to take on additional work responsibilities, and volunteered for a range of corporate tasks. In his response to the ANAO report, Mr Grech states that he returned to work prematurely after being hospitalised in early February 2009. However, Mr Grech was advised by email on 6 February 2009 that there was “no rush to come back”. Mr Grech returned to work on 16 February. On his return, Mr Grech’s workload was immediately reduced. Prior to being hospitalised, Mr Grech was heavily involved in the development of the Australian Business Investment Partnership (ABIP), including attending meetings and negotiations with the major banks. This work ceased on his return.
66. Accordingly, in Treasury's submission, appropriate accommodation of Mr Grech's physical ailment was made and there is no reason to think that it interfered in any way with the evidence he gave to the Senate committee on 19 June 2009.
67. In relation to the claim that Mr Grech was under significant work pressure to a point that he was mentally compromised in the evidence he gave, Treasury rejects such a claim. Mr Grech was provided with appropriate assistance and support as required in relation to OzCar. Contrary to the claims made by Mr Grech in his response to the ANAO report, Mr Grech did not deliver on OzCar alone. As a non-government trust facility, the bulk of the work to establish OzCar was, and was always intended to be, undertaken by the private sector. To assist in the establishment of the facility, Credit Suisse were engaged by the Treasury in November 2008 to provide all necessary services to establish OzCar. Credit Suisse devoted considerable expertise, experience and resources (a dedicated project team) in order to develop and finalise the OzCar structure.
68. A range of other third parties also provided crucial skills and resources in order to establish the facility, including two separate legal firms, and Perpetual Trustee (to perform the role of trustee for OzCar).
69. Mr Grech's role in the Treasury was to instruct Credit Suisse and the other parties as appropriate, consistent with the Government's policy direction. Treasury does not accept that Mr Grech was under any special pressure from his duties at Treasury. If he was, he did not bring it to his supervisor's attention as a problem. To the extent that Mr Grech involved himself in the micro-management of some dealer's problems, that involvement and any pressure it may have placed on Mr Grech, appears to have been motivated by political affiliation rather than any requirement of Treasury's. Indeed Mr Grech's own assessment of his health was that he would not let it

interfere with his activities. In responding to an email from a Liberal Party supporter on 7 November 2008 about possibly joining the Office of the Leader of the Opposition, Mr Grech declines and states:

“...Health is an issue for me, I cannot hide that; but I am determined not to let that stop me. My immediate motivation is to place myself where I think I could be of most value to MT and the Party. At this stage, I am probably more value here in Treasury (albeit the personal risks I am taking).”

70. Mr Grech states that he was working between 60-70 hours per week from late February. The Treasury does not dispute that Mr Grech was present in the office for lengthy periods, although Treasury pass records suggest that in general it was less than claimed by Mr Grech. In addition, documents and emails recovered from the Treasury IT system indicate that Mr Grech was active during normal business hours in corresponding with third parties on issues of a political nature, and outside of his core work responsibilities. Accordingly, it is unlikely that Mr Grech was spending anything like that amount of time devoting himself to the work of Treasury.
71. It is possible that subsequent to the hearing of 19 June 2009 Mr Grech did suffer some kind of mental ailment. The evidence provided by Mr Grech to Treasury has been sparse on this issue. Treasury does, however, know that since 22 June 2009 Mr Grech has been an in-patient in a mental health facility.
72. Treasury considers it unlikely that this state of affairs has been brought about by any work pressure per se. Mr Grech was undoubtedly under enormous pressure as a consequence of certain aspects of his conduct coming to light - faking an email, providing it to members of the Opposition, discussing the matter with journalists and arranging for questions to be asked in the Parliament. These events were, however, all matters within Mr Grech's control and beyond Treasury's knowledge at the time.
73. At the time Treasury selected Mr Grech to give evidence to the Senate Committee, Treasury believed he would give honest evidence about a program in respect of which he had detailed knowledge. If Mr Grech was disabled by any condition, he did not provide Treasury with any reason for thinking that he was, and it is clear from his email correspondence with the Leader of the Opposition that he was determined to give evidence to the Committee. In these circumstances there is no substance to any claim that Treasury either knowingly, or without proper consideration, put forward a witness which it knew was not in a fit state to give assistance to the Committee.⁵⁵

4.57 As the committee has noted previously, any conduct may constitute an offence against a House (that is, a contempt) if it amounts, or is intended or likely to amount, to an improper interference with the free exercise by a House or committee of

55 Treasury submission, dated 24 September 2009, paragraphs 62–73.

its authority or functions, or with the free performance by a member of the member's duties as a member.⁵⁶ For an act to be an improper interference with such conduct, however, the committee has always taken the view that there must be culpable intention involved⁵⁷. The committee believes that it is drawing a long bow to suggest that Treasury, in allowing Mr Grech to give evidence, knowing his difficult state of health and the work pressure he was under, may have failed to respond adequately to the requirements of a Senate committee and may therefore be in contempt. The assumptions on which this charge is based are challenged quite forcefully by Treasury in its submission. In any case, there is a complete lack of evidence of any intention on the part of Treasury officers (other than Mr Grech) to behave inappropriately in relation to the committee inquiry. The committee believes that there is no case to answer on this issue.

Conclusions

4.58 The committee's conclusions on each of the matters discussed in this chapter are summarised in chapter 6.

56 Chapter 1, paragraph 1.21. This is the threshold test prescribed in s. 4 of the *Parliamentary Privileges Act 1987*.

57 In considering questions of contempt, the committee is required to have regard to Privilege Resolution 3, Criteria to be taken into account when determining matters relating to contempt.

Chapter 5

Procedural issues

5.1 During the course of the inquiry a number of procedural issues arose and are examined briefly in this chapter. They include:

- the status of members of other Houses;
- natural justice;
- unauthorised disclosure of submissions and committee proceedings; and
- publication of certain material submitted to the committee.

The status of members of other Houses

5.2 Notwithstanding that the Leader of the Opposition, the Honourable Malcolm Turnbull, was a participant in some of the events relevant to the committee's terms of reference, the committee chose not to invite him to make a submission to the inquiry. Although members of the House of Representatives, particularly ministers, have been invited on many occasions to give evidence to Senate committees, and have done so, this informal procedure is used only in cases where members are offering their views on matters of policy or administration. Where the conduct of individuals may be examined, adverse findings made against individuals or matters of fact disputed, the formal procedures provided in standing order 178 are employed. Under these procedures, the Senate sends a message to the House of Representatives requesting the House to give permission for its members or officers to appear.

5.3 However, use of these formal procedures does not allow the Senate or its committees to inquire into or adjudge the conduct of a member of another House as a member (other than the conduct of a member as a minister). At least as a matter of courtesy and comity between the Houses, and possibly as a matter of law (although it has not been adjudicated in Australia), one House has no authority over members of the other House (except in the immediate conduct of its own – or its committees' – proceedings). This probable limitation precludes one House from summoning a member of the other House or imposing a penalty on them. There is also a rule that one House does not inquire into the proceedings of the other. This rule has its basis in Article 9 of the Bill of Rights, reaffirmed by section 16 of the *Parliamentary Privileges Act 1987*.¹

1 See Harry Evans (ed), *Odgers' Australian Senate Practice*, 12th ed., pp. 60–61, 73, 378, 426–30.

5.4 As a consequence of this rule, the committee has not sought to avoid mentioning Mr Turnbull in its narrative and analysis but it has refrained from making any comment on his conduct. It has also refrained from following up certain matters raised in submissions, such as whether Mr Turnbull asked questions in the House of the Prime Minister and the Treasurer based on the document given to him by Mr Grech at the Sydney meeting on 12 June 2009. It has done so on the basis that this would involve examining proceedings of the House of Representatives.

Natural justice

5.5 Procedures binding the operations of Senate committees in general and the Privileges Committee in particular are set out in Senate Privilege Resolutions 1 and 2. These procedures incorporate principles of natural justice in that they require persons to be informed of any allegations against them and to be provided with particulars of any evidence given in respect of the person.² Reasonable opportunity is to be given to the person to respond.

5.6 Mr Grech's continuing hospitalisation and his apparently fragile physical and mental health have made it impossible for the committee to extend to him the full benefit of the principles of natural justice inherent in its procedures. The committee has made the following approaches to Mr Grech:

- an invitation to make a submission in respect of its first terms of reference (returned – see paragraph 1.14);
- an invitation to make a submission in respect of both terms of reference conveyed to Mr Grech via his legal representative (see paragraph 1.15), in which the committee indicated that it would have no objection should Mr Grech wish to provide his response to the Auditor-General as his submission to the committee (to which there was no reference in the response provided on Mr Grech's behalf by his legal representative);
- an invitation to respond in writing to a series of written questions, posed at the suggestion of Mr Grech's legal representative but met with the response that Mr Grech did not wish to put anything further before the committee (see paragraphs 1.18 – 1.19);
- a request for clarification of Mr Grech's capacity to respond to the committee's questions or instruct his representative to respond on his behalf, and an inquiry as to whether he wished to be provided with the adverse evidence and parts of the draft report critical of him;
- a requirement that Mr Grech produce medical evidence of his condition and an undertaking that the committee would maintain the confidentiality of the medical information;

2 Privilege Resolution 2 (1)

-
- when the medical evidence was not forthcoming within a reasonable time, the imposition of a deadline on the requirement for medical evidence to be produced;
 - provision of relevant parts of the draft report and evidence to Mr Grech's legal representative.

Although the committee has been somewhat frustrated in its attempts to deal with Mr Grech through his legal representative, the medical report did arrive on 16 November 2009 at a time when drafting and consideration of the report was well advanced. The medical report states that Mr Grech was not medically fit to participate in the committee's inquiry. The report was brief and did not respond specifically to the committee's inquiry as to Mr Grech's capacity to instruct his legal representative to respond on his behalf, but the committee is not in a position to look behind the report and has therefore accepted it at face value, but with reservations as noted. The committee has not published the medical report out of respect for Mr Grech's privacy.

5.7 Mr Grech's medical unfitness to participate in the inquiry leaves the committee in the unsatisfactory position of being unable to arrive at conclusions on important aspects of its terms of reference. Without being able to hear from Mr Grech in response to particular allegations and assertions made by other parties to the inquiry, the committee cannot be satisfied that the allegations are sufficiently established. It would be a breach of the principles of natural justice to which this committee adheres to conclude that Mr Grech was in contempt of the Senate, without having heard his response to the allegations. Evidence given by Mr Grech to the Economics Legislation Committee was objectively misleading, as discussed in chapter 4, but whether there was any culpable intention on Mr Grech's part cannot be established without questioning him, and this course of action is not open to the committee owing to Mr Grech's medical unfitness.

5.8 However, the committee did make available to Mr Grech's legal representative those parts of the evidence and the draft report which contained adverse reflections on Mr Grech. The response, received late but nonetheless accepted by the committee, is reproduced in Appendix 2. The committee has no further comment on the response and has not changed its findings as a consequence.

Unauthorised disclosure of submissions and committee proceedings

Unauthorised disclosure of committee proceedings

5.9 It is with regret that the committee reports that an unauthorised disclosure of its proceedings occurred shortly after receiving its second terms of reference. A short article by Paul Maley in *The Australian* on 14 August 2009 reported that the committee had agreed to write to a number of identified people seeking submissions on the 'now-infamous OzCar affair' and that it had agreed not to invite Mr Turnbull to appear. Disregarding the latter claim, that the report was otherwise an accurate record of the committee's proceedings indicated that there had been an unauthorised disclosure. The committee discussed the unauthorised disclosure and agreed that it had

damaged the confidence of committee members in each other but that, in view of the sensitivity of much of the material then before the committee, the substance of the unauthorised disclosure was relatively innocuous and the damage could be contained by non-repetition of the incident.

Unauthorised disclosure of submissions

5.10 All persons invited to make submissions to the committee are informed that submissions remain confidential to the committee until it decides to publish them. They are also advised that the committee would expect to make most material public at an appropriate stage of the inquiry.

5.11 Treasury's first submission to the inquiry was copied by Dr Henry to the Prime Minister and the Treasurer. Alert staff in those offices returned the copies to Dr Henry and notified the committee that they had done so. The committee commends their assiduousness and confirms that this was the correct action to take in the circumstances.

5.12 There are circumstances in which it will be appropriate to keep ministers' offices informed of departmental interaction with parliamentary committees. This ground is well covered in the *Government guidelines for official witnesses before Parliamentary committees and related matters* (November 1989). There is a distinction, however, between an inquiry into matters of policy or administration and an inquiry into conduct that may lead to a finding of contempt. The *Government guidelines* are generally directed to the former and acknowledge that there may be special circumstances and procedures applying to committee inquiries dealing with individual conduct.³ For this kind of inquiry, it is the committee's advice to departments and agencies that they should pay particular attention to any instructions given by the committee regarding submissions, and should not regard themselves merely as an extension of the relevant minister's office (let alone the Prime Minister's office), and therefore free to share all relevant information about the inquiry, including submissions, with that entity.⁴

5.13 The committee wrote to Dr Henry about this matter, expressing its regret at his action but noting that a possible contempt had been averted by the quick action of ministerial staff.⁵

3 *Government guidelines for official witnesses before Parliamentary committees and related matters*, November 1989, paragraph 2.5.

4 A similar issue was dealt with by the committee in its 22nd Report, *Possible Unauthorised Disclosure of a Senate Committee Submission*, PP No. 45/1990, See 125th Report, p. 140 for a summary.

5 Letter from the chair of the committee, Senator the Honourable George Brandis SC, to Dr Henry, dated 19 August 2009.

An issue arising from the committee's correspondence with the Treasury Secretary

5.14 This could well have been the end of the matter – although no apology was forthcoming – were it not for a somewhat misconceived submission from the AFP that mentioned the committee chair's letter to the Treasury Secretary:

Consistent with the 'Government guidelines for official witnesses before Parliamentary committees and related matters - November 1989' the AFP propose to consult as appropriate with the Commonwealth Director of Public Prosecutions (CDPP), the Minister for Home Affairs and Treasury in relation to any possible requests for confidentiality. Once that consultation is complete the AFP will advise the Committee whether any requests for confidentiality are to be made.

The AFP has not yet conducted those consultations in relation to the material in Annexure A because the AFP is aware of Senator Brandis' letter dated 19 August 2009 to the Secretary to the Treasury indicating concern, and raising the possibility of contempt of the Senate, in relation to disclosures of Treasury's submission to the Committee. The AFP understand that the Treasury has since passed to the Committee advice by the Australian Government Solicitor that no contempt was committed. The AFP has read that advice and considers that, for the same reasons, its proposed consultations outlined in this paragraph would not be a contempt. However, before undertaking the consultations, the AFP should be grateful to learn whether, in the light of AGS' advice, the Committee has any ongoing concern in relation to them. Once the consultations are complete, the AFP will advise the Committee whether any requests for confidentiality are to be made.⁶

5.15 The AFP had provided a submission to the committee's first terms of reference, including a number of attachments, and had requested that the committee consult it before authorising publication of the submission to ensure that appropriate confidentiality relating to possible future criminal proceedings was maintained.⁷ The committee indicated that it would contact the AFP in relation to any such decision and also requested any further information the AFP may have relating to the second terms of reference. Further information was provided in the form of attachments under cover of a submission including the requests quoted above.

5.16 As the committee pointed out to the AFP:

- the *Government guidelines* refer to consultation for the purpose of potential claims of public interest immunity—in other words, reasons to be advanced *for seeking not to provide documents* to the Senate or its committees;
- what was at issue here was the publication of material *already provided* by the AFP to the committee;

6 AFP submission, dated 11 September 2009.

7 AFP submission, dated 10 August 2009.

- the committee was fully aware of the sensitivities of the material submitted and would be highly unlikely to risk the subversion of any potential criminal proceedings;
- the subject of the committee's correspondence to Dr Henry was completely irrelevant to the question of what material provided by the AFP should not be published in the interests of avoiding prejudice to future criminal proceedings;
- Treasury had not at that stage provided a copy of the legal advice to the committee, allegedly advising that no contempt was committed by Dr Henry—no doubt quite properly in recognition of the fact that it is the Senate's role to determine such matters.

The committee then invited the AFP to provide it with a list of material in respect of which it sought to make confidentiality claims (properly referred to as claims of public interest immunity) and authorised it to consult with whomever it needed to in making such claims.

5.17 At an advanced stage of the inquiry, Dr Henry did provide the committee with a copy of the legal advice referred to by the AFP. Dr Henry assured the committee that 'there was no intent of contempt by this action' and that the submission 'was made available to Ministers because the matter directly concerns them and because they and staff members of their Offices are named in the submission'.⁸ The committee notes that Dr Henry intended no contempt and that he considered there were justifications for the provision of his submission to ministers. However, in the committee's view, the legal advice on which Dr Henry relied was wrong, reflected an ignorance of Senate practice and procedure, and was based on an erroneous view of this committee's function.

5.18 It is apparent to the committee that there continue to be misconceptions about parliamentary privilege in senior government ranks and continuing confusion between measures to protect the integrity of parliamentary proceedings and the permissible use of parliamentary proceedings in places outside Parliament. However, the committee acknowledges that this has been a difficult case for investigating agencies because of the close relationship between the acts investigated and proceedings in parliament within the meaning of section 16 of the *Parliamentary Privileges Act 1987*.

5.19 Further comments on the issue of publication of documents by committees in general and of this committee's approach to publication of documents in this case are provided below.

Publication of certain material submitted to the committee

5.20 It has been the committee's practice to publish as much material submitted to it as possible in the interests of transparency, so that those examining the committee's

8 Letter from Dr Henry, dated 16 November 2009.

findings may also examine the evidence on which those findings were based. There have been occasions, however, when the committee has taken evidence *in camera* or declined to publish material submitted to it, for a range of reasons including to protect the privacy of persons not directly involved in the inquiry or to avoid prejudice to possible legal proceedings.

5.21 In this case, the committee has been particularly conscious of parallel inquiries into possible criminal offences.

5.22 During the inquiry, the committee was presented with a large quantity of documents attached to submissions, most of them not created for the purpose of submission to the committee. However, as noted in paragraphs 3.43 and 3.44, the committee acknowledges that material of this nature provided by Treasury demonstrated that the department had ample basis, quite independent of Mr Grech's evidence to the Economics Legislation Committee, to institute disciplinary proceedings against him. On the other hand, the committee was concerned that other material, particularly that provided by the AFP, could be required as evidence in possible criminal proceedings.

5.23 Persons often provide to committees documents which have a prior existence; in other words, documents that were not created for the purpose of submitting them to a parliamentary inquiry but for some other purpose. The content of such documents is not generally protected by parliamentary privilege although the publication of it to a committee is so protected.

5.24 The submission of such documents to a parliamentary committee does not limit the ability to produce them subsequently to a court or tribunal. The mere submission of a document to a committee does not make it a proceeding in parliament and therefore unexaminable elsewhere.⁹ Nor does the publication of the document mean that it may not be used for any other purpose. The committee is aware, however, that the publication of such documents may potentially be a source of confusion in any subsequent court proceedings. There is a risk that either side in the proceedings may argue that the documents *are* proceedings in parliament because they have been published by a House or committee, whereas it is only that particular publication which is privileged. The level of doubt thereby introduced to the proceedings may be sufficient to create a fatal impediment. It may be argued, for example, that the inability to examine the material at issue could lead to unfairness in the trial.

5.25 A greater concern is that publication of such material by the committee before the commencement of any trial may inappropriately influence participants in those proceedings, including jurors and potential witnesses. Although the Senate has taken a robust view of the *sub judice* convention and has not accepted undue limitation of its right to inquire into and debate matters of public interest, the committee would not want to provide cause for criminal proceedings to miscarry.

9 Harry Evans (ed), *Odgers' Australian Senate Practice*, 12th edition, p. 402

5.26 With a mind to possible future criminal proceedings, the committee sought from the AFP a list of material whose disclosure might prejudice possible future criminal proceedings. The AFP consulted the Commonwealth Director of Public Prosecutions (DPP) on the possible prejudicial effect of publication of the investigative material provided to the committee. Because the investigation had not been finalised and no decision on possible prosecution of criminal offences had been made, the DPP was unable to advise the AFP. Commissioner Negus (who took over from Commissioner Keelty in September 2009) informed the committee that the AFP was not able at that time to identify particular material which, if disclosed, could prejudice future criminal proceedings and therefore did not propose to make any confidentiality claims on the material provided to the committee.¹⁰

5.27 In these somewhat unusual circumstances, the committee has nevertheless resolved to take a cautious approach to the publication of material which, in its view, may have a prejudicial effect on possible criminal proceedings. If, in the future, it becomes apparent that there will be no charges laid against Mr Grech, the committee reserves its position on making a future decision to release further material.

5.28 There remains the issue of the extensive documentation provided to the committee by Treasury. This material caused the committee a great deal of concern because it was, in many ways, so tangential to the terms of reference on the one hand, but critical to Treasury's submission that it did not take adverse action against Mr Grech in consequence of his evidence, on the other. In approaching this material, the committee agreed to apply certain principles to the consideration of whether it should or should not publish individual documents. These principles included the following:

- that in respect of legal advice, the committee would in this case respect any request made by the commissioning agency not to publish the advice for reasons of legal professional privilege;
- that personal email addresses would be protected, along with private telephone numbers;
- that in respect to emails sent by Mr Grech to individuals, their identity would be protected where there was no mutuality of correspondence (in other words, the email does not form part of a course of dealings between Mr Grech and the addressee);
- that the identity of persons not in the public realm would not be disclosed;
- that any information required for possible criminal proceedings would not be disclosed;
- that personal information relating to Mr Grech's medical condition would not be disclosed; and

10 Correspondence from Commissioner Negus, dated 29 October 2009.

- that personal information relating to other identified people would not be disclosed.

The committee also had regard to the business reputation of people seeking assistance under the Car Dealership Financing Guarantee, with whom Mr Grech communicated and has published only those parts of the email 'strings' which disclose inappropriate behaviour by Mr Grech.

5.29 Notwithstanding the application of these principles, the committee was unable to agree on the publication of the documents submitted by the Treasury Department on 18 August 2009. Government members of the committee who comprise the majority of the committee agreed to the publication of most of those documents in whole or in part, while Opposition members of the committee disagreed with the publication of a significant number of those documents on the basis that their provision was gratuitous and unnecessary to the findings of the committee. As those documents were not created for the purpose of submission to the committee, its majority decision does not affect any other use or publication of the documents by their owners.

Chapter 6

Conclusions

6.1 In this chapter, the committee's conclusions and findings are summarised.

6.2 There can be little doubt that this is one of the worst cases of improper interference with the operations of a Senate committee that this committee has examined. A public servant who behaved in a politically partisan fashion used the process of a Senate committee inquiry and, with it, the protection of parliamentary privilege to raise allegations of corruption against senior government ministers based on a document which, it later emerged, had been fabricated by that person. The person, Mr Godwin Grech was an apparently well respected and hard working public servant holding a position in the Senior Executive Service of the Department of the Treasury. Yet, Mr Grech engaged in correspondence and conversations with fellow politically partisan individuals, using Commonwealth IT and communications equipment for the purpose, and apparently working against the Government and in support of the Opposition and its federal parliamentary leader.

6.3 These matters first came to the committee as terms of reference directed at establishing whether any adverse actions had been taken against Mr Grech in consequence of his evidence to the Senate Economics Legislation Committee on 19 June 2009. Only later, after revelations that Mr Grech had fabricated the email that he asserted he believed he had seen, were the second terms of reference, relating to possible false or misleading evidence and improper interference with the Economics Legislation Committee, agreed by the Senate.

6.4 While the committee has examined both matters together, the second terms of reference and the admissions by Mr Grech did not affect its endeavours to establish the facts in relation to the first terms of reference and to take all steps to ensure that the protection of witnesses before Senate committees remained of paramount importance.

Possible adverse actions taken against Mr Godwin Grech in consequence of his evidence to a committee

6.5 In respect of the matters examined in chapter 3, the committee **finds** as follows:

Media harassment

- At the conclusion of the hearing on 19 June 2009, members of the Press Gallery, particularly camera operators and photographers, flagrantly breached the Presiding Officers' Guidelines for filming and photography in Parliament

House by continuing to film after the adjournment of the hearing and by filming Mr Grech and Mr Martine as they left the building.

- Although the televising of the hearing was duly authorised, the Senate Economics Legislation Committee did not apply the relevant Senate broadcasting resolutions to control the activities of the media present in the hearing room during the hearing.
- Mr Grech (and Mr Martine) was subject to undue pressure from the media during and after the hearing, but there is evidence that Mr Grech invited media attention by his provision of material to a journalist for the purpose of pre-hearing publicity. Mr Grech did not seek the protection of the committee from the media.
- The media attention was a direct consequence of Mr Grech's evidence to the committee.
- There is no evidence that, in their zealotry, camera operators and photographers intended any harm to Mr Grech or to the operations of the committee. However, the conduct of the media at and after the hearing was excessive, inappropriate and in contravention of the rules.

The AFP inquiry

- The AFP inquiry was initiated by the Secretary of the Attorney-General's Department after consultations with the Attorney-General and following an approach from the Secretary of the Department of the Prime Minister and Cabinet.
- The Secretary of the Department of the Prime Minister and Cabinet asked the Secretary of the Attorney-General's Department to examine possible criminal offences and take the necessary action after extensive searches of the relevant departments' IT systems had failed to locate the alleged email and the conclusion was drawn that the email was false.
- In initiating the action which led to the referral of matters to the AFP, the Secretary of the Department of the Prime Minister and Cabinet believed that Mr Grech may have been a victim of the false email. This aspect of the referral was therefore not an action adverse to Mr Grech.
- Further matters referred to the AFP by the Secretary to the Treasury were in consequence of the discovery on Mr Grech's computer of documents indicating possible wrongdoing by him, the search having been initiated by Dr Henry because of concern about the source of material published by journalist, Steve Lewis. This aspect of the referral was an action adverse to Mr Grech.
- The initiation of the AFP inquiry was not primarily motivated by Mr Grech's evidence to the committee.

Disciplinary action by Treasury

- Disciplinary action against Mr Grech was initiated after the discovery on his computer system of incriminating material that suggested that he had breached the Public Service Code of Conduct.
- The search of Mr Grech's computer system was initiated by the Secretary to the Treasury because of concern about the source of material published by journalist, Steve Lewis.
- The initiation of disciplinary action was an adverse action.
- The initiation of disciplinary action was not a direct consequence of Mr Grech's evidence to the committee.
- In the immediate aftermath of the hearing senior Treasury officers took all reasonable steps to comfort Mr Grech and provide for his welfare.

'Backgrounding' of the media

- The committee was unable to discover any evidence of 'backgrounding' of the media.

6.6 In respect of action which the committee found to be both adverse and taken in consequence of Mr Grech's evidence, namely the undue pressure placed on Mr Grech by camera operators and photographers at and after the hearing, the committee also found no evidence of any intention on the part of those camera operators or photographers to cause any harm to Mr Grech or to the committee's operations. The committee has **concluded**, therefore, that **no contempt was committed**.

Recommendation 1

6.7 In respect of its first terms of reference, the committee **recommends**:

- (a) that the Senate endorse the committee's findings in paragraph 6.5 and the conclusion in paragraph 6.6 of the report;
- (b) that the President of the Senate resume consideration of an appropriate response to flagrant breaches of the Presiding Officers' guidelines on filming and photography in Parliament House by members of the media on 19 June 2009, noting the committee's suggestion in paragraph 3.23 of the report; and
- (c) that the Chairs' Committee established under standing order 25(10) consider model practices for handling the media at committee hearings, and the inclusion of additional information about witnesses' rights under the broadcasting resolutions in the standard information provided to all witnesses, as discussed in paragraphs 3.14 and 3.15 of the report.

Possible false or misleading evidence to, or improper interference with, a committee hearing

6.8 In respect of the matters examined in chapter 4, the committee **finds** as follows:

False or misleading evidence by reference to a document later admitted to be false

- There is evidence that the Economics Legislation Committee was misled by the references to a document later admitted to be false.
- Senator Abetz did not give false or misleading evidence to, or cause any improper interference with, the hearing of the Economics Legislation Committee. He did not know at the time that it was a false document. The committee does not dispute that Senator Abetz was acting in good faith in using material supplied by a source he did not doubt.
- Mr Stansfield was unaware that the email was false until it was revealed to be so by the AFP's press release.
- Mr Godwin Grech provided false information to his Treasury colleagues on several documented occasions.
- There are discrepancies between the accounts of events given by Mr Grech and all other persons from whom the committee received submissions.
- No false or misleading evidence was given by Mr David Martine to the Economics Legislation Committee in respect of the document or in respect of any other matter. There was no improper conduct by Mr Martine at the hearing.
- The committee does not accept Senator Eggleston's criticism of Senator Hurley's chairing of the hearing.

Other false or misleading evidence

- Mr Godwin Grech gave a misleading impression to the Economics Legislation Committee about the amount of work involved in his advocacy on behalf of Mr John Grant.
- Mr Godwin Grech gave evidence to the committee about his dealings with the journalist, Steve Lewis, that was untrue.
- Mr Godwin Grech did not disclose to the committee that he had created a record of the email that he asserts he believed existed.

Collusive pre-arrangement of questions and answers for an undisclosed purpose

- Mr Godwin Grech suggested to the Opposition that the Car Dealership Financing Guarantee Appropriation Bill 2009 should be referred to a Senate

committee for the purpose of getting his 'evidence' about alleged corrupt conduct by the Prime Minister into the public arena.

- Mr Godwin Grech met with the Opposition Leader, Mr Turnbull, and Senator Abetz in Sydney for the purpose of showing them the 'evidence' he had of alleged corrupt conduct by the Prime Minister.
- Unbeknown to Mr Turnbull and Senator Abetz, Mr Grech's 'evidence' of this alleged corrupt conduct had been created by himself as a record of an email that he asserts he believed existed.
- Apart from Mr Grech's recollection, which he asserted may be faulty or false, there was no evidence put before the committee that an email resembling Mr Grech's record of it ever existed.
- There was no inappropriate pre-arrangement by Senator Abetz of questions and answers for the hearing of the Economics Legislation Committee.
- Questions which may have a political motive are a commonplace and unremarkable part of the processes employed by senators for holding governments to account.

Improper use of a hearing

- The hearing by the Economics Legislation Committee was an entirely legitimate use of Senate procedures to explore a matter of possible misfeasance.
- Unbeknown to all but Mr Godwin Grech, evidence of the possible misfeasance had been recreated, as a record of an email that he asserts he believed existed. In this sense, there was an improper interference with the hearing of the Economics Legislation Committee on the OzCar bill.

Possible interference with Mr Grech in relation to his evidence

- In respect of the allegation concerning Mr Jim Murphy, the committee does not dispute Treasury's account.
- In respect of the allegation concerning Mr Chris Barrett, the committee does not dispute Mr Barrett's account.
- There is no evidence that improper pressure was placed on Mr Grech in respect of his evidence by any person other than himself, or that any other person caused any improper interference with Mr Grech in respect of his evidence.

Mr Grech's fitness to give evidence on 19 June 2009

- The Department of the Treasury and its senior officers have no case to answer that in allowing Mr Grech to give evidence, knowing his difficult state of health and the work pressure he was under, they failed to respond adequately to the requirements of a Senate committee, thereby causing an improper interference with the free exercise by the committee of its authority.

6.9 Although evidence was given to the Economics Legislation Committee by Mr Grech that was objectively false and misleading, and although the committee was also misled by references to an email later revealed to have been fabricated by Mr Grech, this committee has not been able to make findings about Mr Grech's state of mind at the time he took those actions. A finding of contempt by misleading a Senate committee depends upon the existence of a subjective intention to do so. This committee has not been able to conclude that Mr Grech knowingly and deliberately gave false or misleading evidence, or that he knowingly and deliberately misled the Economics Legislation Committee about the basis of its inquiry. This committee is frustrated by its inability to arrive at a conclusion as to Mr Grech's culpability, both because of the state of his health, and the practical difficulty of testing the claim of medical incapacity advanced by his treating doctor. Nevertheless, the committee is not in a position to dispute the medical evidence of Mr Grech's incapacity to participate in its proceedings. In these circumstances, the committee **is unable to arrive at a conclusion that a contempt was committed by Mr Grech.**

Recommendation 2

6.10 In respect of its second terms of reference, the committee **recommends** that the Senate endorse the committee's findings in paragraph 6.8 and the conclusion in paragraph 6.9 of the report.

George Brandis
Chair

Additional Comments by Senator Collins

Some additional comments are important in addressing the material before the Committee relating to the pressure Mr Grech was under with respect to his evidence by virtue of his relationship with senior Liberal Party identities.

In paragraph 1.9, reference was made to the difficult circumstances in which the Committee's inquiries were conducted and the Committee's attempts to put politics aside and, with the assistance of the Senate's Privilege Resolutions, establish the facts and make findings by its usual means. That these efforts were largely successful is indicated by the Committee's presentation to the Senate of a unanimous report. Because the matters it deals with are so serious, going as they do to the protection of the integrity of the Senate and its processes, unanimous reports by the Committee are highly desirable. This is more difficult to achieve where senators may be subject to investigation and there will necessarily be some element of partisanship.

Such was the case with the second of the Committee's terms of reference in particular. It is a matter of record that the Opposition opposed these terms of reference. Consequently, Government members of the Committee were mindful to ensure that the inquiry was not a 'witch hunt' and that the report was unanimous as far as possible. There were one or two areas where Government members would have been happy to see particular issues canvassed more extensively but, in the interests of achieving unanimity, did not insist on the inclusion of such material. At the suggestion of the Committee chair, I have instead chosen to add such material by way of additional comments. In doing so, I stress that this is not a dissenting report but material in the nature of additional comments.

As rumours of a document linking the Prime Minister and Mr Grant turned into reports that there may indeed be such a document, Mr Grech would have been under pressure in the lead up to his evidence before the Economics Committee. These matters are closely associated with Mr Grech's relationship with senior Liberal Party identities, including Mr Turnbull. This relationship, and the consequences for Mr Grech as the results of his assistance to the Opposition began to surface in public, may have been in itself a source of pressure for Mr Grech.

On the evidence available to the Committee, Mr Grech and Mr Turnbull had a close relationship over an extended period of time. They exchanged at least 22 emails and 8 phone calls/text messages in the period from November 2008 to late June 2009.¹ Mr Grech was also in communication with other senior Liberal Party identities in at least 88 email exchanges from September 2008.

Further, the Committee was provided with copies of Mr Grech's phone and SMS records which showed him receiving details of Steve Lewis's phone number, as described in

¹ Treasury submission, dated 13 August 2009, attachment; AFP submission, dated 11 September 2009, attachment.

paragraph 4.26. Calls to the number used to SMS Mr Lewis's details, were made from Mr Grech's Treasury landline and mobile number on several occasions.

Call Date Phone – from Phone – to Duration

13 May 2009 at 6.32pm	0262633219	<i>(number used to SMS Mr Lewis's details)</i>	8sec
13 May 2009 at 7.24pm	0262633219	<i>(number used to SMS Mr Lewis's details)</i>	5min 36sec
4 June 2009 at 8.14pm	0262633219	<i>(number used to SMS Mr Lewis's details)</i>	10min 38sec
15 June 2009 at 10.44pm	0434315884	<i>(number used to SMS Mr Lewis's details)</i>	6min 1sec
16 June 2009 at 10.49am	0262633219	<i>(Mr Lewis's details)</i>	8sec
16 June 2009 at 3.22pm	0262633219	<i>(Mr Lewis's details)</i>	1min 30sec
16 June 2009 at 6.54pm	0262633219	<i>(Mr Lewis's details)</i>	52sec
17 June 2009 at 5.52pm	0262633219	<i>(Mr Lewis's details)</i>	2min 42sec
18 June 2009 at 9.36am	0262633219	<i>(Mr Lewis's details)</i>	13min 38sec
18 June 2009 at 1.34pm	0262633219	<i>(number used to SMS Mr Lewis's details)</i>	4min 30sec
18 June 2009 at 4.18pm	0262633219	<i>(number used to SMS Mr Lewis's details)</i>	5min 26sec
18 June 2009 at 4.23pm	0262633219	<i>(Mr Lewis's details)</i>	54sec
18 June 2009 at 7.15pm	0262633219	<i>(Mr Lewis's details)</i>	2sec
18 June 2009 at 8.20pm	0418623055	<i>(number used to SMS Mr Lewis's details)</i>	6min 30sec
18 June 2009 at 9.33pm	0418623055	<i>(Mr Lewis's details)</i>	1min 30sec

0262623219 – Mr Grech's Treasury landline number

0434315884 – Mr Grech's Treasury Blackberry mobile number

0418623055 – Mr Grech's Treasury mobile number

The nature and depth of that relationship was such that Mr Grech provided Mr Turnbull and other senior Liberal Party identities with a range of advice on policy and strategy, including drafting detailed policy documents, and advice directly to Mr Turnbull on improvements to 'our' polling; being linked to what Mr Grech called the 'Punter Pain Profile', where voters needed to suffer economically before they would 'vote anything but Labor'.²

Further examples of the nature and type of this comprehensive advice provided by Mr Grech to Mr Turnbull and senior Liberal Party identities include:

- Policy direction and strategies for dealing with the media, as well as backgrounding the media on lines of inquiry to pursue the Rudd Government;
- Strategies on the focus and direction of Senate hearings such as, agenda, order of appearance of witnesses and providing questions for Senate hearings;
- Advice on Mr Turnbull's elevation to Opposition Leader and nominating personnel for positions within Mr Turnbull's office; and
- Advice on how the Opposition deal with the ETS issue, by suggesting to back amendments to avoid a double dissolution and then attacking the shortcomings of the legislation once it passed into law.

² Treasury submission, dated 13 August 2009, attachment; AFP submission, dated 11 September 2009, attachment.

Mr Grech's advice also extended to providing Mr Turnbull advice on his dealings with the National Party, an assessment and strategy for the 2010 election that plans for a Turnbull victory in 2012–13, and on fundraising. In addition to providing advice, Mr Grech also directly canvassed a peak business body to come up with some 'decent policy proposals that Turnbull will find useful'.³ Some of the advice offered by Mr Grech was taken up by Mr Turnbull.

Mr Grech also sought to promote the business interests of some senior Liberal Party identities. Aside from the case of the car dealer referred to in the ANAO report as [*Dealer 7*], for instance, in advancing the Treasury RFT Financial Advisory Services Panel to John O'Sullivan from Credit Suisse, Mr Grech indicates that 'something extraordinary would have to happen for you not to end up on the Panel and to cream most of the work'⁴.

There is no doubt that Mr Grech believed that Mr Turnbull saw him as a dedicated operative of the Liberal Party with a partisan political agenda. In a series of emails between Mr Grech and a Liberal Party contact, it was suggested to Mr Grech that he considers a senior role within Mr Turnbull's office as either a strategic and economic adviser. A Liberal Party contact also told Mr Grech that Mr Turnbull holds him in high regard and with absolute respect. Mr Grech responded by saying that he believes 'Turnbull sees him as more valuable in Treasury' and that 'he prefers to be placed where he's most value to Turnbull, currently it's Treasury'.⁵

It would have been clear to Mr Turnbull and perhaps less so for Senator Abetz, that in relation to Mr Grech they were not dealing with a public servant trying to discharge a public duty but a dedicated operative of the Liberal party with a partisan political agenda who was placing himself at some risk in doing so.

At the Sydney meeting of 12 June between Mr Grech, Mr Turnbull, Senator Abetz and Mr Stanfield, Mr Grech's actions when he tabled the emails, allowing them to be viewed and notes taken but not copied, suggests that he considered the emails themselves would not be used but merely the information in them. Mr Grech may have believed that there was enough information provided in content alone for Mr Turnbull to pursue the issue without the need to table any of them in Parliament or to a Senate inquiry. He states 'he never intended the email to be used in the way that it was, nor did he give the Coalition permission to disclose its contents to anyone.'⁶

Subsequent to that meeting a more comprehensive set of interactions took place between Mr Turnbull and Mr Grech than Mr Turnbull stated in a joint press release on 4 August 2009.

³ Treasury submission, dated 13 August 2009, attachment.

⁴ Treasury submission, dated 13 August 2009, attachment.

⁵ Treasury submission, dated 13 August 2009, attachment.

⁶ Statement by Mr Grech published in *The Australian*, 4 August 2009.

On 16 June a strategy was proposed by Mr Grech on how to deal with journalist Mr Lewis and this strategy was endorsed by Mr Turnbull. The information was to be passed on to Mr Lewis as strictly background, off the record and not for publication basis. Mr Grech made it clear to Mr Lewis, in an email which was also forwarded to Mr Turnbull, that the information needed to be treated in accordance with Mr Grech's wishes.

Given the clear instructions from Mr Grech on how the information was to be handled, Mr Turnbull would have known that the information needed to be treated in accordance with Mr Grech's wishes. Mr Turnbull discussing it publicly with Dr Charlton in front of third parties at the Press Gallery Mid Winter ball, and the subsequent widespread reporting of this incident in the media, may have been a source of distress to Mr Grech and would have placed him under some pressure ahead of the Senate Estimates Economics Legislation Committee hearing on 19 June.

Such pressure may have been compounded by any other backgrounding that may explain Mr Lewis' preparedness to publish details beyond any understanding with Mr Grech. Mr Grech alludes to this possibility in his AFP statement referring to 'where else' Mr Lewis may have sourced detail of the email.

It is difficult to reconcile Mr Turnbull's and Senator Abetz's claim in their joint press release on 4 August 2009 that they had not had any reason to doubt the bona fides of a senior public servant such as Mr Grech.

1. Mr Grech had been acting as a de facto adviser to Mr Turnbull for some time.
2. The depth of animosity that Mr Grech held towards the Rudd government would have been well known to Mr Turnbull and senior Liberal Party identities given the level and frequency of communication between them. Terms used in those communications to describe the Prime Minister, included 'Major Rudd / Carr arse licking', 'we have to defeat this man' (Rudd), referring to the Prime Minister as a 'fraud', 'a pure fake', 'Rudd and his Hacks', and even comparing the President of the United States of America in derogatory terms such as 'the Black Jesus'. Anyone who read these comments would have been left in no doubt that they were dealing with somebody who was highly politically partisan.⁷
3. Mr Grech also demonstrated his eagerness to mislead to promote an outcome. Mr Grech suggested to Mr Turnbull when they met on 12 June that he be characterised as associating with the ACT Labor Branch to demonstrate 'the gross politicisation of Treasury'; any association of the ALP is unknown.⁸ Also, in an email to Mr Sinodinos on 21 May 2009, he advises that he 'is making a special effort' to assist the car dealer referred to in the ANAO report as *[Dealer 7]* because Mr

⁷ Treasury submission, dated 13 August 2009, attachment.

⁸ Treasury submission, dated 13 August 2009, attachment.

Turnbull knows the dealer and has been to the dealer's house. Mr Grech also adds that this dealer is a strong financial donor to the Liberal Party and Mr Turnbull has used the dealer's home for fundraisers. Mr Grech states that he is 'enjoying the irony' of having misled the Prime Minister in person telling him that this car dealer was a big supporter of the ALP.⁹ There is no evidence this incident with the Prime Minister actually occurred.

4. Mr Grech seemed extraordinarily keen to offer himself for the Opposition 'cause'. He was prepared to undertake significant personal risk, for example, in an email to a Liberal Party contact on 7 November 2008, he states 'My immediate motivation is to place myself where I think I could be of most value to MT and the Party. At this stage I am probably more valuable here in Treasury (albeit the personal risks I am taking)'. Not only was Mr Grech happy to be placed where he was of most value to the Opposition but he also indicated to Mr Turnbull, 'I'm happy for you to start using my name in Parliament or in the media' and to encounter any resistance from Treasury or the Government.¹⁰

It is difficult to see how these and other matters had not lead to more caution as Mr Grech clearly displayed behaviour inconsistent with that required of a senior public servant.

⁹ Treasury submission, dated 13 August 2009, attachment.

¹⁰ Treasury submission, dated 13 August 2009, attachment.

Appendix One

List of Submissions

1. Mr Brien Hallett, Usher of the Black Rod, 26 June 2009.
2. Mr Chris Kenny, Chief of Staff, Office of the Leader of the Opposition, 30 June 2009.
3. Senator the Hon. Bill Heffernan, 22 July 2009.
4. Mr Brien Hallett, Usher of the Black Rod, 23 July 2009.
5. Senator Annette Hurley, Chair of the Senate Economics Legislation Committee, 27 July 2009.
6. Mr Alister Jordan, Chief of Staff, Office of the Prime Minister, 29 July 2009.
7. Mr Chris Barrett, Chief of Staff, Office of the Treasurer, received 31 July 2009.
8. Mr M Keelty APM, Australian Federal Police, 10 August 2009.
9. Senator Alan Eggleston, Deputy Chair of the Senate Economics Legislation Committee, 11 August 2009.
10. Dr Ken Henry AC, Secretary to the Treasury, 12 August 2009.
11. Dr Ken Henry AC, Secretary to the Treasury, 18 August 2009.
12. Senator the Hon. Eric Abetz, Deputy Leader of the Opposition in the Senate, 26 August 2009.
13. Mr Brad Stansfield, Chief of Staff, Office of Senator the Hon. Eric Abetz, 28 August 2009.
14. Mr Roger Wilkins AO, Secretary, Attorney-General's Department, 28 August 2009.
15. Mr John Wilson, Lawyer, Williams Love & Nicol, on behalf of Mr Godwin Grech, 28 August 2009.
16. Senator Annette Hurley (on her own behalf), 27 August 2009.
17. Dr Ken Henry AC, Secretary to the Treasury, 31 August 2009.
18. Ms Mandy Newton, Acting Deputy Commissioner, Australian Federal Police, 11 September 2009.

19. Mr Terry Moran AO, Secretary, Department of the Prime Minister and Cabinet, 16 September 2009.
20. Senator Annette Hurley, Chair of the Economics Legislation Committee, 21 September 2009.
21. Dr Ken Henry AC, Secretary to the Treasury, 24 September 2009.
22. Mr Chris Barrett, Chief of Staff, Office of the Treasurer, 27 October 2009

Appendix Two

**Response from Mr Grech's Legal Representative to
extracts from the draft report**

WILLIAMS LOVE & NICOL

LAWYERS

24 November 2009

Partner
John Wilson

ALSO BY EMAIL: rosemary.laing@aph.gov.au

Our reference
JSW: 10090704

Dr Rosemary Laing
Secretary
Committee of Privileges
Australian Senate
Parliament House
CANBERRA ACT 2600

CONFIDENTIAL

Dear Dr Laing

**SENATE COMMITTEE OF PRIVILEGES INQUIRY INTO MATTERS ARISING
OUT OF THE HEARINGS OF THE ECONOMICS LEGISLATION COMMITTEE
ON 19 JUNE 2009**

I respond to the document enclosed with your letter to me of 17 November 2009 as follows.

The first matter referred for the committee's consideration was:

Whether there was any false or misleading evidence given, particularly by reference to a document that was later admitted to be false.

The following two findings stated at paragraph 6.9 of the draft report are not relevant to or required by the express terms of reference.

First, that 'Mr Godwin Grech provided false information to his Treasury colleagues on several documented occasions'.

What 'information', 'false' or otherwise, Mr Grech may have provided to his Treasury colleagues was, as a matter of fact, 'given' by him on occasions other than *at* the hearing of the Economics Legislation Committee hearing on 19 June 2009.

It was, therefore, not 'evidence given' by him on that occasion.

Secondly, whether it is a fact that '[T]here are discrepancies between the accounts of events given by Mr Grech and all other persons from whom the committee [i.e. the Senate Privileges Committee] received submissions' is, again, irrelevant to the matter before the committee: i.e. whether 'any false or misleading evidence [was] given at' the hearing of the Economics Legislation Committee hearing on 19 June 2009.

Those findings should be deleted.

Turning now to the finding that, '[T]here is evidence that the Economics Legislation Committee was misled by references to a document later admitted to be false'.

Again, the referred matter is 'was any false or misleading evidence given'.

That begs the question: what evidence relevant to 'a document later admitted to be false' was 'given'?

Here the committee is conflating the document that Mr Grech recalled, in his evidence of 19 June 2009, as being received by him 'from the PMO' with the document created by him that the committee describes as being 'admitted to be false'.

In relation to the former document, the only express evidence that Mr Grech gave on 19 June 2009 is as stated at page E38 of Hansard:

My recollection may well be totally false or faulty, but my recollection—and it is a big qualification—but my recollection is that there was a short email from the PMO to me which very simply alerted me to the case of John Grant, but I do not have the email.

That answer was given in response to the following question from Senator Abetz (underline added):

But has Mr Grech seen a document of the nature that I previously described – yes or no?

That was the question that Mr Grech's answer was responding to.

Mr Grech evidence as to whether he had 'seen a document of the nature that [Senator Abetz had] previously described':

- Was expressly said to have been based on 'recollection'.
- Contains an express admission – or, to use his term, a 'big qualification' - that the 'recollection may well be totally false or faulty' (underline added).
- Contains an express acknowledgement that Mr Grech did not 'have the email'.

In other words, the Committee was not, and cannot have been, misled by anything: on Mr Grech's evidence what it had before it was the *possibility* that he had received 'a short email from to PMO that very simple alerted [Mr Grech] to the case of John Grant', with the 'big qualification' that his 'recollection may well be totally false or faulty' – in other words, there may have been no such email – and that he did not 'have the email'.

On any reasonable, objective analysis, that evidence simply stated plain matters of fact that were not false.

Contrary to the committee's present finding, there can be no question of that evidence being what it presently terms 'objectively false or misleading': no reasonable person could have been misled by that evidence.

And it cannot be the case that the committee, or any one or more members of it, were, subjectively, 'misled by references to an email later revealed to have been fabricated by Mr Grech'.

Again, the draft findings conflate two discrete documents. That leads the committee to come to the erroneous conclusion that Mr Grech's evidence in relation to the former document was false because the latter document was, to use the committee's word, 'fabricated'. Again, Mr Grech's references to an email on 19 June 2009 were to a 'short email' that he recalled – rightly or wrongly, and with a 'big qualification' – receiving 'from the PMO', not the later 'fabricated' document.

I now turn to the findings under the heading 'Other false or misleading evidence'.

The finding that 'Mr Godwin Grech gave a misleading impression to the Economics Legislation Committee about the amount of work involved in his advocacy on behalf of Mr John Grant' is unfair.

The relevant passage in Hansard needs to be extracted in full, rather than cherry picked:

Senator JOYCE—I have just one question. Mr Grech, how many other dealers did you give the level of attention and the level of advocacy that you gave to Mr Grant? Would you, if we asked for it, be able to table the emails and the replies and the correspondence to prove that case?

Mr Grech—In answer to your question, Senator, I will not deny the fact that the case of Mr Grant was—

Senator JOYCE—Special?

Mr Grech—It was labour-intensive.

Senator JOYCE—It was very labour-intensive, I suggest?

Mr Grech—It was labour-intensive.

Senator JOYCE—Far more than—

Mr Martine—Senator, if one looks through the two cases and two emails here, both of them are referred by the Treasurer's office, and both of them with a request to make contact with the car dealer. As Mr Grech indicated in earlier evidence, there was already a meeting that he had scheduled with Ford Credit on the Monday, well before the email came through from the Treasurer's office on the John Grant situation on the Friday. Mr Grech took the opportunity to put John Grant in contact with Ford Credit on the Monday. They had discussions among themselves, John Grant and Ford Credit. At some point subsequent to that, Ford Credit obviously knocked back John Grant's application.

Senator JOYCE—On this case of Mr Grant, when you say it was labour-intensive, Mr Grech, how do spell labour in that?

CHAIR—Senator Joyce, really that is most unfair.

Senator JOYCE—It is quite obvious that it is game, set and match.

CHAIR—Do you have any more questions?

Senator JOYCE—*Absolutely. Would you say that Mr Grant's case was twice as detailed, or three times as detailed—*

Mr Grech—*Senator, can I be—*

Senator JOYCE—*In the amount of correspondence and time you spent on it? What proportion and amount of time did you spend on it? Was it far in excess, just in excess? You must know. You do have a clear understanding. What is it?*

Mr Grech—*Their needs were different. With respect to the Kay Hull representation, it was simply a case of giving the car dealer a phone call, touching base with him, and informing him. He wanted to know basically how OzCar works, what his options were, where he could go to try to get help. The 'Kay Hull dealer', I will put it that way, I had a couple of phone calls with him. But, in all it was a five or ten minute chat, some of which frankly was spent talking about the particular town in which he lived. With respect to Mr Grant, it was not the amount of work per se. It was different. He wanted to know how OzCar works. He wanted to know what his funding options were and he made it clear that any assistance forthcoming in trying to organise an alternative floor plan, given that GE were basically putting him under the pump with respect to his Kia dealership back in Ipswich, would be appreciated.*

Senator JOYCE—*I have two last questions. If I asked you, as before, to table the documentation for the member for Riverina's case, for Mr Billson's case, would it be in any way comparable to the amount of correspondence that has gone into Mr Grant's case?*

Mr Grech—*If we are just judging the cases by the amount—*

Senator JOYCE—*Do you have another case where there would be—*

CHAIR—*Senator Joyce, Mr Grech is trying to answer your question.*

Mr Martine—*Senator, you have in front of you the extent of the documentation. To the extent that the email chain here with respect to John Grant is longer than the email chain with respect to the car dealer in Ms Hull's electorate, then it is correct to say that there is more documentation.*

Senator JOYCE—*Quite substantially more.*

Mr Martine—*This is the extent of it.*

Senator JOYCE—*That is before the phone calls and the private representations, which we obviously do not see. Mr Delaney said before that you would have made calls to hundreds of dealerships. Mr Grech, did you make calls to hundreds of dealerships?*

Mr Grech—*No, I did not.*

Senator JOYCE—*I did not think you did. Thanks.*

On any fair reading of the evidence, the facts are these:

- Mr Grech makes his 'labour-intensive' statement at the start of Senator Joyce's questioning.
- He is then cut off from answering by the Chair when Senator Joyce seeks to explore with him just what he means by 'labour-intensive'!
- He (Mr Grech) then, when Senator Joyce presses his point, Mr Grech gives the answer that explains what he means by the term that he had initially used:

Their needs were different. With respect to the Kay Hull representation, it was simply a case of giving the car dealer a phone call, touching base with him, and informing him. He wanted to know basically how OzCar works, what his options were, where he could go to try to get help. The 'Kay Hull dealer', I will put it that way, I had a couple of phone calls with him. But, in all it was a five or ten minute chat, some of which frankly was spent talking about the particular town in which he lived. With respect to Mr Grant, it was not the amount of work per se. It was different. He wanted to know how OzCar works. He wanted to know what his funding options were and he made it clear that any assistance forthcoming in trying to organise an alternative floor plan, given that GE were basically putting him under the pump with respect to his Kia dealership back in Ipswich, would be appreciated.

There is nothing 'false or misleading' about that answer; and certainly the committee says nothing in its draft report as to why it might be.

The finding that 'Mr Godwin Grech did not disclose to the committee that he had created a record of the email that he assets he believed existed, is also unfair – for two reasons.

First, again, the relevant passage in Hansard needs to be extracted in full, rather than cherry picked:

Senator ABETZ—Right. Thank you. Now, Mr Martine told us, helpfully, in the opening statement that Treasury have searched and there was no contact between the Prime Minister's office and representations for Ipswich Central Motors.

Mr Martine—That is correct, Senator.

Senator ABETZ—I accept that. Can I ask whether the Prime Minister's office made any representations on behalf of Mr John Grant?

Mr Martine—Senator, I am assuming that is exactly the same question.

Senator ABETZ—Well, it is not. Ipswich Motors is a different legal entity from Mr John Grant.

Mr Martine—Ah, okay. Senator, my apologies if my opening statement was slightly confusing. We have searched for any correspondence from the Prime Minister's office to Treasury relating to either John Grant, by himself, or John Grant/Ipswich Central Motors. To the best of our ability, and we have searched everything we can look for, we have not located any correspondence whatsoever, either emails or physical correspondence.

Senator CAMERON—There you go, there you go.

Senator ABETZ—Can I ask you, then, Mr Grech: are you aware of any direct contact between the Prime Minister's office and people that work for OzCar?

Mr Martine—Senator, there is no paperwork for OzCar.

Senator ABETZ—I am sorry, I am asking Mr Grech.

Mr Martine—I am just trying to clarify that, Senator.

Senator CAMERON—OzCar does not exist.

CHAIR—Mr Martine is able to clarify.

Mr Grech—In the event that there was any correspondence communications between the Prime Minister's office and OzCar, that in effect would mean correspondence communication between the

Prime Minister's office and the Treasury. I am certain that there was no oral communication. In relation to emails and so on and so forth, I am simply not in a position to say anything further to what Mr Martine has said.

Senator ABETZ—*Mr Grech, can you tell us why you are not in a position to tell us anything further because, chances are if there was such an email, you may have sighted it?*

Mr Martine—*Senator, as I indicated, in my opening statement and in response to your question just before, we have thoroughly searched, including Mr Grech has thoroughly searched, all of our available records to see whether we ever received any emails or physical correspondence from the Prime Minister's office with respect to John Grant/Ipswich Motors. As of today, we cannot locate any such correspondence or emails.*

Senator ABETZ—*Mr Martine, that is very helpful. Why could Mr Grech not tell us that he himself had searched and not found any email trail?*

Mr Martine—*I think Mr—*

Senator ABETZ—*I asked Mr Grech that specifically.*

Mr Martine—*Senator, I think Mr Grech was answering that question, and Mr Grech has been involved in this search. As we talked about earlier, part of your FOI request includes correspondence with respect to John Grant between the Prime Minister's office and Treasury. We, including Mr Grech, have searched and we have located no such correspondence.*

Senator CAMERON—*Zero, zilch, nothing there.*

Senator ABETZ—*No oral?*

Senator CAMERON—*Nothing.*

Senator ABETZ—*Can I ask Mr Grech, yet again, whether he, at any stage, sighted a document? I can understand that it may well be that you searched and found nothing. I can understand that and I do not question that. What I want to know is whether Mr Grech may have sighted a document, which is potentially now no longer in existence. Mr Grech, can I ask you: have you seen any contact between the Prime Minister's office and Treasury/OzCar facility?*

Senator CAMERON—*Oh, no. Will you never give this up?*

CHAIR—*Senator Cameron!*

Senator CAMERON—*God!*

CHAIR—*Senator Abetz, I think that question contains a sort of veiled statement.*

Senator ABETZ—*No, it does not, Chair. It is a specific request. I am fully accepting the witnesses' evidence that they searched and could not find the document. I accept that. What I am asking is: has Mr Grech ever seen a document that might now no longer be locatable? Mr Grech, that must be in your personal knowledge.*

Mr Martine—*I think, Senator, we have answered this question.*

Senator ABETZ—*No, you have not, with great respect.*

CHAIR—*Yes. I think, Senator Abetz, that the question has been answered.*

Senator ABETZ—No, Chair. With great respect, that has not been answered, and I ask Mr Grech: has he seen such a document?

CHAIR—The department has answered that question.

Senator ABETZ—No, they have not, Chair.

Senator CAMERON—Yes, they have.

Senator ABETZ—They have said they have found no document.

Senator PRATT—They found no document.

Senator ABETZ—I accept they have found no document. I am making no accusation about that.

Senator CAMERON—You are now just concocting another story.

Senator ABETZ—What I am now asking—

Senator CAMERON—Concocting another story—another straw man!

Senator ABETZ—Chair? You are interrupting.

CHAIR—Senator Cameron!

Senator CAMERON—I mean, that is the problem with you guys.

CHAIR—Senator Cameron!

Senator CAMERON—You try to bully them like Malcolm Turnbull bullies other people.

CHAIR—Senator Cameron, that is enough.

Senator CAMERON—If you are going to continue down that track—

CHAIR—Senator Cameron, order! Please!

Senator CAMERON—They should not be bullied by you guys.

CHAIR—We are trying to have an orderly discussion, although I admit it is not so much on the Car Dealership Financing Guarantee Appropriation Bill.

Senator CAMERON—They have got form, these people.

Senator PRATT—Yes, not so much on the bill.

CHAIR—I have let it be fairly wide ranging.

Senator ABETZ—Thanks, Chair.

CHAIR—In deference to the particular interests of the opposition.

Senator ABETZ—Thanks for that.

CHAIR—But it seems to be pushing it a bit far to ask three or four questions on something that is not relevant to the bill when we do have more questions to ask.

Senator PRATT—Yes, and that is just so much speculation.

Senator ABETZ—Chair, with great respect can I simply ask the question? I do not know why there is

sensitivity.

CHAIR—*There is no sensitivity here.*

Senator ABETZ—*All right. I withdraw that.*

CHAIR—*But we are wasting time.*

Senator ABETZ—*Can Mr Grech simply answer my question: has he seen a document that might be described as a communication between the Prime Minister's office and Treasury in relation to John Grant? He either has, or he has not. Mr Grech, your answer, please.*

CHAIR—*That is simply another way of asking the same question.*

Senator ABETZ—*No, it is not.*

CHAIR—*The department already has stated it has not.*

Senator ABETZ—*Chair, it is possible that good, honest people undertook a search and found no document. I accept that. But it may also be that a document once did exist, and that is what I am asking Mr Grech. It is a very simple answer. He has either seen such a document, or he has not seen a document—yes, or no. I do not understand the concern.*

Senator CAMERON—*It is pure speculation. He should not be forced to answer speculation.*

Senator ABETZ—*Of course it is speculation and we can have it answered here today.*

CHAIR—*Senator Cameron!*

Senator CAMERON—*It is a fishing expedition because they have hit the wall. They cannot go on because it is a fishing expedition. That is all it is.*

CHAIR—*Senator Cameron, we are trying to move on. I would ask people to come back to the bill that we are discussing, if at all possible, rather than continuing on with a question that has already been answered.*

Senator ABETZ—*Madam Chair, I think anybody listening in, any objective observer with great respect, would accept there is a difference between finding a document and actually previously having sighted a document.*

CHAIR—*Well, Senator—*

Senator ABETZ—*Which can now no longer be found.*

CHAIR—*Mr Martine—*

Senator PRATT—*Let us move on.*

Senator ABETZ—*Senator, if I may, I have not asked whether you have seen such a document. I am asking whether Mr Grech has seen such a document, and it must be within Mr Grech's personal knowledge whether he has or he has not.*

Mr Martine—*Senator, as part of our search, we have searched all of our available records to determine whether such a document exists, or in fact ever existed, and we have not been able to locate any such document.*

Senator ABETZ—*And I can understand that and accept that at face value, Mr Martine. There is a different question here.*

CHAIR—Well—

Senator ABETZ—Has Mr Grech ever sighted such a document that might fit in that description, and the answer is yes or no.

CHAIR—We have now had that question several times, and we have now had the answer several times.

Senator ABETZ—No, we have not, Chair.

Senator PRATT—This is not helping—

CHAIR—Senator Abetz, if you have no further questions—

Senator ABETZ—I do have a question.

CHAIR—Further questions.

Senator ABETZ—And the sensitivity in relation to this is gob smacking, quite frankly.

CHAIR—No, Senator Abetz, we are just a bit bored. That is the problem. We are just a bit bored.

Senator PRATT—Point of order.

Senator ABETZ—Chair, may I suggest that we relieve your boredom allowing Mr Martine or Mr Grech to answer the question, yes or no.

Senator FIFIELD—Chair, there is a point of order.

CHAIR—I could go to other senators too.

Senator CAMERON—Do not get to the bullying stage. We know your boss is a bully. Do not start that here. I am not copping it. Right?

CHAIR—Senator Cameron, do you have questions? If Senator Abetz has no further questions, we will move on.

Senator ABETZ—No, I am sorry, Chair.

Senator CAMERON—I have questions.

Senator FIFIELD—We have been moving on before the chair for some time.

Senator ABETZ—All right, Chair. Allow me to move on.

Senator CAMERON—Do not be familiar.

Senator ABETZ—A person, a journalist in fact, has suggested to me—

Senator CAMERON—Do not stare at me.

Senator ABETZ—That there may be—

CHAIR—Senator Cameron!

Senator CAMERON—Do not try to stare at me, or bully me, either. Okay?

Senator ABETZ—That there may be—

CHAIR—Senator Cameron!

Senator CAMERON—It does not work.

CHAIR—Senator Abetz is asking a question.

Senator ABETZ—That there may have been a communication from the Prime Minister's office.

Senator FIFIELD—Extraordinary.

CHAIR—I think this might be—

Senator ABETZ—Allow me. It was along these lines and I want to know whether it is familiar to Mr Grech: 'The Prime Minister has asked if the car dealer financing vehicle is available to assist a Queensland dealership, John Grant Motors, who seems to have trouble getting finance. If you could follow up on this as soon as possible, that would be very useful.' This is what has been suggested to me by somebody, and there is of course the suggestion in today's media that such a document exists.

Senator CAMERON—A suggestion! A suggestion!

Senator ABETZ—Mr Grech, do those words sound familiar to you? Were they part of a document that emanated from the Prime Minister's office?

CHAIR—Mr Martine, would you like to respond?

Mr Martine—Senator, as I—

Senator ABETZ—Why ask Mr Martine when it is not within his personal knowledge?

CHAIR—Because he has answered this many times before, and he probably has it off pat by now.

Senator ABETZ—It is in the personal knowledge of Mr Grech.

Mr Martine—Senator, as I indicated, we, including Mr Grech, have searched all of our available records to see whether any such correspondence, whether it is an email or a physical document, exists that has been sent from the Prime Minister's office to the Treasury with respect to John Grant, and we have not been able to locate any such document.

Senator ABETZ—That is fine, but that is not answering my question, Mr Martine, and you know it. I am asking—and I accept that at face value, no question: has Mr Grech sighted a document as I have just read out? The answer is quick, yes or no, and we can move on, Chair. We can move on.

CHAIR—Yes.

Senator ABETZ—Just allow Mr Grech to answer.

CHAIR—No.

Senator ABETZ—Mr Grech?

CHAIR—Senator Abetz, I indicated to you previously that the committee did want to move on.

Senator CAMERON—They have got nothing.

Senator ABETZ—I have other questions, in that case.

CHAIR—Well, would you please ask them because we have been stuck for about five minutes on the same question and we have had the same answer.

Senator ABETZ—All right. Representations were made to you by Ms Hull, a Ms Kay Hull. That is correct?

Mr Grech—That is right.

Senator ABETZ—And by a Mr Billson, a Mr Bruce Billson?

Mr Grech—Yes.

Senator ABETZ—And what about a Mr Charlton, Andrew Charlton?

Mr Martine—Senator, as I—

Senator ABETZ—Oh, intervention!

Mr Martine—Senator, as I have just indicated, and Mr Grech indicated this as well, there were no phone calls from the Prime Minister's office. As I have indicated, we have had no correspondence. We have been able to locate no correspondence whatsoever in relation to—

Senator ABETZ—Why can I not ask Mr Grech that question, which resides personally in Mr Grech's knowledge?

Senator CAMERON—Because you are making it up. You are making it up. That is what you are doing.

CHAIR—Senator Cameron!

Senator CAMERON—You have got no evidence and you are making it up. That is what you are doing.

CHAIR—Senator Cameron! Senator Abetz, I have said that I will move on to another senator, and I am. Senator Cameron?

Senator ABETZ—No, Chair. At least hear me out.

Senator CAMERON—Sure.

Senator ABETZ—Chair, point of order.

CHAIR—No, Senator Abetz.

Senator EGGLESTON—He has taken a point of order.

Senator ABETZ—Chair, this is a crucial issue. It has been raised—

CHAIR—No, that is not a point of order, Senator Abetz.

Senator ABETZ—I cannot even state a point of order. The Labor senators will not allow it.

Senator FIFIELD—Point of order. Chair, you cannot rule on a point of order before you have permitted a senator to state what their point of order is. You cannot anticipate what a senator is going to say before they say it.

CHAIR—Well—

Senator PRATT—*She was told that it was about that issue.*

Senator FIFIELD—*Chair, you are required to listen to a senator's point of order before ruling on it.*

CHAIR—*Senator Fifield, if you will let me finish, I will allow Senator Abetz one more time to ask his question.*

Senator ABETZ—*Thank you.*

CHAIR—*And then can we have an undertaking to move on?*

Senator ABETZ—*Yes. Chair, I would be delighted. And, Mr Martine, could I have your undertaking that Mr Grech will be allowed to answer this?*

CHAIR—*No. Please, Senator Abetz, just ask your question.*

Senator ABETZ—*Will I be given—*

CHAIR—*Senator Abetz, will you ask your question?*

Senator ABETZ—*Yes, and my question is: will Mr Martine allow Mr Grech to answer this question?*

Mr Martine—*Senator, it will depend, obviously, on what your question is as to who the most appropriate official at the table would be to answer the question.*

Senator ABETZ—*All right. The most appropriate official to answer this question: Mr Grech, to your personal knowledge, have you personally sighted any correspondence—email, note, memorandum or any type of documentation emanating from the Prime Minister's office to Treasury—concerning Mr John Grant and the OzCar facility?*

Mr Grech—*You referred to some journalist before, so I do not like the connotation, what that means—press articles and so on—because frankly I was very distressed this morning when I woke up and read that article. With your indulgence, if I may—and I know time is flitting away from us; I will answer your question; I will get to it—but I am a public servant, and I am basically in a situation in which no public servant should find him or herself in. I have worked very hard over a long time to build up trust within the department and within my relationships—*

CHAIR—*Sorry, Mr Grech—*

Mr Grech—*No, I want to continue. My bottom line is that when articles like the one from Mr Lewis appear in the morning papers and when the circle for a lot of these things is relatively small, I do not know who has talked to whom. I do not know who Ford Credit had talked to. I do not know who Capital Finance or whatever other third party has spoken to. I know that when I go to a meeting and I sit down with three or four or five strangers and try to have a professional discussion, I work on the assumption that what I put on the table is not going to end up on the front pages of the tabloids the next day. But my point is that, you know, it was very hard this morning going into work and looking my colleagues in the eye when I know that their instinctive response would have been to point the finger at someone like me, given that frankly there are not that many people working on this stuff within government. That is just a general point. In terms of your specific question, believe me, I appreciate the sensitivity of it and its import, and it was certainly my belief—and noting that it was only me in Treasury with all this OzCar turbulence and who had been putting together the cabinet papers, dealing with the banks and the other financiers—it all came down on my shoulders. But it was my understanding that the initial contact I had with respect to John Grant was from the Prime Minister's office. As David has said, we have, and our IT people have, undertaken in the last 24 hours as diligent a search as possible to trace, locate through our backups and emails, which may or may not have existed, and we just cannot find it. But, and I do not hide from this, it was certainly my understanding that the original representation with respect to Mr Grant came from the Prime*

Minister's office. But what did I do with that representation? I did nothing with it because the Treasurer's office got onto me, and you have seen the email exchanges that emanated from that intervention. That is all I can say.

Senator ABETZ—*So did you see a document? To the best of your recollection, have you seen a document that reflects what you have just told us?*

Mr Grech—*I am—*

Mr Martine—*Senator, as I have said—*

Senator ABETZ—*The only person who knows whether he has seen it or not, Mr Martine, would be Mr Grech. Mr Grech?*

Mr Martine—*Senator, as Mr Grech has outlined, and as I indicated in my earlier answer, we have searched for any documents. As I have said, nothing exists.*

Senator ABETZ—*That is fine. I accept that. But has Mr Grech seen a document of the nature that I previously described—yes, or no?*

Mr Grech—*My recollection may well be totally false or faulty, but my recollection—and it is a big qualification—but my recollection is that there was a short email from the PMO to me which very simply alerted me to the case of John Grant, but I do not have the email.*

Senator ABETZ—*Yes. Was it similar to the terms that I have suggested?*

Mr Martine—*Senator—*

Senator ABETZ—*Mr Grech is the only one who may have seen this document, and I am asking him about the similarity of it, Mr Martine.*

Mr Martine—*Senator, can I just add that, as Mr Grech indicated, he cannot be certain.*

Senator ABETZ—*I accept that. That is why I said 'similar to'.*

Mr Martine—*We have searched. We have made inquiries with a range of parties. I am personally satisfied that no document exists.*

CHAIR—*I think—*

Senator ABETZ—*And I agree with that, but the question is 'similar to' the document that Mr Grech believes he may have seen. Was it similar to the wording that I read out previously?*

CHAIR—*I think what we are now—*

Senator ABETZ—*The answer is yes or no. It is very easy.*

CHAIR—*Senator, what we are now getting into is a hypothetical.*

Senator ABETZ—*No, it is not. It is a definite—*

CHAIR—*No, Senator Abetz—*

Senator ABETZ—*Chair, on a point of order. The witness has indicated clearly he has a recollection of seeing a document, so that is not hypothetical. I am now asking him his recollection of the content of that document. That is not hypothetical either. Therefore I should be allowed to ask the witness whether that which I read out bears a similarity to that document which he has a recollection of previously seeing.*

CHAIR—I am sorry, Senator Abetz, but Mr Grech said quite clearly that his memory may be faulty.

Senator ABETZ—That is right.

CHAIR—Let me finish. When clearly he has said that he is very stressed by this whole episode, to drill down on that and ask him for a better recollection of a faulty recollection is, to me, hypothetical.

Senator ABETZ—It is not. But, look, Chair, fair enough. I will move on.

Senator PRATT—I have a point of order, Chair.

CHAIR—You have a very short time, Senator Abetz, because there are others.

Senator ABETZ—Do you have a recollection that that document emanated from one Andrew Charlton?

Mr Martine—Senator, as Mr Grech indicated, he—

Senator ABETZ—Mr Martine, it is not in your knowledge. It must be in Mr Grech's knowledge.

CHAIR—Senator Abetz—

Senator PRATT—Point of order, Chair.

Mr Martine—It is a fine point.

CHAIR—Senator Pratt has a point of order.

Senator PRATT—Standing order 194 talks about the relevance of the debate to the bill before us. I fail to see how the nature of Mr Grech's recollection can possibly fall within relevance to the inquiry.

Senator ABETZ—On the point of order, Chair: we are finding out how the OzCar—

CHAIR—I do not really need any help.

Senator ABETZ—Thank you.

CHAIR—I have complained before about the relevance, but I have said that we will continue. But I should say that Mr Martine has every right to make some statement before, or if, he passes on to another officer. Mr Martine?

Mr Martine—Thank you, Madam Chair. The point I was trying to make, Senator, was that Mr Grech has indicated that he is unsure—

Senator ABETZ—Of?

Mr Martine—He is unsure about any correspondence from the Prime Minister's office. As I have indicated a number of times we, including Mr Grech himself, have conducted thorough searches and we have not located any correspondence or emails.

Senator ABETZ—Yes, we know all that, but it may be—

CHAIR—Senator Abetz, you can go on, but I am just pointing that you have now had another half an hour and there are other Senators with questions, so a couple more.

Senator ABETZ—I appreciate that, but usually these facilities are for the opposition to ask questions. However, I will continue.

CHAIR—Well, they are for members of the economics committee to ask questions.

Senator ABETZ—Of which I am a full voting member for this one, thank you, Chair. Can I ask Mr Grech whether the name Andrew Charlton rings a bell in relation to the documents you believe you may have seen?

Senator CAMERON—It rings a bell everywhere because we know what your boss did to him.

Senator FIFIELD—Chair, please direct Senator Cameron—

Senator CAMERON—We know exactly how Malcolm Turnbull turned on an officer of the PMO.

Senator FIFIELD—Chair!

Senator CAMERON—We know what he is like. He is a bully. The bully from Bellevue Hill, that is what he is.

CHAIR—Senator Cameron!

Senator FIFIELD—Chair, will you please take control of the committee.

CHAIR—Well, I am—

Senator ABETZ—Can I just ask about the name Andrew Charlton. And Mr Martine, I love the interference you are running, but at the end of the day this is not within your personal knowledge. It is within Mr Grech's, and I would invite Mr Grech to respond on whether—his memory may be a bit hazy, but there might be elements of that communication that are clear—it may have emanated from a Mr Andrew Charlton.

Mr Martine—Senator, the only point I wish to make is that we all are aware that Mr Charlton is a member of the Prime Minister's office. That is the first point, and secondly—

Senator ABETZ—He has made some allegations today.

Mr Martine—Secondly, as Mr Grech indicated, he is unsure of any correspondence. Once again, I will come back to my earlier answer, which is we have searched for documents and we cannot locate any.

Senator ABETZ—We know that, but can I ask Mr Grech now—and thank you for that introduction—as to the specifics—

CHAIR—This is your last question, Senator Abetz.

Senator ABETZ—As to the specifics, Mr Grech, can you tell us whether it was from Andrew Charlton, to the best of your knowledge, information, belief, recollection?

Mr Martine—Senator, and as I have just answered—

Senator ABETZ—Oh!

Mr Martine—As I have just answered—

Senator ABETZ—Can Mr Grech answer one question—

CHAIR—Senator Abetz!

Senator ABETZ—Without your interference?

Mr Martine—I am just trying to add a point of clarification.

CHAIR—Mr Grech has answered a lot of questions. We are about to move on. Mr Martine, have you finished your answer?

Mr Martine—Yes, I have.

CHAIR—Senator Cameron?

Senator ABETZ—Mr Grech—

Senator FIFIELD—Point of order.

Senator ABETZ—No, Mr Grech

Senator CAMERON—You have had more than a fair go.

Senator FIFIELD—Chair!

Senator ABETZ—Point of order, Chair. Mr Martine cannot intervene and then allow you to throw the call when Mr Grech has not been given the opportunity to answer the specifics of the question.

CHAIR—No. The Department of Treasury are here at the table and were given the opportunity to answer the question.

Senator ABETZ—No. Chair—

Senator FIFIELD—On that point of order, Chair.

Senator ABETZ—This is outrageous.

Senator FIFIELD—Part of the purpose of these committees and these hearings is for the parliament to receive information in the public interest, for the parliament to uncover evidence, to uncover the truth in the public interest. Chair, you are not permitting that to happen.

CHAIR—Well, I reject that proposition.

Senator FIFIELD—You are denying witnesses—

CHAIR—I reject that completely.

Senator FIFIELD—You are denying senators the opportunity to ask legitimate questions.

CHAIR—Senator Fifield, you have made your point of order. We have had two hours—

Senator ABETZ—And interference.

CHAIR—We have had two hours here of questions. There has been no interference. Senator Abetz, you have had an hour.

Senator ABETZ—On behalf of the Coalition, that is right, out of the two-hour hearing. And now we are at the crunch point as to whether or not there have been representations from the Prime Minister's office, namely one Andrew Charlton to Godwin Grech. We are being closed down. Mr Martine is running interference; others are as well. Clearly it is within Mr Grech's personal knowledge whether or not there was such a communication. I would invite the committee and Mr Martine to allow Mr Grech to answer unimpeded. Mr Grech, what is your answer?

CHAIR—*I would ask the Department of Treasury if they wish to answer that question, which has now been asked a number of times.*

Senator FIFIELD—*Point of order, Chair.*

CHAIR—*Department of Treasury?*

Senator ABETZ—*Point of order, Chair.*

CHAIR—*Department of Treasury?*

Senator ABETZ—*No, point of order, Chair.*

CHAIR—*So you do not want an answer?*

Senator ABETZ—*There is a fundamental proposition here. It is not whether the department wishes to answer the question. They are here on oath, and any answers which in fact may be provided—*

CHAIR—*Senator Abetz, I was merely referring to the fact that Senator Cameron already had started a question.*

Senator ABETZ—*No, it is not a wish; they have to.*

CHAIR—*But I am saying.*

Senator ABETZ—*They are required. It is not whether they wish to.*

Senator EGGLESTON—*Address the question that is before the Chair.*

CHAIR—*No. Senator Abetz, will you just let me finish. I had already gone to Senator Cameron.*

Senator ABETZ—*No, you had not.*

CHAIR—*It was Senator Cameron who was questioning.*

Senator ABETZ—*You interrupted.*

Senator EGGLESTON—*Yes, you did.*

CHAIR—*Senator Eggleston, now—*

Senator EGGLESTON—*No, you will not let them answer.*

Senator CAMERON—*I am prepared to go ahead.*

Senator EGGLESTON—*Address the question that is before the Chair.*

CHAIR—*I am trying to let them answer, Senator Eggleston. I am trying. We have four minutes to go.*

Senator EGGLESTON—*Senator Cameron is not the person asking the question. It is Senator Abetz, and Senator Abetz's question has not been answered.*

Senator ABETZ—*That is right, and it needs to be answered. Mr Grech, tell us—yes, or no?*

CHAIR—*No.*

Senator CAMERON—*You are not chairing this.*

CHAIR—*Senator Abetz!*

Senator FIFIELD—*Neither are you, Senator Cameron.*

CHAIR—*Can I have order in this committee, please?*

Senator ABETZ—*Andrew Charlton: yes, or no?*

CHAIR—*Senator Abetz! Now, I had already invited the department to make an answer. I do not appreciate being talked over by members of this committee. Now, Department of Treasury?*

Mr Martine—*Senator, the only thing I would wish to add, as I have already mentioned, is that, as Mr Grech has indicated, he is unsure about any correspondence. We have searched. We have not located any email correspondence or physical correspondence from the Prime Minister's office to the Treasury with respect to John Grant.*

Senator ABETZ—*We accept that, but has Mr Grech seen such a document, potentially, and, if so—*

Senator PRATT—*This is a major indiscretion.*

Senator ABETZ—*Did it emanate from one Andrew Charlton? And that must be within the personal knowledge of Mr Grech, and nobody else's. Mr Grech?*

Mr Martine—*Senator, I think we have answered this question.*

Senator ABETZ—*No, you have not because it is not in your knowledge, Mr Martine.*

Senator PRATT—*You know the answer to this.*

Senator ABETZ—*It is solely in the knowledge of Mr Grech—not yours, Mr Grech's. Mr Grech, what is the answer, please?*

Mr Martine—*Senator, as Mr Grech has indicated, he is unsure and he has outlined in his answer he is very unsure.*

Senator ABETZ—*Can Mr Grech speak for himself?*

Senator PRATT—*He has spoken for himself.*

Senator ABETZ—*He is at the table. He is a very competent witness. He has controlled OzCar from day one; he has been intimately involved. Surely Mr Grech has the capacity to answer this question, whether or not the name Andrew Charlton rings a bell in relation to a possible communication from the Prime Minister's office.*

Mr Martine—*Senator, I think we have answered this question.*

Senator ABETZ—*No. Mr Grech has not, and Mr Grech, as Hansard will show, has been capable for two hours of speaking for himself. Mr Grech?*

Mr Martine—*Senator—*

Senator ABETZ—*No, I do not think your name is Mr Grech, sorry. Mr Grech, what is your answer?*

Mr Martine—*Senator, as I have indicated, Mr Grech has outlined in his evidence that he is unsure as to whether—*

Senator ABETZ—*But Mr Grech can make—*

Senator FIFIELD—We are telling you that you are not Mr Grech. Mr Grech can speak for himself.

Mr Martine—I am certainly not Mr Grech.

Senator FIFIELD—You do not know because you were not there.

Senator ABETZ—Or are you Mr Grech's ventriloquist doll?

Senator PRATT—He has answered the question already.

Senator ABETZ—No, you are not Mr Grech's ventriloquist doll so possibly Mr Grech can answer.

CHAIR—No, no. Senator Abetz, now you are being impolite.

Senator ABETZ—I think you are right, and I withdraw that.

CHAIR—Mr Martine has every right, as the senior officer of the Department of Treasury at this table, to take questions.

Senator FIFIELD—As does Mr Grech have a right to take questions.

Senator ABETZ—As has Mr Grech.

CHAIR—And if he wishes to defer it to a junior officer, he may do that.

Senator ABETZ—All right. Can I ask Mr Martine this question: are you, with your seniority to Mr Grech, directing Mr Grech not to answer my question? And if you are not, will you allow him to answer it?

Mr Martine—Senator, I am the senior representative at the table from the Treasury.

Senator ABETZ—We all know that.

Mr Martine—As Mr Grech has indicated, and Mr Grech works for me, he has been heavily involved in the OzCar initiative.

Senator ABETZ—We know that.

Mr Martine—As we all know. As I have indicated and as Mr Grech has indicated, he is unsure about any correspondence from the Prime Minister's office and, as I have indicated, we have undertaken searches. I am satisfied that there is no correspondence.

Senator ABETZ—We all recall that.

Mr Martine—I am not quite sure what else I can answer.

Senator ABETZ—Mr Martine, my question to you was: will you allow Mr Grech to answer?

Senator PRATT—You are bullying. The witness at the table has given an indication.

Senator CAMERON—That is right.

Senator ABETZ—Or will you override him using your seniority, although it is clear Mr Grech is the only one with the personal knowledge to answer this question.

Senator CAMERON—Believe it or not, I support that proposition. Mr Grech should answer.

CHAIR—Well, it is not a matter of your opinion, Senator Cameron.

Senator CAMERON—No. I did ask—

CHAIR—I will ask the Department of Treasury if they want to answer that question. [4.00 pm]

Mr Martine—Senator, I will just go back to my earlier answer. Mr Grech has indicated that he is unsure about any correspondence. I am not sure what else I can say to answer the question.

Senator ABETZ—Yes, but I am asking whether the name Andrew Charlton rings a bell for him in relation to—

Senator CAMERON—It rings a bell, but not for the Prime Minister.

Senator ABETZ—Can I finish?

Senator CAMERON—It rings a bell for the Leader of the Opposition.

CHAIR—Senator Abetz?

Senator ABETZ—I am asking you whether it rings any bell in relation to representations made from the Prime Minister's office to Mr Grech or OzCar in Treasury?

Mr Martine—Senator—

Senator ABETZ—And, Mr Martine, thank you, but the question is to Mr Grech, unless you are telling this committee you are using your seniority, your authority, not to allow this witness to give evidence which can only—and I stress 'only'—be in his personal knowledge and not yours.

Mr Martine—Senator, as I have outlined, Mr Grech has indicated to the committee that he is unsure about any correspondence. Being unsure about any correspondence—

Senator ABETZ—Is Mr Grech unsure about the name? I have moved on to the name.

Mr Martine—Senator, by definition, if one is unsure about correspondence, one is unsure about the source of the correspondence. As Mr Grech has indicated, he is unsure about any correspondence, emails or otherwise from the Prime Minister's office to the Treasury.

CHAIR—Now Senator Abetz, I think you have to agree that we have gone as far as we can with line of questions.

Senator ABETZ—Unfortunately, and can the record please show—and I want Mr Martine to put this on the record—that he is using his seniority to not allow Mr Grech to answer that specific question.

CHAIR—Well, I do not think we need that on the record at all.

Senator PRATT—It is self-evident.

Senator EGGLESTON—It is not on the record.

Senator ABETZ—Then if we do not, then Mr Grech should be invited to answer without interference from Mr Martine. It is either Mr Martine's seniority which comes into play to shut down Mr Grech—

Senator PRATT—It is already there.

Senator ABETZ—Or he is not using that and Mr Grech should be allowed to answer, but he cannot have it both ways.

CHAIR—Senator Abetz, Mr Martine is acting appropriately. I will give Mr Grech one opportunity, before we go to Senator Cameron, to answer that question.

Mr Grech—Thank you, Madam Chair. I have to defer to the seniority of Mr Martine on that issue.

CHAIR—Thank you. Senator Cameron?

I set out the above extract, going as it does for more than 10 pages of Hansard, to demonstrate the unfairness of the finding against Mr Grech. The dialogue in question evidences constant attempts of Senator Abetz to ask questions of Mr Grech, which, in turn, are constantly interrupted by Senator Cameron and/or thwarted by the Chair (in the main, by her insistence that Mr Martine answer questions put to Mr Grech) and are then answered by Mr Martine. And when Mr Grech is, finally, permitted to respond to a question, he directly answers the question put to him. And then when Senator Abetz seeks to explore his answer with him he is, yet again, cut off by Mr Martine answering the question.

The fact of the matter is that Mr Grech was given no real opportunity to disclose what the committee says now was ‘misleading’ of him not to have disclosed in his evidence.

Finally, what is stated under the heading ‘Improper use of a hearing’ is, on my reading based on what is observed at paragraph 4.20 of the draft report. It is unhelpful and wrong to refer to the document in question as a ‘forged document’ or ‘a falsified document’. No finding by a court has been made that the document was ‘forged’. The document in question is no more than what the committee describes it in the sixth dot point of paragraph 6.9 of the extracts of the draft report that I have been given: ‘a record’ that was ‘created’ by Mr Grech ‘of the email that he asserts he believed existed’.

The ‘inquiry itself...on a matter of possible misfeasance’ (to use the committee’s words at paragraph 4.20) was not ‘based...on a falsified document’. Rather, it was ‘based’ on the nature ‘of the email that [Mr Grech] asserts he believed existed’.

In short, the draft report should be substantially amended to accord with the facts.

That said, the committee’s finding that it is unable to arrive at a conclusion that a contempt was committed by Mr Grech is correct.

Yours sincerely

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