

## COMMITTEES

### Privileges Committee Report Hansard 11<sup>th</sup> September 2007

[Senator FAULKNER](#) (New South Wales) (4.56 p.m.)—I present the 131st report of the Senate Standing Committee of Privileges, entitled *Possible false or misleading evidence and improper refusal to provide information to the Finance and Public Administration Committee*.

Ordered that the report be printed.

[Senator FAULKNER](#)—by leave—I move:

That the Senate (a) agrees to the recommendation in paragraph 40 of the 131st report, and (b) endorses the finding in paragraph 41 of the report.

On 7 February 2007, the following matter was referred to the Committee of Privileges on the motion of Senators Forshaw and Murray:

Having regard to the material presented to the Senate by the President on 6 February 2007, whether any false or misleading evidence was given to a Senate committee, whether there was any improper refusal to provide information to a committee and whether any contempt was committed in that regard.

Senator Forshaw had been the chair, and Senator Murray a member, of the former Senate Finance and Public Administration References Committee, which reported on the Regional Partnerships and Sustainable Regions programs in October 2005. The report described difficulties that the committee had experienced with a witness, Tamworth businessman Mr Greg Maguire.

After hearing evidence from Mr Tony Windsor MP about alleged political interference in a proposed grant to the Australian Equine and Livestock Centre in Tamworth, the committee invited Mr Maguire to respond to adverse comments by Mr Windsor, in accordance with the procedures in privilege resolution 1 for the protection of witnesses before Senate committees. In responding, Mr Maguire claimed to have made financial contributions to past election campaigns of Mr Windsor and volunteered to the committee to provide a list of the companies that he owned which had made those contributions.

Despite reminders, Mr Maguire did not produce the list of companies. Mr Maguire's claim was also directly contradicted by further evidence from Mr Windsor, who denied that Mr Maguire had made any financial contributions. The references committee provided this material to Mr Maguire for further response and again reminded him of his undertaking to produce the list of companies. The committee indicated that it required Mr Maguire to produce the information and explained the consequences should he fail to do so.

In the meantime, the committee had referred the matter to the Australian Electoral Commission because there appeared to be no record of Mr Maguire's companies having made donations to Mr Windsor's campaigns in the disclosures required by law. The AEC reported on progress in its inquiry at several estimates hearings following the presentation of the Regional Partnerships report in October 2005 but, a year later, at a supplementary budget estimates hearing, the AEC reported that it had been unable to find any independent evidence of these campaign donations and could take the matter no further. In other words, the only material the AEC had to go on was covered by parliamentary privilege and could not therefore be used.

By this time the references and legislation committees had been amalgamated and the new Standing Committee on Finance and Public Administration wrote once more to Mr Maguire demanding that he produce the information and informing him again of the consequences of noncompliance. Mr Maguire did not respond. At this point, Senators Forshaw and Murray raised his conduct as a matter of privilege under standing order 81. Because Mr Maguire had not substantiated his evidence, and because it had been directly contradicted, there was a real possibility his evidence was false or misleading. The other possible contempt was that Mr Maguire had improperly refused to provide the committee with relevant information when required to do so.

In conducting its inquiry, the Committee of Privileges followed its usual procedures, seeking comment from the various parties and exchanging the responses amongst them for any further comment. The committee did not hear from Mr Maguire by its initial deadline but allowed him an extension of time to provide his response to the terms of reference. A response was received on his behalf from a firm of Tamworth solicitors. The information in question was still not forthcoming and the committee gave Mr Maguire one last chance to produce it. The committee received a second response on Mr Maguire's behalf from the solicitors but not the list of companies.

The Committee of Privileges was thus in the same position as the finance and public administration committee in relation to the allegation of false or misleading evidence. Without the corroborating material, it was not possible for the committee to judge whether the evidence given by Mr Maguire had indeed been false or misleading.

The solution seemed obvious. The committee needed to exercise its coercive powers to require Mr Maguire to attend before it and produce the missing information. Before taking this step, however, the committee analysed the other aspect of the reference—namely, whether Mr Maguire had improperly refused to provide information to the finance and public administration committee. The committee was assisted in its analysis by advice from the Clerk of the Senate. The committee examined the correspondence between the finance and public administration committee and Mr Maguire and concluded that there had been a clear requirement for Mr Maguire to comply. The committee had written to him on a number of occasions, expressed the requirement clearly and, on two occasions, explained to him the consequences of noncompliance. The information requested was also, in the 's view, relevant to that committee's terms of reference. Was there perhaps a reasonable excuse for Mr Maguire to refuse to provide the information? The committee looked at a number of matters but found nothing compelling.

The committee then encountered a major difficulty. To make a finding whether false or misleading evidence had been given, the committee would clearly need to question Mr Maguire, examine the documents and test his claims. These claims had, however, been directly contradicted by Mr Windsor. Testing Mr Maguire's claims would inevitably involve the committee examining the evidence of Mr Windsor.

Mr Windsor is a member of the House of Representatives. As a member, he enjoys all the immunities of that House. Senators will know that it is a well-established rule that one house may not inquire into or adjudge the conduct of a member of another house. It would of course be possible for the Senate to seek Mr Windsor's attendance at a hearing of the committee, by message to the House of Representatives, but authorisation by the House for Mr Windsor to attend would not suspend the operation of the rule. The committee could not examine Mr Windsor's conduct or evidence and, importantly, nor could Mr Maguire. Therefore, an important element of the procedural fairness established under privilege resolution 2, which sets out procedures for the protection of witnesses before the and includes the ability of parties to an inquiry to cross-examine one another on their evidence, could not be honoured.

The committee is not implying that there is anything in Mr Windsor's evidence or conduct that raises questions; it is simply pointing out that there is an insuperable procedural barrier to the proper and full examination of all the circumstances of this matter that prevents the committee reaching a definite finding on the allegations. The committee is highly critical of Mr Maguire's conduct but, after an unsatisfactory inquiry, it is in the awkward position of being unable to make a definite finding. I should add that in other circumstances—that is, circumstances not involving an issue of comity between the houses—the committee almost certainly would have found a strong case against Mr Maguire. Reluctantly, it is recommending that the Senate accept that the matter is not amenable to further pursuit by use of its coercive powers. I commend the report to the Senate. I seek leave to continue my remarks later.

Leave granted; debate adjourned.