

The truth, the half truth and nothing like the truth: false or misleading evidence in the Australian Parliament's committee system

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Abstract

Parliamentary committees rely on information from witnesses to form the evidentiary basis of their inquiries. Hostile, uncooperative or vague witnesses have the potential to derail the committee process.

In theory, the position is clear; witnesses have to give honest and accurate information and a failure to do so can amount to a contempt of the parliament with punitive consequences. However in practice, it is very rare for the Senate or the House of Representatives to hold a witness to account for giving false or misleading information.

This paper looks at the occasions where false or misleading information by a witness has been raised by a Committee, and discusses the factors that are taken into account in the process. Are witnesses all held to the same standard? Is all information considered equally important? If a witness wanted to disrupt an inquiry, what is the best way for them to do it?

Introduction

Parliamentary committees rely on the integrity of the evidence presented to them. Without the power or time to test the veracity of claims, much must be taken at face value with the assumption that the evidence is truthful and put forward in good faith.

The Australian Parliament's committee system has the special rights and immunities of parliamentary privilege in order to conduct inquiries. The power of parliamentary privilege comes from the Australian Constitution, and in theory, the penalties for breaching this privilege or committing a contempt against the Parliament are strong.

Cases of alleged false or misleading evidence to committees presented to the House have generally not been given precedence, meaning no further investigation has taken place. We have examined the circumstances of matters relating to false or misleading evidence to committees raised in the House or in the Senate, and analysed the reasons behind the findings of no contempt.

The bar for a finding of contempt is very high. Inquiry participants must knowingly and wilfully give false or misleading evidence which substantially impacts on the work of the committee, or obstructs their function. Ultimately, it appears that if the Parliament is satisfied that the record has been corrected at any stage, it is unlikely to make a finding of contempt.

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The disruption of the committee process by the giving, whether intentionally or not, of false or misleading evidence is difficult to quantify, with instances generally resolved during the inquiry process and not made public. The effect of false or misleading evidence on the committee process may be felt more strongly as the inquiry evolves, as committees may change their course of action based on evidence received.

Privilege

Parliamentary privilege refers to the ‘special rights and immunities which apply to the Houses, their committees and their Members, and which are considered essential for the proper operation of the Parliament’.³ The Australian Parliament derives its privilege powers from section 49 of the Australian Constitution which provides that the powers, privileges and immunities of the Houses are those declared by the Parliament.⁴

These rights and immunities protect the ability of Members and Senators to carry out their duties without obstruction or interference. The powers provided for in section 49 of the Australian Constitution are enacted by the *Parliamentary Privileges Act 1987* (PPA), which sets out the penalties which may be imposed by a House if there has been an offence against that House. Each House has the power to declare an act to be a contempt, and to punish such an act, and does not require that act to be a violation of a particular immunity.⁵ In other words, all breaches of a particular immunity are a contempt, but not all contempts will breach a particular immunity.⁶

Recognising contempt in the committee system

The provision of false or misleading evidence to a Parliamentary committee may (but does not necessarily) constitute a contempt of the Parliament, if it ‘improperly interferes with the free exercise by a committee of its authority or functions’.⁷ The Houses may be guided by *May*, which sets out that ‘any disorderly, contumacious or disrespectful conduct in the presence of either House or a committee will constitute a contempt’, with examples of past contempt including: refusal to answer questions, refusal to produce or the destruction of documents, prevaricating, giving false evidence, wilfully suppressing the truth and persistently misleading a committee.⁸ We discuss circumstances that fall within these boundaries which have been brought before the House of Representatives, and the reasons behind the findings of no contempt.

³ D Elder, ed., *House of Representatives Practice*, 7th edition, Canberra, 2018, p. 733.

⁴ *The Australian Constitution*, section 49. Section 50 provides that:

Each House of the Parliament may make rules and orders with respect to:

- (i) the mode in which its powers, privileges, and immunities may be exercised and upheld;
- (ii) the order and conduct of its business and proceedings either separately or jointly with the other House.

⁵ R Laing, ed., *Odgers Australian Senate Practice*, 14th edition, Canberra, 2016, p. 83.

⁶ D Elder, ed., *House of Representatives Practice*, 7th edition, Canberra, 2018, p. 733.

⁷ D Elder, ed., *House of Representatives Practice*, 7th edition, Canberra, 2018, p. 716.

⁸ *May's Parliamentary Practice*, 24th edition, LexisNexis, 2011, 15.3, 15.5.

The PPA sets out a statutory test for contempt:

4 Essential element of offences

Conduct (including the use of words) does not constitute an offence against a House 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.

Any conduct which satisfies this test may constitute an offence. The Australian Senate further applies Privilege Resolution 3, which sets out further criteria to be taken into account when determining matters relating to contempt and which must be used by the Senate Committee of Privileges (Senate Privileges Committee) when inquiring into any matter referred to it.⁹

Privilege Resolution 3 states that the Senate's power should be used where there have been acts which substantially obstruct the committee's work, and should be reserved for the most serious instances. Also, the person must have been acting knowingly and without a reasonable excuse. In practice, these criteria set a high bar for a finding of contempt of the parliament, and the Senate Privileges Committee has not yet set out a finding of contempt for the provision of false or misleading evidence to a committee.

A non-exhaustive list of matters which may be a contempt, including offences by witnesses, is set out in Senate Privilege Resolution 6. These criteria include: that the witness shall not refuse to make an undertaking to tell the truth without reasonable excuse; refuse to answer any relevant question without reasonable excuse; or:

(c) give any evidence which the witness knows to be false or misleading in a material particular, or which the witness does not believe on reasonable grounds to be true or substantially true in every material particular.¹⁰

The Houses provide a number of avenues available to a potential contemnor to avoid a finding of contempt and give the benefit of the doubt to the witness. They allow for late clarification or claim that the witness acted in good faith, and provide a degree of protection for witnesses.

Dealing with an allegation of false or misleading evidence in the House

The House requires that a committee's report on an alleged contempt be made at the earliest opportunity if the matter is to be given precedence.¹¹ In practice, however, steps must be taken prior to reporting to the House:

Despite this requirement it is considered that a committee should seek to form some preliminary view on a matter, and that a matter should be identified in specific terms, before bringing it before the House.¹²

⁹ Parliamentary Privilege Resolutions of the Senate 25 February 1988, Resolution 3.

¹⁰ Parliamentary Privilege Resolutions of the Senate 25 February 1988, Resolution 6, clause 12.

¹¹ D Elder, ed., *House of Representatives Practice*, 7th edition, Canberra, 2018, p. 716.

The committee should inform itself by 'writing to the person or organisation suspected of offending or alleged to have offended, indicating the nature of the concern and seeking a response'.¹³ Having clarified the allegations, the committee may then make a decision as to whether to proceed with a complaint to the House.

Finding a contempt - in practice

The bar for finding a contempt for giving false or misleading evidence to a committee is very high. There are many reasons for not proceeding with contempt at the various stages of the process. Here we draw together some of the reasons for *not* finding a contempt, and how they have been applied to different situations faced by House, Senate and Joint committees.

Intent

An important test for false or misleading evidence is whether it was given knowingly and with intent. In a 1992 report on its inquiry into evidence given to the Joint National Crime Authority Committee, the Senate Privileges Committee reported that '[a]s a general principle a contempt may be committed even if persons act lawfully and in good faith'.¹⁴ In practice, however, this does not appear to have been applied in either House.

In ten of the sixteen reports of the Senate Privileges Committee which deal explicitly with the allegation of false or misleading evidence, the committee found that there had been no culpable intention to deliberately mislead the relevant committees.

To take just one example, in 2002 the Senate Privileges Committee examined an allegation of false or misleading evidence provided to the Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund. The Committee had received evidence regarding the alleged leaking of an ANAO draft issues paper relating to a performance audit of the Indigenous Land Corporation.

The Privileges Committee examined in some detail the complex evidence before the Native Title Committee, and stated that it could understand why the Committee felt it was deliberately misled. However the Privileges Committee concluded, after further 'teasing out the evidence', that 'while misleading evidence was given to the [Native Title Committee], it is unlikely that it was given with deliberate intent'.¹⁵

The most recent House of Representatives Privileges Committee report into false and misleading evidence given to a committee also concluded that no contempt had been committed as the witness did not intend to mislead the committee.

In that case, Mr Stephen Paddison of the State Bank of South Australia was a witness in front of the Standing Committee on Finance and Public Administration on 30 April 1991. Mr

¹² D Elder, ed., *House of Representatives Practice*, 7th edition, Canberra, 2018, p. 716.

¹³ D Elder, ed., *House of Representatives Practice*, 7th edition, Canberra, 2018, p. 716.

¹⁴ Senate Privileges Committee, *36th Report*, 1992, p. 34.

¹⁵ Senate Privileges Committee, *104th Report*, 2002, p. 19.

Paddison was asked about the publicly stated figure of \$2.5 billion of non-performing loans and about \$1 billion lost by the bank. Mr Paddison gave a somewhat vague reply, but did say that the bank was within plus or minus ten percent of that figure and was 'fairly comfortable' with the assessment procedures.

However Mr Paddison's response was contradicted by a memo from the banks' general manager dated 21 March that said the bank projected non-productive accounts to reach \$3.48 billion and potential losses to reach \$1.3 billion. Mr Paddison said he was aware of this memo.

On the face of it, Mr Paddison knowingly gave quantifiably false information to the Committee in response to a direct question.

During the Privileges Committee inquiry, Mr Paddison apologised for the error and said that he should have clarified his evidence; his belief at the time was that the net figures were within 10% of the figures he gave. The figures in the memo were the gross figures which hadn't taken into account various write-offs and recoveries.

The Privileges Committee concluded that no contempt was committed. In its report, the Privileges Committee advised the House that it had 'examined Mr Paddison thoroughly on this matter'.¹⁶ It concluded that Mr Paddison's answer was ambiguous, but Mr Paddison did not intend to mislead the Committee.

It is possible to conclude from the various Privileges Committees' statements about intent that the intent of a witness must be not just to intentionally provide the false or misleading statements, but to do so with an intent as to its effect; that is, the witness must have an intention to deceive or mislead the Committee.

Whether there is 'Improper interference'

Under section 4 of the PPA, an essential element of any offence is that it is an 'improper interference with the free exercise by a House or committee of its authority or functions'. The Senate goes further, requiring that in all matters possibly involving contempt the powers of privilege should only be used where improper acts tend 'substantially to obstruct' in the performance of its functions.¹⁷ These tests require the assessor to focus on practical consequences of actions, rather than the enforcement of theoretical rights.

A recent example of this was a matter raised in the House in late 2018 on behalf of the Joint Standing Committee on Electoral Matters (JSCEM), stating that representatives of GetUp! had provided false or misleading evidence to that committee over a substantial period of time. The information was provided as part of the *Inquiry into all aspects of the conduct of the 2016 Federal Election and matters related thereto*.

¹⁶ House of Representatives Privileges Committee, *Report on whether misleading evidence was given to the Standing Committee on Finance and Public Administration*, 1991, Canberra, p. 4.

¹⁷ Parliamentary Privilege Resolutions of the Senate 25 February 1988, Resolution 3.

The allegation of false or misleading information related to the summary results of GetUp's 2016 Election Vision Survey that had been provided to JSCEM. Overall, it was alleged that the information provided had given a distorted view of the survey results, which impeded JSCEM's inquiry in relation to expenditure by third parties on election issues. While raising this matter in the House on behalf of the JSCEM, Mr Morton also alleged false and misleading information was provided by GetUp! in relation to donations to GetUp! from the Australia-USSR Friendship Association.¹⁸

Despite repeated requests at a public hearing and in writing to provide the full results of the survey, GetUp representatives did not provide the results for many months. The Chair summarised the circumstances in his Foreword to the inquiry report, advising that GetUp! had satisfied the statutory test for contempt and the principles used to determine contempt, and reporting that:

- 'the provision of false and misleading information substantially obstructed the Committee in the performance of its functions in relation to the inquiry';
- it was a 'pattern of deliberate misleading and obstruction, [which] substantially interfered with the Committee'; and that
- the matter would be brought to the attention of the House.¹⁹

After considering the matter, the Speaker declined to give the matter precedence, concluding that JSCEM was not prevented in being able to perform its functions. The Speaker noted the 'significant hurdle' in section 4 of the PPA as to whether a matter constitutes a contempt:

In considering these matters it is important to recognise that the penal jurisdiction of the House is significant, and it should be exercised with restraint. Although I can see that the conduct of GetUp! in response to queries from the committee was unhelpful and at times misleading, it is not clear to me that the conduct was done intentionally to interfere with the committee in a way that was improper. Also, although the committee work was impeded, I do not see that it has prevented the committee from being able to freely perform its functions and exercise its authority and properly report to the House on its inquiry.²⁰

In 2006 the Joint Standing Committee of Public Accounts and Audit (JCPAA) also considered whether an allegation of false or misleading evidence amounted to 'an attempt to interfere with the free exercise by the Committee of its authority or functions.'²¹

In that case, the member for Canning, Mr Randall, raised a question of privilege in relation to a submission he had made to the JCPAA to an inquiry on the administration of the Australian Tax Office. The submission had set out an unfavourable characterisation of the Second Commissioner of Taxation, Mr Kevin Fitzpatrick, who then wrote to the Chair of the

¹⁸ Mr Ben Morton MP, *House of Representatives Hansard*, 29 November 2018, p. 11969.

¹⁹ Joint Standing Committee on Electoral Matters, *Report on the conduct of the 2916 federal election and matters related thereto*, November 2018, Chair's Foreword, p. x.

²⁰ Mr Tony Smith, Speaker, *House of Representatives Hansard*, 5 December 2018, p. 12559.

²¹ Letter from the Joint Committee of Public Accounts and Audit to the Speaker, 9 August 2006, tabled in Parliament 15 August 2006.

JCPAA and Mr Randall, concerning the submission. When raising the matter in the House, Mr Randall argued that in objecting to the content of the submission, Mr Fitzpatrick had misled the committee.

After consideration, the Speaker defined the dispute 'as a conflict between statements the honourable member has made in a submission to the committee and statements the officer has made to the committee'²² and referred the matter back to the JCPAA for consideration. The JCPAA considered the matter and concluded that no interference had occurred, and therefore no issue of privilege had arisen.

The JCPAA also expressly said that disagreement with a claim is not in itself a breach of privilege, and that the normal inquiry processes are adequate to deal with completing claims made in evidence.²³

These examples show that it is often not necessary to determine whether or not the evidence was false or misleading, or given with intent. If the evidence did not have a noticeable impact on the committee's work, then it will not constitute a contempt. The threshold for this impact appears to be high; in that the misleading evidence must not only impede or affect but actually *prevent* the Committee from performing its functions.

Higher accountability for public sector witnesses

In theory, the nature of the witness makes no difference to the prohibition on providing false or misleading evidence. However in practice, public officials and employees of state-owned authorities are often held to a higher standard in relation to the quality of their evidence.

The following examples highlight the higher standard of accountability and its relationship to a parliamentary committee's role in the oversight of government action.

In 2004, the Senate Privileges Committee examined an allegation that officers of Telstra had misled the Environment, Communications, Information Technology and the Arts Legislation Committee in relation to the network fault rate and deterioration of the network. The evidence given by officers contradicted an internal memo.

In that case the Senate Privileges Committee found that there was no intention to mislead, and therefore no contempt, but the Committee also took the opportunity to reinforce a message given in earlier reports about the obligations of senior public service and statutory authority employees.

The Senate Privileges Committee pointedly referred to its 42nd, 46th, 64th and 73rd reports that recommended more training be given to statutory officers and senior officials about the principles of accountability of government departments to the Parliament. The Senate Privileges Committee reported that '...there have unfortunately been many occasions on

²² The Hon. Mr David Hawker, Speaker, *House of Representatives Hansard*, 22 June 2006, p. 101.

²³ Letter from the Joint Committee of Public Accounts and Audit to the Speaker, 9 August 2006, tabled in Parliament 15 August 2006.

which senior public servants and employees of statutory authorities have continued to demonstrate shortcomings in their awareness of parliamentary accountability...'²⁴

The 46th Report referred to by the Senate Privileges Committee related to information given to Senate Estimates Committee E by the Minister and officials of several departments. The Estimates Committee was advised that the proposed diesel fuel rebate did not require taxation legislation, when in fact it did require that and drafting instructions to that effect had been prepared.

Although the statements made were clearly wrong, the Minister was not aware of that at the time, and the officials present who knew the Minister were wrong advised the Senate Privileges Committee that they assumed the Minister had better or superior information. As the matter was not intentional, no contempt was found, but the Senate Privileges Committee made several observations.

The Senate Privileges Committee re-stated the obligation on public servants to answer questions fully and honestly, and to ensure that the Senate is not misled by incomplete information. Although the primary responsibility when the Minister is present rests with the Minister, the Senate Privileges Committee stated that it regards it 'as the duty of a public servant to her or her minister to make it known to that minister as soon as practicable that wrong, inaccurate or incomplete information has been given by the minister ... preferably during the hearing in question'.²⁵

Untestable evidence

In order to find a contempt, the committee, the relevant Privileges Committee and ultimately the House or Senate must be able to conclude that false or misleading evidence was given. This requires testing that evidence against objective reality. If this is not possible, then no contempt can be found. A similar threshold applies in relation to who gave the evidence; if a committee was left with an overall misleading impression but cannot clearly point to the source of that impression then proceedings for contempt cannot progress.

In 2015, the Senate Privileges Committee inquired into allegations that false or misleading evidence may have been given to the former Nauru select committee.²⁶ Two matters were raised by senators for referral to the Senate Privileges Committee and related to potential false or misleading evidence in relation to:

1. conflicting accounts of the surveillance of Senator Hanson-Young undertaken by employees of Wilson Security during her visit to Nauru in December 2013; and
2. evidence about the existence of video footage of a disturbance at the regional processing centre in Nauru in July 2013.

²⁴ Senate Privileges Committee, *119th Report*, 2004, para 1.26.

²⁵ Senate Privileges Committee, *46th Report*, 1994, p. 15.

²⁶ *The Select Committee on the Recent Allegations relating to conditions and circumstances at Australia's Regional Processing Centre in Nauru* existed during the 44th Parliament, March – August 2015.

The Chair's letter to the Senate Privileges Committee expressed concern that the evidence relating to the existence of video footage was indicative of 'deliberate and continual obfuscation'.²⁷

The Senate Privileges Committee looked at these issues in some detail. In relation to the first matter however, the Committee was unable to reach a conclusion, stating that:

After considering the evidence available to it, the committee was unable to conclusively determine the matter, partly because of its inability to elicit additional evidence to corroborate the version of events alleging wide-ranging, authorised surveillance.²⁸

A similar conclusion was drawn in a different matter relating to statements made by Mr Greg Maguire to the Senate Finance and Public Administration References Committee. These statements related to allegations made by Mr Tony Windsor MP that he was offered an inducement not to stand at the 2004 federal election. Mr Maguire made certain claims and undertook to provide further information on notice. Despite repeated requests, Mr Maguire failed to provide any further information to back up his claims.

The Senate Privileges Committee looked at both the failure to provide evidence and the provision of false evidence. Mr Maguire responded to the Senate Privileges Committee's inquiry but did not provide information to substantiate his claims. In light of this ongoing lack of information, the Senate Privileges Committee concluded it was:

...unable to make a specific finding on whether Mr Maguire gave false or misleading evidence to a committee. It would be open to the Senate or the Privileges Committee to conclude [...] that Mr Maguire probably gave false or misleading evidence to the Finance and Public Administration References Committee. A conclusion of this nature, however, cannot form the proper basis for a finding of fact or support an assessment of whether an alleged contempt occurred.²⁹

In relation to Mr Maguire's evidence, the Senate Privileges Committee was clearly concerned about the failure to provide the evidence, and the necessary consequence that the truth or falsity of the evidence could not be tested.

Not actually misleading

A committee may be left with a misleading impression after hearing evidence, but that, in itself, does not mean that the evidence was misleading. This can occur particularly where the committee receives evidence from multiple sources, or where committee members ask slightly different questions on a topic, which will result in different answers and can lead to varying interpretations.

In these situations, the role of the Privileges Committees can simply be to undertake further investigations to determine whether the evidence was, in fact, false.

²⁷ Senate Privileges Committee, *162nd Report*, 2016, p. 1.

²⁸ Senate Privileges Committee, *162nd Report*, 2016, p. 24.

²⁹ Senate Privileges Committee, *131st Report*, 2007, p. 5.

An example of complex evidence was shown by the Senate Privileges Committee investigation in 2007 into whether false or misleading evidence was given to the Senate Legal and Constitutional Affairs Committee concerning the Government's knowledge of the rendition of Mr Habib to Egypt. Evidence had been given across several hearings in 2004 and 2005 by the AFP Commissioner, the Secretary of the Attorney-General's Department, and the head of ASIO.

The Senate Privileges Committee undertook an investigation into various statements compared to further information that had come to light, and asked for further clarification and information from the relevant witnesses.

The Senate Privileges Committee made general observations about the quality of the evidence, stating:

The committee is also of the view that senators are entitled to expect evidence given at estimates to reflect the Government's collective knowledge and considered position on any particular matter. A situation where committees have to piece together the fragmented, and potentially conflicting, views of different agencies, let alone agencies within the same portfolio, is not acceptable.³⁰

Despite these observations, the Senate Privileges Committee concluded that although in certain respects the evidence was equivocal, 'it was not in fact misleading given the state of these officers' knowledge at the time and the terms of the relevant questions addressed to them.'

The question of whether evidence is false or misleading may not even be considered to be in question until later information comes to light, often through the media. The question of Mr Habib's movement to Egypt became a question of privilege following a Four Corners program in June 2007 which used information obtained from the government under FOI.

Similarly, a Daily Telegraph article in 1973 led to one of the few House of Representatives Committee of Privileges inquiry into false or misleading evidence to a committee. The article quoted a letter written by the Secretary of the Department of Aboriginal Affairs, Mr Dexter, and linked the letter to the forthcoming evidence by Mr Dexter at the House Standing Committee on Environment and Conservation's inquiry into a turtle farming project in the Torres Strait.

The article included a quote from the letter that 'we should therefore exercise discretion in what we say in particular in relation to those aspects where we may not yet have determined our own approach, such as marketing'. The House Privileges Committee inquired into a possible breach of privilege in conspiring to give false evidence to a committee, and a related issue of critical imputations on a Member which, at the time, could also be a possible contempt.

³⁰ Senate Privileges Committee, *133rd Report*, 2008, para. 1.33.

In a short report, the House Privileges Committee concluded that the newspaper had quoted the letter out of context and 'presented a distorted version of the letter'.³¹ As a whole, it did not express an intention to withhold information from the committee.

Another early example is shown in Senate Privileges Committee Report 14 in 1989. The allegation in that report was that the Senator representing the Minister for Aboriginal Affairs had made a false statement to Senate Estimates Committee E. When asked whether the Department of Aboriginal Affairs had committed any funds for any persons or organisations to prepare or present submissions to the Senate Select Committee on the Administration of Aboriginal Affairs, the witness replied that they had not. However, the previous month the Department had funded three people to come to Canberra, during which time they had given evidence to the Select Committee.

The task of the Senate Privileges Committee was to determine why the visitors to Canberra had made their trip. After investigation, the Senate Privileges Committee concluded that the evidence was clear that the delegation was not aware of the Select Committee until they arrived to Canberra, the trip was for another purpose, and the Select Committee hearing was arranged at the last minute to take advantage of their presence in Canberra. Therefore the Senator's evidence was not false.³²

These examples show that the threshold issue – whether the evidence is in fact false or misleading – is not always straightforward. It is possible for a committee to be left with a false impression when events are complex, or when a statement appears to be false in hindsight. These examples also emphasise the importance of the Privileges Committees in being able to undertake a *de novo* independent inquiry into allegations of contempt.

Misleading by omission

As discussed above, the Senate Privileges Committee has stated on several occasions the obligation on a witness is to answer the questions not just correctly, but also fully, in order to ensure that the Senate is not misled by incomplete information. However it can be more difficult to show a contempt where the false or misleading evidence relates to evidence not given, or withheld.

This issue was addressed in relation to allegations of false or misleading evidence before the Senate Select Committee on Public Interest Whistleblowing in 1995. The allegations were made by a former employee of Trust Bank Tasmania in relation to evidence given by representatives of Trust Bank.

Although the Senate Privileges Committee found that none of the statements made by the Bank were 'so misleading as to constitute a deliberate intention to give false or misleading evidence', the Committee also noted that the responses by the bank 'were not as helpful as

³¹ House of Representatives Privileges Committee, *Report relating to a letter allegedly written by the Secretary, Department of Aboriginal Affairs*, 22 November 1973, p. 4.

³² Senate Privileges Committee, *14th Report*, 1989.

they might have been'.³³ The lack of information allowed the former employee to make his case that the Bank was deliberately misleading the Committee, where a fuller response would have prevented that possibility.

The Senate Privileges Committee also made it clear that withholding evidence can have serious consequences for the effectiveness of committee work:

The information-gathering processes of the Senate and its committees depend significantly on the willingness of witnesses before committees to give full, frank and truthful information. Withholding or distorting information can be as obstructive to the Senate or a committee as deliberate lying.³⁴

In 2000 the House of Representatives Standing Committee on Family and Community Affairs reported to the House that it had considered allegations that officers of two Victorian government agencies deliberately misled the committee in evidence given in relation to the inquiry into telemedicine. The Committee had also considered allegations that another officer threatened a witness for the purpose of preventing him from giving evidence.

On the first point, the allegations were that the witness withheld, or did not disclose, significant concerns that the witness had been briefed on.

The Family and Community Affairs Committee had investigated the matter, and reported to the House that: 'While [the officer] did not volunteer information about specific difficulties of which he was aware and did put a positive spin on the project, we have not formed the view that his remarks were deliberately misleading'.³⁵

In light of this conclusion, only the second matter relating to threatening a witness was referred to the Privileges Committee for investigation.

In this case, the intent of the witness was considered to be the most important consideration. However it highlights the potential that withholding negative comments could have on the effectiveness of an inquiry. In this case, the first term of reference was to inquire into the 'current status of pilot projects already commenced and an evaluation of their potential for further development'. If the committee only heard evidence about the positive outcomes of these projects, it would have the potential to substantially reduce the effectiveness of their inquiry.

Conclusion

The standards expected by parliamentary committees of witnesses giving evidence are high. Evidence must be truthful and put forward in good faith. The powers and immunities, as well as the legislative authority, of the Parliament are strong with regard to findings of contempt, and there is no doubt that in theory, the penalties for contempt are severe.

³³ Senate Privileges Committee, *61st Report*, 1996, p. 9.

³⁴ Senate Privileges Committee, *61st Report*, 1996, p. 4.

³⁵ Mr Barry Wakelin MP, *House of Representatives Hansard*, 7 September 2000, p. 20385.

Committees are not able to fact-check or test the veracity of all the evidence put before them and must rely on witnesses to present the truth.

A finding of contempt for providing false or misleading evidence to a committee would be a significant event, perhaps so significant that it has yet to happen. The evidence must have been given with the intent to mislead a committee and must interfere with the exercise of a House or Committee. The Senate expressly sets out that the act must have substantially obstructed the work of the committee.

The effect of misleading evidence may be difficult, or perhaps impossible, to assess after an inquiry has reported. At the conclusion of an inquiry, it may be viewed as a linear process from referral to report, with the gathering and analysis of evidence in between. An inquiry is, in reality, a more amorphous process, made up of countless minor and major decisions on next steps. For example, daily decisions are made on witness selection, questioning, investigation and the formation of recommendations. As we have seen, false or misleading evidence may be given throughout the process which alters the course of the inquiry, as lines of questioning are not pursued and attention is distracted to other aspects of the inquiry. We argue that intent on the part of the witness may not alter the direct effect of false or misleading evidence.

In 1992, the Senate Privileges Committee suggested that all witnesses before Parliamentary committees should 'direct their attention to the real effects of their actions', and that:

...all persons...must ask themselves whether their actions may tend to restrict the freedom of inquiry of a House or a committee, and whether their evidence may tend to mislead a House of committee and leave a misleading impression as to the facts.³⁶

We recommend greater guidance be provided to witnesses on the giving of evidence, and on whether their evidence may 'leave a misleading impression' even if there has been no intent. Particularly technical, financial or legalistic evidence is more likely to be misinterpreted or misunderstood by committee members. Witnesses who regularly appear, or may be expected to appear, before committees should have particular regard to this.

Finally, a contempt of the parliament is not the same as 'showing contempt' for the Parliament's processes. Australian Senate Practice (Odgers) states that it is a 'misconception' that particular contempts are offences 'simply because they are affronts to the dignity of the Houses'. The inconvenience of disruption to the committee process is not enough, by itself, to warrant a finding of contempt and invoke the penal jurisdiction of the Houses. We suggest that the provision of false and misleading evidence has the potential to move beyond disruption to significantly undermine the effectiveness of parliamentary committee inquiries.

³⁶ Senate Privileges Committee, *36th Report*, 1992, p. 35.