

SUPPORT FOR VULNERABLE WITNESSES

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Workshop 1B: Engaging the people with Parliament

Introduction

Witnesses are an integral part of most committee inquiries. However, some inquiries can have a significant detrimental impact on certain witnesses. Inquiries may delve into highly sensitive matters or re-open old wounds for inquiry participants. Alternately, some witnesses may get caught in the midst of high profile, controversial matters where they are used as pawns in a game of political point scoring. Other witnesses may simply find the rigorous debate and robust questioning in hearings stressful.

This paper considers the extent that committees and secretariats should provide support to witnesses in a vulnerable mental state. It provides two short case studies before looking at some of the support systems that have been offered to witnesses in different jurisdictions, including a vulnerable witness protocol that was developed by the New South Wales Legislative Council.

While the focus of this paper is on witnesses appearing at hearings, the majority of its content is equally applicable to all inquiry participants.

The paper does not consider support services for secretariat staff, which may also be offered or required during inquiries on sensitive subject matters.

Case study #1 – David Kelly

Dr David Kelly was a distinguished British scientist and leading authority on biological and chemical warfare. He was employed by the UK Ministry of Defence and had formerly been a United Nations weapons inspector in Iraq.

He came to public attention in 2003 after a BBC journalist reported that the dossier on Iraq's weapons of mass destruction relied upon by the Blair Government to justify the invasion and subsequent war with Iraq had been made 'sexier' by including false evidence regarding Iraq's capacity to deploy biological and chemical weapons. The journalist cited his source to be an unnamed government official, who was subsequently revealed to be David Kelly.

Kelly was called to give evidence before the House of Commons Foreign Affairs Committee which was conducting an inquiry on the decision to go to war in Iraq. He was questioned aggressively by committee members about his actions during a televised hearing. He appeared to be under severe stress and spoke so softly that the air-conditioning equipment had to be turned off.¹ The following day Kelly was called before another committee, the Intelligence and Security Committee, to give confidential evidence.

¹ Transcript of evidence taken before the Foreign Affairs Committee, UK Parliament, Tuesday 15 July 2003, questions 20 and 61.

Two days later Dr Kelly was found dead in woodlands near his home. An independent inquiry established to investigate the events leading up to his death, led by Lord Hutton, determined that he had committed suicide.²

Concerns were raised during the Hutton inquiry regarding the manner in which Dr Kelly was questioned, with the reporting noting that the questioning ‘gave rise to criticism from members of the public.’³ However, the inquiry did not make any conclusions in respect to the committee’s questioning on the basis that the UK Bill of Rights ‘provides that the affairs of Parliament ... should not be commented on other than in Parliament.’⁴

It came to light that Dr Kelly was significantly concerned that the proceedings before the Foreign Affairs Committee were broadcast, with his daughter stating that ‘he was really very, very deeply traumatised by the fact that the [hearing] would be televised live’.⁵

In regard to the factors that may have led Dr Kelly to take his own life, the Hutton inquiry’s conclusion quoted the opinion of a Professor of Psychiatry who drew on the testimony of Dr Kelly’s family and friends to state:

I think that as far as one can deduce, the major factor was the severe loss of self esteem, resulting from his feeling that people had lost trust in him and from his dismay at being exposed to the media ... and I think being such a private man, I think this was anathema to him to be exposed, you know, publicly in this way. In a sense, I think he would have seen it as being publicly disgraced ... he is likely to have begun to think that, first of all, the prospects for continuing in his previous work role were diminishing very markedly and, indeed, my conjecture [is] that he had begun to fear he would lose his job altogether ... I think that would have filled him with a profound sense of hopelessness; and that, in a sense, his life’s work had been not wasted but that [it] had been totally undermined.⁶

The findings therefore indicated that the public humiliation and irreparable damage to his career and reputation, which he had built up over a lifetime, led to Dr Kelly taking his own life.

Case study #2 – Godwin Grech

Godwin Grech is a former senior Australian Treasury official who came to public attention during the 2009 ‘Utegate’ scandal.

The scandal arose when allegations were made by then Federal Leader of the Opposition Malcolm Turnbull, that the then Prime Minister, Kevin Rudd and/or then Treasurer, Wayne Swan, had acted improperly by seeking preferential treatment for a car dealer who was pursuing financial assistance from a government agency called OzCar.

² There has been widespread controversy around the findings of the inquiry, with conspiracy theories that Dr Kelly was murdered. However, for the purposes of this paper it is assumed that Dr Kelly did commit suicide.

³ Lord Hutton, Report of the Inquiry into the Circumstances Surrounding the Death of Dr David Kelly C.M.G., 28 January 2004, at 460.

⁴ Ibid, at 461.

⁵ Ibid, at 93.

⁶ Ibid, at 467.

Central to the claim was evidence given by Grech to a Senate inquiry into the OzCar scheme that Mr Rudd's economics advisor had emailed him asking for preferential treatment for the dealer.

Rudd and Swan were accused of misleading Parliament. However, it was subsequently revealed that Grech had forged the email.⁷

As a result of the highly publicised Utegate scandal, Mr Grech spent over a month in a hospital psychiatric ward for depression.⁸

From the outset I must acknowledge that I do not know what support (if any) was offered to Dr Kelly or Mr Grech from the respective committees or secretariats. Nevertheless, they provide interesting examples to lead in to the next section of this paper which considers some of the different types of support that have been offered to vulnerable witnesses in various jurisdictions.

Support options for witnesses

New South Wales Legislative Council: Vulnerable witness protocol

The New South Wales Legislative Council has developed a standard protocol for managing vulnerable witnesses, which is activated whenever necessary.

The protocol was developed following two main catalysts.

The first was a Council committee inquiry in 2007 during which an aggrieved witness expressed a view that if he had a gun he would shoot certain people that had let him down and then shoot himself. It was ultimately determined that the statement was an expression of emotion and there was no actual intent behind the comments. However, the secretariat was questioned as to what procedures it had in place for dealing with such threats, to which the answer was that it was (thankfully) the first time in living memory that such a situation had ever arisen so there was no established procedure specific to committees.⁹

The second catalyst was a 2008 inquiry into the New South Wales Ambulance Service,¹⁰ which exposed significant issues regarding the occurrence of bullying and harassment within the organisation.

During the inquiry the secretariat spoke to hundreds of serving and former ambulance officers, many of whom were experiencing depression and/or anxiety, and some of whom had attempted or were at risk of self-harm or suicide. The secretariat had significant concerns about one inquiry participant in particular whose mental state had deteriorated rapidly since his first contact with

⁷ Paul Maley, 'Why I faked the OzCar email: Godwin Grech', *The Australian*, 4 August 2009.

⁸ Michael Inman, 'Utegate official Grech wins payout', *Sydney Morning Herald*, 8 July 2013.

⁹ There was (and still is), however, a relevant parliamentary precinct security policy which was followed, which essentially involved reporting it to the Police Local Area Command (with basic guidance regarding the comments being privileged).

¹⁰ General Purpose Standing Committee No. 2, New South Wales Legislative Council, *The management and operations of the Ambulance Service of New South Wales* (2008).

committee staff, and who had admitted himself to hospital for psychiatric treatment several weeks after the commencement of the inquiry.

At around the same time, headlines were made when a New South Wales ambulance officer shot and killed his mother before taking his own life. The officer (who was *not* an inquiry participant) believed he had been the victim of discrimination and harassment within the Ambulance Service, and several colleagues had raised concerns about his mental health.¹¹

These events prompted the secretariat to seek advice from NSW Health to determine the best course of action to manage participants who demonstrated significant personal distress. NSW Health arranged for a professor from the Medical School at the University of Western Sydney and a clinical psychologist to assist the committee, free-of-charge, by preparing a support plan for inquiry participants who demonstrated a risk of self-harm or suicide.

Under the plan, the Committee Director consulted with the professor or clinical psychologist if an inquiry participant was identified as being at risk of self-harm or suicide,¹² to determine if there should be a referral to an Area Mental Health Service (AMHS) or other response. If a referral was deemed appropriate, the professor or psychologist would brief the relevant Area Director or delegate and then advise the Committee Director of the specific referral process for that service.

The Committee Director would then contact the inquiry participant and propose that an AMHS representative contact them as part of the routine support plan the inquiry had established to ensure the safety and welfare of inquiry stakeholders. If the participant agreed, the Area Director or delegate would contact them and organise an assessment by an AMHS Psychiatrist. If the participant declined, the secretariat would offer contact details for free phone counselling support such Lifeline or an agency counselling service such as Employee Assistance Program (EAP).

The plan was utilised for 11 individuals over the course of the inquiry.

Following the Ambulance inquiry, in 2009 the secretariat drafted a generic 'mental health protocol' (commonly referred to by secretariat staff as the 'vulnerable witness protocol') for use in any inquiry with witnesses at risk of self-harm, suicide or harm to others. The protocol was based on the Ambulance inquiry support plan, with the exception of the support provided by NSW Health through the professor and clinical psychologist. Instead, under the generic plan the Director or Inquiry Manager speaks to the inquiry participant to ascertain the level of risk and, where appropriate, refers them to a free counselling service such as Lifeline, beyondblue or an EAP (or, if there is a reasonable risk of harm to others, contacts the Police).

The draft protocol was circulated to all Legislative Council committee chairs for consideration and subsequently adopted by committees. While there was general support for the protocol, there was some concern that such a protocol confuses the role of secretariat staff and suggests a

¹¹ Larissa Cummings, 'Court hears of paramedics fatal fury', *The Daily Telegraph*, 20 July 2010; 'Murder-suicide paramedic should have been helped', *ABC News*, 3 September 2010.

¹² The secretariat identified these participants through comments in their submissions or through telephone conversations.

role and responsibility that staff are not equipped to undertake. Some members were of the view that the role of secretariat should only extend to procedural protections (such as those covered in the Senate Privilege Resolution No. 1, which will be discussed later).

The Clerk of the Parliaments also sent the draft protocol to the Crown Solicitor to seek advice on the potential liability of Legislative Council staff for adopting such a protocol, in particular, whether the adoption of such a protocol imposed a greater duty of care upon secretariat staff and committee members.

The Crown Solicitor's advice has been kept confidential, however, in general terms it tended toward the view that the adoption of a well prepared policy was preferable to having no policy at all and leaving staff to respond to situations in an ad hoc manner.

The protocol was subsequently adopted by the committee secretariat as standard procedure and has been used in numerous inquiries over the years.

Victorian Parliament: Support through the Victims Support Agency¹³

The Parliament of Victoria has also provided professional support for participants in some its inquiries.

Perhaps most notably was the support was offered during the *Inquiry into the Handling of Child Abuse by Religious and Other Organisations*¹⁴ through the state's Victims Support Agency (VSA) to victims of child abuse seeking to participate in the inquiry.

The VSA is a government agency that helps people manage the effects of violent crime.¹⁵ The VSA funds a network of Victim Assistance and Counselling Programs throughout Victoria.

In recognition of the fact that many victims and their families would need professional counselling and other support both during and after the inquiry process, a tailored scheme was established during the inquiry through the VSA where victims of crime could be assigned a case manager and were eligible to receive practical assistance, outreach, court support and referrals to other agencies.

The VSA supported victims through the preparation of submissions and preparing for and attending public hearings. It also linked people to support groups and legal services and referred eligible victims to therapeutic interventions including counselling.¹⁶

Support was made available through the agency's Victims of Crime helpline. Representatives of the VSA also attended the inquiry's public hearings and were available at *in camera* hearings for victims who might need support. Further, VSA representatives were available at pre- and

¹³ Background information for this section was provided by Dr Janine Bush, Director, Committee Inquiries (Executive Officer), Environment, Natural Resources & Regional Development Committee, Parliament of Victoria.

¹⁴ Family and Community Development Committee, Parliament of Victoria, *Inquiry into the Handling of Child Abuse by Religious and Other Organisations* (2013).

¹⁵ <http://www.victimsofcrime.vic.gov.au/utility/about+us/victims+support+agency/>.

¹⁶ Family and Community Development Committee, Parliament of Victoria, 'Betrayal of Trust: Inquiry into the Handling of Child Abuse by Religious and Other Organisations', November 2013, Volume 1, pp 33-34.

post-hearing briefings, provided support to individual victims when giving their evidence,¹⁷ and contacted victims in the months following a hearing to check in on their well-being.

The secretariat referred 91 victims to the VSA during the inquiry who received varying levels of support. In addition to this figure, there were also a number of victims who contacted the VSA but preferred not to leave their personal details, as well as a number who self-referred.¹⁸

I understand that a similar approach (although to a lesser extent) has been adopted in several Victorian inquiries since the child abuse inquiry. For example, the current inquiry into the Country Fire Authority Training College at Fiskville¹⁹ has also utilised the VSA to provide an independent helpline to offer assistance to the public for the duration of the inquiry. The helpline has trained call-takers available seven days a week to respond to health or welfare concerns. It can also provide assistance to help people make a submission to the inquiry, and for witnesses appearing before the committee.²⁰

It should be noted that the professional support provided by the VSA during these inquiries has been fully backed and funded by the Victorian Government. Both inquiries were referred by the government, with the latter being a 2014 election promise.²¹

Royal Commission into Institutional Responses to Child Sexual Abuse: In-house support²²

The current Royal Commission into Institutional Responses to Child Sexual Abuse has had substantial government funding to provide counselling and support for its witnesses, and as such has a 'Rolls Royce' model of in-house support. While not a parliamentary inquiry, it conducts a similar role and is therefore a useful example.

The commission has a full-time counselling and support team. Members of the team travel with the commission to public hearings, community forums and private sessions around Australia. Many of its staff have specialist experience in sexual assault or child sexual assault, or hold Indigenous-specific positions.

The support offered to individuals appearing before the commission differs, depending on whether they are appearing at a public hearing or a private session.²³

¹⁷ Parliament of Victoria, Family and Community Development Committee, 'Betrayal of Trust: Inquiry into the Handling of Child Abuse by Religious and Other Organisations', November 2013, Volume 1, p 34.

¹⁸ Ibid.

¹⁹ Environment and Natural Resources Committee, Parliament of Victoria, *Inquiry into the CFA Training College at Fiskville*, referred 23 December 2014.

²⁰ <http://www.parliament.vic.gov.au/enrrdc/article/2523>.

²¹ Media release, Hon Daniel Andrews MP, Premier of Victoria, 'Fiskville Inquiry Will Tell Firefighters the Whole Truth', 9 December 2014.

²² Background information for this section was provided by Ms Vanessa Viaggio, Principal Council Officer, New South Wales Legislative Council. Vanessa was seconded to the Royal Commission for two years.

²³ The difference between the two is not the same as the difference between parliamentary inquiry public and private (or *in camera*) hearings. The difference between parliamentary inquiry public and private hearings is essentially about confidentiality and the presence of media and the public. The Royal Commission's public hearings, on the other hand, are about examining 'case studies' of particular institutions. These hearings are held before three to six commissioners, and public hearing witnesses may still be granted a level of anonymity. In contrast, the purpose of the commission's private sessions is to allow survivors to speak, before a single commissioner, about the impact of

Individuals appearing at private sessions are contacted in the lead up to their appearance and offered a face-to-face meeting with a counsellor on the day of their session. They can also have the counsellor sit with them during their session.

Public hearing witnesses, on the other hand, have access to the full suite of support services offered by the commission. A member of the counselling and support team will contact each witness by phone, and then meet with them both before and immediately after their hearing. The support team conducts regular follow ups in the period after the hearing, with some witnesses receiving calls six months to a year later to check in on their well-being. In addition, witnesses are told they can call any time if they need to talk.

Many of the witnesses involved in the Royal Commission have complex trauma needs, and as such many can become dependent on the counsellors. The aim of the commission's counselling and support service is to facilitate the safe journey of witnesses through the potentially traumatic evidence-giving process; therefore while the team does offer follow up sessions to witnesses, they do it with a view to 'wean them off', or, where necessary, connect the witness to suitable longer term support.

New South Wales Legislative Council: Harnessing existing support

The New South Wales Legislative Council General Purpose Standing Committee No. 3 has recently come up with a more novel approach to providing support for vulnerable witnesses, during its current inquiry into reparations for the Stolen Generations.

Similar to some of the other inquiries discussed in this paper, the Stolen Generations inquiry is examining a highly sensitive subject matter that is causing distress for many inquiry participants in the re-telling of their traumatic stories.

It became apparent that the Legislative Council's generic vulnerable witness protocol would not be suitable for most of the stakeholders in this inquiry. Through the evidence received and background research conducted, a point that has been reiterated is that appropriate counselling support for members of the Stolen Generations and their families should not only be conducted by Indigenous people, but preferably by Indigenous people with specialist knowledge and/or experience with the Stolen Generations. As such, the Council's standard protocol which involves referring inquiry participants to mainstream services such as Lifeline or beyondblue is not suitable for this particular cohort.

Unlike the Royal Commission and the Victorian Parliament in the inquiries mentioned earlier, the committee has not been in a position to fund (or have government funding for) professional support services for its witnesses. The secretariat has therefore had to be creative in harnessing other existing support services.

After liaising with some of the key stakeholders, committee staff have come up with what they hopes to be a suitable alternative. It involves inviting the local 'Bringing Them Home'

their experiences with any institution. The commission conducts significantly more private sessions (4,645 to date) than public hearings.

counsellor²⁴ to each of the committee's regional hearings, with a view to the counsellor being available to offer support to witnesses on the day. In addition to providing specialist Stolen Generations support from an Indigenous counsellor, a key benefit of this approach is that after the committee leaves the counsellor will remain in the area to provide ongoing support should the witness wish to engage their services. This addresses another issue highlighted during the inquiry regarding previous counsellors coming in to Aboriginal communities, temporarily providing support then leaving again, which has had a particularly detrimental impact on these stakeholders.

The approach also has the benefit of being either free or low cost. The plan was developed very recently, and has so far only been used once at the committee's last regional hearing. Two local counsellors (who were also appearing as witnesses) agreed to stay at the hearing to offer support to anyone in need, and did so free of charge. The committee will be holding several more regional hearings in the upcoming months. It may be the case that some of the counsellors might seek payment to make their services available for a day. If so, it is probable that the committee would agree to making one-off payments for such services (although it would not pay for any ongoing counselling).

Other measures to alleviate pressure on witnesses

In addition to connecting vulnerable witnesses to counselling support, there are also other measures that could be taken to provide a multi-pronged approach to alleviating some of the pressure felt by witnesses at committee hearings.

One approach is to attempt to temper the manner of questioning by members. On occasion, Legislative Council committee staff will speak to chairs, and through the chair to committees, if concerned about the vulnerability or mental health of a witness. This may help members to, if necessary, adjust their behaviour toward the witness during the hearing.

By way of example, during one politically vicious Council inquiry, held in the months leading up to an election, the committee resolved to hear from certain individuals who had simply been in the wrong place at the wrong time and found themselves to be key witnesses in serious corruption claims. The witnesses agreed to appear,²⁵ although they were extremely reluctant to do so. One of the witnesses in particular was significantly distressed over the matter.

The secretariat was concerned that some members of the committee, who had been quite aggressive to other witnesses during earlier hearings, may be overly zealous with their questioning of the individuals.

The Committee Director therefore met with the Chair prior to the hearing to express these concerns. The Chair subsequently spoke to the committee to remind them that the witnesses were attending voluntarily and to inform members that the witnesses were anxious and

²⁴ Bringing them Home counsellors provide culturally appropriate counselling services to Stolen Generation members, their family and community.

²⁵ The committee resolved to invited the witnesses to appear, with the proviso that should they decline the committee's invitation, that they be summoned.

apprehensive about appearing. The members took these comments on board and were distinctly more moderate with their questioning than they had been with previous witnesses, even though the individuals potentially had evidence of great significance to the inquiry.

Assuaging the rigour of questioning by members may not, of course, always be possible as members will behave however they wish to behave. For instance, the same conversation with the committee in the David Kelly example would probably have been futile. Nonetheless, in some circumstances it may work.

Another measure to alleviate pressure on vulnerable witnesses is to hold the hearing *in camera*. As noted earlier, one of the key concerns for Dr Kelly was the fact that his hearing was being broadcast. Again, I am not aware of the details of that inquiry to know whether that was an option considered by the committee, however, the impact of the decision to televise the hearing was clear.

While not as directly relevant for the purposes of this paper, witnesses can also be protected through a privilege resolution, such as the Senate Privilege Resolution No. 1.²⁶ The Senate resolution provides a number of procedures for the protection of its witnesses by giving witnesses certain rights, for example, in relation to being provided with information about hearings, inviting versus summoning witnesses to appear, written submissions, being given reasonable opportunity to raise matters of concern relating to their evidence, answering questions and so forth.

Procedural protections can also be provided without a privilege resolution. For example, the New South Wales Legislative Council does not have a privilege resolution; however, its committees generally still observe most of the same procedural practices for the protection of witnesses through standing orders, committee resolutions and convention.²⁷

Commentary

The primary issue in regard to providing support is funding. The comprehensive models of counselling and support services offered by the Royal Commission and the Victorian Parliament inquiries outlined in this paper have been fully funded and supported by governments – a luxury that most parliamentary committees do not have. However, as demonstrated by the New South Wales Legislative Council, there are other ways to access support, such as through harnessing free services such as Lifeline, beyondblue or an EAP.

The Legislative Council's vulnerable witness protocol has proven to be an invaluable tool time and time again that has given staff the confidence to feel that they have taken the best steps they can to offer and connect vulnerable witnesses to appropriate support. However, parliaments considering adopting such a protocol may wish to seek their own legal advice in regard to their liability should any loss or injury arise in circumstances where the protocol is followed.

²⁶ Parliamentary privilege resolutions agreed to by the Senate on 25 February 1988, no. 1.

²⁷ It should be noted that consideration has been given at different times by the Legislative Council to adopt such a resolution; however, the House has yet to take this approach.

Pressure on witnesses can also be alleviated through pro-active measures such as conducting hearings *in camera* or attempting to temper the behaviour of members. In regard to the latter, members can get so busy with multiple inquiries and other work that they may not realise the impact of hearing appearances for some witnesses. Some members can also get so used to the robustness of debate in the House and so focused on political point scoring that they might transfer that behaviour to the questioning of witnesses with the expectation that it will be ‘water off a duck’s back’ in the same way that it is for other members. Communicating concerns to a committee about a witness’ mental state may therefore remind members that this is not necessarily the case and may help to reduce unnecessary rigour in questioning.

Conclusion

Due to the nature of committee work, many secretariat staff will encounter inquiry participants who are in a vulnerable mental state and in need of support. This is an unfortunate reality that cannot be avoided.

Some may argue that the role of committee staff should only extend to providing procedural protections; however, it is difficult to ignore statements made by witnesses regarding self-harm or suicide. While providing counselling support services may not be feasible due to resources, at a minimum equipping staff with a well-prepared policy or protocol to manage these situations must surely be preferable to ignoring such statements or leaving staff to respond to matters on a case-by-case basis.

A conscious, planned and considered approach not only provides confidence to secretariat staff in their interactions with stakeholders, but supports the safety and well-being of one the most important assets to a committee – its witnesses.