

PARLIAMENT OF NEW SOUTH WALES
LEGISLATIVE COUNCIL

STANDING COMMITTEE ON
PARLIAMENTARY PRIVILEGE AND ETHICS

REPORT
ON
SPECIAL REPORT FROM
GENERAL PURPOSE STANDING COMMITTEE NO. 2
CONCERNING A POSSIBLE CONTEMPT

Ordered to be printed 10 November 1998

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Foreword by the Chair

The *Special Report on a possible contempt of the Committee* of General Purpose Standing Committee No. 2 concerns an allegation by a witness before that Committee, Mr Tony Dennison, that the Minister for Health, the Hon. Dr Refshauge M.P., attempted to deter him from giving evidence to the Committee. The Special Report was referred to this Committee for determination of the question of whether any contempt or breach of privilege was committed by Dr Refshauge arising from this allegation.

In considering this matter, the Committee examined the evidence given by Dr Refshauge and Mr Dennison before General Purpose Standing Committee No. 2 regarding what was said by the Minister to the witness in relation to his appearance before the Committee. The Committee noted that the accounts of what was said differed in certain respects, although they both agreed that the Minister had made statements which were critical of General Purpose Standing Committee No. 2. To establish the weight to be given to each account, the Committee sought evidence from the member of Dr Refshauge's staff who heard the conversation in question. The evidence of this staff member supported Dr Refshauge's version of events.

In light of all the evidence the Committee concluded that it was possible that Mr Dennison read more into Dr Refshauge's comments regarding his appearance before the Committee than was either said or intended. Accordingly the Committee concluded that, while Dr Refshauge did make comments critical of General Purpose Standing Committee No. 2, he did not attempt to intimidate Mr Dennison or coerce him not to attend the hearing, and therefore no contempt or breach of privilege had been committed in this case.

As Committee Chair, I wish to acknowledge the co-operation and contributions of the Members of the Legislative Council who served on the Committee. The Committee also wishes to thank the Clerk to the Committee and Deputy Clerk of the Legislative Council, Ms Lynn Lovelock, the Senior Project Officer, Ms Velia Mignacca, and the Committee Officer, Ms Janet Williams.

**HON DR MEREDITH BURGMANN MLC
CHAIR
STANDING COMMITTEE ON PARLIAMENTARY PRIVILEGE AND ETHICS**

Background to the Committee

The Committee was first established as the Standing Committee Upon Parliamentary Privilege by resolution of the Legislative Council on 9 November 1988. It was re-established under the 50th Parliament on 16 October 1991. On 24 May 1995 at the commencement of the 51st Parliament the Committee was reconstituted as the Standing Committee on Parliamentary Privilege and Ethics.

The Committee has two main roles:

- (1) to consider and report on any matters relating to parliamentary privilege which may be referred to it by the House or the President; and
- (2) to carry out certain functions relating to ethical standards for Members of the Legislative Council under Part 7A of the *Independent Commission Against Corruption Act 1988 (NSW)*.

Terms of Reference

The terms of reference for this inquiry are contained in the *Special Report on a possible contempt of the Committee* of General Purpose Standing Committee No. 2, which was tabled in the Legislative Council on 28 April 1998.¹ The *Special Report* states:

General Purpose Standing Committee No. 2 of the Legislative Council to which was referred, on 17 September 1997, a reference to inquire into and report on the budgetary processes of the New South Wales Department of Health, resolved at a deliberative meeting on 27 March 1998 that a Special Report be presented to the House in order that the House may decide whether the Standing Committee on Parliamentary Privilege and Ethics be requested to inquire into and report on whether there has been any breach of parliamentary privilege by the Honourable Andrew Refshauge, MP, Minister for Health, in attempting to deter Mr Anthony John Dennison from giving evidence to General Purpose Standing Committee No. 2 on Thursday 5 March 1998.

So that the House may be placed in a position to decide the above question, the Committee submits the following documents.

1. An extract from the minutes of the meeting of the Committee dated 27 March 1998 containing the Committee's resolution.
2. The record of proceedings of the Committee meetings dated 5 March 1998 and 27 March 1998.

The *Special Report* was referred to this Committee for inquiry and report on 29 April 1998 by the following resolution of the Legislative Council:

That the Special Report of General Purpose Standing Committee No. 2 on a possible contempt of the Committee, be referred to the Standing Committee on the Parliamentary Privilege and Ethics for inquiry and report by 13 October 1998.²

By resolution of the Legislative Council on 24 September 1998, the reporting date for this inquiry was extended to 10 November 1998.³

¹ *Minutes of the Proceedings of the Legislative Council*, No. 31, Tuesday 28 April 1998, p. 382.

² *ibid.*, No. 32, Wednesday 29 April 1998, p. 389.

³ *ibid.*, No. 63, Thursday 24 September 1998, p. 726.

Committee Membership

The Hon Dr Meredith Burgmann, MLC Chair	Australian Labor Party
The Hon Jenny Gardiner, MLC	National Party
The Hon Charlie Lynn, MLC	Liberal Party
The Hon John Johnson, MLC	Australian Labor Party
The Hon Richard Jones, MLC	
The Hon Anthony Kelly, MLC	Australian Labor Party
The Hon Andrew Manson, MLC	Australian Labor Party
Revd the Hon Fred Nile, MLC	Christian Democratic Party
The Hon Peter Primrose, MLC	Australian Labor Party

SECRETARIAT

Ms Lynn Lovelock	Clerk to the Committee
Ms Velia Mignacca	Senior Project Officer
Ms Janet Williams	Committee Officer

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Chapter One

1 BACKGROUND TO THE INQUIRY

1.1 Referral of the inquiry

- 1.1.1 On 28 April 1998 the Chair of General Purpose Standing Committee No. 2, Ms Gardiner, tabled in the Legislative Council the *Special Report on a possible contempt of the Committee of General Purpose Standing Committee No. 2*.¹ The Special Report stated that:

General Purpose Standing Committee No. 2 ... to which was referred, on 17 September 1997, a reference to inquire into and report on the budgetary processes of the New South Wales Department of Health, resolved at a deliberative meeting on 27 March 1998 that a Special Report be presented to the House in order that the House may decide whether the Standing Committee on Parliamentary Privilege and Ethics be requested to inquire into and report on whether there has been any breach of parliamentary privilege by the Honourable Andrew Refshauge, MP, Minister for Health, in attempting to deter Mr Anthony John Dennison from giving evidence to General Purpose Standing Committee No. 2 on Thursday 5 March 1998.

An extract from the Committee's Minutes recording the decision to submit the Special Report to the House, and transcripts of certain proceedings before the Committee on 5 March 1998 and 27 March 1998, were attached to the Special Report.

- 1.1.2 On 29 April 1998, on the motion of Ms Gardiner, the Legislative Council agreed to the following resolution:

That the Special Report of General Purpose Standing Committee No. 2 on a possible contempt of the Committee, be referred to the Standing Committee on the Parliamentary Privilege and Ethics for inquiry and report by 13 October 1998.²

1.2 General Purpose Standing Committee No. 2

- 1.2.1 General Purpose Standing Committee No. 2 was appointed, together with four other General Purpose Standing Committees, by resolution of the Legislative Council on 7 May 1997.³ The inquiry concerning the budgetary processes of the Health Department was referred to that Committee by letter dated 17 September 1997 signed by three Members of the Committee addressed to the Clerk of the House, in accordance with the resolution

¹ *Minutes of the Proceedings of the Legislative Council*, No. 31, Tuesday 28 April 1998, p. 382.

² *ibid*, No. 32, Wednesday 29 April 1998, p. 389.

³ *ibid*, No. 65, 7 May 1997, pp. 674-680.

appointing the Committee.⁴ The letter requested that a meeting of the Committee be convened to conduct an inquiry in the following terms:

[That General Purpose Standing Committee No. 2] follow up its inquiry into the 1997-98 Budget Estimates for the NSW Department of Health by inquiring into and reporting upon:

- (a) the financial management and the budgeted, actual and projected financial positions for the 1995-96 financial year through to the budget projections for 1997-98 of the:

Far West Health Service
Greater Murray Health Service
Hunter Area Health Service
Illawarra Area Health Service
Macquarie Health Service
Mid North Coast Health Service
Mid Western Health Service
New England Health Service
Northern Rivers Health Service
Southern Health Service; and

- (b) implications of those financial positions for the delivery of health services in rural and regional New South Wales.⁵

1.2.2 On 5 March 1998 General Purpose Standing Committee No. 2 held a public hearing in Armidale in the course of its inquiry.⁶ Among the witnesses who gave evidence before the Committee on that day was Mr Anthony Dennison, who was then a member of the Board of Directors of the New England Health Service.⁷ Mr Dennison gave evidence in relation to certain matters concerning the operations of the New England Health Service and its Board of Directors.⁸ However, in the course of his evidence he also discussed a conversation he had had with Dr Andrew Refshauge MP, Deputy Premier, Minister for Health and Minister for Aboriginal Affairs, concerning Mr Dennison's appearance before the Committee. In summary, according to Mr Dennison's evidence, in that conversation the Minister had attempted to influence him not to attend the Committee hearing and give

⁴ General Purpose Standing Committee No. 2, Legislative Council, NSW Parliament, *Interim Report, Inquiry into rural and regional New South Wales Health services*, Report No. 3, July 1998, Appendix 6, p. 77 (Minutes of the Committee, Meeting No. 1). Paragraph 4 of the resolution appointing the Committee permits an inquiry to be established in this manner.

⁵ *ibid.*, p. ii and p. 77.

⁶ *ibid.*, p. 103.

⁷ *ibid.*, p. 104.

⁸ *Special Report*, *ibid.*, Attachment 2, Transcript, 5 March 1998.

evidence.

- 1.2.3 On 27 March 1998 General Purpose Standing Committee No. 2 took evidence from Dr Refshauge in relation to Mr Dennison's claims against him, and took further evidence from Mr Dennison in relation to those matters. The transcripts of the evidence given on 5 March and 27 March comprise Attachments 2 and 3 of the Special Report.

1.3 Board of Directors of New England Health Service

- 1.3.1 At the time the events in question took place, the New England Health Service was listed as an "incorporated hospital" in the Second Schedule of the *Public Hospitals Act 1929* (NSW). Under that Act, each such hospital was governed and managed by a Board of Directors.⁹ The Act provided that the duties of Boards of Directors were:

- (a) to achieve and maintain adequate standards of:
 - (i) patient care within the hospital; and
 - (ii) services provided by the hospital; and
- (b) to ensure the efficient and economic operation of the hospital consistent with the standards referred to in paragraph (a).¹⁰

- 1.3.2 The Act stated that each Board was to consist of such number of directors (not being less than nine nor more than twelve) as the Minister may from time to time fix by order published in the Gazette.¹¹ It allowed for elected directors of the Board, and for appointed directors,¹² such as Mr Dennison.³ It stated that directors may be appointed by the Minister by notification published in the Gazette.¹⁴ The term of office of an appointed Member was to be such term, not exceeding 5 years, as may be specified in the notification of appointment.¹⁵ The Governor had the power, by order published in the Gazette, to remove all or any of the directors.¹⁶ The Board of Directors was subject to the control of the Minister, except in relation to certain specified matters.¹⁷

⁹ s. 22 (1)

¹⁰ s. 27A

¹¹ s. 22(1A)

¹² s. 22(1A)

¹³ Transcript, 27 March 1998, p. 19 (Dr Refshauge recommended Mr Dennison's appointment).

¹⁴ s. 22 (2).

¹⁵ s. 23C(2)(b)

¹⁶ s. 26(1).

¹⁷ s. 22A(1).

1.3.3 The *Public Hospitals Act 1929* was repealed and replaced by the *Health Services Act 1997* (NSW), which came into effect on 1 July 1998.¹⁸ While the new Act became effective after the current inquiry was referred to this Committee, some comment in relation to that Act may clarify matters raised in the evidence given to General Purpose Standing Committee No. 2. The *Health Services Act* has replaced the New England Health Service and its Board of Directors with newly-constituted entities.¹⁹ However, it provides in effect that members of previous Boards (such as Mr Dennison) who were members immediately before the dissolution of the relevant health service, continue as board members for the remainder of their original period of appointment.²⁰ The provisions of the new Act governing membership of the Board, terms of office, and appointment and removal of Board members,²¹ are in relevant respects substantially the same as those in operation under the *Public Hospitals Act*.

1.4 Conduct of the inquiry

Extension of reporting date

1.4.1 Although this inquiry was referred to the Committee in April 1998, the Committee could not commence consideration of the matter until September 1998 due to work on other inquiries with earlier reporting requirements. Because of this delay, the Committee considered that it could not properly investigate this matter and report by the date which had been set by the House in the resolution establishing the inquiry, 13 October 1998. Accordingly, the reporting date for this inquiry was extended to 10 November 1998, by resolution of the Legislative Council on 24 September 1998.²²

Preliminary procedural matter

1.4.2 A preliminary matter considered by the Committee was whether any procedural difficulties were presented by the fact that two members of the Committee, Ms Gardiner and Mr Kelly, are also members of General Purpose Standing Committee No. 2 and were members of that Committee at the time the proceedings which gave rise to this inquiry took place. However, the Clerk to the Committee advised that, while certain restrictions apply in the case of a Member who has a *pecuniary or personal* interest in the subject of an inquiry, there is nothing in the Standing Orders or principles of parliamentary procedure which prevents a member of one committee from sitting on another committee

¹⁸ Proclamation, *Government Gazette* No. 97, 26 June 1998, p. 4423. Section 138 states that the *Public Hospitals Act 1929* is repealed.

¹⁹ Section 23; Schedule 1, p. 97; Schedule 7, s. 2, pp. 150, 151, s. 12.

²⁰ Schedule 7, s. 19.

²¹ See Chapter 3, Part 2 (Area health boards); Schedule 5, s. 7.

²² *Minutes of the Proceedings*, No. 63, Thursday 24 September 1998, p. 726.

investigating a matter that arose during proceedings before the former committee. The Clerk advised that the question of whether a Member continues to serve on the later committee is one for the Member concerned to determine, and that if the Member feels they have no conflict of interest in the matter, there is no requirement for them to stand down.

Evidence obtained by the Committee

- 1.4.3 Attachments 2 and 3 of the Special Report of General Purpose Standing Committee No. 2 contain the transcripts of the evidence given before that Committee by Dr Refshauge and Mr Dennison concerning the subject of the Special Report. As this evidence is reasonably extensive, the Committee did not consider it necessary to hold hearings to obtain further oral evidence in relation to this matter. However, the Committee wrote to Mr Dennison and Dr Refshauge asking whether they had anything further to add to the evidence they had given before General Purpose Standing Committee No. 2. Dr Refshauge replied that he had nothing further to add. Mr Dennison provided a written submission, which dealt principally with the issue of his removal from the New England Area Health Service Board in July 1998. In addition, the submission stated that Mr Dennison stood by the evidence he had given previously. A copy of the submission is included at Appendix 1.
- 1.4.4 In the transcripts of evidence given before General Purpose Standing Committee No. 2, there is reference to the fact that a member of Dr Refshauge's staff heard on loud speaker the telephone conversation between Dr Refshauge and Mr Dennison during which Dr Refshauge is alleged to have attempted to deter Mr Dennison from giving evidence.²³ The Committee considered that it would be useful to obtain evidence from that staff member concerning the content of the telephone conversation, as the accounts of the conversation given by Mr Dennison and Dr Refshauge differ in certain respects. Accordingly, the Committee wrote to Dr Refshauge asking him to indicate, in confidence, the name of the staff member and the Minister supplied this information. The Committee then wrote to the staff member requesting a written statement of their recollection of the content of the conversation. A copy of the staff member's reply to that request and to a later request for information from the Committee appear at Appendix 2.

²³ *Special Report*, Attachment 3, Transcript 27 March 1998 (Dr Refshauge), pp. 3; 41; (Mr Dennison), p. 55.

Chapter Two

2 EVIDENCE BEFORE GENERAL PURPOSE STANDING COMMITTEE NO. 2

This Chapter summarises the evidence given before General Purpose Standing Committee No. 2 on 5 March 1998 by Mr Dennison (part 2.1) and on 27 March 1998 by Dr Refshauge and Mr Dennison (parts 2.2 - 2.3), as far as such evidence is relevant to the present inquiry.

2.1 Evidence of Mr Dennison, 5 March 1998

- 2.1.1 In the first part of his evidence Mr Dennison raised a number of concerns relating to the operations and management of the New England Health Service and the Board of Directors of the Service. He indicated that he had discussed some of these concerns with the responsible Minister, Dr Andrew Refshauge, several days before.²⁴ Dr Refshauge had told him that he would look into these matters and that if there was anything else Mr Dennison thought he should know, he should contact Dr Refshauge direct.
- 2.1.2 One of Mr Dennison's concerns related to the proposed development of a new community health centre at Boggabilla.²⁵ Mr Dennison indicated that the Board had made promises to the local community regarding the establishment of the centre, and that a public announcement had been made that the funds for the centre had been received.²⁶ However, according to Mr Dennison, the Director of Finance of the Health Service had indicated, in a private conversation, that the funds for the project had already been spent "somewhere else".²⁷
- 2.1.3 Mr Dennison said that on 4 March 1998 he had telephoned Dr Refshauge's office to discuss his concerns regarding this matter, and had left two messages requesting the Minister to call him back.²⁸ He had given an indication of the purpose of his call, and had also referred to the fact that he would be attending the hearing of General Purpose Standing Committee No. 2 in Armidale.²⁹ Mr Dennison stated that the "Minister's secretary" had returned his call and that some discussion concerning the health centre had taken place. The secretary had told him that he had probably made a mistake or misheard

²⁴ General Purpose Standing Committee No. 2, Legislative Council, *Special Report on a possible contempt of the Committee*, April 1998, Attachment 2, transcript of proceedings, 5 March 1998, p. 36.

²⁵ *ibid.*

²⁶ *ibid.*

²⁷ *ibid.*

²⁸ *ibid.*, p. 37.

²⁹ *ibid.*

the information concerning this matter but that she would look into the matter and get back to him in a couple of days.³⁰

2.1.4 Mr Dennison then stated that he had received a telephone call from Dr Refshauge himself:

When I hung up on her, when I'd just said goodbye to her, by the time I started to get dressed and the phone rang again and it was Andrew Refshauge ringing me up and he seemed to be in a bit of a panic and he said to me, "Look", you know, he said, "I remember you had some clear concerns about things happening up at New England." He said, "Talk to me about it and I will make sure that Bob MacGregor goes up tomorrow to start sorting some of it out".³¹

2.1.5 Mr Dennison said that, after discussing various concerns in relation to the health service, he had told the Minister that the purpose of his call had been to "do [him] a good turn" by alerting him to the fact that, while various promises had been made in relation to the Boggabilla health centre, in reality the money had already been spent.³² Dr Refshauge had told him that he must have misheard this information, but Mr Dennison had replied that it was "a clear fact", and had described the circumstances in which the information had become known to him.³³

2.1.6 At this point Dr Refshauge had asked Mr Dennison about the hearing of General Purpose Standing Committee No. 2. Mr Dennison's evidence on this issue is quoted here at some length:

And then he asked me about your hearing and I said "Well, yes, I got a subpoena to go to the hearing." He said, "Did you get that subpoena served to you in your hand?" And I said, "No. They are going to give it to me when I get there tomorrow morning." And he said, "If they didn't give you the subpoena you don't have to go, in fact you shouldn't go."

CHAIR: "You shouldn't go"?

Mr DENNISON: Shouldn't go to the hearing, and I said, well, you know that -

Ms SAFFIN: Is that the subpoena there?

Mr DENNISON: Sorry?

Ms SAFFIN: Was that the subpoena they have put in your hand?

³⁰ *ibid.*

³¹ *ibid.*

³² *ibid.*

³³ *ibid.* pp. 37-38.

Mr DENNISON: Yes. He said, "Without the subpoena b shouldn't go to the hearing." But
Yes, and I am a man of my word, so I have got nothing to hide and I to say what I want to say because I am concerned about the health services He said, "You know, your role is to - if you work with me", like, yo know, "you ring me and tell me things, I can get them fixed up within a few days. her than going to the hearing, why don't you just tell me things and then I will fix it up?" And I said, "Well" - I was starting to feel, you know, this bloke must me, you know what I mean, an old mission brother, and you know, all this, I thought I've hit the jackpot.

And then alarm bells started ringing in me head becaus know, he was really coming on strong about not attending the hearing and like he concerned for my wellbeing, that if I should slip up at the hearing and sa something that there's a lot of funny things could happen, that you know this - I with this Committee and probably you know some sort of hurray for me an it was in my best interests not to go to the hearing, if I did attend the hearing that I wasn't to say anything.

You weren't to say anything?

Mr DENNISON:

CHAIR: words, if I asked you a question you were to simply say, "I am not answering the question"?

DENNISON: e
Minis
hearing r
name but I can't repeat it. Dumb.

Dumb, did he?

Mr DENNISON: And he said, "This tour is a waste of time. It has no powers. All it is doing is destroying people's credibility and dragging people through the e said, "You are a pretty good director and we need people like you on th you I can't save you but if you don't say anything and don't turn up", and he said in that they wouldn't be subpoenaing anybody, he said, "I'll stand on it." , "Like a good mate I will protect you to the hilt and let nothing happen to you. Stay away from the hearing."

this time I was
can't remember how long the phone call went for, it could have been ten minutes, could o
Armidale, but I was so up
I bastard, you know, he had no right to ring me up. We have got to h a

representative of the public." I says, "I have a right to attend that hearing and to say what I think needs to be said." But I was really upset, to the tune of even last night I couldn't sleep to think, you know, what would happen to me if I tell the truth to this hearing and I couldn't stop thinking of what's Andrew got to hide.

He must have something to hide because people like him, Ministers, don't ring up black fellows from the mission like me, call you mate and tell you they are going to protect you. And I have been around white fellows a long time now and I know that when they say they are going to protect you, you are the first one that is going to be shot. I have got nothing wrong with white people, I am married to an English woman, but then I could say I was just born like this.

I just felt because of the conversation, I noticed the Minister was upset because his voice was shaking, he was speaking at a hundred miles an hour and when he seen I was upset he started changing the subject and talking about, you know, some of the initiatives and we should adopt those, you know, "You and I can work well together. We could solve a lot of the problems together, but you know, don't go to the hearing, please stay away from the hearing." He said, "It is a nothing inquiry, run by would be politicians." So you know, I was pretty upset by it.³⁴

- 2.1.7 Mr Dennison then referred to various matters, including an alleged comment by Dr Refshauge concerning a ministerial visit to Moree,³⁵ and continued:

And I feel as the Health Minister, that is, you know, to say that "I did haven't to come here, there is no votes in it for me", well, I thought, you know, at first he was trying to protect me from you bad people, right. So obviously he wasn't, to me anyway, and I figured if I took his advice and not come to this meeting I would have been shocked tomorrow if he never let me get out of here, out of the health services.

(...) I felt that (...) I owed it to the public and to my God to come here and tell the truth regardless of what Dr Refshauge asked me to do. Well, he didn't ask me, he told me not to come.³⁶

- 2.1.8 Following further questioning by the Committee regarding health services, Mr Dennison said:

...You just jogged my memory one of the things that was said to me by Dr Refshauge was that one of the reasons that I shouldn't attend the Committee was because there are people even on his own party who might be on that hearing and "the bastards will use anything against me" as well from his own party.³⁷

³⁴ *ibid.*, pp. 38-39.

³⁵ *ibid.*, p. 40.

³⁶ *ibid.*

³⁷ *ibid.*, p. 42.

2.1.9 a question from Dr Pezzutti, Mr Dennison summarised what Dr Refshauge had said to him regarding attendance at the hearing:

: Well, he said it would be in my best interests not to come to the but he said he wouldn't be able to protect me if I did come to th Committee and I said something that I shouldn't have, he wouldn't be able to As I said, I tried to get him off the phone, you know, on certain occasions it, t it was like trying to shake your bank manager. You couldn't get off the

38

2.2

2.2.1 Dr Refshauge began his evidence as follows:

ison appeared before the estimates committee on 5 March 1998, he him that he should not appear before the estimates committee. I made it clear that was up to him. In fact, I told him that if he had a subpoena, he had to go. At no time did I try to intimidate him. The conversation was at all times cordial. At no did I tell him not to answer questions if he appeared before the estimate committee. was relaxed. At no time did I have any indication that Mr Dennison was upset.⁴⁰

2.2.2 r Refshauge then described the course of events which had led to his telephone call to Dennison r Den concerning health services, and invitations he had made to Mr Dennison t provide further information on any issues of concern.⁴¹ had telephoned his office on 4 March 1998, a staff member had returned the call. M Dennison had discussed various health issues and in the course of the conversation Mr Dennison had mentioned that he had received before the Committee. Dr Refshauge then said:

The mber informed me of Mr Dennison's call, and, as I said I would, I Mr t un I always try to follow up these kinds of matters because I want to b accessible t

ibid.

39 The e

40 General Purpose Standing Committee No. 2, *op. cit.*

41 *ibid*

42 *ibid*

responsibility with the area health board members. Up until now they have been unpaid volunteers and I think they deserve as much of my attention as I can give. (...)

The conversation was at all times cordial. We discussed the issues that he had previously raised. I once again asked him to provide any documentation he had. I asked him if there were any other issues as well. As he had mentioned to the staff member that he had received a subpoena, I asked him if he had actually been called to the committee because I was surprised because I did not think the estimates committee was forcing witnesses to appear before it. In fact, the Hon. Jennifer Gardiner had publicly stated that subpoenas were not necessary, but Mr Dennison told me that he had received a subpoena. I told him that if he had a subpoena, he had to go.

I also told him that if he did not have a subpoena he did not have to go, that it was up to him, that there was no point in turning up. I pointed out to him that I thought the estimates committee was a political exercise, that it was damaging the reputation of rural health services across New South Wales, and I said this concerned me because it is already hard enough to attract doctors and other health professionals to rural areas. Those views I have expressed publicly on many occasions have been reported in the press. I believe the coalition is undermining the hard work of health professionals in rural areas, and I think that is irresponsible.⁴³

- 2.2.3 In response to various questions during the course of the hearing, Dr Refshauge reiterated that he had not sought to influence Mr Dennison not to appear before the Committee, though he had stated that he considered that the Committee had no credibility and that to appear before it was a “waste of time”:

CHAIRMAN: After the hearing of this inquiry at Armidale, where we received evidence from over 20 witnesses—not just Mr Dennison—you said on the radio in your first reaction to that day's hearings, "At no time did I say to Mr Dennison that he should not give evidence before the Committee", but you also said that you told everybody not to give evidence to this Committee.

Dr REFSHAUGE: I said that the Committee is a political stunt, it has no credibility and it is a waste of time for people to turn up.⁴⁴

The Hon. Dr B. P. V. PEZZUTTI: Did you, in your conversation with Mr Dennison, seek to influence him to prevent him giving evidence before this Committee?

Dr REFSHAUGE: No, apart from saying that I thought the Committee was a

⁴³ *ibid*, pp. 3-4.

⁴⁴ *ibid*, p. 7.

political stunt and had no credibility, it was a waste of time.⁴⁵

- 2.2.4 On various occasions Dr Refshauge reinforced the point he had made earlier in the evidence to the effect that he had told Mr Dennison that if he received a “subpoena” from the Committee he would have to attend the hearing and tell the truth:

The Hon. Dr B. P. V. PEZZUTTI: Was your first statement—I will just go back to it—that he should not go to the Committee and give evidence unless he had a subpoena? That was your original statement to Mr Dennison, which is what Mr Dennison told us.

Dr REFSHAUGE: I am saying if he has a subpoena he has to go. If he doesn't have a subpoena he doesn't have to go.

The Hon. Dr B. P. V. PEZZUTTI: Okay. Did you tell him that if he went that he could answer the questions with, "No comment."?

Dr REFSHAUGE: No. I said if he goes and he answers, he has to answer the questions honestly.

The Hon. Dr B. P. V. PEZZUTTI: Did you say that to him?

Dr REFSHAUGE: Yes—or I might have put it in the double negative: you cannot lie to the Committee.⁴⁶

Dr REFSHAUGE: I did say very clearly that I thought that the Committee had no credibility and it was a waste of time turning up, but that if he had a subpoena he had to turn up. If he did turn up he had to answer the questions and tell the truth, and if he didn't have a subpoena he didn't have to turn up.⁴⁷

- 2.2.5 Dr Refshauge also reiterated that neither he nor Mr Dennison had been upset during the conversation:

... I don't believe that he was upset at the time. I certainly was not upset or anxious. I was responding to his interests, his issues that he has raised to me. I wanted to find out all of those so that I could comprehensively respond. I wanted to have any documentation that he had, that he said that he had, to see if I could progress it faster and further.⁴⁸

⁴⁵ *ibid.*, p. 17.

⁴⁶ *ibid.*, p. 12.

⁴⁷ *ibid.*, p. 41.

⁴⁸ *ibid.*

- 2.2.6 Dr Refshauge told the Committee that the conversation with Mr Dennison had been on loud speaker and had been heard by a member of his staff.⁴⁹ When asked to identify the staff member, he said that he would prefer to give that information *in camera*.⁵⁰ At the end of the hearing the Committee took evidence *in camera*, presumably in relation to the identity of the staff member.⁵¹
- 2.2.7 Apart from the telephone conversation on 4 March 1998, Dr Refshauge's evidence also dealt with a number of issues which may be seen as having some relevance to the current inquiry and which were the focus of questioning during the hearing. These issues are briefly discussed below.

Credibility of Mr Dennison

- 2.2.8 Dr Refshauge pointed out to the Committee that, in his view, the central issue had become whether Mr Dennison was a credible witness.⁵² He proceeded to raise various matters which he considered to be relevant to this issue. For example, he stated that Mr Dennison's application for appointment to the New England Health Board had indicated that he had held various jobs between 1978 and 1986, whereas a report by the Independent Commission Against Corruption (ICAC) indicated that for much of that time Mr Dennison had been in gaol.⁵³ He also claimed that many of the specific allegations made by Mr Dennison concerning the operation of the New England Health Service were false,⁵⁴ and suggested that Mr Dennison's claims against him in this matter were politically motivated.⁵⁵

Knowledge of Mr Dennison's background

- 2.2.9 Dr Refshauge's reference to Mr Dennison's period in gaol led to some discussion of whether Dr Refshauge had had any prior knowledge of Mr Dennison's background. The Chair of the Committee, Ms Gardiner, raised a number of matters which indicated that information regarding Mr Dennison's previous convictions had been in the public domain in some parts of New South Wales by December 1996 and that around that time the issue

⁴⁹ *ibid*, p. 3.

⁵⁰ *ibid*, p. 42.

⁵¹ *ibid*, p. 43.

⁵² *ibid*, p. 4.

⁵³ *ibid*.

⁵⁴ *ibid*, pp. 4-5.

⁵⁵ *ibid*, p. 5.

had been drawn to the attention of certain members of the Government.⁵⁶ However, Dr Refshauge stated that neither he nor his Department had been aware of this information, apart from the more recent media release of it,⁵⁷ and that he had not found any evidence that he had been informed of Mr Dennison's criminal record.⁵⁸

- 2.2.10 At a later stage in the evidence Dr Pezzutti sought to clarify how the Minister could have been unaware of Mr Dennison's record in light of a departmental policy concerning criminal checks of persons in positions in the health system.⁵⁹ The Minister replied that the checking procedures are lengthy and deliberative, and had not yet been completed.⁶⁰

Proposed changes to "regulations" applying to board members

- 2.2.11 At one point Dr Pezzutti referred to a newspaper report which stated that "new regulations" would be introduced to prevent people with serious criminal histories being employed or appointed to positions in the Health Department.⁶¹ In response, Dr Refshauge told the Committee that the proposed changes referred to were changes to *legislation* which had been passed by Parliament last year,⁶² and that changes were being implemented following recommendations from the Royal Commission into the New South Wales Police Service.⁶³

⁵⁶ *ibid*, p. 6.

⁵⁷ *ibid*, p. 7.

⁵⁸ *ibid*.

⁵⁹ *ibid*, pp. 15; 40-41.

⁶⁰ *ibid*, p. 41.

⁶¹ *ibid*, p. 14.

⁶² *ibid*, p. 14.

⁶³ *ibid*, p. 15.

Note: The *Health Services Act 1997*, which came into effect on 1 July 1998, contains certain provisions relating to criminal and disciplinary matters involving "visiting practitioners" (Chapter 8, Part 3) and "employees in the NSW Health Service" (Chapter 9, Part 2), but these provisions do not appear to apply to health board members. Under the Act, the office of a member of a health board becomes vacant if the member "*is convicted*" of certain criminal offences, but the provision does not refer to the position where the member received a conviction **prior to** their appointment to the Board (Schedule 5, s. 7 (g)).

Status of members of health Boards

2.2.12 During the evidence there was some discussion of the status of members of health Boards and the relationship between the Minister and Board members.⁶⁴ Dr Refshauge stated that he had recommended Mr Dennison's appointment to the New England Health Board, on the recommendation of Mr Slack-Smith, M.P.⁶⁵ He also indicated that the power to dismiss board members rests with the Governor on the advice of the Executive Council, acting on advice from the Minister or the Premier.⁶⁶ Dr Pezzutti then asked:

The Hon. Dr B. P. V. PEZZUTTI: Would you therefore say there is a power imbalance between you and Mr Dennison if you are talking on the telephone?

Dr REFSHAUGE: In regard to his position, an unpaid position, on the area health service, firstly, it is his choice whether he wants to be on it or not. He has the power to be on it or not, very strongly that, or to be not on it. He also would have to, in the normal course of events, be recommended by the Minister.

The Hon. Dr B. P. V. PEZZUTTI: So you do not believe that in any way you acted unfairly towards Mr Dennison in ringing him and importuning him not to go?

Dr REFSHAUGE: I returned his call.⁶⁷

2.3 Evidence of Mr Dennison, 27 March 1998

2.3.1 In his evidence Mr Dennison responded to various issues which had been raised by Dr Refshauge. Firstly, he denied that Dr Refshauge had had no previous knowledge of his criminal record until after or on the day Mr Dennison gave his evidence at Armidale.⁶⁸ In support of this view Mr Dennison described a number of incidents which in his view indicated he had been "under investigation" by Dr Refshauge's department because of his criminal record.⁶⁹ Towards the end of the evidence Mr Dennison suggested that there was a link between Dr Refshauge's alleged knowledge of his background and Dr Refshauge's alleged reference to his ability to "protect" Mr Dennison:

Mr Dennison: They [the Board] already knew about my criminal past, and I

⁶⁴ *ibid.*, pp. 18-19.

⁶⁵ *ibid.*, p 19.

⁶⁶ *ibid.*, p. 19

⁶⁷ *ibid.*, pp. 19-20.

⁶⁸ *ibid.*, p. 44.

⁶⁹ i.e., statements by a member of the public at a public meeting at Moree (p. 45); letter from Dr Refshauge to Mr Lang (pp. 45 and 47); statements made at a meeting between Mr Dennison and Mr Maher and Mr Briggs (pp. 45-46); discussion with Mr Ridgeway (p. 46); comments by Dr Refshauge on local radio (p.56).

believe that is what he was hinting at when he was saying to me in that previous phone call, "You look after me" or "You go there and don't say nothing", or he was saying to me, "I can't protect you." In other words, if I went he could not protect me from himself. That is my opinion.⁷⁰

2.3.2 Mr Dennison also rejected Dr Refshauge's suggestion that he had had political motives for his claims against the Minister.⁷¹

2.3.3 At various points Mr Dennison reiterated his previous evidence that Dr Refshauge had sought to influence him not to appear before the Committee:

The Hon. Dr B. P. V. PEZZUTTI: Do you think [Dr Refshauge] tried to influence you not to appear [before the Committee], to save his face or for his advantage?

Mr DENNISON: Yes.

The Hon. Dr B. P. V. PEZZUTTI: Did he make it clear to you that individuals have the right to make public comment and publicly debate political and social issues?

Mr DENNISON: When was this, in the phone call?

The Hon. Dr B. P. V. PEZZUTTI: Yes.

Mr DENNISON: No.⁷²

The Hon. Dr B. P. V. PEZZUTTI: Importantly, your impression from that conversation with Dr Refshauge was that he said, "Don't go."

Mr DENNISON: He told me clearly not to do as sure as I am black in the face he told me not to go.⁷³

2.3.4 Mr Dennison indicated that he had been subjected to strong criticism by certain members of the Board since giving evidence before the Committee on 5 March 1998, including verbal attacks at a Board meeting in response to statements he had made at the hearing regarding the Chief Executive Officer of the Board.⁷⁴

⁷⁰ *ibid.*, p. 57.

⁷¹ *ibid.*, p. 50.

⁷² *ibid.*, p. 52.

⁷³ *ibid.*, p. 59.

⁷⁴ *ibid.*, pp. 48-49.

Chapter Three

3 PRELIMINARY ISSUES

3.0.1 The current inquiry requires the Committee to determine “whether there has been any breach of parliamentary privilege by the Honourable Andrew Refshauge, MP, Minister for Health, in attempting to deter Mr Anthony John Dennison from giving evidence to General Purpose Standing Committee No. 2 on Thursday 5 March 1998.” This question raises two preliminary issues: parliamentary practice concerning cases involving the possible interference with witnesses; and the principles applicable to complaints involving Members of the Legislative Assembly.

3.1 Interference with witnesses

(a) *Practice in House of Commons*

3.1.1 Improper interference with parliamentary witnesses is one of the categories of contempt of Parliament which are recognised in the House of Commons. According to *Erskine May*, any conduct calculated to deter prospective witnesses from giving evidence before either House or a committee is a contempt.⁷⁵ This principle is reflected in a resolution which has been passed by the Commons at the beginning of every session since 1900 setting out that:

to tamper with a witness in regard to the evidence to be given before either House or any committee of either House or to endeavour, directly or indirectly, to deter or hinder any person from appearing or giving evidence is a contempt.⁷⁶

Furthermore, a committee of the Commons in 1935 reported that it was a breach of privilege:

to give any advice to a witness which took the form of pressure or interference with his freedom to form and express his own opinions honestly in the light of all the facts known to him.⁷⁷

The House resolved that it agreed with the committee’s report.⁷⁸

⁷⁵ *Erskine May’s Treatise on the Law, Privileges, Proceedings and Usage of Parliament*, 22nd ed., ed. D. Limon and WR McKay, Butterworths, London, 1997, p. 126.

⁷⁶ *ibid.*, p. 127.

⁷⁷ *ibid.*

⁷⁸ *ibid.*

- 3.1.2 To establish contempt, it is not necessary to show corruption or intimidation. It is equally a contempt to attempt “by persuasion or solicitations of any kind to induce a witness not to attend” or to withhold evidence or to give false evidence.⁷⁹
- 3.1.3 There have been numerous instances of punishment for offences of this kind.⁸⁰ In the three most recent examples referred to in *Erskine May* (all from last century), the punishment imposed by the House was commitment of the offender to prison or to the custody of the Serjeant-at-Arms.⁸¹

General principles relating to contempt

- 3.1.4 As indicated above, improper interference with witnesses is one category of the offence of contempt of Parliament. As may be seen from the general definition of contempt provided by *Erskine May*, the critical feature of contempt is that the relevant conduct impedes or obstructs the House or Members in the performance of their functions, or has a tendency to produce this result:

Generally speaking, any act or omission which obstructs or impedes either House of Parliament in the performance of its functions, or which obstructs or impedes any Member or officer of such House in the discharge of his duty, or which has a tendency, directly or indirectly, to produce such results may be treated as a contempt even though there is no precedent of the offence. It is therefore impossible to list every act which might be considered to amount to a contempt, the power to punish for such being of its nature discretionary. Nevertheless, certain broad principles may be deduced from a review of the kinds of misconduct which in the past either House has punished as a contempt.⁸²

- 3.1.6 It may be noted that in 1978 the House of Commons adopted recommendations of the Select Committee on Parliamentary Privilege 1966-67 regarding the exercise of the House’s penal jurisdiction (including its power to punish for contempt). The recommendations suggested that in general the House should exercise this jurisdiction:

- (i) as sparingly as possible, and

⁷⁹ *ibid.*, p. 127.

⁸⁰ See references cited by *Erskine May* at p. 127, footnote 8. The most recent reference listed is from 1857.

⁸¹ *ibid.*

⁸² *ibid.*, p. 108.

- (ii) only when the House was satisfied that to do so was essential in order to provide reasonable protection for the House, its Members or its officers from improper obstruction or attempt at or threat of obstruction causing, or likely to cause, substantial interference with the performance of their respective functions.⁸³

This suggests that action should only be taken in respect of a possible contempt where the interference or potential interference with the performance of functions is *substantial*.

3.1.7 As indicated in the general statement of principles above, the power to punish for contempt is discretionary. It has been suggested that, in determining whether to investigate or take action in relation to a possible contempt, regard may be had to factors such as whether:

- the investigation would involve costly, protracted and possibly inconclusive inquiries leading to no useful result;
- summoning persons to appear as witnesses to give evidence would merely afford such persons an opportunity to make defamatory statements in circumstances which protect them from liability to action; or
- to canvas matters before a committee of privileges would merely give added publicity to statements of political controversy.⁸⁴

Contempt and breach of privilege

3.1.8 The passages from *Erskine May* referred to above indicate that the House of Commons has treated interference with witnesses as being, variously, a contempt, and a breach of privilege. The terms of reference for this inquiry also refer to “breach of privilege”, though the title of the Special Report refers to a “possible contempt”.

3.1.9 “Breach of privilege” is defined in the following passage from *Erskine May*. The passage is preceded by a discussion of the rights and immunities which Members of Parliament enjoy by virtue of their office, which are said by *Erskine May* to include freedom of speech and freedom from arrest:

When any of these rights and immunities is disregarded or attacked, the offence is called a breach of privilege and is punishable under the law of Parliament. Each House also claims the right to punish as contempts actions which, while not breaches of any specific privilege, obstruct or impede it in the performance of its

⁸³ House of Commons, *Report of the Select Committee on Parliamentary Privilege 1966-67*, p. xlix; referred to in *Erskine May*, p. 144.

⁸⁴ Standing Committee upon Parliamentary Privilege, Legislative Council, *Report of the Standing Committee Upon Parliamentary Privilege together with the Proceedings of the Committee: Documents Issued by the Reverend the Honourable F J Nile MLC*, Session 1988-89-90, p. 28.

functions, or are offences against its authority or dignity, such as disobedience to its legitimate commands or libels upon itself, its Members or its officers.⁸⁵

3.1.10 This definition indicates that breach of privilege involves conduct which offends against a particular right or immunity, while contempt need not incorporate this characteristic. However, in the specific cases involving interference with witnesses referred to in *Erskine May*,⁸⁶ where the House of Commons has found that a “breach of privilege” has occurred, there has been no indication as to which particular right or immunity has been violated. Moreover, it is not at all clear which particular right or immunity could be said to have been breached.⁸⁷ Accordingly, while attempts to influence parliamentary witnesses in relation to their evidence have been treated as both a breach of privilege and a contempt in the Commons, it may be said that it is difficult to reconcile such conduct with the notion of “breach of privilege” as it is traditionally defined.

(b) *Practice in the Australian Senate*

3.1.13 Under the *Constitution Act 1901* (Commonwealth) the “powers, privileges and immunities” of the Houses of the federal Parliament shall be such as are declared and until declared shall be those of the House of Commons at the establishment of the Commonwealth (s. 49). The powers, privileges and immunities of the Houses in respect of certain matters have been declared by the *Parliamentary Privilege Act 1987* (Commonwealth).

3.1.14 Section 12(1) and (2) of the 1987 Act establish criminal offences in respect of certain conduct including the influencing of a witness by improper means in respect of evidence given or to be given before a House or a committee. For each offence, a penalty of either a fine or a term of imprisonment is specified.⁸⁸

3.1.15 In addition to these criminal offences, the Senate has the power to deal with the improper interference with witnesses as a contempt. Resolutions agreed to by the Senate on 25 February 1988 concerning parliamentary privilege include a list of prohibitions, the breach of which may be treated by the Senate as contempts.⁸⁹ These prohibitions include resolution 6 (10) and (11) which concern parliamentary witnesses:

⁸⁵ *Erskine May*, *ibid*, p. 65.

⁸⁶ *ibid*, p. 127, footnote 8.

⁸⁷ For example, it appears that it is not appropriate to speak of such conduct as violating the “privilege of freedom of speech”: *Odgers Australian Senate Practice*, 8th ed., Harry Evans ed., AGPS, Canberra, pp. 28-29.

⁸⁸ s. 12 (1) (a-b); s. 12 (2) (a-b).

⁸⁹ *Odgers’ Australian Senate Practice*, 8th ed., Harry Evans ed., AGPS, Canberra, 1997, p. 546-547.

Interference with witnesses

- (10) A person shall not, by fraud, intimidation, force or threat of any kind, by the offer or promise of any inducement or benefit of any kind, or by other improper means, influence another person in respect of any evidence given or to be given before the Senate or a committee, or induce another person to refrain from giving such evidence.

Molestation of witnesses

- (11) A person shall not inflict any penalty or injury upon, or deprive of any benefit, another person on account of any evidence given or to be given before the Senate or a committee.

3.1.16 In 1984, after apparent threats to a witness engaged in a particular inquiry, the Senate passed a resolution reaffirming the “long-established principle” that it is a serious contempt to attempt to hinder or deter any witness from giving evidence before the Senate or a Senate Committee, or to improperly influence a witness in respect of such evidence.⁹⁰ The importance with which the Senate views the protection of its witnesses is further indicated by Standing Order 181, which states:

A witness examined before the Senate or a committee is entitled to the protection of the Senate in respect of the evidence of the witness.

The Senate Committee of Privileges has stated that it regards “the protection of witnesses before Senate committees as the single most important duty of the Senate, and therefore of the Committee as its delegate, in determining possible contempts”.⁹¹

3.1.17 The Senate Committee of Privileges has dealt with 12 cases of alleged improper interference with witnesses before parliamentary committees.⁹² In three cases the Committee made a finding that a contempt had been committed,⁹³ but in none of those cases was a penalty recommended. Features of those cases where no penalty has been recommended have included: that the adverse treatment of the witness was considered not of a serious nature;⁹⁴ that the offending agency apologised to the witness and to the Senate;⁹⁵ and that the Committee could not establish whether the “penalty or injury”

⁹⁰ 13 September 1984, J. 1129; referred to in *Odgers*, pp. 408-409.

⁹¹ Senate Committee of Privileges, *Committee of Privileges 1966-1996: History, Practice and Procedure*, 62nd Report, June 1996, p. 23.

⁹² *ibid.*, p. 23.

⁹³ *ibid.*

⁹⁴ *ibid.*, p. 91 (Report No. 21).

⁹⁵ *ibid.*

suffered by the witness was as a result of his giving evidence to the Committee.⁹⁶ In the two most recent cases, although no penalty was recommended, the Committee made observations or recommendations intended to address areas of concern which had come to light as a result of the inquiries, e.g. observations concerning the culture prevailing within the offending agency which had contributed to the relevant conduct.⁹⁷

- 3.1.19 One case examined by the Senate Committee of Privileges involved a public statement by a Minister of the Legislative Assembly of the Australian Capital Territory concerning a witness before a Senate committee.⁹⁸ The Privileges Committee examined the Minister's statement and found that it could be regarded as constituting a threat to the witness. However, the Committee found that the threat had not been made as a result of the witness giving evidence, as the Minister had not been aware that the witness had given evidence. Therefore, the Committee concluded that no finding of contempt should be made.⁹⁹

(c) *Paper by the Clerk of the Senate*

- 3.1.20 A paper by the Clerk of the Senate, Mr Harry Evans, in 1993 discusses the general principles relating to the category of contempt involving interference with witnesses.¹⁰⁰ Among other matters, the paper points out that it is not necessary that a witness has actually been influenced in relation to their evidence for a contempt to have been committed, as contempt encompasses conduct which has a *tendency* to obstruct the performance of functions:

If a threat is made against a witness but ignored by the witness, the person making the threat is still guilty of a contempt, because the rationale of so treating such action is to discourage acts which may have the effect of influencing witnesses or deterring them from giving evidence. A threat made unsuccessfully against one witness may deter other witnesses to whom the threat was not directed. ... [T]he courts have had occasion to expound this principle in relation to contempt of court: "possibility, not probability, was the foundation of the principle that nothing should be said or done to interfere with the administration

⁹⁶ *ibid.*, p. 100 (Report No. 50).

⁹⁷ Senate Committee of Privileges, *Possible Improper Interference with a Witness and Possible False or Misleading Answers given to the Senate or a Senate Committee*, 50th Report, December 1994, p. 46.

⁹⁸ Senate Committee of Privileges, *Possible penalty or injury to a witness before the Standing Committee on Industry, Science, Technology, Transport, Communications and Infrastructure*, 55th Report, June 1995.

⁹⁹ *ibid.*, p. 34.

¹⁰⁰ Harry Evans, "Interference with witnesses", in *Transcript of Proceedings*, 24th Regional Conference of Presiding Officers and Clerks, Port Vila, Vanuatu, 26-29 July 1993, pp. 228-233.

of justice” (*Wellby v Still* 1892 8 TLR 202 at Col. 2). This principle is usually stated in terms of the offence being constituted by the tendency of the act rather than its actual effect.¹⁰¹

3.1.22 On the same principle, it is not necessary that a statement of intention be acted on for a contempt to be found. A person who threatens a witness but then does not carry out the threat is guilty of a contempt, even where the threat was made idly. The tendency of the act is to interfere with the witness.¹⁰²

3.1.23 The paper stresses the importance of applying the principles relating to this category of contempt:

It is suggested that unless parliaments apply these principles with the same vigour and consistency as the courts, not necessarily by imposing punishments but by confirming and upholding the principles in particular cases, a situation could arise of the pressuring of witnesses being seen simply as a legitimate political practice. Parliamentary inquiries would then lose their effectiveness as a means of ascertaining the truth, gathering accurate information and assessing the state of community opinion, and without an effective inquiry capacity, parliaments themselves would be ineffective.¹⁰³

(d) *NSW Legislative Council*

3.1.24 In NSW, unlike the Commonwealth, there is no legislation relevant to the issue of contempt in general, or interference with witnesses in particular. However, the Houses have power to deal with such matters by virtue of, and to the extent of, their inherent or implied powers. Traditionally, the courts have recognised that the Houses have such inherent powers as are “reasonably necessary” to the existence of the House and the proper exercise of its functions.¹⁰⁴ It has been recognised that such powers do not extend to the imposition of punitive measures.¹⁰⁵

¹⁰¹ *ibid*, p 231. It may however be noted that, in the 36th Report of the Senate Committee of Privileges, where no contempt was found, the Committee took into account the fact that, while the conduct towards the witness had had a tendency to interfere with the operations of the relevant parliamentary committee, in fact that committee had not ultimately been prevented from acquiring the information it needed to perform its functions (paragraph 14.14 (9)). However, the Committee also commented that, if it were to pursue its inquiries and take further evidence it might have found a contempt, but that in the particular circumstances of that case it had decided not to pursue the matter further (para. 4.11).

¹⁰² Harry Evans, *ibid*.

¹⁰³ *ibid*, p. 233.

¹⁰⁴ E.g. *Kielley v Carson* (1842) 4 Moo PC 63; *Armstrong v Budd* (1969) 71 SR (NSW) 386. The limitations of the traditional formulation of the inherent powers have been the subject of judicial comment in current appeal proceedings in the High Court in *Egan v Willis & Cahill*.

¹⁰⁵ *ibid*.

3.1.25 There have been no recorded cases in the NSW Parliament involving issues directly comparable to the present matter. There is a precedent in the Legislative Council involving an attempt to deter a prospective witness from appearing before a parliamentary committee.¹⁰⁶ However, the nature of the case was such that the possible contempt aspect of the matter was not pursued and neither the House nor this Committee was required to investigate the matter. Instead, the matter was referred to this Committee for an inquiry concerning the guidelines that apply to public officials called to appear and give evidence before parliamentary committees.

3.2 Complaints involving Members of the other House

3.2.1 As each House of Parliament is sovereign and independent of the other, neither House can claim or exercise any authority over a Member or officer of the other. Therefore, neither House can punish any breach of privilege or contempt offered to it by such Member or officer.¹⁰⁷ *Erskine May* states that if a complaint is made against a Member or officer of the other House, the appropriate course of action is to examine the facts and then lay a statement of the evidence before the House of which the person complained of is a Member or officer.¹⁰⁸

3.2.2 *May* also states that when a Member of either House has been guilty of any offence against the other House which would be punishable by the latter if committed by one of its own Members, it is the duty of the House to which such offender belongs, upon being apprised of the fact, to take appropriate measures to inquire into and punish the offence in a proper manner.¹⁰⁹

3.2.3 The present complaint involves allegations concerning conduct by a Minister who is a Member of the Legislative Assembly. Therefore, irrespective of any view which may be formed in relation to the facts, no action could be taken by the Council against the Minister. Nevertheless, the House has referred the matter to this Committee for investigation of whether the Minister's conduct constituted a "breach of privilege", and the matter concerns possible interference with the workings of a Council committee. Furthermore, the view which has been expressed in relation to the Senate - that the House has an important obligation to ensure that its witnesses are protected - applies with equal force to the Legislative Council. Accordingly, it would be appropriate for the Committee to examine the evidence concerning the Minister's conduct and to seek to form an assessment of that evidence in light of the principles relating to contempt.

¹⁰⁶ See: Standing Committee on Parliamentary Privilege and Ethics, Legislative Council, *Report on Inquiry into the Attendance of Witnesses before Parliamentary Committees*, Report No. 2, May 1996, Chapter 1, Outline of the Inquiry, pp. 1-3.

¹⁰⁷ *Erskine May, op. cit.*, p. 149.

¹⁰⁸ *ibid.*

¹⁰⁹ *ibid.*

Chapter Four

4 ANALYSIS OF ISSUES

4.1 Different versions of events

4.1.1 The evidence currently available to the Committee in this matter is the evidence provided by Mr Dennison and Dr Refshauge to General Purpose Standing Committee No. 2. However, in many respects the version of events given by each of these witnesses differs on issues which are material to the determination of the question of breach of privilege or contempt. This may be seen from the following summaries of the evidence which concentrate on those aspects of the evidence which are most relevant to the question of contempt.

Mr Dennison's version of events

4.1.2 In the telephone conversation of 4 March 1998, Dr Refshauge asked Mr Dennison about the hearing to be held the following day. Mr Dennison initially stated that he had received a "subpoena" to attend the hearing, but when pressed as to whether he had actually received a "subpoena" in his hand, stated that he was going to receive it when he attended the hearing the next morning. As there is no provision for parliamentary committees to issue subpoenas, it is assumed that the term is intended to refer to a *summons* issued under s. 4(2) *Parliamentary Evidence Act 1901* (NSW) requiring the attendance of a witness before the Committee.

4.1.3 According to Mr Dennison, Dr Refshauge then said:

"If they didn't give you the subpoena you don't have to go, in fact you shouldn't go.",

and

"Without the subpoena being put in your hand you shouldn't go to the hearing."

4.1.4 Mr Dennison replied that he had received correspondence concerning the hearing and had said that he would attend. He further stated that he thought that he *should* attend to say what he wanted to say because he was concerned about the health services. Dr Refshauge then indicated that Mr Dennison's role was one where he could ring the Minister and tell him his concerns and the Minister could get these concerns fixed up in a couple of days. Dr Refshauge said to him:

"Rather than going to the hearing, why don't you just tell me things and then I will fix it up?"

4.1.5 Mr Dennison's initial reaction was one of surprise that the Minister took such an active interest in his concerns ("I thought I've hit the jackpot"). However, then "the alarm bells started ringing in [his] head" because Dr Refshauge was "really coming on strong about

not attending the hearing” in a manner which indicated that he was “concerned for [Mr Dennison’s] wellbeing”. In this context Mr Dennison recalled that the Minister had said

that if I should slip up at the hearing and say something that there’s a lot of funny things could happen, ... I could find myself in a lot of problems with this Committee .. and as a Minister he wouldn’t be able to protect me, so it was in my best interests not to go to the hearing, if I didn’t attend the hearing that I wasn’t to say anything.

4.1.6 Dr Refshauge told Mr Dennison that he thought the Committee was a “waste of time” and damaging, and then continued:

"You are a pretty good director and we need people like you on the board but I am afraid if you go there if anything happens to you I can't save you but if you don't say anything and don't turn up", and he said in Parliament that they wouldn't be subpoenaing anybody, he said, "I'll stand on it." He said, "Like a good mate I will protect you to the hilt and let nothing happen to you. Stay away from the hearing."

4.1.7 Mr Dennison stated that he felt upset by the conversation with Dr Refshauge, so upset that he was shaking afterwards. Furthermore, that night he “couldn’t sleep to think ... what would happen to [him] if [he] told the truth to [the] hearing”. Mr Dennison also said that he noticed that the Minister was upset and that his voice was shaking during the conversation.

Dr Refshauge’s version of events

4.1.8 According to Dr Refshauge’s evidence:

1. He told Mr Dennison that if he did receive a “subpoena”, he had to go to the hearing, and had to tell the truth to the Committee.
2. He told Mr Dennison that if he did not receive a “subpoena”, he did not have to go to the hearing, it was up to him whether he went or not. However in Dr Refshauge’s view there was no point in turning up because the Committee was a political exercise of no value.
3. He did not tell Mr Dennison he should not to go to the hearing, and did not attempt to influence him not to go, apart from saying that he thought the Committee was a “political stunt” and a “waste of time”.
4. He did not attempt to intimidate Mr Dennison. The conversation was at all times cordial; Dr Refshauge was not upset and had no indication that Mr Dennison was upset.

4.2 Contempt

(a) *Effect of no “subpoena”*

4.2.1 Dr Refshauge’s advice to Mr Dennison that he did not have to attend the hearing if he did not receive a “subpoena” is a correct statement of the legal position. A person who is invited without summons to give evidence before a committee but fails to attend can suffer no legal consequences as a result. However, a person who is summoned to appear before a committee under the *Parliamentary Evidence Act* and fails to appear is liable to the penalty set out in ss. 7, 8 and 9 of that Act.¹¹⁰

4.2.2 Nevertheless, even in the case of a witness who is not summoned and who is not therefore legally bound to attend, any other person who attempts to deter the witness from giving evidence may still be guilty of contempt of Parliament. The principles of parliamentary procedure governing this category of contempt do not depend on the technical question of whether a summons has been served. The central issue is whether there has been an attempt “directly or indirectly, to deter or hinder any person from appearing or giving evidence”,¹¹¹ or whether there has been any pressure or interference with the witness’ freedom to form and express his or her own opinions, and whether such conduct obstructs, or has a substantial tendency to obstruct, the performance by the Committee or the House of its functions.

(b) *Application of contempt principles to Mr Dennison’s version of events*

4.2.3 A statement that a prospective witness should not attend a committee hearing and should not answer questions is clearly conduct which is calculated to deter the witness from giving evidence. Where the person who makes this statement is a Government Minister who has some official relationship with that witness, such conduct could be said to have a real tendency to interfere with the witness’ freedom to form and express his or her own views before the committee. The particular details of the Minister’s relationship with the witness may be relevant in this regard. In this case, under the legislation operating at the relevant time, the Minister had the power to appoint directors of the Board;¹¹² the Board was “subject to the control and direction of the Minister” except in relation to certain matters;¹¹³ the Governor had the power to remove a director from the Board,¹¹⁴ but by

¹¹⁰ These sections lay down a procedure whereby the recalcitrant witness may be taken into custody and retained and be produced from time to time for the purpose of giving evidence.

¹¹¹ *Erskine May*, p. 127.

¹¹² *Public Hospitals Act 1929* (NSW), s. 22(2). The Act was replaced by the *Hospital Services Act 1997* (NSW) (s. 138), which came into effect on 1 July 1998.

¹¹³ *ibid*, p. 22A(1).

¹¹⁴ *ibid*, s. 26(1)(a).

tradition would exercise this power on the advice of the Executive Council. Although there was no pecuniary benefit attached to membership of the Board, membership entailed participation in the performance of the important obligations and functions of the Board,¹¹⁵ in relation to a subject area (the operations of the New England Health Service) which appears to have been of real and sincere concern to Mr Dennison.

4.2.4 In addition to the clear injunction from the Minister that Mr Dennison “should not” go to the hearing, Mr Dennison’s evidence also describes various matters which, if true, could be seen as forms of pressure or interference with the witness’ freedom to attend the hearing and express his honest opinions, i.e.:

- The Minister’s suggestion that Mr Dennison tell him his concerns rather than attending the hearing, and statements that the Minister could arrange for those concerns to be addressed. In the context, coming directly after Mr Dennison had indicated that he thought he should attend the hearing and raise his concerns with the *Committee*, these comments take on the character of a form of pressure or inducement or an attempt to influence Mr Dennison in relation to his evidence.
- Allusions by the Minister to things that could happen if Mr Dennison “slipped up” at the hearing, and warnings that the Minister would not be able to “protect” or “save” Mr Dennison if he attended.
- Statements by the Minister that “like a good mate” he would protect Mr Dennison “to the hilt” if Mr Dennison did not attend the hearing.

4.2.5 Mr Dennison’s evidence also indicates that Dr Refshauge’s conduct had made him *feel* pressured and constrained in relation to his decision as to whether to give evidence or not, even though he ultimately decided to proceed with the course of action he had previously determined. For example, Mr Dennison said he had been so upset he had had difficulty sleeping - thinking about what would happen to him if he told the truth at the hearing.

4.2.6 On the basis of Mr Dennison’s evidence, if accepted *prima facie*, it would be open to the Committee to conclude that Dr Refshauge’s conduct constituted an attempt to influence Mr Dennison not to attend the hearing and give evidence according to his honestly-held beliefs. Although such conduct did not actually influence Mr Dennison in relation to his evidence, in the circumstances it could reasonably be said to have had a substantial tendency to have had this effect. Such conduct would justify a finding of breach of privilege and contempt.

4.2.7 As discussed in Chapter 3, conduct which has a substantial tendency to obstruct or impede the House (or a committee, being a delegate of the House) in the performance of its functions may amount to a contempt even if the conduct does not actually produce this

¹¹⁵ *ibid*, e.g. duties and functions referred to in ss. 27A, 28, 29.

result. The rationale for this principle is to discourage acts which may have the effect of influencing witnesses or deterring them from giving evidence.¹¹⁶

(c) *Application of contempt principles to Dr Refshauge's version of events*

4.2.8 The version of events provided by Dr Refshauge leads to different conclusions. According to Dr Refshauge, the Minister told Mr Dennison that it was “up to him” whether to attend the hearing or not, though he indicated that he considered the Committee to be a “waste of time” and a “political stunt”. Although these comments may demonstrate a lack of understanding or appreciation of the work performed by the Committee, to the extent that they acknowledge Mr Dennison’s freedom to attend and give evidence as he sees fit, they indicate that an essential element of the offence of contempt would be lacking in this case. There may well be circumstances where statements by a Minister stressing that it is up to the officer concerned to decide whether or not to give evidence may amount to the exertion of improper pressure on the officer and lead to a finding of contempt. Similarly, situations can be envisaged where statements by a Minister intended to discredit a parliamentary committee could have a tendency to discourage witnesses from appearing and therefore to obstruct the work of the committee. However, if Dr Refshauge’s version of events is accepted, such interpretations would not appear to be justified in the circumstances of this particular case.

(d) *Reconciling the conflicting evidence*

4.2.9 Given the conflicting nature of the evidence, the Committee sought to establish the veracity of the evidence given. In the first instance, the Committee wrote to the member of Dr Refshauge’s staff who overheard the telephone conversation seeking evidence as to the content of the telephone conversation. The written replies from the staff member (contained in Appendix 3) support the version of events given by Dr Refshauge - that while the Minister did make comments critical of the Committee and did suggest that Mr Dennison did not need to attend the hearing unless “subpoenaed”, as Mr Dennison has asserted, he did not attempt to intimidate Mr Dennison or coerce him not to attend.

4.2.10 It was not possible to establish any other corroborating evidence in support of Mr Dennison’s version of events. The Committee did however take note of a 1993 ICAC Report which contained comments somewhat critical of Mr Dennison. In the report, the Commissioner states that Tony Dennison was not “a particularly impressive witness”,¹¹⁷ that he had “persuaded himself that various threats and inducements were uttered and offered”,¹¹⁸ and “that he tended to get involved in other people’s situations . . .” but “. . . sometimes appeared to lack understanding of points of view other than his own, because

¹¹⁶ Harry Evans, *op. cit.*, p. 231.

¹¹⁷ ICAC *Report on Investigation Into the use of Informers* Volume 2, dated January 1993, p. 208

¹¹⁸ *ibid.*

he sees himself as more righteous than his fellow men”.¹¹⁹

- 4.2.11 In light of this, the Committee concluded that it is possible that Mr Dennison read more into Dr Refshauge’s comments regarding his appearance before the General Purpose Standing Committee than was either said or intended. As such, the Committee is of the view that there is no evidence of a contempt or breach of privilege having occurred.

FINDING

That, while Dr Refshauge did make comments critical of General Purpose Standing Committee No. 2, Dr Refshauge did not attempt to intimidate Mr Dennison nor coerce him to not attend the hearing, and that therefore the Committee could find no evidence that a contempt or breach of privilege had occurred.

However, in a previous case before this Committee a Member who had criticised a Committee was said to have been unwise,¹²⁰ and this is noted for the guidance of Ministers and Members. Without reflecting in any way on either Dr Refshauge or on this particular case, the Committee is of the opinion that caution should be exercised by Ministers and Members when in discussion with witnesses before Parliamentary Committees.

¹¹⁹ *ibid.*, p. 207

¹²⁰ Standing Committee upon Parliamentary Privilege, *Report of the Standing Committee upon Parliamentary Privilege, Documents Issued by the Honourable F J Nile, MLC*, Legislative Council, NSW Parliament, Session 1988-89-90, p. 30.

APPENDIX 1

Submission from Mr Dennison

APPENDIX 2

**Evidence from Dr Refshauge's
member of staff**

APPENDIX 3

Minutes of the Proceedings

Note:

At the time the Committee was conducting this inquiry, it was also inquiring into other unrelated matters. Those parts of the Minutes of the Meetings of the Committee which concern the other matters have been deleted from the Minutes appearing below.

Meeting No. 80

Thursday 10 September 1998

at Parliament House, Sydney at 9.30 am

MEMBERS PRESENT

Dr Burgmann (in the Chair)

Ms Gardiner	Mr Lynn
Mr Johnson	Mr Manson
Mr Jones	Revd Mr Nile
Mr Kelly	Mr Primrose

- Inquiry on Special Report of General Purpose Standing Committee No. 2 concerning a possible contempt*

The Committee continued to deliberate.

Resolved, on motion of Ms Gardiner: That the Clerk prepare advice for the Committee concerning the participation in this Inquiry of certain members who are also members of General Purpose Standing Committee No. 2.

The Committee continued to deliberate.

Mr Primrose moved: That the Chair write to Mr Dennison and Dr Refshauge asking whether they have anything further to add to the evidence which they gave before General Purpose Standing Committee No. 2, concerning the subject of this Inquiry.

Debate ensued.

Question put and passed.

Mr Jones moved:

1. That the Chair write to Dr Refshauge requesting, in confidence, the name of the staff member who heard on loud speaker the telephone conversation between the Minister and Mr Dennison.
2. That the Chair write to the Chair of the General Purpose Standing Committee requesting, in confidence, the name of the staff member who heard on loud speaker the telephone conversation between the Minister and Mr Dennison.
3. That, having been given the name, the Chair write to the staff member seeking written evidence from that person as to the content of the telephone conversation.

Debate ensued.

Debate adjourned, on motion of Mr Johnson, until the next meeting.

The Committee adjourned at 10.55 am until Thursday 17 September 1998 at 9.30 am.

Meeting No. 81

Thursday 17 September 1998

at Parliament House, Sydney at 9.30 am

MEMBERS PRESENT

Dr Burgmann (in the Chair)

Mr Johnson	Mr Manson
Mr Kelly	Revd Mr Nile
Mr Lynn	Mr Primrose

Apologies were received from Ms Gardiner and Mr Jones.

Minutes of Meetings No. 80 were confirmed on motion of Mr Manson.

Correspondence sent:

- (i) Letter dated 14 September 1998 to the Hon. Dr Andrew Refshauge MP, from the Chair requesting whether he had anything further to add to the evidence which he gave to General Purpose Standing Committee No. 2 on 27 March 1998, concerning the Committee's inquiry into a possible contempt.
- (ii) Letter dated 14 September 1998 to Mr Anthony Dennison from the Chair requesting whether he had anything further to add to the evidence which he gave to General Purpose Standing Committee No. 2 on 5 March and 27 March 1998, concerning the Committee's inquiry into a possible contempt.

Resolved, on motion of Mr Manson: That the Committee next meet at 9.30 am on Thursday 24 September 1998.

The Committee adjourned at 10.10 am until Thursday 24 September 1998 at 9.30 am.

Meeting No. 82

Thursday 24 September 1998

at Parliament House, Sydney at 9.30 am

MEMBERS PRESENT

Dr Burgmann (in the Chair)

Ms Gardiner	Mr Lynn
Mr Jones	Mr Manson
Mr Kelly	Revd Mr Nile

Apologies were received from Mr Johnson and Mr Primrose.

Minutes of Meetings No. 81 were confirmed, on motion of Mr Manson.

The Committee deliberated.

Order of the Day read for resumption of the debate on the motion of Mr Jones (10 September 1998):

1. That the Chair write to Dr Refshauge requesting, in confidence, the name of the staff member who heard on loud speaker the telephone conversation between the Minister and Mr Dennison.
2. That the Chair write to the Chair of the General Purpose Standing Committee requesting, in confidence, the name of the staff member who heard on loud speaker the telephone conversation between the Minister and Mr Dennison.
3. That, having been given the name, the Chair write to the staff member seeking written evidence from that person as to the content of the telephone conversation.

Debate resumed.

Question: That paragraph 1 be agreed to—put and passed.

Mr Jones, by leave, withdrew paragraph 2.

Question: That paragraph 3 be agreed to—put and passed

The Committee adjourned at 10.25 am until Thursday 15 October 1998 at 9.30 am.

Meeting No. 83

Thursday 15 October 1998

at Parliament House, Sydney at 9.30 am

MEMBERS PRESENT

Dr Burgmann (in the Chair)

Ms Gardiner	Mr Manson
Mr Johnson	Revd Mr Nile
Mr Kelly	Mr Primrose

Apologies were received from Mr Jones and Mr Lynn.

Minutes of Meetings No. 82 were confirmed, on motion of Mr Kelly.

Correspondence received:

- (i) Submission dated 30 September 1998 from Mr Tony Dennison regarding the Committee's inquiry into the Special Report on a possible contempt of the General Purpose Standing Committee.
- (ii) Letter received 2 October 1998 from the Hon. Dr Andrew Refshauge, MP, Minister for Health.

Correspondence sent:

- (i) Letter dated 7 October 1998 from the Chair to Dr Refshauge acknowledging receipt of his correspondence dated 2 October 1998.
- (ii) Letter dated 7 October 1998 from the Chair to Mr Dennison acknowledging receipt of his submission dated 30 September 1998.
- (iii) Letter dated 13 October 1998 from the Chair to [Dr Refshauge's staff member] regarding the Committee's current inquiry.

The Committee deliberated.

STANDING COMMITTEE ON PARLIAMENTARY PRIVILEGE AND ETHICS
REPORT ON INQUIRY ON SPECIAL REPORT FROM GENERAL PURPOSE STANDING COMMITTEE NO.2

Resolved, on motion of Mr Primrose: That the Chair write to the Department of Health, requesting a copy of Mr Dennison's application to serve on the New England Area Health Board.

The Committee adjourned at 10.43 am until Thursday 22 October 1998 at 9.30 am.

Meeting No. 84

Thursday 22 October 1998

at Parliament House, Sydney at 9.30 am

MEMBERS PRESENT

Dr Burgmann (in the Chair)

Ms Gardiner	Mr Lynn
Mr Johnson	Mr Manson
Mr Jones	Revd Mr Nile
Mr Kelly	Mr Primrose

Minutes of Meetings No. 83 were confirmed, on motion of Revd Mr Nile.

Correspondence received:

(ii) Letter dated 20 October 1998 from [*Dr Refshauge's staff member*].

Correspondence sent:

(v) Letter dated 20 October 1998 to Mr Michael Reid, Director General, Department of Health, requesting a copy of Mr Dennison's application to serve on the Board of the New England Health Service.

The Committee deliberated.

The Clerk tabled extracts from the ICAC *Report On Investigation into the Use of Informers* dated January 1993, relating to Mr Tony Dennison.

Resolved, on motion of Mr Jones: That the Chair write to Mr Dennison, requesting the release to the Committee of a copy of his application to serve on the New England Health Board.

Resolved, on motion of Mr Kelly: That the Chair prepare and submit a Draft Report on the Inquiry on the Special Report of General Purpose Standing Committee No. 2 concerning a possible contempt of the Committee.

Resolved, on motion of Mr Jones: That the Chair write to *[Dr Refshauge's staff member]* asking whether *[Dr Refshauge's staff member]* can confirm any other part of the evidence given to General Purpose Standing Committee No. 2 concerning the telephone conversation between Mr Dennison and Dr Refshauge.

The Committee adjourned at 10.47 am until Wednesday 28 October 1998 at 9.30 am.

Meeting No. 85

Wednesday 28 October 1998

at Parliament House, Sydney at 9.30 am

MEMBERS PRESENT

Dr Burgmann (in the Chair)

Ms Gardiner	Mr Lynn
Mr Johnson	Mr Manson
Mr Jones	Revd Mr Nile
Mr Kelly	Mr Primrose

Minutes of Meeting No. 84 were confirmed, on motion of Revd Mr Nile.

Correspondence received:

- (ii) Letter dated 26 October 1998 from *[Dr Refshauge's staff member]* in response to the Chair's letter dated 22 October 1998 concerning the telephone conversation between Dr Refshauge and Mr Dennison.
- (iii) Letter dated 27 October 1998 from Mr Dennison in response to the Chair's letter dated 22 October 1998 concerning Mr Dennison's application for appointment to the Board of the New England Health Service.
- (iv) Fax dated 27 October 1998 from Ms Ros Johnson, Associate Director, Community Relations, Health Department, concerning Mr Dennison's application for appointment to the Board of the New England Health Service.

Correspondence sent:

- (i) Letter dated 22 October 1998 to *[Dr Refshauge's staff member]* seeking comment on evidence provided by Dr Refshauge and Mr Dennison to General Purpose Standing Committee No. 2.
- (ii) Letter dated 22 October 1998 to Mr Anthony Dennison, requesting release of copy of

application for appointment to the Board of the New England Health Service.

- (iii) Letter dated 27 October 1998 to Mr Michael Reid, Director General, Health Department, forwarding a copy of Mr Dennison's consent to the release of his application for appointment to the Board of the New England Health Board.

The Committee deliberated.

The Committee considered the draft report on the inquiry into the Special Report of General Purpose Standing Committee No. 2 concerning a possible contempt of the Committee.

Chapters 1, 2 and 3 read and agreed to.

Chapter 4 read.

Resolved, on motion of Ms Gardiner: That paragraph 4.2.9 be amended by inserting after the words "critical of the Committee" the words "and did suggest that Mr Dennison did not need to attend the hearing unless "subpoenaed", as Mr Dennison has asserted".

Resolved, on motion of Ms Gardiner: That paragraph 4.2.11 be amended by omitting the words "no contempt or breach of privilege was committed" and inserting instead "is no evidence of a contempt or breach of privilege having occurred".

Resolved, on motion of Ms Gardiner: That the following paragraph be inserted at the end:

However, in a previous case before this Committee a Member who had criticised a Committee was said to have been unwise,¹ and this is noted for the guidance of Ministers and Members. Without reflecting in any way on either Dr Refshauge or on this particular case, the Committee is of the opinion that caution should be exercised by Ministers and Members when in discussion with witnesses before Parliamentary Committees.

¹ Standing Committee upon Parliamentary Privilege, *Report of the Standing Committee upon Parliamentary Privilege, Documents Issued by the Honourable F J Nile, MLC, Legislative Council, NSW Parliament, Session 1988-89-90*, p. 30.

Resolved, on motion of Mr Kelly: That Chapter 4, as amended, be agreed to.

Resolved, on motion of Mr Kelly: That the Report be signed by the Chair and presented to the House.

Resolved, on motion of Mr Kelly: That 350 copies of the Report be printed, on recycled paper if possible.

The Committee adjourned at 10.45 am until Thursday 12 November 1998 at 9.30 am.