

Standing Committee on Parliamentary Privilege and Ethics

**Report on person referred to  
in the Legislative Council  
(Mr P Spry)**

Ordered to be printed 26 February 2004

New South Wales Parliamentary Library cataloguing-in-publication data:

**New South Wales. Parliament. Legislative Council. Standing Committee on Parliamentary Privilege and Ethics.**

Report on person referred to in the Legislative Council (Mr. P. Spry) / Legislative Council, Standing Committee on Parliamentary Privilege and Ethics. [Sydney, N.S.W.] : The Committee, 2004. – vii p. 6; 30 cm. (Report 26, February 2004 / Standing Committee on Parliamentary Privilege and Ethics)

Chair: Peter Primrose.

“Ordered to be printed 26 February 2004”.

ISBN 0958128960

1. Spry, P.
2. New South Wales. Parliament. Legislative Council.
  - I. Title
  - II. Primrose, Peter.
  - III. Series: New South Wales. Parliament. Legislative Council. Standing Committee on Parliamentary Privilege and Ethics. Report ; 26

328.944 (DDC21)

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## Terms of Reference

The inquiry was conducted in accordance with a resolution of the Legislative Council of 13 November 1997 which permits citizens who are referred to in the House to seek a right of reply by making a submission in writing to the President of the Legislative Council (*Minutes of the Proceedings of the Legislative Council*, No. 16, Thursday 13 November 1997, Entry No. 2).<sup>1</sup>

The resolution is available on the Committee's page of the Parliament's website [www.parliament.nsw.gov.au](http://www.parliament.nsw.gov.au), or by contacting the Committee Secretariat.

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<sup>1</sup> The terms of this resolution have been incorporated into Standing Orders 202 and 203, which were adopted by the Legislative Council as Sessional Orders on 14 October 2003 for remainder of the sittings of the House during 2003: *Minutes of the Proceedings of the Legislative Council*, No. 24, Tuesday 14 October 2003, Entry No. 20.

## Committee membership

The Hon Peter Primrose MLC *Chair*

Australian Labor Party

The Hon Patricia Forsythe MLC *Deputy Chair*

Liberal Party

The Hon Tony Catanzariti MLC

Australian Labor Party

The Hon Amanda Fazio MLC

Australian Labor Party

The Hon Jennifer Gardiner MLC

National Party

The Hon Kayee Griffin MLC

Australian Labor Party

The Revd the Hon Fred Nile MLC

Christian Democratic Party (Fred Nile Group)



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## Report

- 1.1 On 19 May 2003 the President of the Legislative Council, the Honourable Dr Meredith Burgmann MLC, received a submission from Mr Paul Spry requesting the incorporation of a response under the Legislative Council's resolution of 13 November 1997,<sup>2</sup> relating to the protection of persons referred to in the Legislative Council.
- 1.2 The submission referred to statements made by the Honourable Arthur Chesterfield-Evans MLC during debate in the Legislative Council on 29 August 2000 on the Smoke-Free Environment Bill.<sup>3</sup> The President, having accepted the submission for the purposes of the resolution, referred it to the Standing Committee on Parliamentary Privilege and Ethics on 16 September 2003, following the re-establishment of the Committee in the 53<sup>rd</sup> Parliament.
- 1.3 The Committee met in private session on 13 October 2003, and decided, according to paragraph 4 of the resolution, to consider the submission. The response, which the Committee now recommends for incorporation in *Hansard*, has been agreed to by Mr Spry and the Committee in accordance with paragraph 5(b) of the resolution.
- 1.4 The Committee draws attention to paragraph 4(2)(b) of the resolution which requires that, in considering a submission under the resolution, the Committee must not consider or judge the truth of any statements made in the House or in the submission.
- 1.5 The Committee recommends:

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### Recommendation 1

That a response by Mr Spry, in the terms specified at Appendix 1, as agreed to by Mr Spry and the Committee, be incorporated in *Hansard*.

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The Hon. Peter Primrose MLC  
Chair

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<sup>2</sup> *Minutes of the Proceedings of the Legislative Council*, No. 16, Thursday 13 November 1997, Entry No. 2.

<sup>3</sup> *Hansard*, 26 June 2002, pp. 3744-3747.



## **Appendix 1**

**Response by Mr Spry,  
agreed to by Mr Spry and  
the Committee, according to  
paragraph 5(b) of the  
Legislative Council's  
resolution of 13 November  
1997**

# Appendix 1

## Introduction

I refer to Hansard, 29 August 2000, Legislative Council, second reading debate on the Smoke-Free Environment Bill, pages 8446-8447, and in particular to the text starting with “The executive came up with the idea that ventilation was the ...” and finishing with “...because ventilation does not remove cancer causing agents”.

The text includes references to environmental tobacco smoke (ETS), the Australian Ventilation Standard (AS 1666.2), and the Standards Association of Australia (SAA) Sub-Committee ME/62/2, which is responsible for the ventilation standard.

I have been “adversely affected by being named or identified by a Member in the Legislative Council”. My consulting engineering company, (Spry Associates Pty Ltd), has also been adversely affected, by implication. In addition, I have been adversely affected by references to Sub-Committee ME/62/2, and the Ventilation Standard, as I have for some time chaired the Sub-Committee, and Committee ME/62 to which it reports.

I stress that I do not make this submission on behalf of the Standards Association of Australia.

I have not raised this matter earlier as I was not aware of the Hansard reference until recently.

## Response

The Hansard text reflects an unreasonable, unfair and untrue representation of the position of myself and the Ventilation Sub-committee SAA.

This representation is based on a view, which has been promoted by certain community activists and government and quasi government bodies, that it is the role of a sub-committee of SAA to act so as to create “de-facto” health policy for government departments, quasi government bodies and community groups, in circumstances where this de-facto policy would, at least in the case of government bodies, exceed (or anticipate) the mandate given by Parliament. I particularly refer to the efforts of certain government bodies to impose elements of tobacco smoking control by unreasonable manipulation of the Australian Standardisation process.

One consequence of this has been that the development and issue of Australian Standard AS1668.2:2002 (the “ventilation code”) has been held up for more than five years by efforts to have it used as an instrument for the effective prohibition of tobacco smoking in buildings.

It is, in my opinion, the clear majority opinion of the Ventilation Sub-Committee of SAA that health policy is properly to be made by Governments and Departments of State/other bodies etc, operating under authority of these Governments, rather than by Standards Australia subcommittees.

I note that a NSW government body is listed as being an interest represented on the SAA committee responsible for AS1668.2:1991 but that no NSW government body is listed (in AS1668.2:2002) as being an interest represented on the SAA committee responsible for AS1668.2:2002 (when AS1668.2:2002 is amended by Amendment No. 1).

A key issue to be appreciated is that, notwithstanding statements to the contrary, the current (“new”) Australian Ventilation Standard, AS1668.2:2002 (which is referred to in Hansard as a “report” or similar although it was a draft standard at the time), does not deal with the health effects of environmental tobacco smoke. SAA Sub-Committee ME/62/2 has sought, and heeded at an early stage of its deliberations the advice of health authorities on this matter. These authorities advised that smoking is so dangerous that a ventilation code should not attempt to deal with its health effects.

Notwithstanding this, government departments/agencies and community groups have delayed the release of AS1668.2:2002 by over five years by attempting to manipulate aspects of the standard that have nothing to do with the health effects of tobacco smoke (i.e. draft code content dealing with many other things and with the smell of tobacco smoke). This delay has been reprehensible and detrimental to Australia.

Also, state government health bodies (including those in NSW) presently appear to be blocking the incorporation of AS1668.2:2002 in the Building Code of Australia (BCA) thus

- A preventing the use of a ventilation code that (in accord with health authority recommendations to the effect that smoking is so dangerous that a ventilation code should not attempt to deal with its health effects) does not deal with the health effects of environmental tobacco smoke, whilst
- B leaving in force (as part of Australian building regulation) a ventilation code (AS1668.2: 1991) which appears to contain the import that compliance with it satisfactorily deals with the health impact of smoking tobacco in buildings, thus
- C preventing the use of a ventilation code that contains world leading innovations and which, when used, will greatly benefit Australia.

It appears that this situation involves, on the part of certain government bodies and other enthusiasts, *inter alia*, good intention but considerable misunderstanding leading to an approach that will remain counterproductive until it is addressed at the highest level.

I note, for completeness, that AS1668.2:2002 does contain some advisory material (but NO requirements) re. the health effect of tobacco smoke. For example, it quotes health authority advice on the matter.

I also observe that, where the second reading debate addresses (directly and by quotation) technological issues like Ventilation, the statements are not notably accurate.

### **Details of adverse affects**

1

It is stated in Hansard that “Standards Australia committees comprise persons who are not disinterested: They are looking after their own interests”.

It is more correct to say that “formally, they are looking after the interests of the group they represent”, in a way somewhat similar to the way in which members of the Legislative Council look after the interests of the groups they represent.

Hansard also appears to imply that standards committee members (including me) are purely self-interested. I suggest this is a misrepresentation. It is my experience that committee members endeavour to represent their constituency and the community interest.

In my case, with regard to the ventilation code, I represent no interest. I am an independent chairman and I volunteer my time, and the cost of transport and accommodation (I live in the ACT), to the goals of society betterment through development and diffusion of knowledge. Standards Australia involvement is an interest of mine and, so to speak, a chosen community service obligation.

2

Hansard states that I have a “conflict of interest”. Apparently, this is because I designed ventilation improvements for two premises where tobacco is smoked while chairing the Standards Association Sub-Committee that develops the Australian Ventilation Standard.

In fact, I have dealt with a variety of clubs, hotels, taverns and restaurants in Canberra. I have also worked on Old and New Parliament Houses, hospitals, embassies, office buildings, the National Gallery, the National Library, the War Memorial, universities, schools, military facilities etc).

I am a designer etc. of ventilation and air conditioning systems; it is one of the things I do for a living.

In the two jobs mentioned in Hansard, along with a variety of other of my ACT jobs, my task was to modify/improve the ventilation systems so that they were brought up to the standard required by the ACT Smoke Free Areas Act 1995 (an anti-smoking Act). The declared objective of this Act is “to improve Public Health”.

It appears that Hansard reports me as having a conflict of interest because I work to improve ventilation systems so that they come up to the requirements of the ACT anti-smoking legislation and I chair the Standards Association Sub-Committee that develops the Australian Ventilation Standard.

Whilst the text in Hansard clearly has adverse affects I am having difficulty reconciling the underlying (i.e. unstated in Hansard) factual situation with the nature of the adverse affect apparently intended.