

General Purpose Standing Committee No.3

Special Report on possible breaches of privilege

arising from the inquiry into Cabramatta policing

Ordered to be printed 21 June 2001

Report 6

June 2001

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

New South Wales. Parliament. Legislative Council. General Purpose Standing Committee No.3
Special Report on a possible breach of privilege

Chair: The Hon Helen Sham-Ho MLC

"Parliamentary paper ; no. 828".

"Ordered to be printed according to the Resolution of the House".

ISBN 0 7347 6402 2

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Terms of Reference

That General Purpose Standing Committee No 3 inquire into and report on:

1. the adequacy of police resources in Cabramatta, especially in relation to drug crime;
2. the impact, if any, of the crime index on Cabramatta policing; and
3. the effectiveness of the Police Service in addressing the needs and problems of Cabramatta residents and in particular people from non-English speaking backgrounds.

These terms of reference were referred to the Committee by Self referral 29 June, 2000

Committee Membership

The Hon Helen Sham-Ho MLC , Chair (Independent)

The Hon Richard Colless MLC (National Party)

The Hon John Hatzistergos MLC (Australian Labor Party)

The Hon Ron Dyer MLC (Australian Labor Party)

The Hon Ian West MLC (Australian Labor Party)

Ms Lee Rhiannon MLC (Greens)

The Hon Greg Pearce MLC (Liberal Party)

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Chair's Foreword

This brief report deals with two possible breaches of privilege arising from the inquiry into police resources in Cabramatta being undertaken by General Purpose Standing Committee No 3:

- a) the unauthorised publication in the *Sydney Morning Herald* of 24 April 2001 to publish extracts from a confidential submission received by the Committee and which had not been made public at the time; and
- b) the issue by the Police Service of "directive memoranda" to officers who had given evidence before the Committee on 23 April 2001 and the subsequent actions of the Police Service in respect of those officers following their having given evidence before the Committee.

This report was adopted by resolution of a majority of the members of the Committee on 20 June 2001.

The report concludes that the unauthorised disclosure of the submission was a serious matter that potentially interfered with the Committee's functions. Despite this the Committee does not believe further inquiry will be able to identify the source of the disclosure.

The report concludes that the actions of the Police Service with regards to the 4 officers who gave evidence to the Committee on 23 April 2001 also potentially constituted interference with the Committee's functions and may have jeopardised the integrity of the Committee system. The Committee considers this issue of the treatment of the 4 officers as sufficiently serious as might constitute a possible breach of privilege or contempt which warrants the matter being reported to the House for possible reference to the Standing Committee on Privileges and Ethics for inquiry and report. As I am also the Chair of the Privileges and Ethics Committee, it is recommended that another Member chair the proposed inquiry.

Hon Helen Sham-Ho MLC

Committee Chair

Chapter 1 Special Report

General Purpose Standing Committee No 3, which has been inquiring police resources in Cabramatta, has considered two matters which may constitute breaches of privilege:

- a) the unauthorised publication in the *Sydney Morning Herald* of 24 April 2001 to publish extracts from a confidential submission received by the Committee and which had not been made public at the time; and
- b) the issue by the Police Service of “directive memoranda” to officers who had given evidence before the Committee on 23 April 2001 and the subsequent actions of the Police Service in respect of those officers following their having given evidence before the Committee.

The Committee has therefore agreed to the following Special Report:

- 1.1** On 23 April 2001 four serving officers from the Cabramatta Local Area Command appeared before the Committee. The circumstances which led to the hearing and the procedures followed in the hearing are detailed in the opening statement of the Committee Chair. Appendix 1 reproduces the Chair’s opening statement together with the rest of the transcript of the in camera hearing held on 23 April 2001, as made public in accordance with the resolution of the Committee on 30 April 2001.
- 1.2** Prior to the hearing on 23 April 2001, the officers had provided the Committee with a draft submission on 18 April 2001. During the evidence amendments to this draft were provided verbally to the members of the Committee. At the conclusion of their evidence, the officers tendered a single amended, signed copy of their submission. A copy of this submission, with the names of the officers deleted, as made public in accordance with the resolution of the Committee on 23 April 2001, is reproduced as Appendix 2.
- 1.3** At the deliberative meeting held prior to the 23 April hearing the Committee resolved:
 - that the hearing be held in camera; and that the names of officers be deleted from the transcript of the hearing.

At the conclusion of the hearing, the Committee resolved:

- to authorise the Clerk of the Committee to make available to the Court and Legal Services of the NSW Police for response an amended (that is, with the names of officers deleted), corrected copy of the transcript of the in camera hearing on 23 April 2001, together with the submission received.

The Committee also resolved:

- to authorise the Clerk of the Committee to make public an amended (that is, with the names of officers deleted), corrected copy of the transcript of the in camera hearing on 23 April 2001, together with the submission received.

The Minutes of Proceedings of the Committee for 23 April 2001 are attached as Appendix 3.

- 1.4** On the afternoon of 23 April 2001, prior to a transcript of evidence being received by the Committee, the Committee Director received telephone calls from journalists from the *Sydney Morning Herald* and the *Daily Telegraph*. Each indicated that they had a copy of the officers' submission. They sought advice as to the status of the submission. The Committee Director advised that the submission was a confidential document until such time as it was to be made public with the amended version of the transcript of the in camera hearing. The journalist from the *Daily Telegraph* indicated that, in view of this advice, and legal advice from News Limited lawyers, the *Daily Telegraph* would not be publishing the contents of the submission. The journalist from the *Sydney Morning Herald* indicated that the advice from the Committee Director was noted and that legal advice would be sought from Fairfax lawyers before a decision was made on whether to publish the contents of the submission. The Committee Director's file note to this effect is attached as Appendix 4.
- 1.5** On 24 April 2001, an article appeared on page 2 of the *Sydney Morning Herald*, entitled 'Drug criminals "recruiting school students"'. This article is reproduced at Appendix 5.
- 1.6** The Chair has written to each Member requesting written advice as to whether they know how the unauthorised disclosure of the submission occurred. Similar letters have been written to the four witnesses, to the Committee staff and to the Hansard reporting staff who serviced the Committee during the in camera evidence. None of the replies to date contains any information which could assist in ascertaining the source of the original disclosure. A sample letter and list of those to whom it was sent, and the replies received to date, are attached as appendix 6.
- 1.7** The Committee considers the premature publication of the evidence may constitute a breach of privilege. However given that the draft submission was in wide circulation prior to the hearing the Committee believes there will be little prospect of the source of the disclosure being identified. Accordingly the Committee does not see any value in the Privileges and Ethics Committee investigating this matter further (see conclusions, below).
- 1.8** Following the publication of the article in the *Sydney Morning Herald*, on 24 April 2001 the four officers who had appeared before the Committee were served on the same day with "directive memoranda" requiring them to provide certain information to their Local Area Commander in regard to issues discussed in the Herald article. This is attached as Appendix 7.
- 1.9** Following the serving of the "directive memoranda" there was a series of correspondence between the legal representatives of the four officers, the Committee Chair, the Court & Legal Services of the Police Service and the Police Association of NSW, with the Association intimating there was intimidation of the four officers. This correspondence is reproduced as Appendix 8.
- 1.10** On 7 May 2001 the Committee Chair wrote to the Police Commissioner to raise concerns about two issues arising from the events following the hearing on 23 April 2001. The letter from the Committee Chair is attached as Appendix 9. The letter from the Committee Chair articulated in detail her concerns about two possible breaches of privilege

in relation to the unauthorised release of the officer's submission and the "directive memoranda".

- 1.11** The Court & Legal Services of the Police Service, in a letter dated 9 May 2001 explained the reasons why directive memoranda were served on the officers, and requested that, if there was to be further discussion of this matter at the Committee's forthcoming hearing on 11 May 2001, that this discussion should take place in camera. This letter is attached in Appendix 10.
- 1.12** On 11 May 2001, Assistant Commissioner Small, Commander Hansen and Crime Manager Wallace appeared before the Committee. At the conclusion of a public hearing, the Committee took evidence in camera from the three witnesses in relation to the "directive memoranda". At its meeting on 6 June 2001 the Committee subsequently resolved to make public the in camera evidence of Mr Small, Mr Hansen and Ms Wallace, but requested that Mr Small inform the Committee which parts of the transcript he would prefer the Committee to keep confidential. Following receipt of Mr Small's comments, the Committee at its meeting on 15 June 2001 went through each page of the transcript and determined the final amendments to be made. The amended transcript of this evidence, which was made public in accordance with the Committee's resolution, is attached as Appendix 11.
- 1.13** The committee had an initial discussion about the directive memoranda issue on 14 May 2001. On that occasion, the Committee resolved to defer further consideration of the issue until a draft Special Report was circulated by the Committee Chair.
- 1.14** At its meeting on 6 June 2001 the Committee received correspondence from the four officers who had given evidence on 23 April 2001. This correspondence was sent in reply to a request for advice as to whether the officers would object to their names being put back in the transcript of the 23 April hearing. The letters from the officers also outlined their perspective on the "directive memoranda" with which they had been served, and outlined their experience within the Police Service since they had given evidence before the Committee.
- 1.15** The Committee regards the actions of the Police Service with regard to the 4 officers as potentially interfering with the Committee's functions and jeopardising the integrity of the Committee system, and as such may constitute a breach of privilege (see conclusions, below).
- 1.16** A draft Special Report was considered by the Committee at its meeting on 20 June 2001. The Minutes of Proceedings of this meeting are attached as Appendix 13. At its meeting on 20 June 2001, the Committee resolved:

That the Chair's Special Report be presented to the House, as the report of the Committee, so that the Standing Committee on Privilege and Ethics can be requested to inquire into and report to the House on whether there has been a breach of privilege in relation to the following matter that has occurred following the Committee's in camera hearing held on 23 April 2001:

the decision of the Police Service to serve "directive memoranda" on the officers who had given evidence on 23 April and the subsequent actions of the Police

Service in respect of those officers as a consequence of their having given evidence before the Committee.

Conclusions of Committee

- 1.17** The Committee regards the unauthorised disclosure of the submission most seriously and potentially interfering with the Committee's functions. Despite this the Committee does not believe further inquiry will be able to identify the source of the disclosure.
- 1.18** The Committee also regards the actions of the Police Service with regards to the 4 officers who gave evidence to the Committee as potentially constituting interference with the Committee's functions and jeopardising the integrity of the Committee system.
- 1.19** The Committee considers this issue of the treatment of the 4 officers as sufficiently serious as might constitute a possible breach of privilege or contempt which warrants the matter being reported to the House for possible reference to the Standing Committee on Privileges and Ethics for inquiry and report.
- 1.20** As the Chair of GPSC No 3 is also the Chair of the Privileges and Ethics Committee, it is recommended that another Member chair the inquiry.

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Appendix 1

Published Transcript

23 April 2001

Appendix 2

Published Submission of Officers A, B, C, and D

Appendix 3

Minutes of Proceedings of 23 April 2001

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Committee Director's File Note

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Published amended transcript of 11 May 2001

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Minutes of Proceedings

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Appendix 13

Statement of Dissent

The Hon J Hatzistergos MLC

The Hon R Dyer MLC

The Hon I West MLC

