



LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY  
Committee Office

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Mr Richard Mulcahy MLA  
Chair  
Select Committee on Privileges  
ACT Legislative Assembly  
GPO Box 1020  
Canberra ACT 2601

Dear Mr Mulcahy

I refer to your letter of 4 July 2008, requesting a submission to the Privileges Committee established to investigate conduct of the Chair in relation to correspondence to the Minister for Police and Emergency Services during the Legal Affairs Committee inquiry into ACT fire and emergency services arrangements.

My comments relate to the facts pertinent to the events and comment on the appropriate standing orders.

*Term of reference (a)*

*The letter to the Minister for Fire and Emergency Services*

On 16 June 2008 Mr Stefaniak requested me to draft a letter to the Minister for Fire and Emergency Services requesting certain documents. There was some urgency to the request, given that the Committee was hearing from the Minister on the ensuing Friday, 20 June and the inquiry was in its closing stages. I had a staff member draft the letter while I was in the final Estimates public hearing and this letter was checked by another committee secretary and myself at a later time, prior to going to Mr Stefaniak for signature.

Normally my practice as a committee secretary is to ensure that committee members are aware of all correspondence and such documents as media releases, prior to their release. However, on this occasion I omitted to provide copies to all committee members, prior to sending the letter to the Minister. It was a busy day in which I was involved in the final two public hearings for the estimates process and the finalisation of the report for tabling the next day. I therefore did not give the correspondence as much consideration as I normally would have.

Civic Square, London Circuit, Canberra ACT 2601  
GPO Box 1020, Canberra ACT 2601  
Secretary: Telephone: (02) 620 50199 Facsimile: (02) 620 50432  
Email: [committees@parliament.act.gov.au](mailto:committees@parliament.act.gov.au)

However, in part the request was a reiteration of previous requests made of the Minister, either at hearings or in writing, as per the attached schedule. At no time did any member of the Committee object to the previous requests and all members had had access to the previous correspondence.

At a private meeting preceding the public hearing on Friday 20 June, Ms MacDonald raised the matter of the letter having been forwarded without the knowledge of the Committee and that she had only become aware of the request when the Minister advised her informally that he had responded. The Chair apologised for the oversight, but also noted that some documents had actually been requested on previous occasions. The Committee then went on to authorise for publication some of the documents that had been received, but not all, and to discuss a further request for documents which had not been provided. The Committee agreed at its first private meeting on 20 June, ie the one preceding the public hearing with the Minister, to forward a letter to the Minister noting that two sets of documents had not been provided and pressing for the release of one of these documents, but not pursuing the other. For ease of reference, a list of documents is attached, showing the dates they were originally requested [if an earlier request existed] and subsequently requested and the status of the documents to date.

### *Comment*

Given these events, while the Committee did not formally retrospectively authorise the correspondence, the publication of the documents received and the decision to press for one of the documents not provided suggest that the Committee was not overly concerned that the Chair may have overreached his authority. The Committee did not deem the matter sufficiently serious to consider any change to committee procedure as a result of the oversight.

Further, had I suggested to the Chair on Monday, 16 June that the letter be circulated to other members prior to transmission, I am quite sure the Chair would have agreed to do it. It was an oversight on my part that this did not happen.

### *Standing orders*

The Standing Orders are silent on the powers of the Chair vis-à-vis those of the Committee, but SO 239 does give to the Committee the power to send for persons, papers and records. Often the Chair and/or the secretary act on behalf of the Committee in this regard. The Standing Order is very generally expressed and the remaining Standing Orders do not specify to what extent the Chair acts on behalf of the Committee.

It may also be worth considering practice and procedure in the House of Representatives and the Senate. The Standing Orders in that jurisdiction are more specific and state:

(b) The chair of a committee or sub-committee shall direct the secretary of the committee or sub-committee to invite or summon witnesses and to request or require documents to be produced as determined by the committee or sub-committee.

The Senate Standing Order is expressed similarly, with the words 'as determined by the committee or sub-committee' being replaced by 'in accordance with the orders of the committee'. In practice, these directions are very general and the detail of document requests and invites to witnesses is left to the secretary. In fact, committee secretaries in the House of Representatives and the Senate routinely request documents and invite witnesses without specific committee consideration. In my opinion, a matter such as the one under consideration would never have been raised as a privileges issue in the federal jurisdiction. As it is a statutory requirement that the ACT Legislative Assembly consider the practice and procedure of the House of Representatives when its own standing orders are insufficient to determine a matter, I consider this point to be relevant.

Given the vagueness of expression in the Standing Orders, the Privileges Committee might wish to consider whether SO 239 should be re-framed to more closely reflect the SO in the House of Representatives or the Senate. However, the Committee should bear in mind that committees in the federal jurisdictions operate a little differently from Assembly committees, in that they delegate to the secretary much more responsibility. Further, once a minister has been officially notified of an inquiry, very little, if any, correspondence is directed to the Minister or through the Minister's office, but is between the secretary and the appropriate agency officials.

*Term of reference (b)*

*Mr Corbell's knowledge of committee proceedings*

At the private meeting of the Legal Affairs Committee at 0915 on 20 June 2008, Ms MacDonald advised that Mr Corbell had discussed with her the provision of documents to the Committee pursuant to the Committee's request. During the conversation as reported by Ms MacDonald to the meeting, it had become apparent to the Minister that the request had not been formally considered by the Committee at that point. Ms MacDonald further advised the Committee that the Minister was most concerned about the lack of formal consideration of the request for documents by the Committee.

The above events beg the question whether there has been a breach of Standing Order 241, whereby a committee's proceedings may not be disclosed unless authorised. It could only be a breach if the Privileges Committee considers that disclosing that a matter has not been formally considered by a committee is a breach in the same way that disclosing that a matter has been considered by a committee might be a breach. Again the Standing Orders are not specific as to what amounts to a breach in this instance. However, disclosure of a matter which has not been the subject of consideration could be as significant as disclosure of a matter which has been the subject of consideration.


*Term of reference (c)*

*Breach of privilege*

The matter of whether Mr Stefaniak has been guilty of a breach of privilege is for determination by the Privileges Committee. However, I note that the term of reference only relates to Mr Stefaniak's behaviour, apparently in relation to term of reference (a) and seemingly does not require the Committee to make a determination in relation to term of reference (b). However, I think there is a substantive issue for consideration under term of reference (b), ie whether disclosure of matters not considered might amount to a breach of SO 241 and whether in this instance that occurred, either by a member of the Committee or the Minister.

Further, for any breach of privilege to be founded, the Committee must find that the Chair breached Standing Orders. The fact that the Chair wrote to the Minister in part seeking documentation which had already been requested, without the Legal Affairs Committee considering the letter does not of itself seem to be a breach of standing orders, however discourteous it may be to other committee members. It seems to me that, but for my inadvertent failure to circulate the letter on behalf of the Chair, there would not have been an issue of concern. Many letters are written without their being formally considered by a committee at a private meeting and a more prescriptive process may constrain committees in their day-to-day activities.

Yours sincerely

A handwritten signature in black ink, reading "Robina Jaffray". The signature is written in a cursive, flowing style with a large loop at the end of the name.

Robina Jaffray  
Secretary, Legal Affairs Committee  
21 July 2008

**Documents requested and provided**

- 1) Letter to Minister Corbell, 7 February 08 requesting documents
- 2) Letter to Minister Corbell 16 June 2008, as per request from Committee Chair
- 3) Minister Corbell speaks to Ms MacDonald on Thursday, 19 June 2008
- 4) Private committee meeting at 0915, Friday, 20 June 2008
- 5) Public hearing with Minister Corbell, Friday 20 June 2008 at 0943
- 6) Private committee meeting at 1457, Friday, 20 June 2008

**Document requests**

Document	Date initially requested	Form of request	Date of subsequent request [if any]	Authorised for publication
1) Tim McGuffog report	16 June 08	Correspondence signed by Chair, Mr Stefaniak		20 June 08
2) Exit interviews	19 March 08	Public hearing – p 168 Correspondence to Ms Renee Leon, 28 April 2008	16 June	Not received
3) Version 2 – Bushfire Management Plan	7 February 08	Correspondence signed by then Chair Mr Seselja	16 June	Received but not authorised as per Minister's request
4) Yellow Edge report	16 June 08	Correspondence signed by Chair, Mr Stefaniak		20 June 08
5) Stuart Ellis report	7 February 08	Correspondence signed by then Chair Mr Seselja	16 June 08	Not received

It should be noted that the letter of 7 February 08 contained a general request to the Minister for " any other documentation which you think may assist it in its inquiry". Version 2 of the Bushfire Management Plan was something that should have been forwarded to the committee as a matter of course and at the first available opportunity.

Robina Jaffray

Manager Committees and Secretary, Legal Affairs Committee

15 July 2008