

**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

SELECT COMMITTEE ON PRIVILEGES

Members:

**MS R DUNDAS (The Chair)
MR B STEFANIAK (The Deputy Chair)
MR T QUINLAN**

TRANSCRIPT OF EVIDENCE

CANBERRA

TUESDAY, 14 OCTOBER 2003

**Secretary to the committee:
Mr J Pender (Ph: 6205 0127)**

By authority of the Legislative Assembly for the Australian Capital Territory

Submissions, answers to questions on notice and other documents relevant to this inquiry which have been authorised for publication by the committee may be obtained from the committee office of the Legislative Assembly (Ph: 6205 0127).

The committee met at 2.00 pm.

SIMON CORBELL was called.

THE CHAIR: Minister Corbell, welcome to the Privileges Committee. Today we're investigating one of our terms of reference: your refusal to answer questions of the Select Committee on Estimates regarding waiting list figures.

You should understand that these hearings are legal proceedings of the Legislative Assembly protected by parliamentary privilege. That gives you certain protections but also certain responsibilities. It means that you are protected from certain legal action, such as being sued for defamation for what you say at this public hearing. It also means that you have a responsibility to tell the committee the truth. Giving false or misleading evidence will be treated by the Assembly as a serious matter.

This is a public hearing, and it's being recorded and broadcast. If you have any problem with that, please let us know and the committee can discuss it. Would you like to make an opening statement?

Mr Corbell: No. I'm happy to take questions from the committee.

THE CHAIR: We'll jump straight in with the obvious question. The Estimates Committee was looking for statistics relating to waiting lists. In evidence to that committee you indicated that you did not have the figures with you but, when asked by Mrs Cross, you indicated that there had been an increase in the waiting list. You were obviously privy to the information regarding waiting lists. Why did you not provide that information to the committee?

Mr Corbell: As I outlined in the Assembly debate on this matter, the information was in a raw form and the government had taken a decision to change the presentation of the waiting list figures to consolidate a range of information, which had previously been spread across a number of bulletins, in a single document so that people could compare the range of issues and statistics available to get a complete picture of waiting list activity and elective surgery activity.

Because the government had decided to proceed with that new approach, the actual documentation was not yet ready. It was planned to be released the following day, and I was reluctant to provide that information on the basis that the new format was to be released the following day. As I said in the Assembly debate on the formation of this committee, that was a failure of judgment on my part. It was not something which, in retrospect, I think I should have done, and I have already apologised to the Assembly for doing it.

It was not a function of me seeking to deliberately withhold information from the estimates process; that was to be released the next day anyway. The Estimates Committee would have had adequate time to consider that in the context of its report. It's worth noting that the committee did not choose to call for any papers, documents or information on those figures but instead went straight to the recommendation that a privileges committee should be formed to investigate the matter.

It is a matter which I have regret about. In hindsight, I should simply have asked officers to make that information available in its raw form.

THE CHAIR: You were asked by the chair of the Estimates Committee if they could have a raw figure, and you indicated no. Can you provide greater insight into why you made that decision not to give the raw information?

Mr Corbell: I made it for the same reason given in relation to your previous question. The government was preparing a new format for the presentation of this data that consolidated in a single document tables and activity reports on a range of issues to do with elective surgery. The planned release of that document was the following day. On the day of the estimates hearing I knew that the document was not yet ready to be released, and on that basis I declined to make it available.

THE CHAIR: You would have known that you were appearing at the Estimates Committee in your capacity as Minister for Health at least two weeks out, and I assume you would also have had a clear timeframe for the preparation of the new tables. Is there a reason why those timeframes appear not to have sat together well? It was also indicated during those hearings that the figures usually come out on the 21st of the month.

Mr Corbell: That's not accurate. There is no set date for the release of those figures. It usually occurs around the middle of the month, but there is no set date.

THE CHAIR: How long did you know that you wanted to have the new figures released on 23 May?

Mr Corbell: I can't recall when I initially requested the department to prepare the new format. I imagine it would have been some time prior to the estimates hearing; it may even have been a number of months before. But I wasn't making that decision in the context of preparing for an estimates committee. It wasn't a consideration.

MR STEFANIAK: Minister, you'd been to the Estimates Committee before. In fact, you'd been to the Estimates Committee as a minister before, had you not?

Mr Corbell: Yes.

MR STEFANIAK: And also at a number of estimates committees as an opposition spokesperson for various portfolios?

Mr Corbell: Yes.

MR STEFANIAK: So it would be true to say that you're well aware of the responsibility of ministers to answer questions to the best of their ability.

Mr Corbell: Yes.

MR STEFANIAK: I am just trying to find the actual date the hearing was on.

THE CHAIR: 22 May.

MR STEFANIAK: What day of the week was that?

Mr Corbell: It was a Wednesday.

MR STEFANIAK: Thanks. Those figures were released by your department in the early hours of Thursday morning, at about 2 or 3 o'clock. Is that right?

Mr Corbell: The figures were made available the following day.

MR STEFANIAK: To the committee?

Mr Corbell: No, through a public statement that I issued from my office.

MR STEFANIAK: When was that made?

Mr Corbell: The following day.

MR STEFANIAK: Is this the first time you were going to change the format for those types of figures?

Mr Corbell: Yes, it was the first time. A range of statistics is available when it comes to reporting on elective surgery activity. Previously, they were dispersed across a number of different documents and bulletins from each of the hospitals, as well as from the central policy area of the department of health. I took the decision that it should be consolidated into a single document so that people would be able to obtain it and see all of the relevant statistics on elective surgery activity. This is the first time we've done it.

MR STEFANIAK: Right. But the figures were available, albeit in just a straight raw form and not in the new format—

Mr Corbell: The raw data was.

MR STEFANIAK: When you gave evidence before the Estimates Committee and were asked for them.

Mr Corbell: That's correct.

MR STEFANIAK: When were those raw figures first available?

Mr Corbell: I can't recall.

MR STEFANIAK: Some days beforehand?

Mr Corbell: It certainly would have been before the hearing, but I couldn't recall exactly when I received them. I'd have to check my records.

MR STEFANIAK: Could you please do that?

Mr Corbell: I'll be happy to.

MR STEFANIAK: Thank you. Having been in a number of estimates committees, you'll be well aware that, although ministers mightn't like certain questions, invariably they try to answer them to the best of their ability. If they have the information, they provide it.

Mr Corbell: There are ways of answering questions, and there are ways of answering questions—aren't there, Mr Stefaniak?

MR STEFANIAK: Yes, there certainly are. But if information is provided, it is normal for that information to be given at the time.

Mr Corbell: If the information is provided?

MR STEFANIAK: If the information is available.

Mr Corbell: Yes, usually.

THE CHAIR: Mr Quinlan has some questions.

MR QUINLAN: In answering the first question, you pointed out that the committee did not call for those figures or papers after that. For the record, did they recall you to the committee to discuss those figures?

Mr Corbell: No, they didn't, although—I'll have to check this—I'm pretty sure I was recalled in relation to my other portfolio area.

MR QUINLAN: It's significant, so I want to clarify it. You were not recalled by the committee to discuss those figures?

Mr Corbell: No, I was not.

MR QUINLAN: You may answer this or not, as far as I'm concerned. I'm just interested in the state of play. This was in about the middle of the estimates process, when there was plenty of time for recall and plenty of time to call on those figures. Were you and the committee engaged not necessarily in discussion of material for the Estimates Committee but rather in playing immediate politics with those figures and what would be made of them immediately?

Mr Corbell: It was certainly about immediate politics; there's no doubt about that. That's the nature of waiting list data. It is inevitably controversial and, even if there's a reduction in the waiting list, the shadow minister at the time can always find a piece of data that points up some sort of failing. Elective surgery activity is by nature complex, and there are about 10 different ways of measuring it, and you can't get all the ways of measuring it to go the way you'd like them to go all the time.

MR QUINLAN: But you'd like the presentation to go the way you said it.

Mr Corbell: The point I made to the Estimates Committee was that the government had taken a policy decision on how it was to present its data. Because of that I didn't want to

be pre-empted into making a policy announcement ahead of the time chosen by me as the responsible minister to do so. That's why I answered the question the way I did. I didn't want to be pre-empted, effectively, on a policy announcement when I felt it was my prerogative to decide how I announced how the government would be reporting on elective surgery activity.

Having looked at the *Hansard* I can see that Mr Smyth asked me the question, "Raw data?" That's where I feel I made a mistake. I didn't recall him saying "raw data", but it's quite clearly there in the *Hansard*. That is where I made the error, and I should have provided that information. As I've indicated, it's a matter of regret for me, and I've apologised to the Assembly.

However, I have not in any way obstructed the business of the Estimates Committee or affected the capacity of the Estimates Committee to make judgments on the effectiveness or otherwise of the government's expenditure in relation to elective surgery, as the information was available to them before they considered their report.

THE CHAIR: When you appeared before the Estimates Committee, you noted that the new format had been completed, and you indicated that you had asked the department to develop a revised reporting regime and indicated, briefly, what that regime would include. In a sense, you made that policy announcement to the committee when you said, "I'd like to do it in a new format. That format has been completed, and it provides a more straightforward set of information."

Considering that you were quite happy to discuss the fact that the information was available in a new format, how does that sit with the answer you've just given about not wanting to make a policy announcement and being pre-empted into making a policy announcement, when the policy was the new framework and not the figures it included?

Mr Corbell: The comments I made in the Estimates Committee didn't go into the detail of the presentation. They were very general, and I was attempting to answer the question in the most reasonable way I could without pre-empting an announcement. I didn't outline in every detail how the new format was to be presented or the range of information it would include.

THE CHAIR: You indicated that it wouldn't remove any information.

Mr Corbell: Yes, I made it clear to the committee that it wouldn't diminish the amount of information available.

MR STEFANIAK: Surely there's a difference between a format and the actual figures? The figures, rather than the format, are the important thing, wouldn't you agree?

Mr Corbell: Well, I accept there's a difference.

MR STEFANIAK: When the chair asked, "Could we have a raw figure now and the breakdown later this week?" and you just said, "No", he said "Why not, Minister?" and your answer was: "The government will make the decision on when it announces and releases things. As I've indicated to you, I'll be releasing these figures later this week." You've accepted that that was a mistake on your behalf to answer in that way.

Mr Corbell: Yes, I answered that question that way.

MR QUINLAN: This was just an arm wrestle between immediate politics and your presenting it in the way you preferred to rather than entering it into the public domain.

Mr Corbell: That's right. I made an error of judgment not providing the raw figures. At the time, I didn't recollect Mr Smyth saying, "Can we have the raw figures?" But it's clearly in the *Hansard* and I don't doubt that he said it. Caught up in the moment of Mr Smyth trying to extract data from the government—when it is usually the prerogative of the government to decide when that data is announced and the form in which it is released—I said "No" when I should have said "Yes" to the raw data question.

However, it does not in any way diminish the fact that the government wanted to present the data in a different way, in a consolidated manner, and that that was best done when it was ready to be released, which was pretty much towards the close of business that day.

MR STEFANIAK: Are you saying that you didn't recall him asking you for the raw figures until later?

Mr Corbell: I didn't—not until I read the *Hansard*.

MR STEFANIAK: Yet there's a fair bit of argy-bargy here about the raw figures you won't release. He asks you why not, and you say the government will make a decision. He asks you if it is being done to avoid the scrutiny of the committee, and you say it's not. You then talk about the new format and how it takes time to produce. I find it amazing that in that conversation on a quite political issue—as you say, hospital waiting lists are always political issues—you can't recall saying, "No, you can't have them now. Wait until the new format comes out."

Mr Corbell: I recall saying no. Don't misconstrue my answer. The point I was making was that I didn't recall Mr Smyth saying "the raw data" until I'd read the *Hansard*, which was some time after the actual hearing. Quite clearly, he did. I'm not using that as a defence; I'm simply making the point that in the heat of that exchange I must have omitted it.

THE CHAIR: Do we have any more questions on this point?

MR STEFANIAK: Do you stand by what you said in the Assembly in terms of admitting that you made an error here?

Mr Corbell: I do, absolutely. I did make an error of judgment. I said that because it was only in the lead-up to that debate that I looked at the *Hansard* and saw that Mr Smyth asked for the "raw data". That's the key issue. He asked for the raw data, and I said "No." When I said no, I can recall thinking, "He wants me to release what I'm about to release, and I'm not going to do that." But he was just asking for the raw statistical information, which I could have made available to him. That was a mistake on my part.

MR STEFANIAK: You actually said, "As I indicated to you, I'll be releasing these figures later this week."

Mr Corbell: That's right.

MR STEFANIAK: That would imply the figures as well as the new format.

Mr Corbell: In my mind, they were one and the same, Mr Stefaniak. That's the point I'm making.

THE CHAIR: I would like to ask some questions regarding another one of our terms of reference, which is the creation and distribution of the document known as "Budget estimates 2003". We've already had a public hearing with the people responsible for that, but are you satisfied with the process that was undertaken by the department of health for investigating the creation and release of that document and the follow-up training sessions that the ACT Health executive have been taking part in?

Mr Corbell: Yes, I am.

THE CHAIR: We received a copy of the report by the department on that incident. An area raised as a matter of concern, which isn't really discussed in depth in this report, is how sensitive material is handled within the department. Do you have any information to add about how sensitive material is being handled by ACT Health in terms of it being released to chairs of estimates committees, such as the process that led to this committee being established?

Mr Corbell: It's not about handling sensitive material; it's about public servants exercising professional judgment about how to approach issues surrounding estimates committees. As Dr Sherbon indicated to you in his evidence, there was significant professional failure on the part of a number of officers in terms of both the production and the dissemination of that document.

Those officers have been counselled, and a formal comment has been placed on the file of one, if not both, of those officers. It is quite a significant step for the potential career advancement of any officer to have an adverse comment like that on their file. The whole of the ACT Health executive have now undertaken an independent training exercise on some of the appropriate approaches and protocols that should be adopted when public servants are dealing with estimates committees of the Legislative Assembly. I think that's been a very appropriate course of action.

It's not about handling sensitive documents, because you could argue that the document would never have come out had they handled it appropriately. The reality is that the document was leaked. We still don't know who leaked it—it was an unauthorised release—but the key issue is that it should never have been written in the first place. The approach that the department of health has undertaken is to both counsel the officers involved and give all officers at a senior level sufficient professional training and development to ensure that that sort of incident does not occur again.

THE CHAIR: Have you been taking part in that training?

Mr Corbell: No, it's for officers of the department.

MR STEFANIAK: Did you have any knowledge of that document's existence yourself?

Mr Corbell: No, I didn't. When I first saw it, I thought it must have been a joke. I couldn't believe anyone would be silly enough to write it. Unfortunately, that wasn't the case.

MR STEFANIAK: Going back to the figures on the Wednesday. My understanding was that the press release was put out in the early hours of the next day. Is that so?

Mr Corbell: It is normal for my office to send out media releases at some hour of the early morning, so that they're available.

MR STEFANIAK: I'd heard it was something like 2.00 or 3.00 am.

Mr Corbell: That would not surprise me. It's probably a fairly normal time for most of our officers to send out media statements for the following morning.

MR STEFANIAK: My question is: why? It seems to me a little bit strange that you have this issue in the Estimates Committee in relation to the figures and then a media release goes out in the very early hours of the next morning. You indicated in the Estimates Committee that you were going to put out a new format and the figures later that week, and you would have done that even if you had not been asked. Why was it put out at that time when the indications you gave were that it would be put out later on that week? Is it your normal practice to put things out at two or three in the morning?

Mr Corbell: It's the practice of most offices to put things out fairly early in the morning if they want them reported on the morning news of that day. You don't put out a media statement at eight in the morning if you want to catch the morning news. In that regard, it's not an unusual practice to issue a media statement. I'm not quite sure what your question is. Is it why I chose the following day?

MR STEFANIAK: You'd indicated, in the transcript, that you were going to do it later on that week. You indicated today that you intended to issue the new format on the following day, which would be the Thursday. I was of the understanding, though, that the release went out in the very early hours of Thursday morning. I'm asking you: why is that so? Is that a normal practice of your office? If it isn't, why was it put out at that particular time?

Mr Corbell: If the intention is to have media statements reported in the morning news, it is a normal practice of my office to issue them early in the morning—two or three in the morning. The wonders of fax technology mean that these things can be programmed and sent out.

MR QUINLAN: Can I ask that question in another way?

Mr Corbell: I'm not quite sure what you're trying to get at, Mr Stefaniak.

MR STEFANIAK: Why at that particular time? I'm well aware of fax technology, Minister, and well aware that people put out releases early.

Mr Corbell: It's just the established practice.

MR STEFANIAK: If your practice is that time, that's fine. That's my question.

Mr Corbell: My established practice is that time.

MR QUINLAN: Can I ask the question another way? The argy-bargy having occurred in the estimates that day, was there an impetus within the department, or your office, to get the figures out fairly promptly?

Mr Corbell: I don't recall any approach along those lines. My office and I were waiting for the format to be finalised, including its printing and collation so that, when a statement was issued, the new document in its new, printed and collated form would be available to all who requested it. It was pretty clear, as it is on all occasions when you release waiting list figures, that you've got to have the documents available for people. They weren't available and they weren't finalised, collated, printed and ready to be distributed at the time I was questioned on this matter in estimates.

I can recall having a conversation with a member of staff from my office, who indicated that they were still waiting for the information to be available in its new format from the department, and we weren't quite sure when that was going to occur. With recollection, what occurred was that it eventually became available towards the end of business on that day, so it was released as soon as I knew that the documentation was ready to go.

MS DUNDAS: Didn't the estimates timetable impact on the health figures timetable in any way? Didn't you sit down and think that maybe you should try and reshuffle your estimates times or see if you could step up the process a little?

Mr Corbell: No, I didn't think it necessary to change the Estimates Committee time. I didn't know the exact release date for the waiting list data. I knew it was probably going to be some time that week, but I didn't know for sure until pretty much the close of business that day, when the department came through with the documentation.

MR STEFANIAK: Sorry to be pedantic, but when you say later on that day, do you mean that the department came through with the information later on that Wednesday?

Mr Corbell: The documentation in the new format? Yes.

MR STEFANIAK: And that was released at two or three the following morning?

Mr Corbell: What I released the following morning was a media statement that outlined in detail what the government was doing in relation to its new reporting format, as well as the actual data itself. The department had made sure that the Assembly library and the government website had that information in the new format so that, as soon as people had my media statement, if they were going to the library or if they were going to the website, the information would be there.

MR STEFANIAK: Was there much of a difference between when you finally got that information and the media release? Did you release any of that information to the

committee or to any other body when you got it, or did you wait until the release went out at two or three the following morning?

Mr Corbell: I was never asked by the committee, outside of the questioning from Mr Smyth, to provide any further documentation. The committee didn't come back to me after the event and say, "We note that you've just released this data. Can you provide a copy?" or "We want to question you again." They didn't do anything like that.

MR STEFANIAK: No, I am asking: after you got the documentation from the department later on that day, was any of that then released? Or was it not released until the media statement went out the following morning? I accept that we're only talking a few hours.

Mr Corbell: We're talking pretty much an evening and, no, there was no other release of information, to the best of my knowledge, before the statement was released.

MR STEFANIAK: Why was that?

MR QUINLAN: Things went back to normal.

Mr Corbell: I released a statement, and I made comment on the statement once it was released. On occasions, ministers advise journalists in advance of a statement being released—as I'm sure you did when you were a minister—and may provide commentary to journalists prior to the statement being broadly released. For example, you give something to the ABC and they run a news bulletin ready to go, and everyone else is playing catch-up because you've released just the statement to everyone else. I don't recall doing that on this occasion. It was a case of the statement being released at the normal time, and I got some phone calls from my media advisor that morning to call some radio stations.

MS DUNDAS: No further questions? Thank you very much for your time, Minister.

Mr Corbell: Thank you.

Resolved:

That, pursuant to standing order 243, the committee authorises the publication of evidence and submissions received by the committee during this hearing, together with any supplementary material arising from the public hearing.

The committee adjourned at 2.32 pm.