

**LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY**

**SELECT COMMITTEE ON PRIVILEGES NO 3**

**Members:**

**MS TUCKER (The Chair)**

**MS MacDONALD (The Deputy Chair)**

**MR CORNWELL**

**TRANSCRIPT OF EVIDENCE**

**CANBERRA**

**Monday, 8 MARCH 2004**

**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 11.03 am.**

**VICKI DUNNE** was called.

**THE CHAIR** (Ms Tucker): I declare this hearing of the Select Committee on Privileges open and welcome Mrs Vicki Dunne to speak to the committee. You would be aware of requirements around witnesses to Legislative Assembly inquiries. Would you like me to read them out for your benefit?

**Mrs Dunne:** I think you should just for the record.

**THE CHAIR:** Okay. 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. Before we start, could you state your name and the capacity in which you appear?

**Mrs Dunne:** Yes, sure. Vicki Dunne, member for Ginninderra.

**THE CHAIR:** Thank you. We have received your letter putting your point of view to the committee about the flier. I have some questions and quite probably other members will as well. I am interested, looking at the minutes of the committee, to understand whether you actually thought that in some way this flier was a proceeding of the committee because I note from the minutes on 28 November that it says, “The committee believes that there should be an Aldi at the Belconnen Fresh Foods Markets site but noted that some of the common lines might prove unfair competition for other small businesses at the markets.”

And then, strangely—I can’t quite work out the process of the committee—it was then decided to seek submissions. But you seem to have made a decision then as a committee to be going with the idea that Aldi should be at the markets. So I’m a little interested to

know whether that is why you thought you could put this out and, if so, did you check as chair of the committee with the rest of the committee? Well, you obviously didn't, but is that what you thought?

**Mrs Dunne:** Before I address that specific question, Madam Chair, would it be permissible for me to make an opening statement?

**THE CHAIR:** Of course it would, sorry. I thought your written letter was that.

**Mrs Dunne:** No. I did think of that as an opening statement but I thought that, for the benefit of proceedings here, I would like to summarise that.

**THE CHAIR:** Please do.

**Mrs Dunne:** I would like to thank members for the time that they have put aside for this. I would like to address a number of issues, including the facts of the case, the intent, some of the claims that are made in bringing forward a question of privileges and looking at the precedents of this.

Quite simply, Madam Chair, members, the facts are that I issued a pamphlet which was clearly written in my capacity as the member for Ginninderra, because that is what it says on the bottom. The pamphlet was in response to a number of inquiries about progress with the petition. In response, I gave people the same information that was in the pamphlet—that the petition had been referred to the committee, that I was the chairman of the committee and that they may make submissions to the committee. That is something that I had done on a number of occasions when I was at the markets basically as a private citizen, because I shop there regularly. I wonder whether that sort of information might be considered contempt. I don't think so.

There is a parenthetical statement in the brochure that I am the chair of the Planning and Environment Committee and I intended—and it was there—after some discussion because I intended to make all aspects open and transparent; I didn't want to be accused of concealing anything. However, I recognised that possibly this could be seen by some as implying that it was an official statement which could have carried the implication to a

reader not familiar with the operation of committees that the committee might have already made up its mind, which is why I stood aside even though I thought the risk was small. I regret in hindsight that that statement was there but we did actually discuss whether or not it should be in there.

I think, however, this has nothing to do with any contempt of the Assembly and the fact of my standing aside in no way constitutes an admission of a breach of privilege. And I really think that the issue hangs substantially on intent. Senate practice regards culpable intention as essential to establishing contempt.

Here it should be made clear that my intent was to inform people who had previously signed a petition on the Aldi question of what had become of it and to invite them to make submissions. I don't think that this is culpable. If I had intended to present a view as chair, I wouldn't have done it in a sort of parenthetical way which basically says, "By the way, I'm the chair of that committee." I would have signed it Vicki Dunne, Chairman of the P&E Committee.

If I had wanted to influence the outcome of the committee I wouldn't have adopted a strategy of writing a pamphlet designed to make the outcome appear a foregone conclusion. I would have done something designed to make the outcome appear more to be a foregone conclusion in the hope of discouraging contrary submissions from, for instance, Westfield, who had a view to the contrary.

The issue of the Belconnen Markets is essentially an argument between, on one hand, the market traders and their customers who want an Aldi there but who do not have highly paid lobbyists and, on the other hand, businesses and competitors and the ACT government who don't want the markets there. Some of those are large corporations who do have highly paid lobbyists. Neither the ACT government nor the likes of Westfield would be likely to be put off by the pamphlet that I handed out—I am sure that members will have a copy of it—especially when the committee, at my instigation, had written to those people, especially Westfield, soliciting submissions.

The claims in bringing forward this issue of contempt seem to hang around three issues: that by putting out the pamphlet I was mounting a claim to achieve a particular result in

the committee; that the use of the committee secretariat in this process was a problem; and that there would be damage to the concept of trust in the parliamentary institutions.

As I have said before, any statement by the chair or member that could be considered trying to achieve a result in a committee is a bit problematical. Assembly committees are not like criminal courts—their chairs do not preside in splendid isolation as a strictly neutral adjudicator. The process of deliberation, as opposed to hearings like this, is collegiate, unstructured, informal and, in my experience on the Planning and Environment Committee, mostly friendly. To that process members bring their views, their prejudices and their experiences, though one hopes that they are subject to adjustment in the light of evidence.

Out of this emerge the views of the committee, which is a different thing from the views of any or all of its members. It is not like a judge expressing a view to a jury about the guilt or innocence of the accused. In the ACT Assembly, as in most other places, we do not expect chairs to disqualify themselves on issues on which they have views, as opposed to a pecuniary interest of some sort.

Chairs are usually chosen because they have some knowledge, interest and thus inevitably views on the issues. It wouldn't be a surprise to members that most or all of the members of the Planning and Environment Committee are interested in the issues covered by the Planning and Environment Committee and have strong views on those subjects. But the point is that we all do and the hope is that the best outcome emerges from those views informed by evidence interacting robustly and therefore producing an agreed position.

On the issue of whether or not the use of the committee secretariat was inappropriate, I don't think that there is any sustainable argument that the pamphlet sought to use the committee secretariat. The only reference to the secretariat was listing their address as a place to send submissions, which it is. If I had asked people to send me their views they would be just communicating with a private member and those views could not necessarily be handed on to the committee. So, as I had previously said to people in one-to-one exchanges, this is where they should send submissions if they were interested in making them.

There is no involvement of the secretariat in anything; no direction that the secretariat do anything and no claim that they have done anything; and no citing of them as an authority for anything.

And as to the community's trust in its parliamentary institutions, I think it is unlikely to suffer from this incident. But I also think that it is the job of the Privileges Committee to consider the functioning and the processes of the Assembly and not the issue of trust.

Looking at the precedents for issues around contempt, Erskine May, as you said in your letter, Madam Chair, says that any act or omission which obstructs or impedes, or which has a tendency to directly obstruct or impede, could be considered contempt. That is a very broad definition. But the experience in the Australian context has narrowed that somewhat. The Australian practice requires the matter to be a serious matter, to be a significant obstruction, and the Senate practice now regards culpable intent as essential.

There is no basis for any claim that a failure to distinguish roles or advocating a position constitutes obstruction or impeding the function of the Assembly. None of this would be considered worthy of mention in standing orders. The only provision relating to privilege is revealing confidential evidence and proceedings. Even here, House of Reps practice has meant that unauthorised publication, which is specifically prohibited under the standing orders, has not been pursued as this has not constituted substantial interference.

I would like to say to the committee, as I have said to the members of the Planning and Environment Committee and to the members of the Assembly when this matter arose, that it is a matter of some regret that this has come to pass. There was no intention on my part to impede the operation of the committee and I heartily apologise for the inadvertent use of the term that has brought this about, and I would like to restate that apology. I would, Madam Chair, welcome the opportunity to respond, if I feel the need arises, to evidence that may come about later, either in writing or orally.

**THE CHAIR:** Sure, that's fine. Except there is one person who is giving in camera evidence. One of the witnesses is giving in camera evidence so obviously that won't be possible there.

**Mrs Dunne:** Okay.

**THE CHAIR:** Thank you for that. There are a few basic questions. When you are talking about intention, from reading this pamphlet, is it correct to read that you wanted to get Aldi at Belconnen Markets?

**Mrs Dunne:** It's been a longstanding view of mine, yes.

**THE CHAIR:** Okay. So your intention—

**Mrs Dunne:** But not at all cost.

**THE CHAIR:** But what this pamphlet seems to be saying is that you want people to know that you want Aldi to go to the markets.

**Mrs Dunne:** Well, it says two things. The first and foremost is that there is active participation, active attempts, to get Aldi into the Belconnen market generally and that I have expressed a view about Aldi going to the Belconnen Markets specifically. But more importantly in this, to provide information to people about an inquiry. So the first part is setting the context for the second.

**THE CHAIR:** When I read this, I see that that is what you are saying—that you think that the markets will miss out if they don't get Aldi and you're supporting the position that Aldi go to the markets.

**Mrs Dunne:** Yes.

**THE CHAIR:** That's clear.

**Mrs Dunne:** And I have supported that view for probably four or five years.

**THE CHAIR:** And you have said that. Right. And then you say that you are the chair of the committee. So that is where there is confusion, as you said, about what this document

is. I mean, when I see the minutes of the 28th and then, as I understand it, this flier went out on the 29th or thereabouts, it looks as though what you have done is you have actually made a decision as a committee and then you've put this pamphlet out which is kind of putting that point—which is an interesting committee process in itself but I don't need to go into that now. And so it looks as though what has happened is that you as chair are then saying, "Okay, the committee has come to this position"—this is the inference because you are chair. As the chair of a committee, would you agree that you are the person who speaks for that committee and you have to get approval from the committee to speak for it? You get it checked. Do you agree with that as the role of the chair?

**Mrs Dunne:** The role of the chair is to speak on behalf of the committee. But can I go back? I don't think that there is any inference from this that the committee has made a decision. As you will see from the minutes over a period of time, the views of the committee while I was on that inquiry changed somewhat. It might be that the wording of the minutes were probably, might be, in retrospect a little infelicitous because I don't think that the committee had come to a firm view.

**THE CHAIR:** Okay.

**Mrs Dunne:** And you have probably access to more minutes than I do, Ms Tucker, because I stood down.

**THE CHAIR:** No, this is the 28th.

**Mrs Dunne:** Yes, I know. But you will see over the time of the deliberations that the view shifted—

**THE CHAIR:** Well, clearly they changed when you look at the report.

**Mrs Dunne:** The view shifted, but the report that has come out is as I would have expected it to be.

**THE CHAIR:** Okay. So basically you are saying then, you are clarifying, this was not



meant to be a document of the committee at all and that that is just a coincidence.

**Mrs Dunne:** Yes.

**THE CHAIR:** So then we get back to—

**Mrs Dunne:** But that was my point, Ms Tucker, that the essentially parenthetical statement in the fourth paragraph, “As a result, the Planning and Environment Committee, which I chair, is holding an inquiry.” I mean, probably we wouldn’t be here today except for those three words in commas.

**THE CHAIR:** Well, I think if you were asking people to write to the committee secretariat you would still be here today. I hear your argument but I’m not quite clear on why you think it is appropriate. If you were putting this out as a member only then I would have thought you would ask people to contact your office if it is about you as a member. But what you have done is you have asked people to contact the secretariat. That is why the argument is being put back.

**Mrs Dunne:** Well, actually what I have done is if they—

**THE CHAIR:** You have co-opted the secretariat.

**Mrs Dunne:** want to put in a submission the person that they would write to is the secretariat.

**THE CHAIR:** Yes.

**Mrs Dunne:** If people wanted to put in a submission, there is in a sense no point in them writing to me, because then they are writing to me as a private member. I could go to the committee and say, “Here are X number of people who have written to me in their private capacity. Would you consider taking this on as evidence?”

**THE CHAIR:** Or exhibits it could be; yes it can be exhibits.

**Mrs Dunne:** And I would actually also have to go back to those people and say, “Are you comfortable with me doing that?” I mean, the Planning and Environment Committee has done that in the past. But what this was about was that we had advertised in the press in November both in the *Canberra Times* and the *Chronicle* saying that this inquiry is on and this is where you put in submissions. And I had people who had come to me at the markets, because I shop there most Sundays, saying, “What is happening? What has happened with our petition? What do you think will happen in relation to Aldi coming here?” And I had said to them there is an inquiry and you can put your views forward to the Planning and Environment Committee, and this is how you can write to them. So I had done that orally, and that’s the sort of thing that members do. I am sure all members would have done that on some occasion. And this is nothing more—its intent was nothing more—than to formalise that.

**THE CHAIR:** Except, can I just ask you to clarify: you are saying that committees have done this before. But are you saying that you know that committees have actually asked people who have a particular position only to write to the secretary?

**Mrs Dunne:** No, sorry. When I said—

**THE CHAIR:** Because you said, “To help bring Aldi to the markets, write to—

**Mrs Dunne:** No, look, could I go back to clarify. When I said the committee has done this before, that is we have taken correspondence that a constituent has made with a private member and brought that to a committee. That’s what I said we have done before, in the past. I have done it and I know that other members of the committee have done it. You get something and you say, “This reflects on what I’m doing on a committee,” and then you contact that person and say, “This reflects on something that’s going on at committee. Do you mind if I bring your letter to the attention of the committee?”—

**THE CHAIR:** Sure.

**Mrs Dunne:** and then the committee decides whether or not to accept that. That’s what I was saying was happening before.

**THE CHAIR:** Okay, thank you for clarifying that. So my question still is: do you think it's appropriate that you have said "if you want to help bring Aldi to the markets"? So the concern is that you are inviting submissions only entertaining one point of view.

**Mrs Dunne:** Yes, it is, because the committee had written to all the people that we could think of who were interested parties, who would have one view or another. We did, I think, briefly canvass the idea of how we would contact people who signed petitions, but we didn't progress that, simply because there were 1,600 signatures on the petition that was referred to us, and there were before that another similar number. So there was in excess of 3,000 people who had signed petitions.

We did vaguely canvass whether we could contact those people; we didn't go down that path. And all that I see this doing, because it was only circulated at the markets, the petition was only signed at the markets, was trying to communicate with those people who had signed the petition—that as a result of their signing the petition, these steps had been taken, and if they were still interested in expressing their views any further, they could write to the committee secretary.

**THE CHAIR:** So you say it's all right to just seek one point of view, because it was your view that this pamphlet would only go to people who had that point of view?

**Mrs Dunne:** No, I don't say that. I am saying that I am providing information to those people who had that point of view, but other people may have picked it up. There is no way of policing who does and doesn't pick it up.

**THE CHAIR:** So is that not a problem in terms of the perception of the committee?

**Mrs Dunne:** In all honesty, Madam Chair, I don't think it is, because all steps had been taken to ensure that as many sides as possible could express their view.

**THE CHAIR:** How? Through your normal committee work?

**Mrs Dunne:** Through the normal committee work, through the advertisement in the paper, through the fact that the committee had specifically canvassed amongst itself who

would possibly be opposed to this and actively writing to them at my instigation.

**THE CHAIR:** So this particular plea or advocacy for a particular point, how broadly did it go?

**Mrs Dunne:** There were 200 copies of the pamphlet.

**THE CHAIR:** How long were they in circulation, do you know, because Ms Dundas said in debate that there was—

**Mrs Dunne:** I couldn't say for sure, but I took them to the markets on the last Saturday in November—the date of which escapes me, but I think it was about the 28th—and some of the traders came and asked for copies of the pamphlet. I understand that Ms Dundas said she picked one up in the week before Christmas.

**THE CHAIR:** So they were reproduced?

**Mrs Dunne:** I don't know whether they were reproduced. I produced 200 copies, but some of the traders took them away and had them on their counters.

**THE CHAIR:** Ms MacDonald, do you want to ask some questions?

**MS MacDONALD:** Can I ask: the cut-off date for submissions, do you remember when that was?

**Mrs Dunne:** 12 December. That is my recollection. I'm pretty sure that was—

**MS MacDONALD:** Yes, that's okay.

**THE CHAIR:** Yes, that's what I've got.

**MS MacDONALD:** How many submissions had the committee received at that point?

**Mrs Dunne:** I have no idea, because we had specifically said to the committee secretary

that after submissions closed we would then look at the submissions. Simply because we had a lot of other work, and rather than having her coming to us sort of on a regular basis, saying, “We’ve got three today and five next week,” we just said, “When it closes, bring it all together.” I don’t know.

But I do understand that when this was raised with the committee as an issue of some concern, and I offered to stand aside and that offer was taken up, we wrote to the principal players. We wrote to all the traders, we wrote to the Jamison traders, we wrote to the sort of body corporate for both those organisations, we wrote to Westfield. And basically anyone that we had previously written to, we wrote to them again and you have that correspondence. There was a press statement put out at the time, and I understand—but you’d probably need to check, because after that I wasn’t involved; from the date of the press statement going out I was no longer involved—that there were no submissions received as a result of that second round of letters. I understand that all the submissions were received before then.

**MS MacDONALD:** But that was after the original cut-off date.

**Mrs Dunne:** Yes, but they were given the opportunity to—

**MS MacDONALD:** So you don’t know whether or not there was an increase in the number of submissions as a result of this flyer going out at the markets?

**Mrs Dunne:** No, I don’t. But actually, probably by looking at the list of people who made submissions, I actually think—

**MS MacDONALD:** I don’t have the report with me, so—

**Mrs Dunne:** I actually think that there were very few private citizens who made a submission.

**MS MacDONALD:** Very few?

**Mrs Dunne:** Very few. I think that they were almost exclusively someone who had an

active commercial interest, either in the markets or in Jamison.

**THE CHAIR:** Mr Cornwell.

**MR CORNWELL:** Yes. This phrase “which I chair”, I suppose it could have also said “of which I am a member”?

**Mrs Dunne:** Well, that wouldn’t have been strictly true—I suppose it’s strictly true, but it doesn’t tell the whole truth, yes.

**MR CORNWELL:** Yes. But I am just wondering, Madam Chair, what the effect would have been if Mrs Dunne had not mentioned the fact that she was a member of the committee? What would have been the effect of that? I mean, would you be damned if you did and damned if you didn’t? I guess that’s what I am asking.

**THE CHAIR:** It depends if she invited them to write to the secretary of the Planning and Environment Committee, I think.

**MR CORNWELL:** Yes, but I just—

**THE CHAIR:** If that wasn’t in there, and she wasn’t there as the chair, then it would be her work as a private member, which would be potentially different. I don’t know, we would have to think about it. It’s hypothetical, really.

**Mrs Dunne:** But it is actually an issue that when we put together this pamphlet in my office there was some discussion, because it originally didn’t have it in it. And there was a discussion about whether or not it should go in, whether I should advert to the fact that I was a member of the Planning and Environment Committee, simply on the basis, as I said in my opening comments, that we eventually decided to put it in for absolute clarity. I think it is a bit of a damned if you do and damned if you don’t. If I hadn’t said it, people could criticise me for not saying it.

**THE CHAIR:** Okay. Can I just pick up your comments about advocacy. You said, “As I understand the term in this context, it refers to a legislator acting or speaking in a

particular way in return for a financial or other material consideration, or on entering into any contractual arrangement to limit the legislator's independence or freedom of action.” I am interested to know where you got that definition from.

**Mrs Dunne:** Erskine May.

**THE CHAIR:** So your understanding of advocacy in our standing orders is from Erskine May saying that it's about in return for money?

**Mrs Dunne:** Yes, my understanding, and it may be imperfect, is that—I mean, the classic contemporary example would be the cash for questions in the House of Commons. The point that I was making is that while I have views on this, I do not have any pecuniary or other material interest in the outcome. Just to refer to page 425 of Erskine May, which says that “It is inconsistent with the dignity of the House, with the duty of a member to his constituents, and to the maintenance of privilege and freedom of speech for any member of this House to enter into any contractual agreement with an outside body controlling or limiting members' complete independence and freedom of action in Parliament”. And it goes on.

I think there is, again, possibly a blurring of distinction between the sort of strictly parliamentary practice sense of advocacy in terms of receiving money to do something, as in cash for questions, and advocating a particular cause in the general sense, and if there was a prohibition about advocating in a general sense for a particular cause, none of us, Madam Chair, could do our duty here.

**THE CHAIR:** Do you think that you have confused your role as inquirer versus advocate?

**Mrs Dunne:** No, I don't because I have had a longstanding—long before this became an issue before the Planning and Environment Committee and long before I became a member of the Legislative Assembly—view about the appropriateness or the desirability of Aldi going to the Belconnen Markets. I clearly hold the view that I could put that personally held view aside for the purposes of deliberating on a committee inquiry and I think, Madam Chair, that that has been demonstrated with other things that have come

before my committee and other people's committees.

Other people often have views and they can put those aside, but that is not to say that the deliberations won't be informed by those views. But most people would say, "Look, members, you know that my view is X and I would put forward this but the evidence might temper that," and that's how my committee works. People are very up front when they say that, because there is no point in a small organisation like this pretending you don't have personal views.

**THE CHAIR:** So do you think if a member of the public reads this flyer and they were opposed to Aldi going to the market, that they might feel they wouldn't get a fair hearing when the chair says, "To help bring Aldi to the markets, write to the secretary"?

**Mrs Dunne:** I think that's very unlikely, Madam Chair, because I think that there had been a reasonable amount of publicity. Members of the public pick things up and come across issues raised by members of parliament on a fairly regular basis and are offended by it or in some way or other they usually make their views fairly plain. I didn't have anyone who came to me and said, "Here, I've seen your pamphlet. You are trying to stop me exercising my right to oppose Aldi going to the markets." And if someone had done that, I would have disabused them of that idea.

**THE CHAIR:** Mr Cornwell, do you have any other questions?

**MR CORNWELL:** No, not at the moment thank you.

**THE CHAIR:** Ms MacDonald?

**MS MacDONALD:** Ms Tucker asked a question but then you went on to make your opening statement.

**Mrs Dunne:** Sorry.

**MS MACDONALD:** That's okay, I just wanted to clarify. You didn't speak to any of the other committee members before you put this flyer out?



**Mrs Dunne:** No, and I didn't simply because I didn't consider that I was speaking on behalf of the committee. As I have said all along, I consider that I was speaking as a private member.

**MS MacDONALD:** Also, you said that the issue of how to get in contact with the people who had actually signed the petition had come up for brief discussion but it wasn't pursued. Was there a reason that you can recollect as to why?

**Mrs Dunne:** My recollection was that it was just the sheer difficulty of contacting all those people. Now, they fall into two categories. From my recollection, before the tabling of the petition that resulted in the motion to refer it to the committee, there had been at least one and possibly two other tablings of petitions. The petitions were all tabled by Ms Dundas and the terms, the actual petition forms, are with the clerk now. I don't know that members have access to the names and addresses. Once they have gone to the clerk, I don't know whether even the committee could have taken the 1,600-odd that they had received. I don't know whether they actually received the actual petitions or whether just the terms of the petition.

**MR CORNWELL:** Who owns the petition?

**Mrs Dunne:** Who owns the petition?

**Mr Pender:** The Assembly.

**MR CORNWELL:** Does the committee own the petition?

**Mr Pender:** Well, the terms of the petition are usually what's referred, not necessarily the signatories.

**Mrs Dunne:** Not necessarily the names, the signatories. It was discussed briefly but I think it was discounted as something that we should do, not so much because there was particular discussion about whether the names and addresses were accessible—we hadn't got that far—but just the sheer volume of accessing 1,600 or 3,000, depending on which

way you look at it, names and addresses was too much of a resource demand on a secretary who was a single person, one person who has vast amounts of work to do.

**MS MacDONALD:** Okay. I understand that. There wasn't any discussion about getting the information out to other areas which may have a different view at all—say, putting information out at Belconnen Mall or Jamison Centre?

**Mrs Dunne:** No, but we had advertised in the paper, which is the usual way of soliciting information, and we had specifically written to people and organisations who would have had a contrary interest, and there was discussion.

**MS MacDONALD:** But there was no decision to try and speak to people who might shop elsewhere?

**Mrs Dunne:** No. This pamphlet was basically put together for a one-off purpose because, as Liberal members, Mr Stefaniak and I were going to Belconnen Markets on a particular day and he had a petition which he was sort of advocating and I had this because it had fallen in my bailiwick that, because of planning and issues, that is the sort of thing that I would be covering.

**THE CHAIR:** Okay. Do you want to make any other statements? Do you think you have missed anything you want to tell the committee?

**Mrs Dunne:** No, look I cannot. I think it has been fairly closely canvassed. But I would reiterate, Madam Chair, that I would like the opportunity to respond to the available evidence if I—

**THE CHAIR:** If you need to clarify something, you can write to the committee.

**Mrs Dunne:** And you might feel that you need to come back as well.

**THE CHAIR:** Sure.

**Mrs Dunne:** And I am quite open to that.

**THE CHAIR:** We want it to be a fair process, so that is obviously what we will do. All right, thank you very much.

**Mrs Dunne:** Thank you.

**JOHN HARGREAVES** was called.

**THE CHAIR:** Mr Hargreaves, you should understand that these hearings are legal proceedings of the Assembly protected by parliamentary privilege, which gives you certain protections but also certain responsibilities. It means 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. You understand that?

**Mr Hargreaves:** I do.

**THE CHAIR:** I'm sure you do. So could you state your name and capacity in which you appear, please.

**Mr Hargreaves:** John Hargreaves, member for Brindabella, but also I am the Deputy Chair of the Standing Committee on Planning and the Environment.

**THE CHAIR:** Would you like to make an opening statement?

**Mr Hargreaves:** Yes, I would. Thank you, Madam Chair. I think the actual facts of the issues are fairly clear. The content of the flier actually puts the issue in fairly clear context. But for my own concern, there were two issues which I felt went to the issue of a breach of privilege or contempt, and it's not for me to determine which of those—I leave that in the hands of the committee to determine whether it will be one or either or neither.

Those two issues are the actual conduct of the inquiry itself into the possible provision of an Aldi supermarket at Belconnen Markets. Then there was the matter of the integrity of the parliamentary process, and in both issues one needs to go to the question of intent. I would like to do both of those.

You would know the history, I would hope, about when the committee picked up the inquiry for the Aldi supermarket and when the flier was actually distributed at Belconnen

Markets. The flier was, in my view, a clear attempt to affect a result in a matter before a committee inquiry, and I felt that that in itself by a member of a committee was inappropriate to the extent where it put the inquiry itself into jeopardy.

There were conversations certainly between myself and other members of the committee as to whether or not the inquiry should be aborted. And the reason for that was, when it was brought to my attention—and I have given the date in my letter to the Speaker that should be available to the committee; I think it was about 8 January or thereabouts. The issue was brought to my attention by this person who said that it wasn't—I paraphrase this—much point in pursuing the inquiry because the committee had made up its mind. And I consider that to be jeopardising that particular inquiry. That was, therefore, a perception on the part of the member of the public who had an interest in the issue that the integrity of the inquiry was in question. Did you have a question?

**MS MacDONALD:** Yes. You said a member of the public said that to you?

**Mr Hargreaves:** Indeed. The person who brought the matter to my attention and who brought the pamphlet to me on 8 January. Subsequent to that, other people have made the same comments to me, that they thought it was a fat lot of use putting in a submission to the inquiry because the committee had made up its mind. I felt that was serious enough to raise the issue within the committee.

We decided that we could in fact rescue the inquiry itself by in fact accepting Mrs Dunne's offer to stand down for the purposes of that particular inquiry and to issue a letter to all of the people who had made submissions and to people to whom letters had been sent seeking to find out if they wished to make a submissions, and those predominantly were the traders at the Belconnen Markets and the traders of the Jamison Centre. And we also put out a press release to that effect.

I had sufficient faith in the integrity of my colleagues on the committee to actually pursue the inquiry further, just to get on with it. I felt that Mrs Dunne's standing down from the inquiry actually gave us a bit more integrity to put the inquiry before the people. But, nonetheless, it did in fact put that inquiry at risk and in that sense I felt that that was an improper interference. Whether the interference was successful or not, whether it was

concluded or not, is immaterial to me and, hence, I put that position to you.

In the context of the integrity of the parliamentary system, I was concerned that the chair of the committee, let alone a member, would actually issue a flier such as this exhorting people to make what is essentially, or contribute what is essentially, a campaign to effect a result of an inquiry before that particular chair and that committee. It really matters not the content of that particular inquiry. This, I felt, definitely compromised the committee system, and I go back to the comment that was made that the integrity of the committee was questioned in the context of the Aldi bid.

I think what we have is where a member of a committee can put out a statement exhorting one side of an argument, it brings into question the unbiased nature of the committee. It actually assumes that a senior member of the committee has made up his or her mind on an issue. Now, whilst it was suggested, I think by Mrs Dunne, that the members of the committee would not be influenced particularly by a position taken by herself as chair, I don't believe that that is so out there in the electorate. I think people in the community would see the chair of a committee as being the significant opinion leader within that committee, and for that chair to have that particular position I think was quite inappropriate. I hope the committee has got a copy of the speech I made and the letter I did to the Speaker, so essentially we are going over ground again, so I won't bother to go into that in too much detail. I was quite happy to leave it with you if you didn't have it.

But I wanted to address the issue of intent because my reading of the House of Reps practice means that you can do something by omission and it will still constitute contempt. Nonetheless, when you talk about the issue of seriousness, the issue of intent actually is quite relevant. I don't think particularly that the action was with the intent of bringing the committee system into contempt within the community. But I do think the intent was there to affect the result of an inquiry before the committee. So I think there was a deliberate attempt to influence the committee, so I think intent exists there.

I had considered the issue of naivety. I mean, we all suffer from that. I am quite happy to put my hand up and say I have suffered from that in the past also. But I think it is not necessarily so in this case. The chair in fact has been a member in this place for 2½ years or so, and has also been a senior advisor to ministers in previous governments. I think it

could be expected that the chair should know what constitutes proper or improper behaviour. So I think to suggest that one wasn't aware of what the implications might be, I don't accept that. I put to the committee that it not accept it also.

The speed with which the chair offered the apology when I brought the matter to the committee's attention needs to be considered in the context of what was actually said. What was actually said, in the offer to stand down from the inquiry, was, if the committee feels that this is a serious enough issue, and it would appear from the numbers that it is, then she would stand down. I don't believe that the chair really accepted the seriousness of this issue, both from the context of the jeopardising of the inquiry, nor with the issue of parliamentary integrity. Hence, I felt that I would refer it to this committee, or a committee to be constituted, for you to make up your minds. And that's about it.

**THE CHAIR:** So Mrs Dunne believes that what she was doing was just being transparent. She feels that—I hope I'm representing her accurately—she put the note in there that she was chair so that it was clear. She wanted to be transparent. And she doesn't feel that she has in any way coopted the secretariat either because this is just about drawing attention to the fact that there is a process in place and that the members of the public can be part of it, and that it was going to people who did want Aldi there.

**Mr Hargreaves:** I don't believe that to be quite the case. You have to understand, I think, that there is a possibility that some people would see it that way, and I acknowledge that. But I would also suggest to you that some people that pick up this flyer will see that a person has identified themselves as the chair of a planning and environment committee. That is a significant member of that committee.

It uses language which is somewhat emotive in terms of things like “obstructed this project”, “threatening the long-term future of the Belconnen Markets”. It then goes on to say, “To help bring Aldi to the markets, write to the secretary, Planning and Environment Committee.” Now, the reading that I took from that, and the reading that other people who have looked at it have confirmed with me, is that if people wish to bring Aldi to the markets, which was the subject of the inquiry, then they should write to the secretary of the Planning and Environment Committee.

It doesn't say, for example, "If you have an opinion on this issue, if you would like to make your views known to the government or to the Assembly on whether or not there should be an Aldi at the Belconnen Markets," then I would have accepted that. But this is not so. This is quite clearly to help bring Aldi to the markets. Now, the inquiry was all about whether or not the Assembly should recommend to the government to allow that market to receive an Aldi supermarket. I don't accept that.

In terms of being transparent, it has been said that there is often a difficulty determining in which hat we work, whether it is a constituent representative, whether it is chair of a committee or whatever else. We do not have the luxury of having a cloud on that issue. We need to be specifically careful that people understand in which capacity we are communicating with them.

This flyer indicates that the whole thing is about an inquiry—it is not about a constituent issue, it is about an inquiry. Mrs Dunne was the chair of that inquiry. The language being used in here is "as a result of the Planning Environment Committee, which I chair", "Help bring Aldi to the markets, write to the secretary, Planning and Environment Committee". The whole visage of the communication between Mrs Dunne and the community is in the context of the Committee for Planning and Environment. It doesn't just say, "I'm your member for Ginninderra. Please, if you want to say something on X, Y, Z please do so." It doesn't. It directs people and exhorts people to write on a particular vein into a particular inquiry, so I don't accept that.

**THE CHAIR:** Mr Cornwell, do you have a question?

**MR CORNWELL:** How would you have felt if Mrs Dunne hadn't mentioned the fact that she was a member of the committee in any way, shape or form? Would you have regarded that as being wrong or improper?

**Mr Hargreaves:** From my position, it would have gone to the degree of seriousness. For a member of a committee to put out a flyer exhorting the public to put a particular case in a particular way, I think breaches privileges, regardless of their position. To actually advertise that they are a member of that committee or the chair of that committee



exacerbates the issue for me. So I see them both as serious and one is even greater.

**MR CORNWELL:** Right. So it's a matter of degree, but as far as you are concerned, it would still have been worthy of criticism if she had not advised that she was a member of the committee?

**Mr Hargreaves:** Indeed. The issue here can be looked at in the context of the flyer in two parts. The one is saying that as a member of the committee, blah, blah, blah, and so therefore that is all right, so long as there is not an inquiry in train. There was an inquiry in train. Submissions had been called. Members of the committee had not seen those submissions as yet. The closure date was imminent. But then again, the second part was an exhortation actually to make a position known on one side of an argument, which is this second issue with which I have a problem.

So I think when once a committee picks up an inquiry, the committee members do not have the luxury, whether they are being a local member or a member of the committee, to go out and exhort members of the public, in writing, using the committee secretariat as the post office, to influence the result of that committee, which is essentially what we see.

**MS MacDONALD:** There was apparently some discussion at the meeting on 28 November of the Planning and Environment Committee about who to actually invite to submit and there was possibly some discussion about how to get in contact with the people who had actually signed the petition. Is that your recollection, and what is your recollection of that discussion?

**THE CHAIR:** It wasn't the 28th.

**MS MacDONALD:** Wasn't it?

**Mr Hargreaves:** I couldn't tell you the date.

**THE CHAIR:** Are you talking about 28 November?

**MS MacDONALD:** Yes.

**THE CHAIR:** The flyer went out on the 29th. That is why I was wondering was this a committee document, because the committee agreed that Aldi should go there, as a committee, on the 28th, and then they decided to send out submissions asking people to comment, which seems a bit of a strange process, I have to say—but anyway, that’s not what we are looking into.

**Mr Hargreaves:** No, but I think I can explain that, which actually gives you the context. The wording of the minutes, or the record of the meeting, as with every meeting, isn’t always reflective of the conversations that go around it. It is usually reflective of a conclusion. And what in fact the conclusion was at that particular point in time was that there was no reason why an Aldi supermarket could not go to the Belconnen Marketplace.

**THE CHAIR:** It says “believes that there should be an Aldi”.

**Mr Hargreaves:** Yes, okay, and I don’t challenge that at all or quarrel with it. At the time, however—and I cannot recall the exact dates involved in this; I just don’t know—I remember raising the issue that such a case could apply for the Jamison Centre as well. And, indeed, if in fact all we were doing was seeking the response of people who had signed the petition or what we were doing was seeking the input of traders at the Belconnen Marketplace, then we were perhaps doing the traders at the Jamison Centre a disservice, and that we should in fact perhaps canvass their view as well.

And so they were to receive—the Jamison traders were to receive—a letter from the committee, signed by the chair, inviting them to make a submission. It was not to invite them to say whether it should go at Jamison Centre. It was not a piece of paper saying, “If you want an Aldi at the Jamison Centre, please write to the secretary and say X.” It was merely that there was an inquiry in train, and if they wished to make a submission on it, then we would receive those submissions.

**THE CHAIR:** I interrupted your question, sorry.

**MS MacDONALD:** That's alright.

**THE CHAIR:** What was your question about? Probably this is January.

**MS MacDONALD:** No, it was actually prior to that. It was about the recollection of whether or not to get in contact with the people that signed the petition. Mrs Dunne has said that—and, like the chair, I hope I am not misrepresenting her when I say this, but it is my understanding of what she said—there was a brief discussion around it but the reason it didn't proceed was because of the sheer numbers, the sheer volume, of people that signed the petition.

**Mr Hargreaves:** I have no recollection of that conversation about whether or not we should or should not individually contact people who had signed the petition. My recollection is only around the discussion about whether or not the traders at the Belconnen Marketplace should be the only people contacted. And it was my position that the Jamison traders ought to be invited as well. Now, that conversation regarding all the petitioners may very well have gone on, but I wasn't awake at the time.

**MR CORNWELL:** So the decision to proceed with it was taken on the 28th.

**THE CHAIR:** To proceed with what?

**MR CORNWELL:** With Aldi going in there?

**THE CHAIR:** Well, I don't know. These are confirmed minutes. It says, "The committee believes that there should be an Aldi at the Belconnen Fresh Food Markets site, but noted that some of the common lines might provide unfair competition for other small businesses at the markets. Other issues raised by the committee during discussions were" and then there is a list of them, including, that they should write to the Jamison shopping centre seeking their views as to whether an Aldi might have a detrimental effect on their business viability. So I just thought it was strange that the committee made a decision or, you know, agreed to a position before they have asked for the evidence.

**MR CORNWELL:** Yes, I agree.

**THE CHAIR:** I was just a bit interested in that.

**MR CORNWELL:** Yes, that's what I am a bit confused about.

**THE CHAIR:** It's not really—I don't know if that is what the inquiry is about.

**Mr Hargreaves:** If I can address that, Madam Chair. It is not unusual for a committee to come to a certain position along the way and then for it to receive additional information or submission which changes that view either completely or in part. What we have got here is a position at a given point in time. It is not a concluded position by the committee, it is not a decision in the context of writing the report saying, "We agree with this. Let us now recommend to government." It was a position taken at that particular time subject to those other points.

**THE CHAIR:** What other people said, all right.

**Mr Hargreaves:** For example, what the Jamison Centre people said. Now, if they came back and said it makes no difference to the Jamison Centre whether an Aldi is at the marketplace or not, it would have had a completely different outcome.

**THE CHAIR:** Karin.

**MS MacDONALD:** You have already said that a member of the public has said, "Why bother to put a submission in when the committee's viewpoint is already determined?" So you think you would have got more submissions from other people who may have had problems with it if—

**Mr Hargreaves:** And further, the committee, when we talked about the pamphlet, the flier—

**MS MacDONALD:** So you do believe that's the case?

**Mr Hargreaves:** Yes, indeed. We were worried that, for example, the traders of the Jamison Centre wouldn't provide submissions at all. The committee concluded that the way it wished to address that fear was to put a media statement out that the committee was not biased in its view and that we would send a letter to both the Belconnen Markets people and the Jamison traders saying exactly the same thing and inviting them to make the submission again.

**THE CHAIR:** So why do you not think that dealt with the issue?

**Mr Hargreaves:** I think that it contributed to us proceeding with the thing and not aborting the inquiry altogether. The fact that there was a consideration of an abortion of the inquiry I think goes to the issue of contempt. Whether it actually did, was aborted or not, is not necessarily material.

The issue, as I say, of contempt or breach of privilege is in two parts, and the actual inquiry itself is only one of them. I think that the health of the inquiry, if you like, or lack of health of the inquiry, was addressed by Mrs Dunne doing the honourable thing and standing down from it and the committee actually putting out the letters to those two centres saying, "Please tell us," "Don't think that we have got a biased view because we don't"—all that sort of thing.

However, I am concerned that we didn't necessarily get to every single person about that. We only got to the people that we wrote to about that. And I have to say that I had difficulty finding the media statement that was published in the *Canberra Times*, so I don't think it was particularly effective as a mass communication mechanism. The intention was fine but it didn't actually have that much effect. I cannot be sure how many people out there still consider that the inquiry was biased. I don't know. I have got no way of knowing. So I consider that to be a serious issue, but the committee did deal with that.

The concern I had also in terms of whether or not we should proceed with the inquiry was whether Mrs Dunne understood the seriousness of it, and I don't think she did at the time we actually did it. I think her offering to withdraw from the inquiry was a political response—and fine, we accepted that and got on with the inquiry.

Now, when you go to the next issue about whether the committee process, the integrity of the parliament, was compromised, I argue that it was and that you can and should divorce the two issues and consider whether a contempt or a breach of privilege applies in both of those two.

And then we go to the intent. I believe that there was an intention to interfere improperly with the conduct of an inquiry through the wording in this flier, which was in fact partly thwarted by us continuing on with the inquiry and putting out those letters. I believe that the compromising of the integrity of the parliament and the committee system was more through an act of omission—and there are better words in *House of Representatives Practice* which talks about that—which, for example, has a tendency directly or indirectly to produce those sorts of results.

I don't believe for one minute that Mrs Dunne has deliberately held the Assembly in contempt—I don't think that for a second—but I do believe that her actions have indirectly contributed to a lowering of the regard that the parliament has in its committee system; it has actually contributed to a contemptuous regard by some people in the community, hence the letter to the Speaker.

**THE CHAIR:** I am not quite sure what your argument is around intent. On one hand you are saying you don't think that Mrs Dunne deliberately tried to thwart the procedures of the parliament but then you are saying that you see there is clearly intent to do something. What are you saying that the intent was to do?

**Mr Hargreaves:** The intent was to influence the outcome of a committee. Now, when you talk about the intent you also talk about the two issues. One is that the inquiry was jeopardised; the second one is that the committee system was compromised. In the first one there was clear intent, in my view, because of the nature of this flyer to influence the result of an inquiry. You then talk about the deliberate nature of the action. I believe that there was a deliberate attempt to influence the result of this particular inquiry, not a deliberate attempt to bring the committee system into disrepute.

**THE CHAIR:** Okay. So that is the parallel. If a court is looking at a crime you don't

have to actually establish that the person had the intention to break the law. You have to establish that the person had the intention to do a certain thing?

**Mr Hargreaves:** Indeed.

**THE CHAIR:** So that is what you are saying? You are making that distinction?

**Mr Hargreaves:** Yes, I am.

**THE CHAIR:** Okay.

**MR CORNWELL:** On the other hand, if a decision had been taken by the committee on the 28th—is that what you said?—

**THE CHAIR:** Yes.

**MR CORNWELL:** to go ahead with Aldi coming to Belconnen Markets and a letter was therefore decided to be sent to the Jamison Traders and things for their view, did the letter in fact say that was the case?

**Mr Hargreaves:** No.

**MR CORNWELL:** It didn't?

**Mr Hargreaves:** The issue here is this: the committee determined that something was appropriate at that particular time, that is, that there should be an Aldi permitted on the Belconnen Markets site. It had not determined to recommend that to the Assembly at that time, and I make the distinction here. It had concluded something with the information available to it at the time.

**MR CORNWELL:** Right.

**Mr Hargreaves:** It had not concluded to recommend to the Assembly that an Aldi go on the Belconnen site. Now, on its way from that first position adopted to the second

position, which is to recommend something to the Assembly, it was determined to find out the views of the people at the Jamison Centre. And if, of course, they had no difficulty with it then there would have been a recommendation to the Assembly it can go on the Belconnen Market site. When they actually came and said they did have some difficulty with it, the issue about the appropriateness of the Belconnen Marketplace was then revisited.

**MR CORNWELL:** Okay. So, if that was the case and it was decided by the committee that, if you like, in principle, “Aldi, but we’re not going to tell—

**Mr Hargreaves:** It didn’t even get to that level of in principle.

**THE CHAIR:** The word is “believes” so they’re saying it wasn’t really.

**MR CORNWELL:** So, therefore, it was then decided to write to Jamison and various other people. Now, could it not therefore be a reasonable thing that a person who wanted the Aldi site or wanted the business of Aldi to go there also decided to reinforce the desires of those who shared that view? Is it not reasonable that that person could also have decided to send a letter or something—a flier in this case—out saying, “Look if you want the thing, back it up”?

**Mr Hargreaves:** The answer to that question is absolutely—absolutely. The difference is that it was not a member of the public who did that, it was not one of the Belconnen Market traders who did that, it was the chair of the Planning and Environment Committee that did that. If, for example, the chair had advised the Belconnen Marketplace traders that the committee was going to seek the views of the Jamison Traders and left it at that, and then the traders at the marketplace decided to put in something even more heavy to underscore their view, that would have been quite appropriate behaviour but that is not what occurred.

What occurred, in fact, was that this flier emerged, under the signature, if you like, of the chair of the Planning and Environment Committee, exhorting people at that locality, members of the community and traders there, to put a strong position in favour of one side of the argument. That is where I believe the inappropriate behaviour has occurred.



**MR CORNWELL:** I see.

**THE CHAIR:** Okay. I think we might need to wrap up. Is that all right?

**MR CORNWELL:** Yes.

**Mr Hargreaves:** That is fine with me. Thank you very much Madam Chair, members, Mr Secretary.

**THE CHAIR:** Thank you, very much.

**Short adjournment.**

**In camera hearing: authorised for publication 18 March 2004.**

**HELEN CROSS** was called.

**THE CHAIR:** We welcome Helen Cross to this in-camera hearing. I just need to read you your responsibilities as a witness. 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 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. You are familiar with those responsibilities.

We are happy to give you an in-camera hearing, but I just wanted to make sure that you understood that any evidence that is received in camera can always be published by a committee. You understood that?

**Mrs Cross:** Yes.

**THE CHAIR:** Okay, that's good. Could you state your name and the capacity in which you appear?

**Mrs Cross:** Helen Cross, member of the planning and environment committee.

**THE CHAIR:** Thank you. Would you like to make an opening statement?

**Mrs Cross:** I would. Thank you, Madam Chair, and I thank the committee for allowing me to do this in camera. One of the reasons was I didn't want this to become a circus with other people in the gallery, and I just wanted to say what I had to say.

I will make a brief statement and then the committee may wish to ask me questions. I also have something I would like to table which just confirms something I have in my statement.

This serious incident has caused a great deal of stress and wasted precious committee time. Indeed, it has undermined and been very disruptive to our committee's inquiry. When the flier was first brought to my attention my comments were that Vicki has been set up. I was assured that she was not and proceeded to say how stupid her actions were.

It was evident to me from that moment on that it was a selfish act by Mrs Dunne to promote Mrs Dunne in her electorate—promote herself as the chair of the P&E committee and its inquiry at the expense of the committee and the integrity of that inquiry. Mrs Dunne, unlike some of the newer members in this place, has seven-plus years extensive parliamentary experience and in the processes of this Assembly. She has worked as a senior advisor for five years and has been here as a member for almost two and a half.

Mrs Dunne's actions have compromised the Assembly in relation to its consideration of this proposal—i.e. a cheap supermarket at a place like the markets or Jamison. Irrespective of what we do about her actions, it has inevitably done harm to the repute of this Assembly.

Apparently she was angry with the deputy chair for raising this issue in the first place. It was as if she was saying, "How dare you challenge or question me." It is evident that the chair used and abused her position as the chair of the P&E committee to influence the inquiry process, and indeed the potential outcome.

It is also evident to me that this was done consciously, given that the flier distributed had both her position as the member for Ginninderra and her position as chair of the planning and environment committee stated on the flier and, according to her, she used her other party members to hand this flier out at the Belconnen markets.

It is also of concern that she went to great lengths to distance herself from responsibility in the matter by raising numerous reasons for issuing the flier when questioned by the committee members. No apology was forthcoming in the beginning. Indeed, it took all committee members to raise their concerns with Mrs Dunne before any apology was made in that first meeting, albeit grudgingly—a clear indication of her reluctance to

acknowledge responsibility and her contempt for the Assembly process. It is inconceivable to me that she did not know it was an abuse of her position as chair of an Assembly committee.

I put a motion of no-confidence in the chair to the committee because of this reluctance and, on the advice of the deputy chair, I have decided to postpone the vote on this until your committee completes its work. I do believe Mrs Dunne has held the Assembly in contempt for the reasons I mentioned earlier and has shown clear intent to interfere in the Assembly process. It is clear by her actions and her comments on this matter.

When committee members come together to assess a particular matter they need to remain open-minded—even those who come to the table with a predetermined opinion or position, irrespective of how many years they have had that predetermined opinion or position. It is paramount that personal opinions remain just that, personal, and not interfere in the decision-making process, to allow for an outcome that is a fair and transparent outcome and one that is best for the community.

I would like to table, if I may, a press release that has gone out by Mrs Dunne on Saturday which—

**THE CHAIR:** This Saturday?

**Mrs Cross:** This last Saturday, relating to this matter, and this caused me grave concern. I only saw this this morning and was frankly dumbfounded that she would be so stupid to do it, but it goes to the comments that I made in my statement regarding Mrs Dunne's intent. May I table this?

**THE CHAIR:** Sure.

**Mrs Cross:** I have got copies for all of you. May I make a comment, Madam Chair?

**THE CHAIR:** Yes.

**Mrs Cross:** I would have thought that, given that your committee is conducting this

inquiry, the last thing the person that the inquiry is being conducted about would want to do is send out a press release saying that she has been vindicated when, in fact, your committee process has not been completed; and the last person that should be commenting on the report that was tabled in the Assembly is the person this inquiry has been about.

**THE CHAIR:** Thank you. We will consider that as a committee.

**MR CORNWELL:** Yes, thank you.

**THE CHAIR:** So that is your statement?

**Mrs Cross:** Yes.

**THE CHAIR:** Thank you. Mr Cornwell, do you have questions?

**MR CORNWELL:** Yes, I will ask the questions I have asked others. This comment “which I chair”, how would you have felt if Mrs Dunne had put this out and had not indicated she was a member of the committee, whether as chairman or not?

**Mrs Cross:** I believe that Mrs Dunne mentioning the fact that she is the chair is the worst possible conflict and contempt. I believe that Mrs Dunne would also have been in a wrong position sending out a flier as the member for Ginninderra also asking people to write because she favoured Aldi at the markets, because of her position as a committee member. So I believe that there are degrees of severity here. Adding the secretariat, bringing the secretariat into it, and mentioning her position as chair is very serious. If she had sent out a flier as the member for Ginninderra also saying that we want Aldi at the markets, that also compromises her position as a member of a committee.

We all come to committees with predetermined ideas, we all have different philosophies. Some of us are driven by party philosophy, some of it is personal philosophy. At the end of the day the community expects us to be fair and open and transparent in the way we conduct ourselves on those committees. I think that the degree that you raise is of a serious degree but a lesser degree, but all the same a conflict of interest.

**MR CORNWELL:** Right. Could I just follow up on that, Madam Chair?

**THE CHAIR:** Yes.

**MR CORNWELL:** Thank you. The other point, of course, is this question of whether one should be making statements or not in relation to activities of a committee of which one is a member. As we know, the normal, the convention, Madam Chair, is that we don't issue statements, except the chairman, on committee matters. It's not a standing order or anything of that nature, it's simply a convention which has always been followed. Do you see involvement of this nature as being in breach of that convention?

**Mrs Cross:** The convention that you refer to is different to what Mrs Dunne has done, Mr Cornwell.

**MR CORNWELL:** Yes.

**Mrs Cross:** The convention is something we follow out of respect for any chair of a committee because the chair is the spokesperson of that committee.

**MR CORNWELL:** With agreement of the committee, however, too.

**Mrs Cross:** Of course. What Mrs Dunne has done, however, has nothing to do with the convention that you refer to. What Mrs Dunne has done is an act of Mrs Dunne's and a conflict of what the committee would have agreed to, and against any convention that a committee would follow.

May I also say that not every single word that is said in a committee meeting is recorded in the minutes because a secretary is only able to record so much. But I can assure you that in meetings we had in November it was agreed by the committee that no public comment would be made on what any of us think on this inquiry because we hadn't conducted the inquiry, and it was agreed in that meeting. I have gone over the minutes and there is nothing in the minutes to indicate that this decision was made. We discussed so many things. But for us, as mature adults, it's a given that when we are about to

conduct an inquiry we do not make a comment, irrespective of what our personal views are on a topic.

Many of us come to this place with predetermined views on a number of social issues. Some of us have been presidents of business associations. We do not, however, bring that into an inquiry because that would taint the inquiry and, in fact, compromise the inquiry. So what you are asking is a totally different issue to what Mrs Dunne has actually done because it is nothing to do with a convention of a committee. The committee was not consulted on this.

**MR CORNWELL:** Okay. That's fine.

**Mrs Cross:** Can I also let the committee know that I did take notes at the first committee meeting we had with Mrs Dunne in this room when Mr Hargreaves brought this to the attention of the committee and we had Mrs Dunne come in. When I raised the concerns of obstructing committee work with Mrs Dunne, I said that she had jeopardised the inquiry and that I felt that the integrity—these are just my handwritten notes; they're just in pencil, they're not very neat but I am happy for you to have a copy of it.

**THE CHAIR:** You can just tell us.

**Mrs Cross:** Okay. The thing that concerned me more than anything is not that we can't make mistakes—we make mistakes, we're fallible—but I did not feel that this was an innocent mistake. I think the concern that I had with Mrs Dunne was the reasons that she gave seemed to change a lot. She did say that her aim for the flier was to notify members of her electorate. She said, and these were her words, "I concede that my normal punctiliousness has lapsed." She said that her position on this had been going on since well before the 2001 election; she has been an active public advocate of Aldi coming to Belconnen for four years. There is a reason I am reading this out.

**THE CHAIR:** No, that's fine.

**Mrs Cross:** Yet feels that the third paragraph that was put on the flier is on public record anyway and has been for some time, so what's the problem; disagrees that there has been

a breach of trust. These are the issues that I raised and she felt that the flier was just simple communication, that there wasn't an issue with that.

We asked her how many. She said there were 200 printed. We were wary of that response because the flier was distributed, according to Mrs Dunne, at the end of November and yet Ms Dundas didn't get a flier till 23 December. Now, 200 fliers, from my short political experience, can be distributed in a very short time and it certainly doesn't take a month to get rid of 200, so I question the number.

She said again that the aim of the exercise was to communicate with her electorate. She agreed that there was a blurring of roles—yes, she had failed to address this blurring of her roles; she said this. Again she said she was providing information to her electorate, she does not feel that she has compromised the secretariat and that I was stretching a long bow to say that it will influence others; and there was no intent to break standing orders or her integrity or anyone else's.

It was only after the three members of the committee, after probably 40 minutes, expressed their concerns—because it wasn't enough that one of us did, it wasn't enough that I did; it was only after Ms Dundas did and it was unanimous—that Mrs Dunne apologised for her lapse of judgement and her regard for this committee. She decided only then not to participate in the inquiry and that she would withdraw. Well, I felt that that was just piecemeal because we were going to ask her to stand down because it was an impossible position for us to be in because we felt compromised.

I, as a new member, look up to a chair of my committee, of any committee, that I serve on, and I serve on two. Usually the chairs of my committees are experienced people who know better or should know better, who should set an example for me. I felt that not only did Mrs Dunne try to use every excuse to absolve herself from responsibility but I felt immediately that her judgement was impaired, which is when at a committee I said, "Look, I believe that you are no longer fit to chair this committee."

I did not want her to step aside from the committee. I simply said, "I want to put a motion of no-confidence forward, given that you haven't just said 'I screwed up' and that 'I shouldn't have done this and it was a stupid thing to do.'" I believe that there was



every attempt by Mrs Dunne to continue to deflect her responsibility in this action, which I felt was a serious action, not because it's a reflection on her—it's a reflection on us, our integrity, it's a reflection on the secretariat, it's a reflection on this place, that no matter what we do and what decision this Assembly takes, we will be accused of having a vested interest in this. Some of us might have personal opinions on this but those personal opinions are not reflected in the report that we tabled in this Assembly.

**THE CHAIR:** Okay. So basically do you believe that there was a blurring of the roles as an inquirer and as a member and an advocate?

**Mrs Cross:** I don't believe that what Mrs Dunne said is the truth. I believe that Mrs Dunne deliberately used her position as the chair of the committee to promote herself as the member for Ginninderra because I believe that she is one of the few people in this place that knows better because she has worked in this place for so many years and has been exposed to the elements.

**THE CHAIR:** That's a serious allegation, Mrs Cross. I am just concerned because this is an in-camera hearing and I feel that there might be some need for natural justice to occur if you accuse her of lying.

**Mrs Cross:** That's my personal—well, I'm not saying she lied.

**THE CHAIR:** You said she didn't speak the truth.

**Mrs Cross:** I didn't use that word, Madam Chair.

**THE CHAIR:** Okay.

**Mrs Cross:** You used the word, I didn't use the word.

**THE CHAIR:** Well I'm happy for you to clarify—

**Mrs Cross:** I said I don't believe—

**THE CHAIR:** You said you didn't believe she was telling the truth and that's quite serious.

**Mrs Cross:** You asked me did I believe that she had blurred her roles.

**THE CHAIR:** Yes, and then you said something about—

**Mrs Cross:** I said I don't believe that the reason that was given to the committee is the accurate one.

**THE CHAIR:** Right.

**Mrs Cross:** I think, because there have been so many reasons given—and I believe in natural justice, Madam Chair, absolutely, and—

**THE CHAIR:** That's fine. I am just raising it. I just wanted to flag it with you, that if you make allegations like that we have a responsibility as a committee to consider whether we give Mrs Dunne the opportunity to respond to that. So I just want you to be clear on the process, that's all.

**Mrs Cross:** Sure. This is my personal view and—

**THE CHAIR:** But do you have evidence for that? You see, we need evidence.

**Mrs Cross:** Yes, I suppose I could say as a committee member I have because every time this issue was raised with Mrs Dunne in the few meetings we were with her, instead of sticking to one line, Mrs Dunne varied things a bit. I did hear Mrs Dunne's evidence today and I deliberately looked up my notes because I was concerned that what we were told in the first committee meeting when we asked Mrs Dunne about this is not identical to what I heard today, and that concerns me. I have learnt from previous experience to express my concerns rather than hold back. And I might be wrong, Madam Chair, but I can only go on what I have been exposed to in the committee meetings I have been present at.

**THE CHAIR:** Yes. So your notes—that’s what you’re bringing as evidence for your concerns?

**Mrs Cross:** Yes.

**THE CHAIR:** That’s fine.

**Mrs Cross:** Can I also say that I did not believe Mrs Dunne did this flier. My very first reaction when I saw this—and Mr Hargreaves will confirm this—was to say, “She’s been set up.” I believed it because I looked. I said, “She’s not that silly to do this.” He had to convince me that she did do it. In fact, I raised it with her. I said I didn’t believe you did this. I said, “I thought you were set up.” She said, “Well thanks for thinking that but I did do it.”

**THE CHAIR:** Okay. Just in conclusion on the question of whether there has been an interference. I don’t want to paraphrase what you said, so on the key questions my notes say you said “inevitably damaged the reputation of the committee”—this is one of the things that you said. So are you telling this committee that you think that there has been serious damage to the reputation of the committee? You have explained to us that you think there was an intention there. Is it your understanding, are you saying that the intention was to not respect the processes of the committee or that her intention was to get a particular outcome to a particular inquiry?

**Mrs Cross:** I can’t go into Mrs Dunne’s head and say what was in her head. I can only go on what I’ve seen, what I’ve heard Mrs Dunne say. I can’t pre-empt Mrs Dunne’s mental frame of mind. I can only go on the evidence of what I’ve heard her say in committee meetings and also her actions. A committee chair that has in mind the best intentions of her members, the secretariat and the Assembly would have immediately offered to stand down as chair of that committee, not just from this inquiry, because to show lapse of judgement, as Mrs Dunne said, for this in a serious way compromises the integrity of an inquiry.

If you put your committee members first and the Assembly first, to show them that you do believe you have done the wrong thing you would say, “You know what, I have

screwed up. I'm going to stand down." I did offer Mrs Dunne the opportunity, not to leave the committee, to stand down as chair because of my no confidence in her. And Mrs Dunne refused. Mrs Dunne not only refused, she said, "Well, not if you ask me." I said, "Well, what will it take?" and I think she wanted all the committee members to say the same thing. It shouldn't have to come to that. It should be her own conscience that says, "I have compromised the integrity of this committee, therefore I will stand down as its chair because I no longer want people to think that with any future inquiries I will compromise those inquiries." I think that that's what indicates to me that she is not putting the committee interests and the Assembly interests first.

**THE CHAIR:** Do you consider that the flier could have been intimidating to potential witnesses against the supermarket proposal?

**Mrs Cross:** Yes, absolutely. Anyone looking at that flier, seeing it's the member for Ginninderra and the chair of the committee saying, "This is what we want," would think, "Well, why bother?"

**THE CHAIR:** Do you think that the committee received more or less submissions because of the flier?

**Mrs Cross:** I can't answer that, Madam Chair. I think that there has probably been an influence in that regard but I can't answer that.

**THE CHAIR:** Okay. I don't have any more questions. Does anyone else? No, okay, well thank you very much.

**Mrs Cross:** Thank you very much.

**The committee adjourned at 12.37 pm.**