

**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

THURSDAY, 18 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 11.21 am.

THE CHAIR (Ms Tucker): We will start this public hearing of the Select Committee on Privileges, and welcome Mrs Dunne, the first witness.

VICKI DUNNE was called.

Mrs Dunne: And you have already read me the riot act, so you don't have to do it again.

THE CHAIR: You are aware of your responsibilities as a witness to a committee.

Mrs Dunne: Et cetera, yes.

THE CHAIR: Will you state your name and capacity in which you appear today.

Mrs Dunne: Vicki Dunne, member for Ginninderra.

THE CHAIR: Thank you. You have had evidence made available to you that has been given.

Mrs Dunne: Yes, thank you, Madam Chair.

THE CHAIR: And you have also received a letter from the committee raising concerns about a media release that you put out. So we are interested in anything you would have to say.

Mrs Dunne: Right. I would like to start by discussing the evidence raised by Mrs Cross in her in camera evidence. Let me say from the outset that I find the idea of a member of the planning and environment committee giving in-camera evidence in these circumstances bizarre. In-camera evidence is designed to protect the legitimate rights to privacy and commercial interests of members of the public. For any MLA to use this device to attack another in the hope of denying the accused the right of reply is breathtakingly cynical.

I might add, Madam Chair, that I noticed in that evidence that, although you pressed Mrs Cross on the matter of where she said that she didn't believe me, therefore accusing me of lying, you didn't, under standing orders, require her to withdraw that, and I think that that should be addressed.

Perhaps Mrs Cross wanted to paint herself as a shrinking violet, as the sort of person who was too timid to argue for a particular finding in a committee if she thought that the chair might disagree with her. If so, I think that those of us who have observed her behaviour in the Assembly would find this less than convincing. In any case, I thank the committee for its recognition of the principles of natural justice in allowing me access to those accusations.

The claimed agreement referred to by Mrs Cross not to make public comments on this issue did not occur. It is not reflected in the minutes, it would not have been supported by me if raised, given my position and previous actions not just on this inquiry but any other inquiry. It would have been unnecessary if there had been general agreement that members should never comment on issues before a committee in any capacity, and would not have given rise to a contempt, even if it had occurred and there had been a breach.

Mrs Cross refers also to a media release of mine, which you also refer to, in which I commented on the report of the planning and environment committee's inquiry into the Belconnen Markets and the possibility of an Aldi supermarket going there. And in that press release I noted that most of the submissions received agreed with my publicly held position.

Madam Chair, this is politics and I freely admit that I put out press releases, this and others, with the intention of making my colleagues and me look good and making the government look bad. I do this in the hope of inducing people to vote for us. Some of you do the same. As it occurred not only after I stood aside from the inquiry, and therefore I'm not bound by any conventions of the committee, but after the report had been tabled in the Assembly, it could clearly not affect the content of that report and is obviously outside the scope of this inquiry.

I would like to get on to the issues of contempt, if I may. In the report of the Select Committee on Privileges, *Unauthorised diversion and receipt of a Member's emails*, there is a description of what contempt is, which I think is relevant and it really sets the bar for what contempt is in the ACT Legislative Assembly. At paragraph 2.21 the report says:

It is reasonable to conclude from the above that for an action to constitute a contempt it should include the following:

- (i) *improper interference* in the free performance by a member of his or her duties as a member;
- (ii) *Serious interference* with a member's ability to perform his or her duties as a member;
- (iii) *An intention* by the person responsible for the action to improperly interfere with the free performance by a member of his or her duties as a member; and
- (iv) *that the interference related to the member's duties as a member* of the Assembly not in any other area of his responsibility or activity.

Thus, in this context, contempt, despite its ordinary English meaning of the word, is not about reputation or attitudes: it is about interference with the operation of the Assembly or its committees.

It should be clear that the issuing of 200 copies of a brochure describing a committee process and indicating a view on the public policy issue, whether or not desirable, is not capable of interfering seriously with the operations of the committee.

Mr Hargreaves in his evidence attempted to draw a long bow and claim that the brochure had the effect or the tendency—which is not discussed in the committee report that I have just referred to—to encourage submissions favourable to my position and discourage others. He asserted that a member of the public has made this claim.

In response, I would note that, firstly, the committee has not heard from such a person. Secondly, an examination of the list of the actual submissions received in the P&E committee's report on Aldi, which is report No 27, indicates that there was probably one and certainly no more than three submissions from ordinary citizens as opposed to traders—that is, those who did not have a commercial interest in the outcome. Three, the suggestion that those who did have a commercial interest in the outcome were discouraged from making submissions by this pamphlet is hard to take seriously.

Four, if this had happened, this is still a long way short of sustaining the claim that the committee outcome was seriously affected. Are Mr Hargreaves and Mrs Cross seriously claiming that there were other submissions out there which would have led them to bring down a different report had they been received? I think this is something that the committee has to seriously consider.

Five, given the definition of contempt, which I have referred to, we are not talking about actions which might, in theory, have a tendency to affect outcomes at the margin. We are talking about actions that actually, seriously, deliberately, interfere with a member's performance of their duty. This is the definition set in this Assembly.

It is, of course, open to the Assembly to decide that members or chairs of committees should not speak at all in any capacity on matters before their committees. In the ordinary course of event, such a rule would be made through legislation, with effect prospectively. The Assembly has not done so.

I note in passing that it might be considered that this would, in itself, interfere with the performance of a member's duties—for example, in terms of representing the interests of constituents. It might well make the committee system unworkable in a 17-member Assembly. The problems with forbidding members of estimates committees, for instance, to comment on the budget are obvious. But to try to do this retrospectively by the necessarily imprecise mechanism of contempt of the Assembly, apart from other considerations, would be to broaden greatly the scope of what contempt is.

I would like to finally invite you, as members of the committee, to reflect on the process of committees. We are not judges at one removed from the issues that we consider when

we consider matters before standing committees. This is part and parcel of an adversarial political system. The whole issue has arisen because there was a reference to the planning and environment committee which was likely to embarrass the government. Mr Hargreaves, as a member of that government, sought to forestall the inquiry, claiming that we shouldn't inquire into issues affecting particular businesses, despite the fact that a number of the planning and environment committee's inquiries do just that. And if members would like, I can list them. This approach also had the effect of tying up me and my office for a considerable time, and that, too, is politics, Madam Chair.

Mrs Cross, for her part, asserts that I have a conflict of interest. I suspect that she is confused, as are many people, by the ordinary meaning of the word. A conflict of interests does not arise from being interested in a topic in the ordinary sense, otherwise the whole of the planning and environment committee would be unable to sit on most matters. It arises from having a material interest—a vested interest, if you like.

Mrs Cross, however, does have a conflict of interest here. Since I was chosen as the chairman of the planning and environment committee she has made no secret of her desire to be a committee chair. Her response was, when she was a member of the Liberal Party room, "How come she gets to be a committee chair and I don't?" And since her expulsion from the Liberal Party she manoeuvred to get herself put onto the planning and environment committee.

I don't know whether the ALP promised her a committee chair if she could help get rid of me as the chairman or she merely entertains the shy hope that this may come to pass. Either way, it is clearly a conflict of interest and her in-camera evidence before the committee demonstrates her ambition by her dwelling on the fact at considerable length that she has foreshadowed a vote of no confidence in me and she is waiting for the outcome of this inquiry.

Let us not imagine then that we are dealing with a complaint raised by disinterested parties. When Mr Hargreaves said in his evidence that this matter was so serious that the committee discussed aborting the inquiry, he means that he discussed aborting the inquiry with Mrs Cross, because his party didn't want the inquiry anyway, and by doing that, he could get rid of Mrs Dunne. And that's okay, because this is politics, and I would

be naive to expect—

THE CHAIR: I am not quite sure how this is—

Mrs Dunne: I have got one more sentence.

THE CHAIR: relevant to what we're looking at.

Mrs Dunne: Well it is—it is quite relevant. It's okay because it's politics, and I would be naive to expect anything else. But talking about this discussion as though it were evidence in itself is coming a bit rich. And it has to do with the motivation for this inquiry in the first place.

THE CHAIR: With respect, Mrs Dunne, we have set up a committee to look at a question of contempt and I don't think it is particularly helpful to make accusations of motivation. There is, in the view of this committee and the Assembly, an important issue, which is the question of whether there has been a contempt and that is what we are looking at. We are looking at that in an objective and dispassionate way and the assertions you have made are not particularly helpful.

I can assure you that this committee is looking in objective terms at the question of contempt and, whatever the motivations are, people giving evidence is not really of interest to us. We are looking at the evidence that has come and we will make our decision on the evidence that we have, which includes your pamphlet and includes your media release. Also, for your interest, the committee has published all evidence given to this committee.

Just in terms of your comments about open and transparent process, the committee is of the view that committee processes should be open and transparent. Unless there is good reason for in-camera evidence, we make information public. Of course, the transcript that you were given is confidential because it has not been checked or edited, as is normally the case.

Mrs Dunne: Yes, I understand that.

THE CHAIR: I would like to ask you a question. In terms of the media release that you put out, why there has been concern in the committee about that is not particularly related to the report on the matter of the Aldi supermarket—that’s not what we are looking at. What we are looking at is the second paragraph, which states:

Mrs Dunne stood aside from the inquiry following concerns about a pamphlet she had issued inviting market shoppers, several thousand of whom had signed a petition calling on the government ...

Et cetera, et cetera, and also your headline which is “Dunne ‘Vindicated’ by Belconnen Markets Report”. This implies. Because there is a committee inquiry occurring now, this committee inquiry, into whether or not a contempt has been committed, it is appearing as though you are saying that you are vindicated from the charge of contempt or the potential—

Mrs Dunne: There is no mention in the press release, Madam Chair, of any contempt inquiry. The thrust of the report by the planning and environment committee vindicated the public position that I have held in relation to the siting—

THE CHAIR: Well, whether or not it does that, I don’t think we are interested in discussing whether or not it vindicates your position on the Aldi supermarket.

Mrs Dunne: That is why the word “vindicated” is there.

THE CHAIR: We are not interested. You are saying that that is what you are referring to.

Mrs Dunne: Yes.

THE CHAIR: But can you see how the fact that you are in the middle of a committee process right now related to this issue means that this “Dunne Vindicated” headline plus the fact that in your second paragraph you say you stood aside from the inquiry and there is a committee to look at that whole question—

Mrs Dunne: But that is not referred to. What this is, Madam Chair, is a press release about the report. The second paragraph sets in context my relationship to that report because there would be an expectation that, as the chairman of the planning and environment committee, I would be speaking on behalf of the committee. But I am not because I did not participate in that inquiry and therefore my relationship to that committee report is the same as any other private member to that inquiry. That is the sole and sum total of what is said in that press release—it is about the report; it is not about any contempt inquiry or anything else.

MS MacDONALD: Can I ask: when you put out this press release, and it was put out the Saturday before you appeared before this inquiry—

Mrs Dunne: Yes.

MS MacDONALD: did you not give any consideration that it might impact on this committee's deliberations?

Mrs Dunne: I considered that and considered that it wouldn't because it was plainly and clearly about the committee report and the content of the report, and nothing else.

MR CORNWELL: Unfortunately, though, that may have been your view but it is not necessarily the view of others. I think that is what Madam Chair is saying, that the inference may not be the same as yours.

Mrs Dunne: But the inference is: the press release stands in relation to this committee's report and inquiry basically in the same way as the pamphlet stands in relation to the Aldi inquiry, and whether the pamphlet materially seriously—what are the words—actually and deliberately interfered with that inquiry and, therefore, whether this press release does that to your inquiry.

THE CHAIR: Are there any other questions on that?

MS MacDONALD: I might just ask one.

THE CHAIR: Yes, of course.

MS MacDONALD: Ms Tucker's already touched on this. I have already asked you and you have answered that you didn't believe that it would have any impact on this committee. So you didn't think that your press release could give the impression that you had not committed a contempt and thereby circumvented the process of this committee. You didn't actually consider—

Mrs Dunne: It is not for me to determine whether I have committed a contempt. It is for this committee to come to a view and advise the Assembly.

MR CORNWELL: Unfortunately, as I say, to refer back to what I said about the interpretation, though: you see, it is up to this committee to make that decision but you can understand why people may look at this media release and imagine that you are attempting to influence the committee's decision. I understand what you are saying as to why it was issued but, unfortunately, the headline "Dunne 'Vindicated' by Belconnen Markets Report" when a committee is looking at a privilege issue could very well be interpreted that you are claiming that, on the question before the privileges committee, you have now been vindicated.

Mrs Dunne: No. Mr Cornwell, I have to disagree because this committee's inquiry is about contempt, not about the Aldi report—that is sort of accidental material and there is a clear distinction between the accidental material and this committee's inquiry. My evidence to you is my attempt to influence the committee; that's what evidence is. Really, I think that a press release would be a gross and ham-fisted way of attempting to influence the committee report—

MR CORNWELL: Yes, I grant you that.

Mrs Dunne: and not the sort of thing that one would do. It is quite simple and patently obvious from the reading of the press release that it is about the substance of the inquiry into the Belconnen Markets and nothing else.

MR CORNWELL: To you, yes, and I agree. You have explained where you were coming from on this. The problem is, if I showed this to another member of the Assembly or somebody who is aware that this committee hearing was going on, because obviously it wouldn't work out there—but if I showed this to somebody else from the Assembly—and they saw the headline, there is a chance that they would think that you were claiming, for the benefit of this committee, that as a result of the report that had been brought down, you had been vindicated in terms of the privileges inquiry. Now, as I say, you have explained that that is not your intention. That's fine. But to show it to another member of the Assembly who is not on this committee, I would be unsurprised if they read it that way. That is a concern.

Mrs Dunne: Okay. It is not the common man test but I did actually run the test by other people whether they thought I was venturing into sort of inappropriate areas. I did take advice. I was doing my job as the shadow minister responsible for these things and the member for Ginninderra who has an interest in these things. I think that even if it failed the common man test or the disinterested member test, the question then that still arises is, I suppose, the one that this committee has to answer—do they feel that the press release impacts on their inquiry? I think that's the test.

THE CHAIR: In the second paragraph you say, “Mrs Dunne stood aside from the inquiry following concerns about a pamphlet.”

Mrs Dunne: Yes.

THE CHAIR: So, in your mind, you don't see that that could in any way relate to the fact that you also are the subject of an inquiry about possible contempt as a result?

Mrs Dunne: Well, if I had said “and I am subject to an inquiry into contempt” and anything like that, that would have. But I have not made any public statement, nor will I, in relation to an inquiry into contempt until that is all resolved.

THE CHAIR: But a public statement has been made. There is a public inquiry into the matter to which you allude.

Mrs Dunne: Yes, and I have not made a public statement.

THE CHAIR: But that's not the point.

Mrs Dunne: But it is my point.

THE CHAIR: The point is there is a public process.

Mrs Dunne: But it is my point. I have not entered into that discussion, nor will I, and this press release doesn't—

THE CHAIR: But this is a public statement you have made and the point—

Mrs Dunne: It is a public statement—you got it off a web page; this is the one that was faxed out. It is a public statement but it is not a public statement about this inquiry. It is a public statement about another inquiry.

THE CHAIR: So it is ambiguous in its wording.

Mrs Dunne: No, no, it's not ambiguous.

THE CHAIR: From your perspective obviously it isn't but what we are saying is that—

Mrs Dunne: It is actually carefully worded to ensure that it does not reflect on this inquiry, because that would be improper.

THE CHAIR: Okay, I think we have got your point of view on that. I don't think there is much point in pursuing that further. Are there any other comments that you would like to make, or are there any other questions from members of the committee?

MR CORNWELL: I do not have any.

THE CHAIR: Thank you. We are hoping to wrap this up this week so there will be a report tabled in the next sitting week.

MR CORNWELL: In the time limit, is that right? Wasn't it 1 April?

THE CHAIR: Yes. So this should be finished on time.

Mrs Dunne: Okay, thank you.

The committee adjourned at 11.45 am