

PARLIAMENT OF NEW SOUTH WALES
LEGISLATIVE COUNCIL

STANDING COMMITTEE ON
PARLIAMENTARY PRIVILEGE AND ETHICS

REPORT

ON

PERSON REFERRED TO IN
THE LEGISLATIVE COUNCIL

(PROFESSOR ROBERT WALKER)

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Committee Membership

The Hon Dr Meredith Burgmann, MLC Chair	Australian Labor Party
The Hon Jenny Gardiner, MLC	National Party
The Hon Charlie Lynn, MLC	Liberal Party
The Hon John Johnson, MLC	Australian Labor Party
The Hon Richard Jones, MLC	
The Hon Anthony Kelly, MLC	Australian Labor Party
The Hon Andrew Manson, MLC	Australian Labor Party
Revd the Hon Fred Nile, MLC	Christian Democratic Party
The Hon Peter Primrose, MLC	Australian Labor Party

SECRETARIAT

Ms Lynn Lovelock	Clerk to the Committee
Ms Velia Mignacca	Senior Project Officer
Ms Janet Williams	Committee Officer

REPORT

- 1.1 On 20 October 1998, the President of the Legislative Council, the Honourable Virginia Chadwick, MLC, received a letter from Professor Robert Walker requesting the incorporation of a response under the Legislative Council's Resolution of 13 November 1997,¹ relating to the protection of persons referred to in the Legislative Council. The letter referred to statements made by the Honourable John Jobling MLC and the Honourable Duncan Gay MLC during debate on the Public Sector Management Amendment (Council on the Cost of Government) Bill on 14 October 1998. The President, having accepted the letter as a submission for the purposes of the resolution, referred it to the Standing Committee on Parliamentary Privilege and Ethics on 20 October 1998.
- 1.2. The Committee met in private session on 29 October 1998, and decided, according to paragraph 5 of the resolution, to consider the submission.
- 1.3. In agreeing to the attached response, the Committee did not consider it necessary to consult Professor Walker, Mr Jobling or Mr Gay on the matter. The response, which the Committee now recommends for incorporation in *Hansard*, has been agreed to by Professor Walker and the Committee in accordance with paragraph 5 (b) of the resolution.
- 1.4. The Committee therefore recommends:

That a response by Professor Walker in the terms specified at Appendix 1, and agreed to by Professor Walker and the Committee, be incorporated in *Hansard*.

The Hon. Dr Meredith Burgmann, MLC
Chair

¹ Minutes No. 16, Thursday 13 November 1997, Entry No. 3.

APPENDIX 1

**RESPONSE BY PROFESSOR ROBERT WALKER
AGREED TO BY PROFESSOR WALKER
AND THE STANDING COMMITTEE ON
PARLIAMENTARY PRIVILEGE AND ETHICS
ACCORDING TO PARAGRAPH 5 (B) OF THE
LEGISLATIVE COUNCIL'S RESOLUTION
OF 13 NOVEMBER 1997**

During consideration of the Government's proposals to extend the life of the Council on the Cost of Government for two years on 14 October 1998, Opposition members of the Legislative Council opposed passage of the Government's Public Sector Management Bill, as was their right. However in the process, rather than examine the record of the Council of the Cost of Government, as summarised in five six-monthly Reports which have been tabled in Parliament, two members of the Opposition made a series of false and malicious allegations about my conduct and about the performance of the Council.

They are, of course, only the latest episodes in a series of personal attacks on my reputation which have been made in the NSW Parliament over the last seven years under the protection of parliamentary privilege.

It is very easy for members to make false statements knowing that the person attacked is not in a position to respond at the time, or to seek remedies for defamation.

The right of reply is welcomed, but it can not fully remedy the damage that personal and political statements can cause to citizens and their families, unless subject to an equally significant response.

The personal attacks of these two members on me (and my wife) should be placed in context.

Over the years, since my appointment as a Professor of Accounting in 1978, I have advised a number of Parliamentary Committees, and governments of different political persuasions. My work with the NSW Public Accounts Committee in 1984 led to pioneering disclosures in this state about the extent of unfunded superannuation committees by statutory authorities - and later, to similar disclosures concerning the budget sector. In 1983 I was engaged by the National Companies and Securities Commission to undertake a review of disclosure rules for companies in terms of the then Companies Act and Codes. This work led to wholesale revisions to existing reporting requirements. Later I served as a foundation member of the Accounting Standards Review Board.

For some time I engaged in some recreational journalism - initially writing about accounting topics. I was prompted to start contributing items to business periodicals because of my concerns about the extent of "creative accounting" in use in the private sector during the late 1980s. At a time when regulatory agencies were largely inactive in this area, I pointed out some of the accounting fiddles being used by companies such as Bond, Hookers and Elders, well before those companies' real circumstances became apparent.

Over the next few years, in the course of my teaching and research activities at the University of NSW, I came to recognise that the scope of creative accounting was probably worse in the public sector. In 1991 I pointed out that Premier Nick Greiner was making false comparisons between the budgetary performance of NSW and Victoria. This was not intended to be a party-political attack, but rather an expression of concern about the way in which public debate about financial matters was being publicly distorted by inappropriate use of financial concepts. At that time, NSW was presenting its budget for the set of entities whose transactions went through the "consolidated

fund"; Victoria was reporting on the results of a wider set of entities. Hence Premier Greiner's comparisons between the budget results of Victoria and NSW were comparing numbers of apples and oranges.

After raising these issues, I argued that all governments should report on a consistent basis: by reporting on the results of "general government". That position was subsequently agreed to at a Special Premier's Conference. All states agreed to "move towards" a presentation on a general government basis, if only in supplementary reports within the budget papers. In NSW, the annual Budget now encompasses the general government sector, not just the consolidated fund.

Subsequently I wrote other items about NSW public sector finances. These included an item which pointed out that NSW Treasury had made an error in the state's public sector consolidated statements of \$3 billion. This called into question the Coalition's record in reducing debt, and its claims about debt reduction. It led Premier Greiner to call on the university to sack me because I could not "add up"; later I was able to release correspondence from Treasury confirming my analysis.

Another item described the high transaction costs (\$71 million) of the GIO privatisation and float: leading Minister Souris to issue a press release challenging my figures and making a personal attack on me; within hours he was forced to concede on the ABC's 7-30 Report that my figures were accurate.

Another item described the use of a second "special dividend" of \$100 million from Sydney Water to bolster the budget results; this was subsequently redefined as being for the purchase by Sydney Water of assets (including the Alexandra storm water canal) - and led the Auditor General to question the values assigned to those assets.

I have also given evidence before Parliamentary Committees and written other materials on issues which seemed to have distressed the Opposition. My commentaries on the risks of "corporatisation" to the conduct of Sydney Water in providing adequate water supplies to the public were recently recalled by editorial writers in the Sydney Morning Herald.

Later I wrote about the budget for the Olympics. Premier Fahey had been saying that the Olympics budget would break-even - but the "break even" budget only related to the budget for staging the games, and ignored the costs of constructing infrastructure or upgrading transport links, and associated activities. My estimate at the time was that the Games would cost the State more than \$3 billion, and would not "break even" as Mr Fahey had been saying.

It has not been widely recognised (at least, among members of the Coalition) that my media contributions were not limited to commentaries on NSW matters - or, for that matter, on criticisms of Liberal or Coalition Governments. For example, I wrote about what I saw as misleading accounting practices adopted in Victoria when the Cain Government was in office, and the work of the Victorian Commission of Audit established by the Kennett Government. Indeed, my very first media contribution on public sector accounting (in the ill-fated Business

Daily, August 1987) concerned the adequacy of reports from the NSW Labor Government in 1984 about the scale of “debt” as a proportion of Gross State Product.

Some members of the Coalition seem to have interpreted my commentaries as politically motivated, and have responded with personal attacks of increasing stridency. Premier Fahey's response to an interviewer's question referring to my estimate of a \$3 billion Olympic budget was so strong that the episode, in which he rolled his eyes and (verbally) attacked the interviewer, ended up on Channel 9's “Sports highlights of the year”.

Mr Fahey even sought to take retribution on my wife, who was then working in Treasury. Memoranda and other information obtained under FOI or during the discovery process before the Equal Opportunity Tribunal showed that Mr Fahey wanted my wife's position within Treasury abolished and he wanted her sacked. Her name had to be taken off the organisation chart and from any memoranda going to Mr Fahey because (my wife was told) he went “berserk” every time he saw the name “Walker”. My wife was actually asked to use her maiden name of Betty Con to try to minimise the number of these incidents.

With that history it will be appreciated that my wife and I have got quite used to personal attacks from members of the NSW Coalition. Some members appear to have become quite obsessed, particularly since I was appointed Chairman of the Council on the Cost of Government in 1995.

I note that on 14 October the Hon. D. Gay actually gloated that his attacks on me in the Legislative Council have consumed “many hours” of the chamber's time.

I also note, for example, that in 1995 Mr Gay attacked me and the Council (under the cloak of parliamentary privilege) for the content of a report on the Darling Harbour Authority - a report which was prepared by staff of the Premier's Department before the Council first met in October 1995, and to which I made no contribution whatsoever. A similar attack was made on the work of the Council in the House of Assembly in relation to another report which was also produced by staff of the Premier's Department before the Council first met.

On 4 June 1996 Mr Gay again made false statements to the Legislative Council, alleging that the Council on the Cost of Government had prepared reports on Eastern Creek, the Department of Juvenile Justice, the M2, State Rail). Again, some of these reports were prepared before the Council was established.

Later Mr Gay attacked me and the Council on several occasions on the basis of an unfounded allegation that the Council had failed to meet statutory deadlines for the presentation of a bi-annual Report to Parliament. This claim was entirely false, and reflected his misreading of the relevant requirements as set out in the Public Sector Management Act.

However this background suggests that the recent personal attacks on me, and more generalised attacks on the work of the Council were premeditated, and are part of a pattern of personal attacks being made by some members of the Legislative Council without prior careful consideration of the facts.

I have come to regard comments made in Parliament about my work and motivation with an air of resignation and amused tolerance. However the attack on hard-working members of the Council on the Cost of Government, and staff of the Office of the Council on the Cost of Government, deserves a response.

Otherwise there is a risk that the threat of personal and defamatory abuse under the cloak of parliamentary privilege will deter other academics from engaging in public debate about matters of significant public interest - and deter members of the business community from involvement in efforts to reform public sector financial administration.

Statements by Mr Jobling

Mr Jobling described the Council on the Cost of Government as “nothing more than a personal indulgence for one of Labor's greatest supporters while Labor was in opposition, Professor Bob Walker. He further suggested that the Council on the Cost of Government has become Bob's very own sheltered workshop”, and that I had only been appointed because I was one of "Labor's mates".

These statements imply that I have acted irresponsibly and unprofessionally in overlooking the work of the public servants employed in the Office of the Council on the Cost of Government.

(I will not bother to respond to his curious suggestion that I lack skills, knowledge and experience to perform the task of overlooking public sector finances, but would simply note that I am not a member of any political party.)

There is no evidence from his speech that Mr Jobling has ever actually read any of the Council's reports. However his claims that the Council has been idle are rejected. The Council's charter is set out in the Public Sector Management Act, and was misrepresented by Mr Jobling. Evidence about the work of the Council could have been readily obtained by Mr Jobling from the Council's five Reports to Parliament, reports on agency reviews lodged with the Parliamentary Library, and the Council's substantial reports on the performance of government agencies.

The fact is that the Council has operated with a small staff, has been actively involved in a wide range of projects. Reports of many of those have been filed in the Parliamentary library, including the development of sets of performance indicators relating to the activities of government agencies. In my view, these constitute the most comprehensive set of performance indicators ever issued by an Australian government, and have been used by agencies to refocus their activities, and by the government in the Budget process. In addition, a major portion of the Council's work has involved efforts to streamline and standardise back-office processes (the Council estimates that this may involve savings in corporate services of \$300 million per annum after five years). Moreover our work has included the provision of advice to government on a range of financial matters.

Mr Jobling told the Legislative Council that the Premier had stated during his address at the inaugural meeting of the Council on the Cost of Government in 1995:

In future the office will ... require a core staff of only 15.

He then falsely claimed that the Council's core staff has increased to 25, 10 more than originally planned. However the exact words of the Premier's speech on 27 September 1995 were as follows:

The Council has been serviced by the Office of the Council on the Cost of Government which consisted of 35 staff. In future, the Office will require less than half that number - that is, **a core staff of only 15, augmented from time to time by short term secondments for specialist projects** (emphasis added).

Mr Jobling deliberately misrepresented the Premier's statement, and then used that misrepresentation to accuse the Council of wasteful practices. The fact is that the head count of staff for the Council in the Budget papers includes short term secondments, paid from the Council's budget. Recent modest increases in staffing, calculated on this basis, reflect the additional workload following the Government's request for the Council to initiate a cycle of reviews of all major government programs, over a scheduled four to five year cycle. That task was not contemplated when the Council was originally established.

Similarly Mr Jobling falsely claimed that recently advertised positions were additional appointments. The fact is that they will come from within the Council's existing budget, and will not involve increased expenditure as he claimed. He used this "evidence" to claim that the Council was not "fiscally responsible".

In fact, the Office of the Council has operated as a far leaner outfit than the "management review units" operated by the Coalition - and it remains an extremely modest operation. When compared with the arrangements undertaken by predecessor units under the Coalition Government, the Office of the Council has done more, with less. There was no justification, even in the heat of debate, for Mr Jobling to misrepresent facts, and then make a series of false statements which impugn my professionalism.

Further, Mr Jobling made a number of statements suggesting that the Council has "become an organisation involving friends and associates". To quote:

To my understanding it has employed university students who were members of Professor Walker's staff.

This statement implies either:

- (a) that I have improperly recruited "students" who were not qualified to perform work for the Council, or (when read in conjunction with other statements about the allegedly political nature of the Council's work),
- (b) that I have abused my position as an academic by placing pressure on "students" employed by the Council.

The suggestion that the office has employed [unqualified] “students” is false and is rejected. Mr Jobling's statement was made recklessly, and has no basis in fact.

It is not surprising that graduates of the University of NSW would have been employed by a government agency. To my knowledge, one full-time, one part-time and two former employees of the Council were graduates of the University of NSW, and had been students of mine before being employed to work in the Office of the Council. They were all eminently qualified: three held Masters' degrees majoring in economics, finance or accounting respectively, and the fourth had completed a four-year bachelor's degree with honours.

Other claims by Mr Jobling may reflect his own misunderstanding of the role of the Council, or of public administration generally. In isolation they may be seen as reflecting his ignorance in those areas rather than being personal attacks. However the conjunction of a series of false and defamatory statements with these misstatements only adds the accumulated damage to my reputation. As such they warrant a response.

First, Mr Jobling claims that the Council has not reduced the scale of aggregate recurrent expenditure for the NSW general government sector. This simply misrepresents the role of the Council. The level of aggregate expenditure is a matter for decision by the Government of the day. The Council's role is to seek to ensure that this expenditure provides value for money, and to reduce wasteful expenditures. The Council's various reports amply explain its efforts in these areas.

Second, Mr Jobling claimed that the Council had failed by not criticising a series of Government policy decisions. Again, this reflects a misunderstanding of both the Council's role, and also of public sector administrative processes generally. It is not widely accepted that the role of public sector agencies is to criticise the Government of the day. Even most Auditors General, as officers of Parliament, accept that it is not appropriate for them to criticise Government policy decisions.

Statements by Mr Gay

Mr Gay has demonstrated his obsessive antipathy towards me for some time, and has previously chosen to make a series of statements attacking my wife.

It is a matter of record that my wife made a claim of marital status discrimination before the Equal Opportunity Tribunal, arising from conduct from Ministers and some senior public servants which started when the Coalition was in office. Her action was successfully settled, after mediation before Trevor Morling QC. Subsequently my wife chose to leave the public service - in disgust at the conduct of some politicians and a few senior public servants. I have noted elsewhere that the Coalition's pattern of discriminatory behaviour through private communications to a client of my wife's consultancy practice. It is disappointing to see Mr Gay contribute to these on-going activities of marital status discrimination, particularly in view of her past distinguished service for a former Coalition Premier, Nick Greiner, while she was a Treasury official.

My wife, who came to this country with her parents as a non-English speaking migrant of 7 years

of age, graduated from the University of Sydney in Economics, and was proud to have worked as a public servant, and to serve the Government of the day with commitment and enthusiasm. She is puzzled by the obsessive behaviour and attacks at our family, from a small number of Coalition members of Parliament.

Mr Gay's statements under the protection of Parliamentary privilege on 14 October 1998 implied that my appointment had nothing to do with knowledge, skills or expertise but was simply party "political".

I would again note that I have no political affiliations, and that my qualifications and record of academic publications and community service speak for themselves.

Mr Gay also claimed that the proposed amendments to the Public Sector Management Act were designed to provide me "with a salary after the State election". This allegation reflects a complete misrepresentation of the Public Sector Management Act, which provides that the term of office of all members of the Council is at the will of the Premier, whoever that may be.

It is difficult to accept that Mr Gay, who takes pride in his record of criticising the work of the Council, has so poor an understanding of the legislation being debated on 14 October that he made these false statements out of ignorance, or by mistake. More likely, these misrepresentations were made deliberately, and reflect his continuing and unhealthy obsession with my family.

My wife suggests that those who launch personal attacks do so not just because they lack personal integrity, but because they can't manage intellectual argument. I take some comfort from that.

I also take some comfort from informal communications from some members of the Opposition who consider that the Council has made a valuable contribution to public administration and deserves to continue.

(Dr.) R.G. Walker
October 1998

APPENDIX 2

Minutes of the Proceedings

Meeting No. 86

Thursday 29 October 1998

at Parliament House, Sydney at 1.00 pm

MEMBERS PRESENT

Dr Burgmann (in the Chair)

Ms Gardiner	Mr Lynn
Mr Johnson	Mr Manson
Mr Jones	Mr Primrose
Mr Kelly	

Apologies were received from Revd Mr Nile

Minutes of Meetings No. 85 were confirmed on motion of Mr Johnson.

Correspondence received:

- (i) Submission dated 27 October from Professor RG Walker to the Chair regarding his reply to comments made about him in the Council.

Correspondence sent:

- (i) Letter dated 29 October 1998 from the Chair to the Hon. Duncan Gay, MLC, advising that the Committee proposed to make a report recommending the incorporation in Hansard of a response by a person referred to by him during debate in the Legislative Council.
- (ii) Letter dated 29 October 1998 from the Chair to the Hon. John Jobling, MLC, advising that the Committee proposed to make a report recommending the incorporation in *Hansard* of a response by a person referred to by him during debate in the Legislative Council.

The Committee deliberated.

Resolved, on motion of Mr Johnson: That the Chair prepare and submit a Draft Report on the request for a Citizen's Right of Reply by Professor RG Walker, recommending that a response by Professor Walker, in a form of words agreed to by Professor Walker and the Committee, be incorporated in *Hansard*.

The Committee considered the draft report on the inquiry into a person referred to in the Legislative Council.

Resolved, on motion of Mr Johnson: That the Report be adopted.

Resolved, on motion of Mr Primrose: That the Report be signed by the Chair and presented to the House.

Resolved, on motion of Mr Jones: That 300 copies of the Report be printed, on recycled paper if possible.

The Committee adjourned at 1.15 pm *sine die*.