THE SENATE

STATEMENT BY THE PRESIDENT

Parliamentary Commission of Inquiry

SPEECH

Thursday, 22 June 2017

BY AUTHORITY OF THE SENATE
The PRESIDENT (09:31): Senators will recall the statement I made to the Senate on 10 October 2016 regarding the records of the Parliamentary Commission of Inquiry. The commission was established in May 1986 to investigate whether the conduct of the late Justice the Hon. Lionel Keith Murphy, a senator for New South Wales from 1962 to 1975 and a justice of the High Court of Australia from 1975 to 1986, had been such as to amount to ‘proved misbehaviour’ within the meaning of section 72 of the Constitution.

The commission’s inquiry was brought to an end in September 1986 when it became known that Justice Murphy was suffering a terminal illness. The parliament then enacted the Parliamentary Commission of Inquiry (Repeal) Act 1986, dividing the records into two categories: ‘class A documents’ comprising records relating to Justice Murphy’s conduct, and ‘class B documents’ consisting of all other commission records including those relating to the interpretation of section 72 of the Constitution. The act strictly prohibited access to the class A documents for 30 years, that being until 26 September 2016, and, after that date, required that the presiding officers determine the access or otherwise of the documents. The class B documents could be accessed at any time with written approval of the presiding officers.

On 13 December 2016, the Speaker and I, taking into account the advice of our officials, authorised publication of the class B records of the commission. These records were duly published on the parliament’s website on 19 December 2016. In my statement to the Senate last year, I announced that the Speaker and I had authorised the Clerks of the Senate and the House of Representatives and a small number of other officials from our departments to examine the commission’s class A records and advise us how the records might be handled from now on. The independence of this process was very important to us. Neither the Speaker nor I personally reviewed the documents prior to making any decisions about granting or withholding wider access to them. I said in October that the process would be thorough and may take some time, and that we would await advice on the contents of the records before determining a way forward.

The Speaker and I have now made a decision in relation to the class A documents. In making our decision, following this independent advice, we have taken into account the following key matters:

1. that the records contain a significant amount of personal information relating to Justice Murphy and other persons;
2. that the information potentially pertains to illegal behaviour;
3. the time that has elapsed since the establishment of the commission of inquiry; and
4. the decision taken by the parliament in 1986.

In relation to the last matter—that is, the decision taken by the 34th Parliament when dealing with the class A documents—we note two key issues. First: the parliament, by way of legislation, preserved the documents for 30 years and did not order the destruction of them in 1986. Second: the parliament, significantly, did not provide for an automatic release of the documents after 30 years, but strictly empowered the President of the Senate and the Speaker of the House of Representatives to make a decision about the release, or otherwise, of the documents.

Then senator Gareth Evans, who was at that time the Minister for Resources and Energy and who led the debate for the Hawke government in the Senate, acknowledged that there would be legitimate historical interest in the records in the future. During the debate on the bill in the Senate on 21 August 1986, Senator Evans told the Senate:

It is appropriate that basic archival rules apply ... and that in 30 years time the basic ground rules for Commonwealth documentation generally apply, subject to such exemptions as apply to this sort of material, which can properly be administered by the Presiding Officers.
The Speaker and I have approached this important decision in exactly that spirit.

It is important to recognise that the records of the commission reflect an incomplete process, insofar as it could not fulfil its ultimate purpose of formulating and reporting to the parliament its conclusions regarding the conduct of Justice Murphy. Of course, the privacy or reputation of all people impacted by the documents was a factor that was carefully considered in deciding whether or not to release the records. However, these concerns had to be weighed against the considerable public interest in having access to information relating to important concerns about the integrity of the High Court and, more broadly, about serious issues of public governance and accountability at the time of the commission’s investigations. In seeking to serve this public interest, the Speaker and I took into account the fact that the general and specific nature of the allegations relating to Justice Murphy and others are widely known and, after 30 years, are historical in nature. We also took into account the non-partisan, focused and highly credible nature of the investigative processes employed by the commission, which is reflected in the character of its records. At the time it was wound up, the commission had provided Justice Murphy with a number of specific allegations to which he had been invited to respond, but the judge’s unfortunate prognosis meant that a response was never to be received.

I now advise the Senate that the Speaker and I have decided to approve the publication of the class A documents. Now that we have made our decision public, the Speaker and I will request that the Clerks of both houses, where possible and appropriate, advise persons named in the records, and the closest living relatives or legal representatives of deceased persons, of the forthcoming publication of the class A documents. To enable sufficient time for this to happen, we have ordered that the class A documents be scanned and published in electronic form on Monday, 24 July at 10 am. A small amount of personal information, including signatures and addresses of unrelated persons, will be redacted from the published versions.

In concluding my remarks, I wish to reiterate the deep sense of responsibility that the Speaker and I have felt in executing the task that was bequeathed to us by the 34th Parliament. I thank the Senate.