

The Senate

Procedure Committee

Storage of Senate documents

Unauthorised disclosure of committee
proceedings

First report of 2005

September 2005

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President of the Senate

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Deputy President and Chair of Committees, Chair

Senator the Hon R Hill
Leader of the Government in the Senate

Senator C Evans
Leader of the Opposition in the Senate

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Senator the Hon C Ellison

Senator the Hon J Faulkner

Senator A Ferguson

Senator J Ludwig

THE SENATE
PROCEDURE COMMITTEE
FIRST REPORT OF 2005

The committee reports to the Senate on the following matters referred to the committee.

STORAGE OF SENATE DOCUMENTS

Standing Order 44 provides:

The custody of the Journals, records and all documents laid before the Senate shall be in the Clerk, and they shall not be taken from the chamber or Senate offices without the permission of the Senate.

In accordance with this order, documents tabled in the Senate are stored in a secure area under the control of the Senate Department in the basement of Parliament House.

The volume of tabled documents is now enormous, amounting for the period 1901 to 2001 to about 5 million pages. The yearly volume has also increased enormously over that period, and continues to increase. It will soon be necessary to store some tabled documents outside Parliament House. This will require an authorising resolution of the Senate in accordance with Standing Order 44.

Because of the Senate Department's project to record on microfilm and in digital form all of the documents tabled in the Senate, the texts of tabled documents are more readily accessible than ever before, and the storage of some of the originals of tabled documents outside the building will have no adverse effect on accessibility.

It is proposed that only relatively old documents which have been microfilmed be stored outside. Multiple printed copies of recently-tabled documents are retained in the building so that printed copies may be supplied to senators on request.

The committee recommends that the Senate authorise the storage outside the building of tabled documents which have been microfilmed, with the proviso that only the National Archives of Australia holds documents stored outside.

The committee therefore recommends to the Senate the following resolution:

The Senate authorises the storage outside Parliament House by the National Archives of Australia of documents laid before the Senate, provided that the storage of those documents is under the control of the Department of the Senate and microfilm copies of them are available within Parliament House.

UNAUTHORISED DISCLOSURE OF COMMITTEE PROCEEDINGS

On 1 August 2005 the Senate, by adopting the recommendation of the 122nd Report of the Committee of Privileges, referred to the Procedure Committee the following matter:

Proposals relating to the unauthorised disclosure of committee proceedings as contained in the 122nd report of the Committee of Privileges, its appendices and associated documents.

The Committee of Privileges considered that individual committees should investigate apparent unauthorised disclosures of their documents, and raise as matters of privilege for reference to the Privileges Committee only those cases involving actual or potential substantial interference with the work of a committee or the Senate. Committees are already encouraged to do this by the resolution of the Senate of 20 June 1996, which is shown in Attachment 1. The Privileges Committee considered that further guidance should be given to committees as to how they should deal with apparent unauthorised disclosures and determine whether such disclosures should be raised as matters of privilege.

The proposals of the Committee of Privileges may be effected by adopting the proposed resolution of the Senate at pp 65-66 of the committee's report, and adding the additional paragraph proposed by the committee at paragraph 3.47 (p. 48) of the report, and a further paragraph requiring committees to have regard to the report of the Committee of Privileges.

Attachment 2 shows the suggested resolution of the Senate. The Procedure Committee recommends that this resolution be adopted by the Senate, initially as a sessional order so that the effectiveness of the resolution may be reviewed.

While the President, Senator Calvert, does not object to the proposed resolution being adopted as a sessional order, he has asked for his reservations about the practicality of paragraph (4) of the resolution to be noted.

John Hogg
Deputy President
Chair of the Committee

ATTACHMENT 1

UNAUTHORISED DISCLOSURE OF COMMITTEE PROCEEDINGS RESOLUTION OF THE SENATE OF 20 JUNE 1996

The Senate adopts the procedures, as outlined in the 20th report of the Committee of Privileges tabled on 21 December 1989, to be followed by committees in respect of matters on which such committees may wish action to be taken:

- (1)
 - (a) a committee affected by any unauthorised disclosure of proceedings or documents of, or evidence before, that committee shall seek to discover the source of the disclosure, including by the chair of the committee writing to all members and staff asking them if they can explain the disclosure;
 - (b) the committee concerned should come to a conclusion as to whether the disclosure had a tendency substantially to interfere with the work of the committee or of the Senate, or actually caused substantial interference;
 - (c) if the committee concludes that there has been potential or actual substantial interference it shall report to the Senate and the matter may be raised with the President by the chair of the committee, in accordance with standing order 81.
- (2) Nothing in this resolution affects the right of a senator to raise a matter of privilege under standing order 81.
- (3) This order is of continuing effect.

ATTACHMENT 2

UNAUTHORISED DISCLOSURE OF COMMITTEE PROCEEDINGS PROPOSED RESOLUTION OF THE SENATE

- (1) The Senate confirms that any disclosure of evidence or documents submitted to a committee, of documents prepared by a committee, or of deliberations of a committee, without the approval of the committee or of the Senate, may be treated by the Senate as a contempt.
- (2) The Senate reaffirms its resolution of 20 June 1996, relating to procedures to be followed by committees in cases of unauthorised disclosure of committee proceedings.
- (3) The Senate provides the following guidelines to be observed by committees in applying that resolution, and declares that the Senate will observe the guidelines in determining whether to refer a matter to the Committee of Privileges:
 1. Unless there are particular circumstances involving actual or potential substantial interference with the work of a committee or of the Senate, the following kinds of unauthorised disclosure should not be raised as matters of privilege:
 - (a) disclosure of a committee report in the time between the substantial conclusion of the committee's deliberations on the report and its presentation to the Senate;
 - (b) disclosure of other documents prepared by a committee and not published by the committee, where the committee would have published them, or could appropriately have published them, in any event, or where they contain only research or publicly-available material, or where their disclosure is otherwise inconsequential;
 - (c) disclosure of documents and evidence submitted to a committee and not published by the committee, where the committee would have published them, or could appropriately have published them, in any event;
 - (d) disclosure of private deliberations of a committee where the freedom of the committee to deliberate is unlikely to be significantly affected.
 2. The following kinds of unauthorised disclosure are those for which the contempt jurisdiction of the Senate should primarily be reserved, and which should therefore be raised as matters of privilege:
 - (a) disclosure of documents or evidence submitted to a committee where the committee has deliberately decided to treat the documents or evidence as in camera material, for the protection of witnesses or others, or because disclosure would otherwise be harmful to the public interest;
 - (b) disclosure of documents prepared by a committee where that involves disclosure of material of the kind specified in paragraph (a);

- (c) disclosure of private deliberations of a committee where that involves disclosure of that kind of material, or significantly impedes the committee's freedom to deliberate.
 - 3. An unauthorised disclosure not falling into the categories in guidelines 1 and 2 should not be raised as a matter of privilege unless it involves actual or potential substantial interference with the work of a committee or of the Senate.
 - 4. When considering any unauthorised disclosure of material in the possession of a committee, the committee should consider whether there was any substantive reason for not publishing that material.
- (4) Before deciding to raise a matter of privilege involving possible unauthorised disclosure of committee proceedings, any committee may seek the guidance of the Committee of Privileges as to whether a matter should be pursued. If the committee decides that such a matter should be raised, it must consult with the Committee of Privileges before taking the matter further.
- (5) When applying this resolution a committee shall have regard to the matters set out in paragraphs 3.43 to 3.59 of the 122nd Report of the Committee of Privileges, June 2005.