

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

COMMITTEE OF PRIVILEGES

**AUSTRALIAN PRESS COUNCIL AND
COMMITTEE OF PRIVILEGES**

EXCHANGE OF CORRESPONDENCE

113TH REPORT

JUNE 2003

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MEMBERSHIP OF THE COMMITTEE

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**AUSTRALIAN PRESS COUNCIL AND
COMMITTEE OF PRIVILEGES**

EXCHANGE OF CORRESPONDENCE

113TH REPORT

1. On 6 February 2003, the Committee of Privileges tabled a report entitled *Unauthorised disclosure of draft report of Environment, Communications, Information Technology and the Arts Legislation Committee*. On 3 March, the committee sent a copy of the report to, among others, the editors and publishers of the major media outlets in Australia, and every Press Gallery journalist.

2. On 14 March 2003, the Australian Press Council initiated correspondence with the committee, which appeared to be based on media descriptions of the committee's report. An exchange of correspondence then ensued, which the committee now tables as Appendix A to this report, together with extracts from the Australian Press Council's current website giving a brief description of the Council, and its membership as at May 2003.

Robert Ray
Chair

APPENDIX A



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Internet: <http://www.presscouncil.org.au>

Chairman
Professor Ken McKinnon

Executive Secretary
Jack R. Herman

14 March 2003

Senator Robert Ray
Chair
Senate Privileges Committee
Parliament House
Canberra ACT 2600

Dear Senator Ray,

The Council is alarmed at the proposals made in the report from the Senate Privileges Committee on the Age's early publication of material from a Senate Committee report.

In particular, the Council is alarmed by the proposal that early publication of reports be, *ipso facto*, a contempt of the Parliament. You are quoted as saying that this is to stop newspapers claiming that a premature publication did not materially affect the committee.

As you are well aware, many leaks in cases of premature release of committee material are from politicians. Yet the proposal would punish as a matter of course the journalist (and possibly the editor and publisher). The proposal is basically hypocritical in seeking to punish the messenger and not the perpetrator of the 'leak'. Imagine what would happen to government in Australia if you extended your proposed approach to reporting the news to the whole of the workings of parliament!

In the Council's view, your proposal is an unacceptable and completely unnecessary restriction on press freedom. There is a public interest in the full disclosure of information on matters affecting the political process, and the High Court has unanimously recognised an implied freedom of communications on political matters in the Constitution. Your proposal would have a chilling effect on such discussions, particularly in cases where a government may be deliberately 'sitting on' a committee report.

The proposal is unjust as it removes any burden of proof on the Senate and exposes journalists, editors and proprietors to punishment in cases where the offence is

inadvertent or where there may be a strong public interest justification for the release of the material. That justification may include exposure of corruption or illegality which the Parliamentary committee may be reluctant to see in print.

The Press Council calls upon your committee not to proceed with this further erosion of the limited freedom of speech and of the press available within the confines of Parliamentary reporting.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Ken McKinnon". The signature is written in a cursive style with a large initial "K" and a long, sweeping underline.

Ken McKinnon
Chairman

cc. The Speaker of the House of Representatives and The President of the Senate



AUSTRALIAN SENATE
CANBERRA ACT

COMMITTEE OF PRIVILEGES

5462

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27 March 2003

Professor Ken McKinnon
Chairman
Australian Press Council
Suite 303
149 Castlereagh Street
SYDNEY NSW 2000

Dear Professor McKinnon

I refer to your letter of 14 March 2003, on behalf of the Australian Press Council, concerning the 112th report of the Committee of Privileges. The committee considered the letter at its meeting this morning.

Having examined the content of your letter, the committee finds it difficult to believe that the council has actually read the 112th report, much less other reports quoted at paragraphs 1.27 and 1.28 of the report. Perhaps the council has relied on recent inaccurate and self-serving reports and comments of the media which the council purports to monitor.

To take your points in turn:

- There are no proposals at present that 'early publication of reports be, *ipso facto*, a contempt of the Parliament'. Even though the committee, like all parliamentary privileges committees, is already empowered to treat any premature disclosure and publication of committee reports as a strict liability offence, the 112th report clearly indicates that the committee has not reached any conclusion on the matter.
- The Committee of Privileges has long acknowledged that politicians are the most likely source of leaks. As the proceedings relating to the 112th report demonstrate, the committee has consistently attempted to find and punish unauthorised disclosers of parliamentary committee reports and proceedings. It has been thwarted in this aim not least by the refusal of journalists to divulge their sources, on 'ethical' grounds.
- Until the publication of the 74th report, the committee took the view that it should not punish publishers of improperly-obtained material on the very basis that you suggest: that it should not recommend punishment of the publisher unless it could punish the discloser. However, as thieves require a 'fence' for their stolen goods, so too do

leakers require an outlet for their improperly-obtained information. The media are no more exempt from punishment than are receivers of stolen goods, even if the thieves are never caught.

- The committee notes your confusion between 'government' and each house of the parliament: governments cannot suppress Senate committee reports.
- The High Court has not said that the inherent freedom of political communication allows the publication of confidential court documents without conviction for contempt of court.
- The matter has nothing whatsoever to do with the burden of proof.

In the light of the serious defects of understanding indicated by your letter, the committee thought it might be useful to make available to the council the source material on which media reports, comments and editorials were based. It therefore encloses the 112th report and the other reports referred to above, together with its most recent general report which explains its operations.

The committee welcomes and encourages discussion on issues raised in its reports. It expects, however, that participants should be well informed before entering into debate. The committee trusts that the enclosed reports will assist you to provide a more detailed and thoughtful contribution to its deliberations on this important matter.

Yours sincerely



Senator Robert Ray
Chair



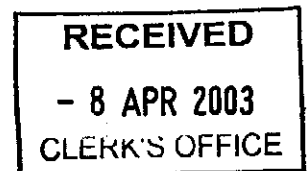
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Chairman
Professor Ken McKinnon

Executive Secretary
Jack R. Herman

28 March 2003

Senator Robert Ray
Chair
Senate Privileges Committee
Parliament House
Canberra Act 2600



Dear Senator Ray,

The Council has received your letter of 27 March and the attached reports.

Thank you for your prompt response which I passed along to Professor Ken McKinnon for his information and action.

I am sure that the Council will study the committee's recommendations and note how they differ from the reports of them and the reports of your comments on them (for example in The Age of 7 February). In the absence of a complaint from you about inaccuracy, the Council assumed that the newspaper had accurately reported you.

I will advise you in due course of any further submissions the Council would seek to make.

Yours sincerely,

JR Jack R Herman
Executive Secretary



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Chairman
Professor Ken McKinnon

Executive Secretary
Jack R. Herman

9 May 2003



Senator Robert Ray
Chairman, Committee of Privileges
Australian Senate
Parliament House
CANBERRA ACT 2600

Dear Senator Ray,

Thank you for the Committee of Privileges Reports Nos 74, 99, 100 and 107 enclosed with your dismissive response to the Council's letter of 14 March 2003 concerning the 112th report. While the Council's response will not be as rude as yours it does have to be direct.

The Committee is very willing to be judgemental about the press while being unwilling to analyse its own failings or to take a modern view of privilege. The perennial question, *Quis custodiet custodians?* is as apt in relation to this issue as it has been for two thousand years.

For instance, it is clear from Report 107 that the Committee of Privileges has built up its work-load assiduously, moving from 17 cases in the sixty five years 1901 to 1965 to 96 cases between 1981 and August 2002 (p 27). Is it that people have become more disrespectful of the pomp and circumstance of the Senate? Or is it that Senators and Senate Committees are simply using the Act and the Committee in the same way as they use the media, as a political tool? Although the Resolutions of the Senate (3(a), p 89) bid the Committee not to consider trivial matters, it is obvious that when a Senator's pride is at stake hardly any matters are trivial. In an age of greater information flows might more robustness be considered? It would not go amiss for the Committee to review more critically its own processes.

Turning to the 112th report on media ownership, it is reported that members of the relevant Committee swore that none of them leaked information and that none of the staff could have. But leak it did so one or more Senators is a liar. Your report recognises this, but again, as in the past, cannot find the culprit. In lieu the Committee takes the easy course of shooting the messenger, the press, rather than finding ways of disciplining Senators or finding ways of discovering and closing the source of the leaks. As the Australian said (Report 99 of August 2001, p7)

In relation to leaks that do occur, the media and the public will know that the Parliament is committed to the integrity of its processes when it begins regularly to deploy the sophisticated documentation examination techniques now available for determining whether a copy has been made of an original to identify and deal with members who act in disregard of the terms of confidentiality of documents supplied to them as committee members.

Has the Committee considered adopting powers to check the hard drives and telephone records (including mobiles) of Committee members and staff when there has been a leak? Has it considered the same kind of courses for Senators that it urges on Heads of Commonwealth departments and authorities and on editors and journalists? Perhaps courses in moral rectitude could be considered?

All parliamentarians, without exception use the press to their own ends. Skill in the exploitation or even manipulation of the media is a fundamental tool of the modern parliamentarian. Can any member of the Senate, particularly anyone who is or has been a Minister, put hand on heart and truthfully declare that he/she has never inappropriately leaked information?

For instance, you can hardly say that the Committee has achieved a stated primary purpose, that is, to protect *in camera* evidence. It leaks profusely and the press most often does little more than report what has been common knowledge for some time around Parliament House.

Does anybody still believe that the government of the day does not selectively leak ahead of official announcements at press conferences, nor put 'spin' on the news, nor tell part truths? Does that constant flow of unauthorised information interfere with the integrity of parliament? On the contrary it might well be argued that in the modern world it is the press that gives parliament and its committees (of both houses) their standing.

Could a modern Government govern successfully if unable to condition the public through selective leaks? Leaking is endemic and it is the members of parliament that do it. Given modern devices it is something that the Committee of Privileges will never be able to control. It might be more productive to work more openly.

The press in pursuit of its role to inform cannot ignore information. Newspapers have a duty to the public to publish information that becomes available to it. As the Australian is reported as saying in Report No 99 (p 7);

A free press in a democracy cannot resolve such conflicts simply by closing its eyes to material which is available to it on topics which are of clear public importance and active public debate.

Members of the Committee surely do not envisage a world in which it is the duty of press organisations to ignore received information until they are scooped or until there has been an official release. That happens only in countries where there is authoritarian control of the press and other aspects of life.

In the matter reported in the 112th report it is anything but self-evident that publication affected the 'integrity' of the Committee's work however much it might have offended the Chairman. Integrity must not be equated with the feelings of a Chairman.

The statement you are quoted as making in delivering the 112th report, to the effect that from now on early publication will be treated as *a priori* contempt of parliament, together with the intention (p 14) to send a copy of the report to editors and publishers of major media organisations and every Press Gallery journalist, properly raises Press Council concerns. While the Council agrees that the Committee of Privilege has been sparing in its reprimands these are obviously intended as 'warning off the course' statements. For the Committee to assuage its frustration by making a scapegoat of the press is to focus on the hole not the donut.

It would be hypocrisy if not humbug for the Committee to carry out its stated intent of *a priori* holding the press in contempt when there has been a leak. The considerable powers of the Committee conferred by the Act cannot reasonably be invoked on the premise that 'you were warned'.

We agree, however, that editors should be sufficiently aware of the absurdities of the way the privileges game may be played that we should send copies of this correspondence for their edification.

A free press, while arguably not quite as important as parliament, is as fundamental to the wellbeing of Australian democracy.

Yours sincerely,

A handwritten signature in black ink that reads "Ken McKinnon". The signature is written in a cursive, slightly slanted style.

Ken McKinnon



THE SENATE
CANBERRA ACT 2600

5738

19 June 2003

Professor Ken McKinnon
Chairman
Australian Press Council
Suite 303
149 Castlereagh Street
SYDNEY NSW 2000

Dear Mr Chairman

I refer to your letter of 9 May 2003, and to the acknowledgement of 28 March, signed on behalf of the Executive Secretary, of my earlier letter. The committee responds as follows:

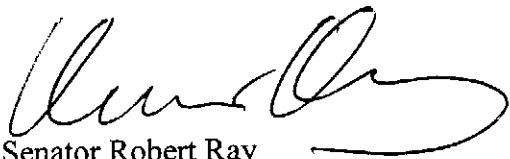
- Your summary of page 27 of the 107th report is inaccurate. Paragraph 4.1 states that the committee made 10 (not 17) **reports** (emphasis added) between 1966 and 1987 (not 1981). A further 96 **reports** were tabled between 1988 and August 2002. The paragraph points out that of these 96 reports 38 reports, or 42 per cent, related to right-of-reply matters. This involves the right of persons mentioned adversely in the Senate to make a response to matters raised by senators. The committee has since tabled a further four right-of-reply reports (108th to 111th); the 112th report is the committee's most recent.
- Very few of the reports of the Committee of Privileges are self-generated: all right-of-reply matters are referred to the committee by the President of the Senate, while matters of possible contempt are referred by the Senate following their being raised by senators, in an individual capacity or as a chair or member of a parliamentary committee. The method of raising a matter of privilege is set out in Privilege Resolution 7.
- As not only the 112th, but also the 99th, report of the committee make absolutely clear, and as the committee acknowledged in its last letter to you, members of the committee, and other senators, are honest enough to recognise that a deliberate leaker is almost invariably a member of the relevant committee. But, as the Committee of Privileges also pointed out in that letter, there would be no 'market' for the material if the journalists and their publishers were not willing recipients of stolen goods.
- Although the committee already has powers to check hard drives and telephone records (including mobiles) of other committee members and staff when there has been a leak, it has always worked from the papers provided by persons raising a

possible matter of contempt, together with both written and oral evidence from all parties. An alternative, and simpler, option open to the committee would be to summon the relevant journalist and demand that the journalist divulge that information – a course that the committee has previously resisted. The committee recognises the journalists' Code of Conduct, even if journalists do not similarly recognise what is, in effect, the Senate's code of conduct.

- In any case, it is a rash assumption that recourse to technology would necessarily involve the committee's finding the culprit. For example, as paragraph 1.10 of the 112th report makes clear, 'at no time did The Age journalist view or possess a copy of the report before it was tabled in parliament', and the journalist herself advised that 'information about its principal recommendations was conveyed to me verbally'.
- The committee is not aware of any unauthorised disclosure of *in camera* evidence given to a parliamentary committee since its 99th report was published in June 2000.

The committee agrees with your suggestion that the correspondence be disseminated. It therefore proposes to table the series of letters before the Senate is scheduled to rise on 27 June, and assumes that you will make arrangements, as set out in your letter, to 'send copies [to editors] for their edification'.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Robert Ray', with a long, sweeping underline that extends to the right.

Senator Robert Ray
Chair



Australian Press Council

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About the Council and its Website.

The Australian Press Council is the self-regulatory body of the print media. It was established in 1976 with two main aims: to help preserve the traditional freedom of the press within Australia and ensure that the free press acts responsibly and ethically.

To carry out its latter function, it serves as a forum to which anyone may take a complaint concerning the press.

In its attempts to preserve the freedom of the press, it keeps a watching brief on developments which might impinge on such freedoms.

The Council is funded by the newspaper and magazine industries, and its authority rests on the willingness of publishers and editors to respect the Council's views, to adhere voluntarily to ethical standards and to admit mistakes publicly.

The Council consists of 21 members, representing the publishers, journalists and members of the public, and is chaired by an independent Chairman. It meets monthly, usually in Sydney, where it maintains a small office, headed by the Executive Secretary.

The Council can amend its own Constitution, with the approval of the constituent bodies. It has wide powers to determine and vary its internal structures and procedures.

Any information on the Council not available from this website can be obtained from the Press Council office by phone, fax, mail or email.

Charter for a free press

The Council has developed a Charter which will form the basis of its activities in defence of free speech and press freedom.

Public Member vacancies

Nominations for the NSW/ACT vacancy and for the WA vacancy have closed. New vacancies will be announced here from time to time.

Contacting Us

Address inquiries and complaints to:

Executive Secretary
Australian Press Council
303/149 Castlereagh St
Sydney NSW 2000
Phone: (02) 9261 1930 or
(1800) 02 5712
Fax: (02) 9267 6826

E-Mail:
info@presscouncil.org.au



Australian Press Council

Press Council Members

Public Member vacancies

The current Council has 21 members, one of whom is the Chairman, from 1 December 2000, Professor Ken McKinnon. Public, journalist and editor members are appointed by the Council on the nomination of the Chairman. There is a panel of ten public members (seven of whom attend each meeting), including Lange Powell, the Vice Chairman. There are two journalist members and one editor member (from a panel). The ten members nominated by metropolitan, suburban, regional and country publishing groups and AAP Information Services represent the industry and most have alternates who act in their absence.

Nominations for the NSW/ACT vacancy and for the WA vacancy have closed. New vacancies will be announced here from time to time.

The Council seeks to ensure that its membership covers a wide range of qualifications, experience, community interests and regional representation. Public members are selected having regard to personal qualities, including community involvement, as well as the need for gender, ethnic and regional balance. Members are expected to act and vote as individuals, not as representatives of the bodies that nominated them. There is a procedure whereby members declare any direct or indirect interest in complaints before it. Members who declare such an interest leave the meeting when they have been directly involved in the processing of a complaint. In any case, members with a declared interest take no part in the debate nor do they vote on it.

Current Members and Alternates

A [list of the current members and alternates](#) follows. Biographies of the members are contained in separate pages. There are three such pages:

1. [Chairman and Public members](#)
2. [Industry members and their alternates](#)
3. [Journalist and Editor members and their alternates](#)

A [list of the Chairmen, Vice Chairmen and Executive Secretaries](#) since the foundation of the Council is contained in the history of the Council.

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Industry Members
Journalist Members
Office Staff

The APC office is in Sydney, but the Council, Complaints Committee often meets in other centres.

Members - May 2003

Chairman

Professor Ken McKinnon

Industry Members

Member	Constituent Body	Alternate
<u>Warren Beeby</u>	News Ltd	Sharon Hill
<u>Tom Burton</u>	John Fairfax Group	<u>Gerard Noonan</u>
<u>Alan Deans</u>	Australian Consolidated Press	<u>Pam Walkley</u>
<u>David Elias</u>	The Age	<u>Russell Skelton</u>
<u>Chris McLeod</u>	Herald & Weekly Times Ltd	<u>Rex Jory</u>
<u>John Radovan</u>	Australian Associated Press	<u>Phillip Dickson</u>
<u>Brian Rogers</u>	WA Newspapers	<u>Karen Brown</u>
<u>David Sommerlad</u>	Country Press Australia	<u>John Dunnet</u>
<u>Gene Swinstead</u>	Community Newspapers of Australia (formerly ASNA)	<u>John Booth</u>
<u>Lloyd Whish-Wilson</u>	Regional Dailies	<i>vacancy</i>

Panel of Public Members

(seven members of the panel attend each meeting.)

<u>Lange Powell (Vice-Chairman)</u>	<u>Kevin McCreanor</u>
<u>Helen Edwards</u>	<u>Natascha McNamara</u>
<u>Jack Ensor</u>	<u>Wendy Mead</u>
<u>Caroline Gale</u>	<u>Katherine Sampson</u>
<u>Prof Hoong Phun Lee</u>	<i>vacancy - NSW/ACT</i>

Journalist Members

Helen Elliott
Sandra Symons

Panel of Alternates

vacancy
Ken Randall

Editorial Panel (one member of the panel attends each meeting)

Gary Evans
John Morgan

Executive Secretary (non voting)

Jack R Herman

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