

The Senate

Committee of Privileges

Possible unauthorised disclosure of private
deliberations or draft report of Select Committee
on the Free Trade Agreement between Australia
and the United States of America

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POSSIBLE UNAUTHORISED DISCLOSURE OF PRIVATE DELIBERATIONS OR DRAFT REPORT OF SELECT COMMITTEE ON THE FREE TRADE AGREEMENT BETWEEN AUSTRALIA AND THE UNITED STATES OF AMERICA

Introduction

1.1 On 5 August 2004, on the motion of Senator Ridgeway, the Senate referred the following matter to the Committee of Privileges for inquiry and report:

Whether there was any unauthorised disclosure of the private deliberations or the draft report of the Select Committee on the Free Trade Agreement between Australia and the United States of America, and, if so, whether any contempt was committed in that regard.¹

Background

1.2 On Friday evening, 30 July 2004, the Select Committee on the Free Trade Agreement between Australia and the United States of America (the FTA Committee) held a meeting by telephone. The following day various press articles appeared, purporting to give reports of the discussion at the meeting and the content of the draft report.

1.3 At a press conference on 2 August 2004, the Labor Party members of the FTA Committee – the Chair, Senator Cook, who participated via teleconference, Senator O'Brien and Senator Conroy – disclosed their recommendations in relation to the provisions of the legislation which was before the committee, and released a document setting out those recommendations.

1.4 Senator Ridgeway, a member of the committee, wrote to the President of the Senate on 3 August 2004,² advising that the disclosure of the private discussions, the draft report and the Labor senators' recommendations had not been authorised by the committee.

1.5 On 4 August 2004, the President made a statement relating to the matter raised by Senator Ridgeway.³ The President indicated that the appropriate course normally would be for the FTA Committee to investigate unauthorised disclosures in

1 Appendix, p. 12.

2 Appendix, pp. 13-14.

3 Appendix, p. 11.

accordance with the order of the Senate of 20 June 1996. The President reminded the Senate, however, that the committee would cease to exist when it presented its final report to the Senate, and that there would therefore not be an opportunity for that committee to investigate the unauthorised disclosures. The President, pursuant to the procedures provided by standing order 81 and resolutions of the Senate of 25 February 1988, determined that the matter may have precedence. As indicated, the matter was referred to the Committee of Privileges on 5 August.

Conduct of inquiry

1.6 For reasons stated at paragraph 1.5, the Committee of Privileges was not assisted in this case by efforts of the FTA Committee to find for itself the culprit or culprits in relation to the leaking of supposed private proceedings of that committee. Nor did it have the advantage, at the time of receipt of the reference, of that committee's evaluation of whether the leaking and public circulation of committee proceedings constituted substantial interference with the work of the FTA Committee. This is because of the rule that the moment a select committee reports to the Senate it goes out of existence, and there was no time before the report's tabling for the FTA Committee to undergo the normal procedures, which might have obviated the need for the Privileges Committee's inquiry.

1.7 However, in accordance with its own normal procedures, the Committee of Privileges wrote to all members and the secretary of the FTA Committee at the relevant time.⁴ All members of the FTA Committee, with the exception of Senator Cook who was on sick leave, and Senator Ridgeway, responded to the committee's invitation of 5 August to comment on the issues arising from the reference to the committee.⁵

1.8 In addition, all members of the Committee of Privileges had the opportunity to view a videotape of the proceedings of a press conference held by the three Labor members of the FTA Committee at which the possible unauthorised disclosure of content of the draft report was alleged by Senator Ridgeway to have occurred.

Responses by FTA Committee members to Committee of Privileges questions

1.9 All members of the FTA Committee denied any knowledge of the unauthorised disclosures of proceedings and the draft report which appeared in the media on the 31 July-1 August 2004 weekend. Self-evidently, the possible unauthorised disclosure on 2 August involved the three Labor FTA Committee members. Those members who addressed the Privileges Committee's question whether the disclosure amounted to an act tending substantially to interfere with, or actually interfered with, the work of the FTA Committee answered "no". The

4 Appendix, pp. 37-38.

5 Appendix, pp. 39-42; 48-61.

secretary to the FTA Committee gave details of the processing of the report and confirmed that neither he, nor any member of the secretariat, disclosed an account of the private deliberations nor had any knowledge or evidence of who might have done so.⁶

1.10 The Committee of Privileges was surprised that Senator Ridgeway did not respond in writing to its invitation. However, Senator Ridgeway orally advised that he considered that his letter to the President, initiating the inquiry sufficiently covered his concerns and that he had nothing further to contribute. Because Senator Cook was ill, the committee did not pursue the matter further with him. All relevant documentation is included as an appendix to this report.

Analysis of responses

1.11 The Committee of Privileges has been ordered by the Senate, under the terms of reference of 5 August 2004, to consider three separate acts of unauthorised disclosure:

- Content of the FTA Committee's draft report
- Content of Labor senators' comments on the draft report
- Purported disclosure of deliberative proceedings of a committee

Possible unauthorised disclosures

1.12 As the press reports and the Labor senators' comments, attached to Senator Ridgeway's letter to the President, clearly illustrate, there is no doubt that unauthorised disclosure of the report's contents occurred. In addition to asserting that news reports over the weekend of 31 July-1 August indicated that the FTA Committee's report had been divulged without authority, Senator Ridgeway drew attention specifically to examples from the Labor senators' document circulated on 2 August which were direct responses to the draft report, thereby in themselves divulging both the content of the draft report, as finally tabled, and the additional comments that were attached to the report.

1.13 In his response, Senator Brandis stated:

In relation to the alleged disclosure of sections of the Draft Report, I would point out that the document which was produced by Senators Cook, Conroy and O'Brien at their press conference shortly before the private meeting of the Committee on the afternoon of Monday 1 [sic] August was not a section of the draft report, merely the Labor Senators' additional remarks. I would not have thought it a breach of privilege for a member of a Senate Committee (either alone or expressing a corporate view with party colleagues) to announce that view in advance of the Committee's report

6 Appendix, pp. 43-47.

being tabled, even if they were to do so in the very words which they subsequently included as additional remarks in the Committee's report.⁷

1.14 Senator O'Brien supported this view:

The document circulated by Labor Senators had no status beyond that of a statement representing our views on the FTA. The document was not prepared by the committee. It had not been submitted to the committee by Labor Senators. It had not been subject to consideration by the committee. It did not constitute a draft report of the committee or part thereof.

Reference in the document highlighted by Senator Aden Ridgeway in his letter to the President of 3 August, and claimed by Senator Ridgeway to disclose details of the draft report, impart no information about its contents beyond confirming the draft report deals with the subject of the inquiry.⁸

1.15 Senator Conroy advised the committee that:

Prior to the press conference, a member of my staff rang the Clerk of the Senate, Mr Harry Evans, to discuss the disclosure of recommendations in relation to the FTA by Labor Party Senators.

Mr Evans advised that recommendations by the Labor Party Senators in relation to the FTA could be disclosed, although the Committee's draft report could not be disclosed.

Following this conversation, the statement of recommendations was distributed at the press conference.⁹

1.16 Senator Conroy continued:

Following the press conference, Mr Evans rang my office and said that the statement of recommendations which was released at the press conference also included references to the draft committee report. Mr Evans referred my staffer to five references, in the statement of recommendations, to the draft committee report.

Senator Ridgeway, in his letter dated 3 August 2004, refers to the statement of recommendations and raises the same five references to the draft committee report.¹⁰

1.17 Upon receipt of Senator Conroy's letter, the Committee of Privileges decided to seek comment from Mr Harry Evans, Clerk of the Senate. Mr Evans informed the committee that:

In the first conversation, the staff member rang me to inform me that the Labor Party senators were proposing to hold a press conference and release

7 Appendix, p. 39.

8 Appendix, p. 48.

9 Appendix, pp. 60-61.

10 Appendix, p. 61.

a document about their recommendations on the free trade agreement, and asked whether there would be any problem with this. I indicated that there would be a serious problem with the unauthorised disclosure of the report of the committee. I said that, if they insisted on holding the press conference and releasing the document, they should cast both the document and their statements at the press conference in the form of statements of the Labor senators' views and positions on the free trade agreement, and not refer to anything in the committee's report.

Following the press conference, I was shown a copy of the distributed document, and then rang the staff member to point out that the document had done the very thing which I warned against doing, namely, it referred to the content of the report of the committee. I pointed out specific instances where the document appeared to disclose material in the committee's report. I indicated that this could be raised as an unauthorised disclosure of the report.

Subsequently, when asked about the document and the press conference by other senators, I advised that they could constitute unauthorised disclosures.¹¹

Comment on possible unauthorised disclosures

1.18 It is significant that the three Labor Party senators who held the press conference did not pretend other than that they were appearing as members of the committee. The Chair, Senator Cook, who was unwell at the time, participated by teleconference; the other two senators participated in person. One journalist who attended the conference specifically asked whether a question of privilege might be involved, and the Labor Party senators went to considerable lengths to desist from referring to committee proceedings. Unfortunately, it is clear from the document handed out that not merely did they reveal their own views, as committee members, on the subject, but by releasing the recommendations they revealed both the structure and, in some cases, the content of the report.

1.19 Had they declared at the press conference that they were speaking as members of the Labor Party in developing policies, and had indicated certain of their thought processes – as indeed the Clerk of the Senate had suggested they do – there would have been no problem at all, and the comments of Senator Brandis and Senator O'Brien would have been valid. The problem lay not so much with the actual press conference – though, as indicated above, it was clear that they were appearing as the chair and members of the FTA Committee – but with the actual document that they circulated during those proceedings.

1.20 There is no doubt whatsoever that the document was, in the terms of section 16 of the *Parliamentary Privileges Act 1987*, a proceeding in Parliament, particularly as it directly referred to aspects of the draft report and the three Labor Party senators' proposed recommendations which formed an integral part of that

11 Appendix, pp. 62-63.

report as eventually published. Perhaps it would have been wise if the press conference had been conducted by one senator only, Senator Conroy, who at that time was the trade spokesperson and had a legitimate reason to put forward Labor Party views without reference to the committee at all.

Possible misrepresentation of private deliberations

1.21 The Committee of Privileges gained the impression that the three Labor Party committee members had been stampeded into revealing their views, notably as a result of the purported – and, accepting that the minutes of the committee proceedings, attached to this report,¹² were confirmed by the FTA Committee members,¹³ inaccurate – reports which were published in the media at the weekend. This aspect of the terms of reference, in the view of the Committee of Privileges, involved a far more serious offence than that committed by the Labor Party senators. Not merely did it purport to reveal the private deliberations of the committee but it misrepresented those deliberations – another contempt under paragraph 16 of Senate Privilege Resolution 6. This does not, however, exonerate the Labor Party senators concerned, despite their best efforts to comply with the rules of the Senate regarding unauthorised disclosure.

Possible substantial interference with work of FTA Committee

1.22 Having established that unauthorised disclosure and misrepresentation occurred, the Committee of Privileges directed itself to the question whether these improprieties actually substantially interfered with the work of the FTA Committee, or had a tendency to do so. What is clear to the Committee of Privileges is that the FTA Committee was already dysfunctional; it is hard to imagine that these latter activities caused it to be worse than it already was. For these reasons, the Committee of Privileges is prepared to accept the view of the members of the FTA Committee who addressed the question that none of the unauthorised disclosures had the effect of either actually substantially interfering, or having a tendency substantially to interfere, with the proceedings of the FTA Committee.

1.23 The committee gave consideration to going through the ritual of calling all members of the FTA Committee, and editors and publishers of the relevant media, to attend a public hearing. It decided, however, that given the nature of its conclusions such a course was not warranted. As the Senate is aware, the Committee of Privileges deals with most matters referred to it on the papers: only rarely does it consider that a public hearing is necessary or desirable. In the light of the above analysis, the Committee of Privileges regards it as counterproductive and unnecessary to pursue the matter further. Consequently it notes the denials of all concerned that they disclosed the private proceedings or draft report of the FTA Committee, as reported in the media during the weekend of 31 July-1 August 2004. Self-evidently, the Labor Party members of the FTA Committee did in fact divulge, on 2 August, aspects of the draft

12 Appendix, p. 45.

13 Appendix, p. 47.

report, including additional comments, of the committee. Again, the Committee of Privileges does not propose any further action against these members.

Conclusions

1.24 In respect of the three elements involved in the reference to the Committee of Privileges, outlined at paragraph 1.11, the Committee of Privileges has reached the following conclusions:

- (a) While unauthorised disclosure of the contents of the draft report of the FTA Committee occurred on the weekend of 31 July-1 August and again on 2 August 2004, no contempt should be found.
- (b) In relation to reports of purported private deliberations of the FTA Committee, on the evidence of the confirmed minutes of that committee there was no unauthorised disclosure as such: rather, the accounts given to media outlets were inaccurate, and were likely to have been designed to place pressure on certain committee members to reveal their intentions in relation to the committee report. While it is open to the Committee of Privileges to find that a contempt occurred, it has concluded that it should not do so.
- (c) Given the already dysfunctional nature of the FTA Committee, the unauthorised disclosures and misrepresentations did not result in any further substantial interference or tendency substantially to interfere with the working of that Committee.

Finding

1.25 Although all three matters referred to the Committee of Privileges involved deliberate unauthorised disclosure and misrepresentation of proceedings of the Select Committee on the Free Trade Agreement between Australia and the United States of America, in the light of the circumstances no contempt of the Senate should be found.

John Faulkner
Chair

APPENDIX

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<p>Tabled paper — Letter to Senator the Hon. Paul Calvert, President of the Senate, dated 3 August 2004, from Senator Aden Ridgeway</p> <p>Attachments:</p> <ul style="list-style-type: none"> • Extract from <i>The Canberra Times</i>, dated 31 July 2004 • Extract from <i>The Sydney Morning Herald</i>, dated 31 July 2004 • Extract from <i>The Financial Review</i>, dated 31 July 2004 • Extract from <i>The Age</i>, dated 31 July 2004 • Extract from <i>The Australian Financial Review</i>, dated 31 July 2004 • Extract from <i>The Weekend Australian</i>, 31 July 2004 • Recommendations of Labor Senators on the Senate Select Committee on the Free Trade Agreement between Australia and the United States of America 	<p>13-14</p> <p>15-16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22-36</p>
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<p>Letter, dated 20 August 2004, from Mr Brenton Holmes, Secretary, Select Committee on the Free Trade Agreement between Australia and the United States of America [as amended by committee]</p> <p>Attachments:</p> <ul style="list-style-type: none"> • Notes on events – Saturday, 31 July 2004 • Minutes of Private Meeting of the FTA Committee, 30 July 2004 • Minutes of Private Meeting of the FTA Committee, 2 August 2004 	<p>43</p> <p>44</p> <p>45</p> <p>46-47</p>

Letter, dated 30 August 2004, from Senator Kerry O'Brien Attachments:	48-49
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Wednesday, 4 August 2004

The **PRESIDENT** (Senator the Hon. Paul Calvert) took the chair at 9.30 a.m. and read prayers.

PRIVILEGE

The **PRESIDENT** (9.31 a.m.)—Senator Ridgeway, by letter dated 3 August 2004, has raised a matter of privilege under standing order 81. The matter concerns unauthorised disclosures of the deliberations and the draft report of the Senate Select Committee on the Free Trade Agreement between Australia and the United States of America. Senator Ridgeway has drawn attention to several press items which are unambiguous reports of proceedings of the committee at a private meeting by telephone on 30 July 2004, and, in one case, of the content of the committee's draft report. Senator Ridgeway has also drawn attention to a document distributed at a press conference on 2 August 2004, which appears to be part of a draft report of the committee and which also contains several unambiguous references to the content of other parts of the draft report of the committee. Senator Ridgeway, who is a member of the committee, states that, at the time of the appearance of the press items and of the press conference, the committee had not authorised any disclosure of its deliberations or of the content of its draft report.

Normally, the appropriate course would be for the committee to investigate these unauthorised disclosures under the Senate's resolution of 20 June 1996. The select committee, however, will cease to exist when it presents its final report in the Senate, which is expected within days. There will, therefore, not be an opportunity for the committee to investigate the unauthorised disclosures and formulate its conclusions in accordance with the Senate's resolution. The matter clearly meets the criteria which I am required to

consider under standing order 81. The appropriate course, therefore, is for me to determine that a motion to refer the matter to the Privileges Committee may have precedence under that standing order. I table the correspondence from Senator Ridgeway and attachments. Senator Ridgeway may now give notice of a motion to refer the matter to the Privileges Committee.

Senator RIDGEWAY (New South Wales) (9.33 a.m.)—I give notice that on the next day of sitting I shall move:

That the following matter be referred to the Committee of Privileges:

Having regard to the material provided to the President by Senator Ridgeway, whether there was any unauthorised disclosure of the private deliberations or the draft report of the Select Committee on the Free Trade Agreement between Australia and the United States of America, and, if so, whether any contempt was committed in that regard.

CHAMBER

2002-04

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

JOURNALS OF THE SENATE

No. 157

THURSDAY, 5 AUGUST 2004

7 PRIVILEGES—STANDING COMMITTEE—REFERENCE

Senator Ridgeway, pursuant to notice of motion not objected to as a formal motion, moved matter of privilege notice of motion no. 1—That the following matter be referred to the Committee of Privileges:

Having regard to the material provided to the President by Senator Ridgeway, whether there was any unauthorised disclosure of the private deliberations or the draft report of the Select Committee on the Free Trade Agreement between Australia and the United States of America, and, if so, whether any contempt was committed in that regard.

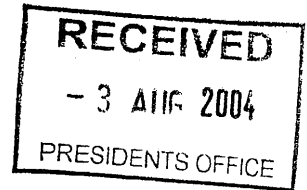
Question put and passed.



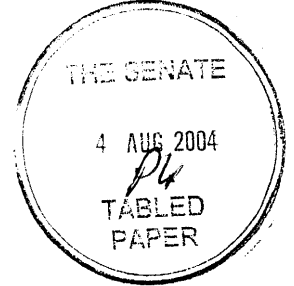
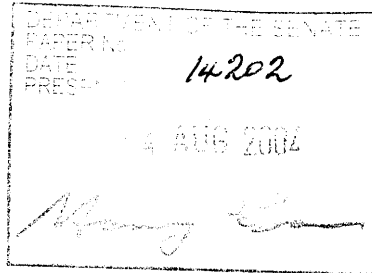
PARLIAMENT OF AUSTRALIA • THE SENATE

SENATOR ADEN RIDGEWAY

Australian Democrats Senator for New South Wales



Senator the Hon. Paul Calvert
President of the Senate
Parliament House
CANBERRA ACT 2600



Dear Mr President

Pursuant to standing order 81, I raise a matter of privilege. The matter relates to the unauthorised disclosure of the private deliberations and the draft report of the Select Committee on the Australia-US Free Trade Agreement.

Following a meeting by telephone of the committee on Friday, 30 July 2004, various press items appeared giving reports of the discussion at the meeting and of the content of the draft report. Attached is a selection of those press reports. There may be others.

The committee had not at that time authorised the publication of either its deliberations or any part of the draft report. It is therefore clear that there have been unauthorised disclosures of the committee's private deliberations and of the content of the draft report of the committee, contrary to the rules of the Senate, and, in particular, standing order 37 relating to the disclosure of committee documents.

At a press conference yesterday, Monday, 2 August 2004, the Labor members of the committee disclosed their recommendations in relation to the provisions of the legislation which was before the committee, and released a document setting out those recommendations. Attached is a copy of that document.

I appreciate that there is nothing to prevent senators who are members of a committee publicly expressing their views about matters which are before the committee and indicating the views which they hope to persuade the committee to adopt. The document in question, however, clearly contains their intended contribution to the draft report of the committee.

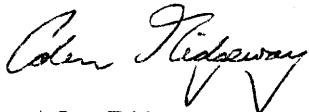
Moreover, in at least five places the document refers to the content of the remainder of the committee's draft report. I refer particularly to page 1, paragraph 6, last sentence; page 2, paragraphs 5 and 6, last sentence of each paragraph; page 3, paragraph 3, first sentence; page 4, paragraph 3, first sentence.

The committee had not at that time authorised any publication of the content of its draft report. The publication of this document by the senators at the press conference clearly constitutes unauthorised disclosures of the content of the draft report of the committee.

These unauthorised disclosures are blatant breaches of the confidentiality of the committee, contrary to the rules of the Senate.

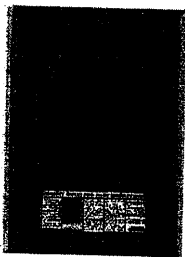
Accordingly, I ask that you give precedence to a motion to refer this matter to the Privileges Committee in accordance with standing order 81.

Yours sincerely

A handwritten signature in cursive script that reads "Aden Ridgeway".

Aden Ridgeway
SENATOR FOR NSW

3 August 2004



Inquiry farce: row over trade report

By Ross Peake
Political Correspondent

A telephone conference of a key Senate committee ended in disarray and farce last night after a shouting match over the US free-trade agreement.

Coalition members were stunned when the Labor chairman Peter Cook said he could not write a recommendation after the six-month inquiry because the Labor Caucus had not reached a position.

They said the Senate inquiry process had been reduced to a charade.

The telephone hook-up was organised to finalise the inquiry report before Parliament resumes next week.

Labor Leader Mark Latham has insisted he has to wait for the Senate inquiry's report before finalising his position.

When Senator Cook refused to write a firm recommendation — for or against the FTA — there was outrage from the three Coalition senators, George Brandis, Ron Boswell and Jeannie Ferris.

Senator Brandis called for a recommendation to be made by the committee but Labor's Kerry O'Brien successfully moved a procedural motion that Senator Brandis's motion "lay on the table".

The committee meeting ended in disarray but it is understood it will reconvene on Monday after the Labor Caucus holds its first meeting following the winter break.

It was expected the committee would give Mr Latham the green light to lock his

Caucus into supporting the trade deal with the United States.

The Canberra Times reported yesterday that the two key chapters in the draft report, dealing with subsidised medicine and intellectual property, had a benign tone.

Senator Cook is expected to be in hospital for surgery for an unspecified condition by the time the report is tabled in the Senate next week.

It is widely believed within

the Labor Party that Mr Latham will come down in favour of the FTA.

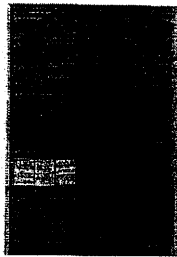
He has recently brought back to his front bench the former Labor leader Kim Beazley, who is a strong supporter

of the trade deal. Left members of the Labor Caucus are determined to oppose the FTA when it comes up for debate.

They concede they will have little chance of winning because Mr Latham is expected to lock the Opposition front bench into supporting the trade deal before he puts the issue to Caucus for a vote.

Left members hope to raise the issue at Monday's Caucus meeting to show Mr Latham the depth of antagonism in the party.

Continued on Page 2
Free for all on free-trade
Issue — Forum: Page B4



Continued from Page 1

They insist that despite the omens, ALP backing for the trade deal is not a "done deal" and point to the walkout when Mr Latham called on Labor MPs to vote for the agreement in the House of Representatives.

They believe Mr Latham will cover his support for the trade deal with a "rhetorical fig leaf" by expressing concerns about its benefits.

When he appeared on Thursday before the Australian Manufacturing Workers

Union — strident opponents of the deal — he said it had only mild economic benefits.

Prime Minister John Howard repeated his call for the ALP to support the trade deal. "He's got to call it for Australia, not for the Labor Party," he said.

Democrats trade spokesman Aden Ridgeway called on the ALP not to rush its decision.

"The Opposition has resisted Government pressure on other issues, such as the war on Iraq and their troops-home-by-Christmas policy, they cannot let the FTA be the one issue

that they cave in on," he said.

"The Government is manufacturing the urgency because they know that the longer they wait, the more facts about the inadequacy of this deal will emerge."

Greens Leader Bob Brown also called on Labor to hold firm.

Union and entertainment figures who oppose the deal have been joined by Labor's arts and information technology spokeswoman Kate Lundy, who has said it could threaten Australian culture.

Pressure mounts on Labor over trade deal

Louise Dodson
Chief Political Correspondent

The Senate committee report into the free trade agreement with the US answers many of the criticisms of the deal but has found its economic benefits to be exaggerated.

The Opposition Leader, Mark Latham, has said he will announce Labor's position on the agreement when the committee has formally reported its findings - expected to be next week.

Labor is set to support the trade deal, even though the union movement and sections of the party are strenuously opposed.

Most of the draft report has been circulated to the committee's members, although its recommendations have not. The committee is chaired by Labor's Senator Peter Cook.

The report lists the criticisms that have been made of the agreement and then answers them. The committee examined whether the agreement would increase prescription drug prices and undermine Australia's popular Pharmaceutical Benefits Scheme (PBS), which subsidises drugs.

The draft report notes concerns that the appeal mechanism put in the agreement at the behest of the big US drug companies would result in price rises. However, it answers the criticism noting that the appeal process does not provide for a price review.

It notes concerns that the deal would force Australia to adopt the intellectual property provisions that operate in the US - which are seen by some critics as a trade restriction - but also

notes views that this could strengthen Australia's intellectual property protection.

Unions and pensioners' groups are urging Labor not to bow to the Government over the deal.

The Combined Pensioners and Superannuants Association of NSW has followed the Australian Manufacturing Workers Union to call on Labor to oppose it.

"When will the ALP find a backbone and stand up for Australians, especially the most vulnerable who'll be affected by this deal?" the association's president, Morrie Mifsud, said.

"Labor must know that the [trade agreement] gives US pharmaceutical companies a chance to meddle with the PBS, which will make essential medicines even more expensive than now."

In a move which could affect Greens preferences to Labor - which could be vital in a close election - Bob Brown, of the Greens, has called on Labor MPs to lobby against the agreement.

Senator Brown said the deal would prevent the Australian Parliament having a say over local broadcast content.

"The Canadians haven't handed away their ability to legislate, to protect and increase this component of the arts industry from their very, very big neighbour with whom they share a land boundary. Why should we?" he said.

The Australian Democrats' Senator Aden Ridgeway - a member of the Senate committee examining the trade deal - lobbied the Labor Party to stand up to the Government on the issue.

New split on free-trade deal

Report Mark Davis
Political correspondent

The Senate committee examining the federal government's free-trade agreement with the US has split over whether to support the contentious deal, with Labor senators undecided on their position.

In a telephone hook-up on Friday, the two coalition senators on the seven-member committee moved that it recommend the Senate vote in favour of the FTA.

But the three Labor senators are understood to have indicated they were not in a position to decide on a final recommendation and combined with other non-government senators to defer a vote at least until Monday.

The committee split suggests Labor is still divided over its FTA stance and wants to thrash the issue out at its full party room meeting in Canberra on Monday before deciding on its next step.

As Labor's internal tensions

over the FTA continued to play out, there was speculation in Canberra that Prime Minister John Howard could call an election this weekend.

Mr Howard hosed down the rumours of a September 4 election, which had galvanised the Labor Party's campaign team, saying he would not be in a position to meet Governor-General Michael Jeffery this weekend.

The chairman of the Labor-dominated FTA committee, Peter Cook, had circulated the final two chapters of a draft report but did not include his suggested recommendation on whether the Senate should vote for or against the deal.

Labor remains divided over whether it should vote in favour of the government's legislation implementing the agreement when it goes before the Senate in the next fortnight.

Labor's Left MPs are virtually unanimous in opposing the agreement on the grounds that it

will cost jobs in manufacturing, could hurt Australia's pharmaceutical benefits scheme, changes intellectual property laws to bring them into line with US standards and will hamper the ability of future Australian governments to regulate for local content in areas like broadcasting and on the internet.

Some elements of Labor's Right faction are in favour of supporting the agreement, while the rest of the Right and the party's centre and non-aligned MPs are willing to join with these MPs if leader Mark Latham throws his weight behind the FTA.

Labor's campaign team went on election alert early on Friday after rumours emerged that Mr Howard would call an election for September 4, the weekend after the Olympic Games finish.

By convention the Prime Minister would have to meet the Governor-General to advise him to call an election.



Age

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Free trade report near completion

The Senate committee investigating the controversial Australia-US free trade agreement is expected to finalise its position on Monday night after its ailing chairman, Senator Peter Cook, told a phone hook-up yesterday he had not yet come to recommendations.

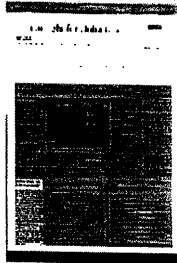
He circulated a draft which weighed the pros and cons but came to no conclusions. Senator Cook is due to have surgery next week.

At yesterday's phone hook-up Liberal deputy chairman George Brandis tried to have the committee endorse the FTA. But Labor deferred this motion until Monday.

The three Labor members of the committee will confer on Monday before Senator Cook, who will be on a phone from Perth, puts the recommendations to the other committee members.

Labor sources said the shadow cabinet and the caucus would not consider the Opposition's position until after the committee had finalised its report.

Michelle Grattan



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Labor agony on FTA continues

As the opposition was agonising on Friday over whether to support the federal government's free-trade agreement with the US, speculation that Prime Minister John Howard was about to call an election swept Canberra.

Mr Howard hosed down the rumours of a September 4 election, which had galvanised the Labor Party's campaign team, saying he would not be in a position to meet Governor-General Michael Jeffery this weekend.

Meanwhile, a Senate committee examining the free-trade agreement was debating its final report on Friday evening.

The chairman of the Labor-dominated committee, Peter Cook, had circulated the final two chapters of a draft report but did not include his suggested recommendation on whether the Senate should vote for or against the FTA when it goes before the Senate in the next fortnight.

Mark Davis



Senators stall on FTA decision

Steve Lewis
Sid Marris

LABOR senators on the crucial committee that will ordain the federal Opposition's position on the US free trade agreement last night refused to back a call to support the deal until getting directions from the ALP caucus on Monday.

In what one source described as a "farcical" telephone hook-up yesterday of members of the Senate committee, the final report was discussed without any recommendations being offered.

A government motion to recommend the deal be supported was put off until Monday when committee members talk again.

Despite Opposition Leader Mark Latham declaring Labor would have to wait until the outcome of the Senate committee report, it is understood the committee chairman senator Peter Cook, in charge of writing the document, said he would not offer draft recommendations until the Labor

caucus had debated the issue. The meeting was called after Senator Cook was struck down with a serious illness, which colleagues say is cancer.

Senator Cook will participate in another meeting of the committee on Monday, after the Labor caucus meeting by telephone.

The internal contortions by the Opposition over whether to support the legislation required to put the free trade deal in force came as the Labor Party went on "red alert" yesterday amid fevered speculation John Howard was poised to call an election. Opposition MPs were placed on notice to expect a September 4 poll, although this was later dismissed as a false alarm.

Adding to the speculation, the secretaries of the departments of Treasury and Finance yesterday released the guidelines for costing election policies.

Campaigning in Perth, the Prime Minister ruled out calling an election this weekend. Instead, he will celebrate his daughter Melanie's birthday on Sunday before travelling to Townsville on Monday to welcome home 400 Australian

troops from the Solomon Islands.

"I'm not in Canberra until Monday evening," Mr Howard said.

"We'll certainly be sitting the parliament next week."

The cross-party Senate committee into the FTA is scheduled to table its report in the Parliament on August 12 although the release date is now expected to be brought forward.

Mr Howard continued to urge Labor to back the FTA, as he revealed US President George W. Bush lobbied strongly on behalf of American drug firms for a more favourable final deal.

Labor MPs have raised significant concerns the trade deal will undermine the Pharmaceutical Benefits Scheme, which provides subsidised medicines.

"Now it is true that the Americans wanted more, it was the only specific issue that George Bush raised with me when he came to Australia in October ... right at the end of the discussions. Because we wouldn't agree to more, at one stage I thought the discussions might break down altogether," Mr Howard said.

Recommendations of Labor Senators on the Senate Select Committee on the Free Trade Agreement between Australia and the United States of America

On March 7 2001, in an appearance before the United States House of Representatives Ways and Means Committee, US Trade Representative Robert Zoellick told Congress that '...if we approach this [Free Trade Agreement with Australia], I want to make sure that it's done in a fashion that has bipartisan support in Australia.'

It is unfortunate that the Government did not listen to this advice. Instead the Government acted unilaterally and pursued a trade deal for political purposes, with an unrealistic negotiating time frame imposed by the US electoral cycle.

This was a deal which Deputy Prime Minister John Anderson said would be un-Australian if it did not include sugar¹. The Government repeatedly stated that the Pharmaceutical Benefits Scheme (PBS) was 'off the table'. However the Parliament was presented with a deal that did not include sugar and made some changes to the administration of the PBS, yet it was expected to provide immediate support.

In pressing for the passage through the Senate of legislation to implement the Australia-US Free Trade Agreement (AUSFTA) the Government is asking the Parliament, and thereby the people of Australia, to take an enormous amount on trust. There are some outstanding issues surrounding the Agreement that are simply not addressed by the implementing legislation, and set out hereunder is a number of recommendations that seek to address these many and varied shortcomings and unknowns.

It is recommended that the Senate pass the appropriate legislation that will give effect to the Australia-US Free Trade Agreement.

In choosing this path Labor Senators contend that there remain areas of concern which could largely have been avoided if proper process had been followed both in the initiation of the FTA proposal and in its subsequent negotiation and signing. This is elaborated briefly below, and in detail in the body of the report.



In turning to the merits of the Agreement, the Labor Senators note that Australia will enjoy enhanced access to US markets in a number of areas. There are many areas where both the Australian and US markets are already very open.

The gains in agriculture will assist Australia's primary industries sector, although it is universally acknowledged that there is disappointment over extended phasing out

1 Australian Financial Review, 24/1/2004, 'Sugar Doubts Could Kill Trade Talks'.

periods of tariffs, continued quotas, and let-out clauses which allow for the reimposition of tariffs in the event of strong competition (safeguards) with respect to some important Australian export commodities.

Investment, while already a fairly open market, is further encouraged by this Agreement, although it seems very unlikely that the gains will be anywhere near those that have been proclaimed on the basis of the Government's commissioned study by the Centre for International Economics (CIE). Both the US International Trade Commission and the Government's own impact analysis concur that the Agreement is not likely to produce a new wave of investment in Australia by American interests. It can only be hoped that the much-vaunted 'dynamic gains' actually emerge from the new trading environment – an aspect of econometric guesswork that does not have a track record.

Likewise, the burgeoning services area may enjoy greater opportunities for trade with America, notwithstanding some uncertainty about the willingness of many of the American states to sign on to enhanced access in the area of government procurement. Assistance needs to be put in place for Australian firms to take up the government procurement opportunities provided by the Agreement.

Unfortunately, the FTA has not delivered on the matter of mutual recognition of qualifications and the movement of business people between the two countries. This remains a key impediment to cross-border trade in services.

There have been several economic analyses of the costs and benefits of the AUSFTA, and these have produced wildly divergent assessments. Labor Senators are persuaded that the assessment of the Select Committee's consultant Dr Philippa Dee is the most judicious assessment. It concludes that the Agreement is likely to be beneficial overall, but only marginally so. Dr Dee's report, and the exchange of views that transpired in relation to it, are included in this report.

Notwithstanding the benefits outlined above, there remain a number of areas in the AUSFTA as it stands that require action to ameliorate many of the downsides or threats that flow from the Agreement. These risks are manifested most worryingly in the areas of health care, intellectual property, cultural protection and the impact of the Agreement on Australia's manufacturing sector. They are explored at length in the body of this report.

Again, the concerns that have arisen in relation to such crucial and complex areas as intellectual property would probably not have emerged if the Government, in its undue haste to secure an FTA with America, had not over-ridden the comprehensive review processes and recommendations that had been undertaken domestically to ensure a robust and fair intellectual property regime in Australia.

The question of due process remains one of the outstanding failures of the whole AUSFTA business. Instead of ensuring that the Agreement was initiated and negotiated on the basis of a thorough and independent assessment of what was in Australia's national interest – through the Productivity Commission, for example – the

Prime Minister launched an approach to the US government, and then committed Australian officials to an unprecedentedly short time frame in which to negotiate the most complex trade agreement Australia has ever pursued. It is no wonder that various assurances and commitments given by Government ministers at the outset were eroded as the US exerted its economic, political and negotiating muscle.

In eschewing due process, the Prime Minister failed to provide the leadership necessary to bring the Australian community along with him. The Select Committee has witnessed much public anger, anxiety and disappointment as it sought to provide at least some opportunity for Australians to have their say about an Agreement with potentially enormous consequences. Almost none of the detail about many aspects of the implementation of the Agreement has been made available. Legitimate concerns were either ignored or summarily dismissed as the Government simply proclaimed more fiercely the alleged benefits and waved about highly-contested econometric 'evidence' to support its claims.

There must be far greater involvement of the Parliament at every stage of the Agreement-making process, and sound proposals are set out in the Committee's report. The States and Territories – who will be significantly impacted upon by the Agreement – had an extremely limited role during negotiations, and none had the necessary information about what was in the deal to enable cabinet ministers to adequately assess the implications of the AUSFTA for their jurisdictions. The Treaties Council of Australian ministers did not even meet to consider the matter. This is a major procedural flaw.

Another major shortcoming is that the Government has not explained – if indeed it has any idea – how the AUSFTA fits into a broader strategy for promoting Australia's national interest through trade. The proliferation of preferential trade agreements involving several of Australia's trading partners throughout the Asia-Pacific risks the emergence of a 'spaghetti bowl' of deals, each with their own special arrangements, which can easily turn into a red-tape nightmare for Australian firms trying to do business in a variety of Asia Pacific Economic Cooperation (APEC) markets.

Moreover, the proliferation of these preferential agreements – although ostensibly promoted by the Government as encouraging 'competitive liberalisation' which sets benchmarks and aspirations for future World Trade Organisation (WTO) discussions – may well have precisely the opposite effect, sucking the oxygen out of multilateral trade negotiations when the multilateral process is universally acknowledged as the best way to liberalise global trade.

In short the Government has attempted to harass the Parliament and the Australian people into accepting an Agreement that has enormous implications for our national interests. The Americans quickly adopted the Agreement. This is no surprise – it clearly delivers Australian markets to high-tech, highly aggressive American firms seeking a big slice of the Australian economic action. Australians are clearly not so sure. It seems there will be an overall economic benefit, but Australia's national interest must always be considered in more than economic terms.

As long as many of the worst fears expressed by people coming before the Select Committee are not realised, the AUSFTA will deliver meaningful benefits. The recommendations made by the Labor Senators must be implemented in order to provide a robust grounding for the acceptance of the Agreement. A 'trust me' approach is inadequate when Australia's national interest is at stake. Only the actions recommended here can deliver to the Australian people the assurance that they both need and deserve.

Recommendation 1

Labor Senators recommend that the Senate agree to the Australia-US Free Trade Agreement Implementation Bill.

Chapter 2 – Process

The main body of this report raises a number of concerns regarding the process by which the Australia-US FTA was entered into. The following recommendations address these concerns.

Recommendation 2

That the Prime Minister order a review of the Treaties Council with particular consideration to ensuring that when international agreements are being negotiated there is:

- timely consultation with States and Territories regarding National Interest Analyses,
- a more systematic approach to consultation and consideration of when negotiations should be elevated to Ministerial level.

In addition, because of the significant increase in negotiation of bilateral agreements, the review should consider mechanisms to ensure that current legislation/regulation across all jurisdictions, conforms and continues to conform to treaties.

Recommendation 3

Labor Senators recommend that the Government introduce legislation to implement the following process for parliamentary scrutiny and endorsement of proposed trade treaties:

- A. Prior to making offers for further market liberalisation under any WTO Agreements, or commencing negotiations for bilateral or regional free trade agreements, the Government shall table in both Houses of Parliament a document setting out its priorities and objectives, including comprehensive information about the economic, regional, social, cultural, regulatory and environmental impacts which are expected to arise.

B. These documents shall be referred to the Joint Standing Committee on Foreign Affairs, Defence and Trade for examination by public hearing and report to the Parliament within 90 days.

C. Both Houses of Parliament will then consider the report of the Joint Standing Committee on Foreign Affairs, Defence and Trade, and then vote on whether to endorse the Government's proposal or not.

D. Once Parliament has endorsed the proposal, negotiations may begin.

E. Once the negotiation process is complete, the Government shall then table in Parliament a package including the proposed treaty together with any legislation required to implement the treaty domestically.

F. The treaty and the implementing legislation are then voted on as a package, in an 'up or down' vote, i.e. on the basis that the package is either accepted or rejected in its entirety.

G. The legislation should specify the form in which the Government should present its proposal to Parliament and require the proposal to set out clearly the objectives of the treaty and the proposed timeline for negotiations.

Recommendation 4

Labor Senators recommend that Australian governments – prior to embarking on the pursuit of any bilateral trading or investment agreement – request the Productivity Commission to examine and report upon the proposed agreement. Such a report should deliver a detailed econometric assessment of its impacts on Australia's economic well-being, identifying any structural or institutional adjustments that might be required by such an agreement, as well as an assessment of the social, regulatory, cultural and environmental impacts of the agreement. A clear summary of potential costs and benefits should be included in the advice.

Recommendation 5

Labor Senators recommend that all committees and working groups prescribed by and established under the AUSFTA report annually on their activities and outcomes. These reports should be tabled in the Parliament by the Minister for Trade within 15 sitting days of their receipt. Each report shall be accompanied by a statement from the Minister setting out the Government's views on the report received and drawing attention to any notable outcomes.

Chapter 3 – Intellectual Property

A major concern of Labor Senators is that Australia entered into the Intellectual Property (IP) obligations of the Agreement in a manner that cut across established processes for copyright law reform and which did not appear to be part of a strategic vision of intellectual property.

Labor Senators were also concerned that it was difficult to get a comprehensive explanation from Government officials on many of the implications of the FTA on Australia's IP regime.

These concerns and more specific issues raised in the main report are addressed by the following recommendations:

Recommendation 6

Labor Senators recommend that the Senate establish a Select Committee on Intellectual Property to comprehensively investigate and make recommendations for an appropriate IP regime for Australia in light of the significant changes required to Australian IP law by the AUSFTA.

Recommendation 7

Labor Senators recommend that the Commonwealth Government enshrine in the *Copyright Act 1968* the rights of universities, libraries, educational and research institutions to readily and cost effectively access material for academic, research and related purposes. Labor Senators further recommend that the issue of such use of copyright material should be referred to the Senate Select Committee on Intellectual Property to investigate whether universities, libraries, educational and research institutions should be exempt from paying royalties after 50 years.

Recommendation 8

Labor Senators recommend that the Senate Select Committee on Intellectual Property investigate options for possible amendments to the *Copyright Act 1968* to expand the fair dealing exceptions to more closely reflect the 'fair use' doctrine that exists in the United States and to address the anomalies of 'time shifting' and 'space shifting' in Australia.

Recommendation 9

Labor Senators recommend that the Senate Select Committee on IP review the standard of originality applied in Australia in relation to copyright material with a view to raising the threshold to a standard such as that in the United States.

Recommendation 10

Labor Senators recommend that the Senate Select Committee on Intellectual Property should investigate the possibility of establishing in Australia a similar regime to that set out in the *Public Domain Enhancement Bill 2004 (US)*, with a view to addressing some of the impacts of the extension of the term of copyright, in particular the problems relating to 'orphaned' works.

Recommendation 11

Labor Senators recommend that the Senate Select Committee on Intellectual Property investigate amendments to *Copyright Act 1968* to provide that a contract that purports to exclude or modify exceptions to copyright infringement such as fair dealing is not enforceable.

Recommendation 12

Labor Senators recommend that the Commonwealth Government use the two year implementation period applying to effective technological protection measures to ensure exceptions will be available to provide for fair dealing including temporary copies, research and study and the legitimate private use and application of all legally purchased or acquired audio, video, DVD and software items on components, equipment and hardware, regardless of the place of acquisition.

Recommendation 13

Labor Senators recommend that the Commonwealth Government use the two year implementation period applying to effective technological protection measures to ensure exceptions will be available to provide for the sale and distribution of legitimate audio, video, DVD and software items, as well as related components, equipment and hardware, regardless of the place of acquisition.

Recommendation 14

Labor Senators recommend that the Commonwealth Government ensure that specific exceptions will be available in the implementation of Australia's obligations in relation to Technological Protection Measures (TPMs) to provide for the manufacture of interoperable software products.

Recommendation 15

Labor Senators recommend that the Commonwealth Government implement Recommendations 15 and 16 of the Digital Agenda Review report prepared by Phillips Fox to ensure that temporary reproductions and caching are explicitly protected under Australian law.

Recommendation 16

Labor Senators recommend that any notice and take-down scheme introduced by regulations should balance the interests of copyright owners while appropriately protecting the personal information of Internet users. Regulations should ensure that carriage service providers are not required to disclose personal information about their customers unless compelled to do so by a court order.

Recommendation 17

Labor Senators recommend that the reasonable costs to internet service providers of complying with a notice and take-down procedure should be met by the issuer of the notice.

Recommendation 18

Labor Senators recognise that assessing whether a copyright infringement has occurred is a complex issue, appropriately determined by a court. Any notice and take-down scheme should not require a carriage service provider to assess whether a copyright infringement has occurred, or the relative seriousness of any infringement.

Chapter 4 – Pharmaceuticals**Recommendation 19**

Labor Senators support Joint Standing Committee on Treaties (JSCOT) recommendation 5 that any independent review must ensure the fundamental integrity of the PBS listing processes, should not consider information that was not before the Pharmaceutical Benefits Advisory Committee (PBAC) and should base its recommendation on the same criteria as PBAC. The submission of the pharmaceutical company to the independent review should be made public.

Recommendation 20

Labor Senators recommend that an evaluation of the review process should be carried out after 12 months of operation and every 12 months thereafter. As well as assessing the accountability, transparency and practicality of the review process, the evaluation should consider the impact of the review process on the rate at which new drugs are listed on the PBS or the prices at which they are listed. The outcomes of the review should be tabled in Parliament.

Recommendation 21

Labor Senators recommend that the ANAO or the Productivity Commission should be asked to carry out an independent audit of the PBS listing process after the additional transparency mechanisms are implemented. This audit should examine the cost and efficiency of the new procedures and whether they benefit the Government, consumers and pharmaceutical companies. It should assess whether the transparency requirements affect the process of negotiating pricing agreements with pharmaceutical companies.

Recommendation 22

The Government must ensure that increased information on PBS listing procedures is balanced. Where the Government provides more information on PBAC decision making processes, it must ensure it can disclose the clinical and economic data that

forms the basis of those decisions. There must be clear guidelines on determining what material is 'commercial-in-confidence' and this should be only material that is genuinely pertinent and sensitive to the business operations of a pharmaceutical company.

Recommendation 23

Labor Senators recommend that the Government should table in Parliament a statement of the terms of reference and schedule of meetings of the Medicines Working Group established under the Agreement as soon as they are determined. The Government should also be required to table an annual statement in Parliament on the operations of the Medicines Working Group. This statement should include details of each meeting, including: who attended, what topics were discussed, the outcomes of those discussions including any commitments made by Australia and what consultation took place with stakeholder groups before and after the meeting.

Recommendation 24

Labor Senators recommend that the Government monitor the impact of the new legislation on the rate at which generic drugs enter the market following expiration of a patent and consult with the generic pharmaceutical industry on the impact of the changes. An independent study of the entry of generic drugs to the market and the strategies of patent holders before and after the legislative changes should be undertaken and the results tabled in Parliament. If the new procedures are found to create incentives for 'evergreening' patents, the Government must amend the legislation so as to minimise the legal obstacles to putting generic drugs on the market once the original patent has expired, while ensuring the integrity of the patent system.

Recommendation 25

Labor Senators recommend the creation of an offence for the lodgement of a spurious patent claim that delays the entry of a generic drug onto the market. The validity of a patent claim would be determined by a court.

Recommendation 26

Labor Senators recommend that consistent with the terms of the Free Trade Agreement that the Commonwealth Government ensure that:

- Whenever possible all blood products to be used in the Australian medical system must be sourced from Australian blood plasma.
- That Australian blood plasma continue to be collected by voluntary donation.
- If plasma fractionation is to occur outside of Australia that Australian plasma should be processed on separate production lines.

- If plasma fractionation occurs outside of Australia then overseas suppliers must satisfy at least the same level of medical standards that apply to Australian suppliers.

Chapter 5 – Sanitary and Phytosanitary Measures

Recommendation 27

Labor Senators recommend that both the bilateral committees operate under a terms of reference that does not provide any avenue for influence on Australia's quarantine decision-making process.

Recommendation 28

Labor Senators recommend that a process to engage key industry and community stakeholders to participate in committee discussions be developed.

Recommendation 29

Labor Senators support the Joint Standing Committee on Treaties recommendation 8 for greater stakeholder consultation.

Recommendation 30

Labor Senators recommend that Australia's Quarantine Import Risk Assessment process be enshrined in regulation to insulate the process from external pressures.

Chapter 6 - Local Media Content

Recommendation 31

Labor Senators acknowledge the concern expressed by many witnesses on the 'ratchet' nature of Australia's commitments for local content. Labor Senators therefore recommend that Australia's local content requirements for free-to-air television, subscription television and radio be enshrined in legislation, so that reductions in these quotas require reference to the Parliament.

Recommendation 32

Labor Senators recognise that the Free Trade Agreement means that Australia's local content quotas cannot be increased above their current level except in limited circumstances. However they also recognise that over the longer term future technologies are likely to result in these quotas becoming an ineffective mechanism for encouraging the creation of local content. Labor Senators therefore recommend that the Government consider new or increased direct incentives to encourage local content production, but that local content requirements apply in emerging technological platforms, wherever possible.

Chapter 7 – Manufacturing

The Select Committee found that there is significant debate about the impact of certain provisions of the AUSFTA on Australian industry and that the Government has failed to adequately analyse the impact. As a result the Labor Senators have severe reservations that cannot be tested.

Recommendation 33

Labor Senators recommend that the Government refer the following to an independent commission of inquiry as a matter of priority.

The review should canvass but should not be limited to:

1. the effect of the Agreement on the manufacturing industry generally, and in particular the Textile Clothing and Footwear (TCF), chemicals, plastics, pharmaceuticals and automotive industries immediately and over the next 20 years. This would include the scale of the threat from imports, affect on employment, investment (capital and research and development), prices, exports, skill acquisition, knowledge transfers, brand recognition;
2. whether the agreement will lead to closer integration between US subsidiaries in Australia and their parent companies in the US, and the potential impact of this integration;
3. the means through which manufacturing, in particular the automotive and TCF sectors, can inoculate itself from these threats through both their own initiative and through assistance from Government;
4. the extent to which industry development measures will be necessary for manufacturing, in particular automotive and TCF manufacturing, and the components and cost of such a package;
5. the impact of the Agreement on manufacturing businesses in regional Australia;
6. the extent to which industry development measures will be needed for regional Australia, the components of these measures / packages, and the cost;
7. the impact of the Rules of Origins provisions on industry, the compliance costs, and whether there are opportunities to achieve greater uniformity through existing agreements; and
8. legislative changes required to facilitate industry development; and
9. the impact on Australian industry of the government procurement provisions on Commonwealth, State and Territory government purchasing policies, and regional Australia.

Recommendation 34

Given a possible negative impact of the agreement on the Automotive Components Sector, Labor Senators recommend that the Government develop as a matter of urgency an Industry Development Plan to assist the sector meet future challenges. At a minimum, this package should include:

- a new 10 year industry strategy and vision for the sector to replace the outdated Action Agenda;
- a non-means tested labour adjustment package to assist in education, retraining, developing English language skills, and finding new employment;
- a program that encourages greater linkages across the automotive supply chain and clustering;
- a Research and Development (R&D) grants program dedicated to the industry to assist it to meet emerging markets overseas and to build on existing niche capability, that will assist it to compete with the US; and
- a regional component to assist restructuring in regional towns and cities – both labour adjustment and industry restructuring.

Recommendation 35

Given the possible negative impact of the Agreement on the Textile Clothing and Footwear sector, Labor Senators recommend that the Government develop as a matter of urgency an Industry Development Plan to assist the sector meet future challenges. At a minimum, this package should include:

- a new 10 year industry strategy and vision for the sector to replace the outdated Action Agenda;
- a more generous non-means tested labour adjustment package to assist in education, retraining, developing English language skills, and finding new employment;
- an R&D grants program dedicated to the industry to assist it to meet emerging markets overseas and to build on existing niche capability; and
- a regional component to assist restructuring in regional towns and cities – both labour adjustment and industry restructuring.

Recommendation 36

Given the possible negative impact of the Agreement on the Chemicals and Plastics sector Labor Senators recommend that the Government develop as a matter of urgency

an Industry Development Plan to assist the sector meet future challenges. At a minimum, this package should include:

- a new 10 year industry strategy and vision for the sector to replace the outdated Action Agenda;
- a more generous non-means tested labour adjustment package to assist in education, retraining, developing English language skills, and finding new employment;
- an R&D grants program dedicated to the industry to assist it to meet emerging markets overseas and to build on existing niche capability; and
- a regional component to assist restructuring in regional towns and cities – both labour adjustment and industry restructuring.

Recommendation 37

Labor Senators recommend that the Government establish a Manufacturing or Industry Council, similar to that which was established in the late 1970s and abolished by the Government in 1996. The Council should:

- involve industry associations, individual businesses, unions and the research sector;
- undertake an analysis of the state of the manufacturing industry in Australia;
- have a significant research capacity; and
- be provided with adequate resources to represent all industry sectors, to meet regularly, to engage experts as required, and to undertake significant research tasks.

Recommendation 38

It is recommended by Labor Senators that the Industry Department be provided with additional resources to:

- undertake its own analysis of the impact of the AUSFTA on Australian industry, in particular manufacturing industries;
- ensure it is fulfilling its function of providing up to date statistical information on the performance of industry sectors including investment in research and development;
- contribute, in an informed manner, to the development of future trade agreements with other countries; and

- contribute to analysing, at least every 5 years, the impact of existing agreements on certain industry sectors.

Chapter 8 – Investment

Labor Senators acknowledge that there is likely to be a net benefit to Australia from the increase in the threshold for Foreign Investment Review Board (FIRB) screening of foreign investment in Australian companies from \$50 million to \$800 million. Indeed all of the economic modelling examined by the Committee assigned the majority of projected gains to the effects of investment liberalisation.

Labor Senators are however concerned that the implementation of AUSFTA leads to an unusual situation in which investment from the United States is treated more generously to investment coming from any other country. There is also a further concern that such discriminatory treatment may breach Australia's obligations to Japan under the Treaty of Nara and to New Zealand under the Australia-New Zealand Closer Economic Relationship.

Recommendation 39

Labor Senators therefore recommend that the Productivity Commission examine the economic and other impacts of extending this measure to investment from any country. It is further recommended that if the Productivity Commission finds that there is an overall benefit from applying FIRB liberalisation to investment from all countries that this should then be implemented.

Chapter 9 – Services

Recommendation 40

Labor Senators recommend that the Professional Services Working Group address immediately the issues of mutual recognition of qualifications and the movement of natural persons involved in service provision, and make recommendations to the Parties for removing as rapidly as possible any outstanding impediments to these functions. The report of the Working Group should be presented to the Parties within twelve months of the establishment of the Group.

Recommendation 41

That the Australian Government press assiduously, through all available diplomatic, official and professional channels, for the removal of all impediments to the mutual recognition of qualifications and the movement of people involved in cross-border service provision.

Chapter 10 - Agriculture

Labor Senators note that generally the Agreement has resulted in a small net benefit while acknowledging that there will be benefits to agricultural producers in some

sectors as a result of AUSFTA coming into force. However it is the position of Labor Senators that the best hope for significant trade liberalisation still rests in the WTO.

Labor Senators are also dismayed that the Agreement did not provide for the principle of most-favoured-nation (MFN) treatment to apply to trade in agricultural goods as it did for trade in services and investment.

Recommendation 42

Labor Senators recommend that Australia should, as a matter of high priority, commence negotiations with the United States to obtain a commitment, through treaty or other process, which will ensure that both Parties to the Agreement will not give more favourable access in agricultural products to any third country without also providing the same access to the other Party.

Recommendation 43

Labor Senators recommend that the Commonwealth Government should invest significant effort into maintaining the strong relationship of the Cairns Group of countries, as the best vehicle for achieving significant agricultural liberalisation in the next WTO round.



AUSTRALIAN SENATE
CANBERRA ACT

**COMMITTEE OF PRIVILEGES
PERSONAL AND CONFIDENTIAL**

5 August 2004

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Senator the Hon. Peter Cook
The Senate
Parliament House
CANBERRA ACT 2600

Similar letter to all members of the FTA Committee

Dear Senator Cook

As you may know, the Committee of Privileges received the following reference on 5 August 2004:

Whether there was any unauthorised disclosure of the private deliberations or the draft report of the Select Committee on the Free Trade Agreement between Australia and the United States of America, and, if so, whether any contempt was committed in that regard.

Copies of the President's statement, and of the letter which he tabled when giving the matter precedence, are enclosed for your information, together with the 74th report of the Committee of Privileges which sets out its views on unauthorised disclosure.

The Committee of Privileges has decided to invite you to make any comments you may have on issues arising from this matter. Specifically, the committee would like you to address the circumstances surrounding the press conference in which you participated on Monday, 2 August, and the distribution and content of the document circulated at that conference.

The committee would also appreciate your comments about press reports which purported to divulge the private deliberations of the select committee on Friday, 30 July 2004.

In respect of these deliberations:

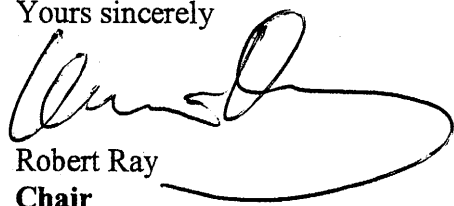
- Did you disclose to any person, not authorised by the committee to receive it, an account of the private deliberations?
- Do you have any knowledge or evidence of who might have disclosed any such private deliberations to any person not authorised by the committee to receive them?
- In your assessment, did any unauthorised disclosure of the private deliberations amount to an act tending substantially to interfere with the work of the committee, or actually causing substantial interference, either at the time of the unauthorised disclosure or subsequently?

In your response to this question the committee would appreciate your reasons for the assessment, including examples, if possible, of actual or potential interference with the committee's work.

I have written in similar terms to all members and the secretary of the committee at the relevant time.

The committee would appreciate your response as soon as possible, but in any case no later than 30 August 2004. Please send it to Miss Anne Lynch, secretary of the Privileges Committee, Room SG.39, Parliament House, Canberra ACT 2600. While any comments are confidential until the committee authorises their release, it normally assumes that they will be made public at an appropriate stage of the inquiry. If you need any further information on the matter, you may care to get in touch with the secretary on the above telephone or fax numbers.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Robert Ray', with a large, sweeping flourish extending to the right.

Robert Ray
Chair

RECEIVED
- 9 AUG 2004
Committee of Privileges



PARLIAMENT OF AUSTRALIA • THE SENATE

SENATOR GEORGE BRANDIS

Senator for Queensland

PRIVATE AND CONFIDENTIAL

9 August 2004

Senator the Honourable Robert Ray
Chairman
Privileges Committee
The Senate
CANBERRA A.C.T. 2600.

Dear Senator Ray

I refer to your letter dated 5 August 2004, concerning the reference to the Privileges Committee of alleged unauthorised disclosures of private deliberations or the draft report of the Select Committee on the Free Trade Agreement.

In answer to the two questions posed in the dot points in your letter, the answer is in each case "no".

In relation to the question inviting my view of whether the alleged unauthorised disclosure of either the private deliberations or sections of the draft report amount to an act (or acts) tending substantially to interfere with the work of the committee, or actually causing substantial interference, either at the time of the unauthorised disclosure or subsequently, my answer is also, from my point of view, in each case "no", although I acknowledge that if another Senator or Senators who participated in the Committee's deliberations felt themselves to be under some constraint in the discharge of their function as Committee members as a result of either of the alleged events, then the events might have had that effect.

In relation to the second of the two matters (i.e. the alleged disclosure of sections of the Draft Report), I would point out that the document which was produced by Senators Cook, Conroy and O'Brien at their press conference shortly before the private meeting of the Committee on the afternoon of Monday 1 August was not a section of the draft report, merely the Labor Senators' additional remarks. I would not have thought it a breach of privilege for a member of a Senate Committee (either alone or expressing a corporate view with party colleagues) to announce that view in advance of the Committee's report being tabled, even if they were to do so in the very words which they subsequently included as additional remarks in the Committee's

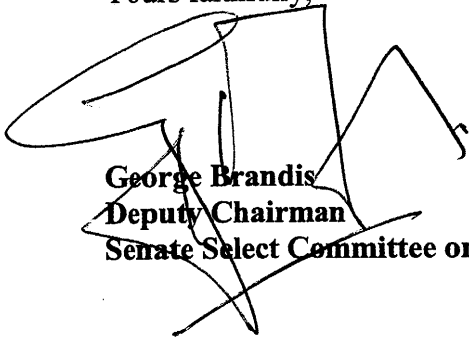
GPO Box 228
BRISBANE QLD 4001
Telephone: (07) 3001 8180
Facsimile: (07) 3001 8181

Email: senator.brandis@aph.gov.au

Parliament House
CANBERRA ACT 2600
Telephone: (02) 6277 3547
Facsimile: (02) 6277 3552

report. I do not consider that any of the Labor Senators went beyond doing so in either their oral remarks to the press conference or in the document which they circulated there.

Yours faithfully,

A handwritten signature in black ink, appearing to be 'George Brandis', written over the typed name and title.

George Brandis
Deputy Chairman
Senate Select Committee on the Free Trade Agreement



PARLIAMENT OF AUSTRALIA • THE SENATE

Senator Jeannie Ferris
Senator for South Australia

PRIVATE AND CONFIDENTIAL

9 August 2004

Senator the Hon. Robert Ray
Chair, Committee of Privileges
The Senate
Parliament House
CANBERRA ACT 2600

Dear Senator Ray

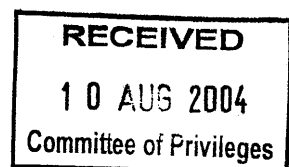
Thank you for your letter of 5 August 2004, regarding the reference to the Privileges Committee of the alleged unauthorised disclosure of the private deliberations or the draft report of the Senate Select Committee on the Free Trade Agreement between Australia and the United States of America.

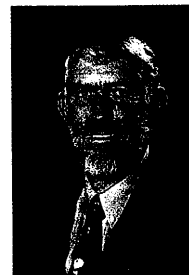
In response to the two questions set out in the dot points in your letter, my answer is in each case "no".

In response to the third question you raise in your letter regarding whether, in my assessment, any alleged unauthorised disclosure, either of the private deliberations or of the draft report of the committee, amounted to an act tending substantially to interfere with the work of the committee, or actually causing substantial interference, either at the time of the unauthorised disclosure or subsequently, my answer, again, in each case is "no".

Yours sincerely

Senator Jeannie Ferris
Senator for South Australia





9 August 2004

Miss Ann Lynch
Secretary of the Privileges Committee
Room SG 39
Parliament House
Canberra ACT 2600

Dear Ann,

I have received Senator Ray's letter today relating to the reference that has been sent to the Privileges committee with regard the alleged unauthorised disclosure of the private deliberations or the draft report of the Select Committee on the Free Trade Agreement.

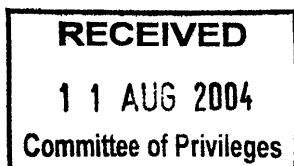
In Senator Ray's letter he has requested that I answer the 2 following questions.

1. Did you disclose to any person, not authorised by the committee to receive it, an account of the private deliberations? Answer No
2. Do you have any knowledge or evidence of who might have disclosed any such private deliberations to any person not authorised by the committee to receive them? Answer No.

If there is anything further that you require from me please don't hesitate to contact me directly.

Regards,

Senator Len Harris
Queensland Senator
One Nation





AUSTRALIAN SENATE

**SELECT COMMITTEE ON THE FREE TRADE AGREEMENT
BETWEEN AUSTRALIA AND THE UNITED STATES OF
AMERICA**

20 August 2004

Ms Anne Lynch
Secretary
Privileges Committee
SG 39
Parliament House
Canberra 2600

Dear Ms Lynch

I refer to the letter dated 5 August 2004 signed by the Chair of the Privileges Committee (Senator Ray) concerning an unauthorised disclosure of the private deliberations of the Select Committee on the Australia-US Free Trade Agreement.

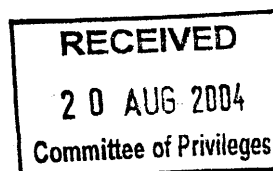
Senator Ray's letter directs my attention specifically to press reports following a meeting of the Select Committee on 30 July 2004. I confirm that neither I, nor any members of the secretariat, disclosed an account of those private deliberations. Nor do I or any member of the secretariat have any knowledge or evidence of who might have done so.

For the record, my response would be similar in relation to press reports that indicate that reporters had knowledge of matters contained in the Select Committee's draft report. The secretariat took particular care concerning the security of the draft report. All hard copies were watermarked "Chair's Draft Confidential", and electronic versions of each chapter were password-protected. All material related to the drafting of the report was kept in locked filing cabinets in the secretariat.

I have attached a file note that describes my actions on being alerted to the press reports that disclosed the deliberations of the meeting of 30 July. . . .

I also include the Minutes of the meeting of 30 July and the next meeting thereafter (2 August 2004). At the meeting on 2 August the Committee confirmed the inaccuracy of the press reports relating to the 30 July meeting.

Brenton Holmes
Secretary



NOTES ON EVENTS SAT 31 JULY 2004

- Senator Cook rings me on mobile and asks if I have seen report in The Australian revealing what happened in the FTA Cttee meeting last night.
- I said NO, but was in a newsagent's, so I picked up a copy.
- Sen Cook said I NEVER SAID WHAT THIS REPORT CLAIMS I SAID.
- I told Sen Cook I agreed, and told him my recollection of the relevant part of the conversation.
- Sen Cook said he would arrange a press release countering the accusation.
- I said that the secretariat had taken copious notes, and that there may be material in there that would set out who said what and when.
- I rang my colleague Pete Leemen at home, and asked her if she'd seen the article, She said no. I then read the opening para and the relevant bit about what Sen Cook was alleged to have said about having to wait until he had discussed the recs with the Labor caucus.
- Peta said words to the effect 'That's rubbish, it wasn't like that at all.'
- I asked her about the notes she took, and she said they were in her desk at work.
- I came to the office (around 1pm), retrieved a copy of The Australian and photocopied the article.
- I then rang the Clerk (Harry Evans) at home about the article. He said he'd seen a Canberra Times version.
- I told Harry that I felt it was important that the secretariat didn't get dragged into the politics of all this, and said that I was going to photocopy Peta Leemen's notes and fax them to Senator Cook without me reading them first. That way I would avoid any editorialising on their contents when I spoke to Senator Cook.
- Harry said that it wouldn't be a problem if I read them first, but I confirmed that I would not do so until after I had phoned Senator Cook and faxed them to him. Harry said it would be perfectly proper for Senator Cook to say that he had called for the secretary's notes to determine whether they held any record of the relevant bit of conversation.
- I rang Sen Cook and told him what I planned to do (as per conversation with Harry), and he agreed. He advised he'd already put out a press release denying the claims. He gave me his home fax number and asked me to also fax to Simon in the office.
- Without reading the notes I faxed them to Sen Cook and Simon, then read the notes. The notes confirmed my recollection of the situation.

Copy of my file note

Brenton Holmes



AUSTRALIAN SENATE

**SELECT COMMITTEE ON THE FREE TRADE AGREEMENT
BETWEEN AUSTRALIA AND THE UNITED STATES OF AMERICA**

PARLIAMENT HOUSE
CANBERRA ACT 2600
Telephone: (02) 6277 3527
Facsimile: (02) 6277 3830

MINUTES OF PRIVATE MEETING

By teleconference

Commencing at 5:30pm, 30 July 2004

Meeting no. 27

Present (by teleconference): Senators Cook (Chair), Brandis, O'Brien, Ferris, Boswell, Harris, Conroy, Ridgeway

In attendance: Brenton Holmes, Peta Leemen, Tanya Stacpoole. (Also Simon Corrigan by permission of Committee)

BUSINESS

1. The Committee agreed that Simon Corrigan could be present at the meeting to attend to followup matters for Senator Cook.
2. Senator Cook introduced discussion by reference to the circulated draft report, indicating he thought Committee sharply divided on views, therefore suggested parties/individuals put in own recommendations. Discussion ensued.
3. Senator Brandis moved (seconded Senator Ferris) that the Committee recommends that the Senate support the passage of the FTA. Discussion ensued.
4. Senator O'Brien moved (seconded Senator Conroy) that Senator Brandis's motion be deferred until the next meeting of the Committee. *For: Senators Cook, Conroy, O'Brien, Ridgeway, Harris; Against: Senators Brandis, Ferris, Boswell.* Motion carried
5. Discussion as to when Committee could meet on Monday. Agreed to meet in Canberra at 6pm (EST), with Senators Cook and Harris by teleconference.

Adjourned: 6:16pm

APPROVED

**Senator Peter Cook
Chair**



AUSTRALIAN SENATE

SELECT COMMITTEE ON THE FREE TRADE AGREEMENT BETWEEN AUSTRALIA AND THE UNITED STATES OF AMERICA

PARLIAMENT HOUSE
CANBERRA ACT 2600
Telephone: (02) 6277 3527
Facsimile: (02) 6277 3830

MINUTES OF PRIVATE MEETING Committee Room 1S6 Commencing at 1.34pm, 2 August 2004 Meeting no. 28

Present: Senators Cook (Chair, by teleconference), Brandis, O'Brien, Ferris, Conroy, Boswell (by teleconference), Harris (by teleconference), Ridgeway (by teleconference)

In attendance: Brenton Holmes, Peta Leemen, Tanya Stacpoole. (Also Simon Corrigan by permission of Committee)

BUSINESS

1. The Committee noted the release of the ALP Senators' conclusion and recommendations arising from the FTA Inquiry. The Chair indicated that this document should be circulated to all Committee members for consideration.
2. The Chair proposed that the Committee adopt the Chair's Draft, consisting of the Introduction and Summary and 10 Chapters previously circulated as the body of the Committee's report, to be supplemented by additional comments and recommendations from individual parties or senators if they chose. Discussion ensued.
3. The Committee considered a motion that the Committee adopt the text of the Chair's Draft.
For: Senators Cook, Conroy, O'Brien, Harris; Against: Senator Ridgeway, Abstain: Senators Brandis, Ferris, Boswell Motion carried.
4. It was agreed that the Chair's Draft, together with the additional comments from Senators, would be tabled this Thursday (5 August) as the final report of the Committee.
5. The Committee approved the minutes of the teleconference meeting of 30 July 2004
6. The Committee considered whether to adopt the ALP's Recommendation 1 as its own recommendation. The Chair noted that this was not a stand-alone recommendation but had qualifications explaining it.
7. Senator Conroy moved (seconded Senator Brandis) that the Committee recommend that the Senate agree to the Australia-US Free Trade Agreement Implementation Bill.
For: Senators Cook, Conroy, O'Brien, Brandis, Ferris, Boswell
Against: Senators Ridgeway, Harris Motion carried.

8. The Committee considered the publication of the Chair's Draft as a "Summary of Inquiry" prior to the final report being tabled with comments provided by individual parties.
9. Senator O'Brien moved that the Committee approve publication of the *Summary of Inquiry* consisting of the Chair's Draft together with a one page record of the resolutions passed at its private meeting. *For: Senators Cook, Conroy, O'Brien, Harris, Boswell, Brandis and Ferris; Against: Senator Ridgeway.* Motion carried
10. The Chair noted articles in the Weekend Australian and other media outlets on the weekend that purported to describe what happened at the teleconference meeting on 30 July and were clearly based on leaks from Committee members. He said that the assertion that he had said at that meeting that he could not decide on recommendations until after the Labor caucus had met is wrong, and notes of the meeting prove this.
11. Senator Conroy moved (seconded O'Brien) that the Committee note that articles in the media over the weekend 30 July – 1 August 2004 claiming that Senator Cook told a private committee meeting that he could not make recommendations on the FTA inquiry until after a Labor caucus meeting are inaccurate. *For: Senators Cook, Conroy, O'Brien, Harris; Against: None; Abstain: Senators Brandis, Ferris, Boswell, Ridgeway.* Motion carried.
12. The Committee discussed the provision of additional comments to the secretariat for inclusion in the final report. Coalition senators said they would provide additional comments soon after the meeting. The minor parties agreed to have their additional comments to the secretariat by 5 pm Wednesday 4 August to enable tabling the following day.

Adjourned: 2.14 pm

APPROVED

**Senator Peter Cook
Chair**



RECEIVED
30 AUG 2004
Committee of Privileges

KERRY O'BRIEN

LABOR SENATOR FOR TASMANIA
SHADOW MINISTER FOR RECONCILIATION AND INDIGENOUS AFFAIRS
SHADOW MINISTER FOR TOURISM, REGIONAL SERVICES AND TERRITORIES

30 August 2004

Senator Robert Ray
Chair
Committee of Privileges
The Senate
Parliament House
CANBERRA 2600

Dear Senator Ray

Thank you for your invitation to comment on two matters related to the activities of the Select Committee on the Free Trade Agreement (FTA) between Australia and the United States of America.

I note at the outset that the committee itself was not afforded the opportunity to consider whether any improper disclosure of information caused, or had the tendency to cause, substantial interference with its work.

You have asked me to "address the circumstances surrounding the press conference in which [I] participated on Monday, 2 August, and the distribution and content of the document circulated at that conference."

I confirm my participation in a press conference at Parliament House on 2 August 2004.

I have not had the opportunity to read a transcript or view a tape of the press conference but recall it was entirely concerned with the Labor Party's position on the FTA. Indeed, I was directly questioned about internal Labor Party discussions on this matter.

The document circulated by Labor Senators had no status beyond that of a statement representing our views on the FTA. The document was not prepared by the committee. It had not been submitted to the committee by Labor Senators. It had not been subject to consideration by the committee. It did not constitute a draft report of the committee or part thereof.

References in the document highlighted by Senator Aden Ridgeway in his letter to the President on 3 August 2004, and claimed by Senator Ridgeway to disclose details of the draft report, impart no information about its contents beyond confirming the draft report deals with the subject of the inquiry. Notwithstanding the fact he attended just 65 per cent of committee meetings, even Senator Ridgeway could be expected to assume the draft report would be relevant to the committee's terms of reference.

The document was freely distributed to electronic and print media representatives present at the press conference.

Two non-Labor members of the committee, Senator George Brandis and Senator Jeannie Ferris, were present of the press conference. According to the ABC's 7:30 Report the two committee members "were clearly enjoying the sometimes uncomfortable public manoeuvrings of Labor's internal difficulties." [Attachment A]

It is a matter of regret Senator Ridgeway did not raise the matter of privilege now subject to inquiry during the committee's private meeting on the afternoon of 2 August 2004. Senator Ridgeway did not attend the committee's private meeting on 4 August 2004, thus denying the committee a second opportunity to consider this matter. I note Senator Ridgeway expressed no concern about interference with the committee's work during his remarks at the tabling of the committee report on 5 August 2004. [Attachment B]

In my view the press conference and distribution of the statement did not amount to an improper or substantial interference with the free exercise by the committee of its authority or functions. Nor was our action intended or indeed likely to amount to improper or substantial interference.

The media focus on Labor's internal processes, and uncomplaining presence of two non-Labor committee members, support my contention there was no improper interference with the committee's work arising from the press conference and related distribution of a statement in the name of Labor Senators.

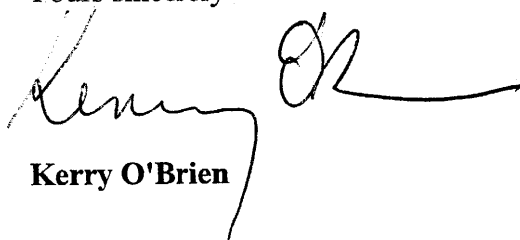
You have also asked for my response to direct questions about press reports concerning a private meeting of the committee on 30 July 2004. I am pleased to provide the following response:

1. No
2. No
3. No

I note that in his letter to the President on 3 August 2004 Senator Ridgeway referred to the likely incomplete record of press reports related to the committee's private meeting on 30 July 2004 attached to his correspondence.

To assist your inquiry in this matter I bring to your attention reported comments by the Prime Minister relating to his knowledge of the committee's deliberations. [Attachment C] Consistent with my advice in respect to unauthorised disclosure I advise I have no knowledge of who might have provided the Prime Minister with information about the committee's deliberations.

Yours sincerely



Kerry O'Brien

ATTACHMENT A

Australian Broadcasting Corporation

TV PROGRAM TRANSCRIPT

LOCATION: <http://www.abc.net.au/7.30/content/2004/s1167379.htm>

Broadcast: 02/08/2004

Labor set to commit to FTA

Reporter: Michael Brissenden

KERRY O'BRIEN: Welcome to the program.

And it seems Mark Latham's Federal Labor is about to sign up to the contentious free trade agreement masterminded by Prime Minister John Howard and US President George W Bush.

Mr Latham has resisted months of heavy pressure from the Government on the FTA, insisting he would wait until a Senate committee investigation of the agreement made its findings.

But the three Labor members of that committee revealed today that they supported the FTA, albeit with 43 recommendations to improve the outcome, they say, and soften its negative impacts.

With the Government already seeking to capitalise on what they regard as a victory over Labor, Mr Latham now has to weather the remaining Opposition within his caucus tomorrow before formally confirming the decision.

Political editor Michael Brissenden reports.

MICHAEL BRISSENDEN: Is the US free trade agreement about trade or politics?

Well, the answer at this point in the cycle is as clear and shiny as the polish on a parade soldier's boot.

And where there's khaki in these uncertain times, then politicians are never far away.

Both John Howard and Mark Latham were in Townsville today for yet another welcome home ceremony.

JOHN HOWARD, PRIME MINISTER: Welcome you back in a formal way to Australia after your magnificent service in the name of our country in different theatres of operation.

MARK LATHAM, OPPOSITION LEADER: The Australian Labor Party firmly supported your mission from the time it was requested by the Solomon Islands.

MICHAEL BRISSENDEN: For the Government, the FTA has been a political weapon now for months, but over the last few days, the PM has ramped up the rhetoric as he's warmed to a theme that potentially underlined, once again, Labor's commitment - not to free trade as such, but ultimately to our biggest and most important alley.

JOHN HOWARD: They should have supported it five months ago.

This whole process has been delayed by Labor politics.

MICHAEL BRISSENDEN: The Parliament resumes tomorrow for what could be the last session before an election and the pressure on Labor had become intense.

Given the FTA still isn't due to come into effect until next year, the Opposition had taken the not-unreasonable position of reserving its decision until it could review the findings of the special Senate committee investigating the pros and cons.

But the perception that Labor was dithering, that it was rent with division and that Mark Latham wasn't showing leadership was taking its toll.

Today the Labor members of the committee took the highly unusual step of releasing their recommendation ahead of the committee's findings.

Senator Stephen Conroy and Kerry O'Brien were there in person.

Senator Peter Cook, who is in Perth undergoing treatment for cancer, presented his views by phone.

SENATOR PETER COOK, COMMITTEE CHAIRMAN: When the Prime Minister decided to set a deadline by which this agreement had to be done, he then decided for Australia that the ruling principle of this agreement would not be, "Is the deal worth it?"

But rather, "Does it suit my - the Prime Minister's - electoral timetable?"

MICHAEL BRISSENDEN: And the electoral timetable is, of course, dominating everything.

The Labor senators have recommended the party support the FTA with some serious reservations.

The biggest concern is still the impact on the pharmaceutical benefits scheme.

SENATOR STEPHEN CONROY, ALP COMMITTEE MEMBER: You've often heard me say if anything undermined the PBS, it was a deal breaker.

Well, having looked at the legislation, which was only provided, you know, a few weeks back, and then look at the review mechanism which was only provided a very short period ago, then you can actually make a judgment about whether the concerns were reality.

And, on balance, what our view was - or our views is - is that those concerns are nowhere near as great.

We think a couple of added protections can ensure there is no bad behaviour by drug companies.

MICHAEL BRISSENDEN: These protections are contained in eight of the 43 recommendations Labor has attached to its support for the FTA.

But as *Four Corners* reveals in a special investigation tonight, the pressure from US pharmaceutical companies and their allies in Congress and the Bush administration are not about to go away.

JONATHAN HOLMES, REPORTER, 'FOUR CORNERS': Given that, as you've said, in the long run you would like to see prices going up, do you see the changes that have occurred as a result of the FTA leading to that in the long term?

SENATOR JOHN KEL, REPUBLICAN, ARIZONA, 'FOUR CORNERS': What I would hope that would happen is that there would be a recognition that it's going to cost money to invent these miracle drugs, that somebody has to pay for that.

MICHAEL BRISSENDEN: Back home, the Labor senators today conceded the deal could have been a lot better.

But if they think some parts of the FTA might be half-baked, the politics has become pretty raw.

Two of the government members on the committee were sitting among the media during the Labor press conference.

George Brandis and Jeannie Ferris were clearly enjoying the sometimes uncomfortable public manoeuvrings of Labor's internal difficulties.

So, too, was Senator Bill Heffernan, widely known around the corridors as one of Mr Howard's more thorough political point men.

SENATOR BILL HEFFERNAN: Thanks, George.

You had a big win, mate, a big win.

Big win, Jeannie, big win.

MICHAEL BRISSENDEN: But was it a big win for the national interest or simply a partisan political victory?

SENATOR GEORGE BRANDIS, COMMITTEE DEPUTY CHAIRMAN: The decision by the Labor Party to support the free trade agreement was the right decision.

I'd like to congratulate Senator Conroy on his significant victory over the left of his own party.

It's a shame that Mr Latham dithered for five months and was indecisive throughout the whole process.

We know that the Labor Party will be supporting the FTA - that's what the Howard Government has said all along - and the Labor Party has at last come to that view as well.

SENATOR JEANNIE FERRIS, COMMITTEE MEMBER: I think this is a great win for our Prime Minister and also for Australia.

UNIDENTIFIED FEMALE REPORTER (TO SENATOR JEANNIE FERRIS): Are you disappointed it's taken them so long, or surprised?

SENATOR JEANNIE FERRIS; Well, that's for them to answer.

MICHAEL BRISSENDEN: The Labor senators say their recommendation is their judgment alone, but clearly their deliberations haven't occurred in a vacuum.

Labor has come to this under considerable pressure.

There is division inside the party and in sections of the Labor heartland.

DOUG CAMERON, AMWU: If this agreement is passed by the Senate, it will go down in history as the greatest economic treachery perpetrated on Australians for a questionable political outcome.

MICHAEL BRISSENDEN: Along with some unions, a fair sprinkling of stars from the film industry have been the most vocal and have produced the most convincing arguments for many on the Labor left.

GEOFFERY RUSH, ACTOR: What will happen to the next generation of Nicole's, Russell's, Baz's, Cate's and, dare I say, Geoffrey's if our Government decides to forego our legacy and give up on them?

MICHAEL BRISSENDEN: Tonight, a meeting of the left caucus has announced it will oppose the deal at tomorrow's wider caucus meeting.

The decision is binding on all members of the left, but it was by non means unanimous.

And, on its own, the left doesn't have the numbers to swing the decision.

In the end, the Senate committee has done what many on the Labor right wanted it to - It's finessed a way for the party to support the deal that will carry the protections many want, providing Labor does win the election.

Not to do so might keep them out of the race altogether.

And even some in the left concede that while the FTA isn't high on the list of concerns of many ordinary voters, it is a potentially powerful political wedge.

KERRY O'BRIEN: And will this have any bearing on the PM's election timing?

Your guess, as always, is as good as mine.

Political editor Michael Brissenden.

On Monday when the Labor Party announced its conclusions, I was the first to congratulate Senator Conroy on his achievement in winning a famous victory over the Luddite Left of his own party.

Were there to be a Labor government elected in this country, the three people whose portfolio responsibilities would be Australia's relations with the world would be Senator Conroy, the shadow minister for trade; Mr Beazley, the shadow minister for defence; and Mr Rudd, the shadow foreign minister, all of whom are enthusiastic and longstanding supporters of the free trade agreement. I hope that they will not allow Mr Latham's latest political stunt in trying to get a bit of cover from the Left of his party to stand in the way of the consummation of this historic agreement.

I want to mention two other people. Mr Stephen Deady, the chief negotiator, gave very generously of his time and appeared before the committee on three of its 13 hearing days, on two occasions for all-day sessions, accompanied by the team of negotiators he led. It is a shame—and the government senators make this observation in their remarks—that in the principal report more weight is not given to what Mr Deady had to say. To all the scaremongering, ratbag criticism from a miscellany of groups that did not even understand the agreement, Mr Deady was able to give a detailed, informed, technical, calm and authoritative explanation. If you read the *Hansard* of Mr Deady's evidence—and government senators set out extracts of the *Hansard* about the generic pharmaceuticals issue in our remarks—you will see that these issues are phoney issues. They are bogus dilemmas that have been raised to score political points.

Finally, I want to mention one person who has not been mentioned at all in this debate, and that is the Australian Ambassador to the

United States, the Hon. Michael Thawley. I was in Washington last year on a study trip and I was fortunate enough to accompany Mr Thawley to the Capitol to meetings with Senator Richard Lugar, the Chairman of the Senate Foreign Relations Committee, and Senator Evan Bayh, a key ally of Australia on this issue. Mr Thawley's contribution has been a distinguished one. (*Time expired*)

Senator RIDGEWAY (New South Wales) (10.01 a.m.)—I also rise to speak on the tabling of the report of the Senate Select Committee on the Free Trade Agreement between Australia and the United States of America. It has been a very long and involved process in getting to this speech today. I would hope that in the time remaining for this debate—as during the debate over the past few days—many of the issues will be aired and there will be an opportunity for the Australian public to become more aware of the contents of the agreement, as well as its consequences in the short, medium and long term.

The Democrats have been following this issue now for almost two years—since the government first announced that they were looking into the possibility of a free trade agreement with United States. Of course it is not over yet. The Senate is debating the implementing legislation and there is still a lot of work to be done. But the tabling of this report is an ending of sorts, because the inquiry was extremely important as part of a process and played a crucial role in uncovering to the Australian people just what the free trade agreement is all about.

The Australian Democrats supported the initial establishment of the Senate select committee and, given that the executive of government in this country has the power to enter into this agreement without the involvement of parliament, I think it is always important to remind ourselves that the Sen-

ate, as the house of review, has a role in carefully scrutinising and analysing the terms of the deal to essentially determine whether it is in Australia's interest, particularly when the government has chosen to ignore sound advice in terms of the Productivity Commission being given the job of assessing the national interest.

This inquiry has conducted extensive hearings around the country. We have received over 500 submissions from individuals and organisations keen to share their views about this agreement. The committee secretariat staff are to be commended for the incredible work that they have done on this occasion. I think that they have shown enormous diligence throughout the entire process. They are also to be commended for the very high-quality final report, 1,100 pages of it, on the very complex free trade agreement. The major issues of agreement that have emerged through this inquiry have been outlined and discussed in a thorough and reasoned manner. The report comprehensively covers the details of the free trade agreement and the divergent views on the more controversial aspects of the deal itself. The discussion in each chapter is very detailed, outlining the arguments of the witnesses and comparing these to the DFAT and government responses.

In the opinion of the Democrats, however, the conclusions reached in this report simply do not go far enough. Based on the evidence we have seen over recent months and after looking at the details of the deal, we do not believe for one moment that it is in Australia's interest. While the shortcomings of the deal are discussed, the report fails to conclude that the deal itself is not in Australia's interest. In our minority report we have explained our response to this inquiry. Based on the evidence we have seen throughout the inquiry we firmly believe that the report's conclusions should have been much stronger

and an overall recommendation should have been made against support for the deal.

There were over 500 submissions to this inquiry from people from all walks of life—from academics, CEOs, unions and NGOs to the little mums and dads, ordinary people down the street. There is overwhelming and legitimate concern in the community about the impact this agreement is going to have on our individual lives as well as on the nation. After listening to these concerns and studying the terms of the deal carefully and thoroughly, the Democrats have come to the reasoned and balanced conclusion that the free trade agreement is not in Australia's interest. It will do more harm than good. Even if we are to accept that it might bring some economic benefit to some sectors of our economy, the cost to our social, cultural and environmental interests is just too high a price to be paid. We should not be paying this price for a measly economic gain and a pat on the head from our friends in the United States. This deal should have been a great opportunity for Australia. I want to make it clear that the Australian Democrats are not against trade. I think it is capable of bringing real benefit to our country. However, the deal as it stands is unbalanced and unfair. The government have simply bowed to pressure of US interests and accepted the scraps from their table just to be able to say they have got a deal.

Let me briefly enumerate one more time, for the record, our concerns as a result of this deal. The cost of the Pharmaceutical Benefits Scheme will rise. Australian film and television production will suffocate as their protection is removed. Australian innovation will be stifled by larger and more powerful corporations. Jobs will be lost as a result. Many small businesses will go under. Public services in our local communities will be provided by huge US conglomerates. Our ability to protect our island nation from imported

diseases will be whittled away. Genetically modified products will enter our market unlabelled with no consumer information. And if we try to change anything the US government will sue for damages and make us change our law.

The Australian Labor Party know this. They sat on the same inquiry, they heard the same evidence and they questioned the same witnesses. They know just what a bad outcome this is for Australia, yet they have decided to support this deal. We know they are more than aware of its shortcomings, as they have kindly provided us with a list of 42 reasons why the free trade agreement will damage our country. They are also 42 reasons not to support the deal. The opposition know it is a dud, yet they have put political expediency ahead of the national interest and decided to support it.

I am extremely disappointed at the ALP's decision to support this deal this week. There has been much talk of two conditional amendments, but I see them as nothing more than two bandaids on a leaky dike. I firmly believe that Labor are absolutely aware that the two amendments they propose will achieve nothing at all. The terms of the deal are locked in, and they cannot be changed. Announcing to the world that the opposition will save Australia from the free trade agreement is a plain and simple lie. The ALP needed to bite the bullet and stand up for this nation, and they have failed. Right now, they are playing an entertaining game of brinkmanship with the government on the free trade agreement. This critical deal will sell our national interest down the river for generations to come, and the opposition are using it to try to strategically wedge the government ahead of the looming election.

This issue is not a football to be kicked around and used as a weapon for political point scoring. The government has failed this

country by accepting the deal, and the ALP have failed this country by falling into line. It is just not good enough—the national interest must always come first, and this should never happen again. It is time to end this undemocratic farce, where the executive government can bind us indefinitely into the future without having to consult the parliament—the representatives of the Australian people. The parliament must have a voice in this process. It is disgraceful that the government is allowed to enter into an agreement of this kind, in our name and on whatever terms it decides are good enough.

I will give it to the Americans: they got this part right. The United States Congress members and senators got to vote on this deal, but we in the Australian parliament get no such opportunity. It is time that Australia embraced a similar arrangement. The current system whereby, without consultation, our executive can make commitments that have a significant impact on every facet of Australia's economic and social structure and bind us long into the future is inappropriate and lacks democratic legitimacy. I am extremely disappointed at the outcome because the inquiry had such promise. The ending to this story is nothing but unsatisfactory. There is a high degree of frustration out there in the community and here in this place. People realise deep down that it is a bad deal for the country, but I am discouraged that they will not stand up and be counted. A conscience vote is not going to apply in this case. If it did, maybe we would get a different outcome. The Democrats know this, and we are proud to say it. We will not stand by and watch this country's future be sold at bargain basement prices, because it is too important. In closing, I would like to thank the committee secretariat staff for their incredibly hard work throughout this inquiry. (*Time expired*)

Senator KIRK (South Australia) (10.11 a.m.)—In the past, Australia has undoubtedly

CHAMBER

ATTACHMENT C

Fed: Latham's FTA stance a fraud, says Howard

Saturday, 31 Jul 2004 at 4:19pm; Category: Australian General News; Low priority; Story No. 1576.

Fed: Latham's FTA stance a fraud, says Howard

Trade US Howard

By Holly Nott

PERTH, July 31 AAP - Opposition Leader Mark Latham's assertion that a Senate committee report would dictate his position on the free trade agreement (FTA) with the United States had been exposed as a fraud, Prime Minister John Howard said today.

The Australian newspaper today reported that the chairman of the Senate committee examining the FTA, Labor Senator Peter Cook, had refused to offer up the draft recommendations until after the Labor caucus had debated the issue.

But Mr Latham has consistently said he would wait to see the Senate committee report before finalising his party's position on the FTA.

Senator Cook strongly rejected today's reports of the committee's dealings, describing them as "false and mischievous".

But Mr Howard said Mr Latham had been exposed as a fraud.

"Now, what this has done is to expose to the Australian public the pretense, the political alibi that Mr Latham has clung to over the last five months as a substitute for the courage he ought to assume in his own party leadership on this issue," he told a Liberal conference in Western Australia.

Mr Howard said Mr Latham had dithered and prevaricated during the five months since the FTA negotiations were finalised.

"The terms and conditions of the agreement can't change - everybody knows that," Mr Howard said.

"Yet in a craven, weak fashion, the leader of the Opposition has hid behind this political alibi of saying 'well, I've got to wait until the Senate committee reports'.

"Yet in reality, the Senate committee won't report until the Labor members are told by caucus what that report should be.

"This is a total fraud and a huge pretext which has been now exposed and laid bare by the news that is coming out of the Senate committee's deliberations."

In the final hours of his four-day tour of marginal West Australian seats, Mr Howard told the annual conference of the state's Liberal Party that the FTA issue had highlighted serious flaws in the Labor leadership of Mr Latham.

"If he handles issues like this in opposition, imagine his incapacity to handle difficult issues in government," he said to applause from the floor.

He called on Mr Latham to put aside his political predicament and make his decision with the best interests of Australia in mind.

"He can dither and prevaricate no longer," Mr Howard said.

"He must make a decision. He must make the decision he should have taken in the national interest five months ago."

Mr Howard said the FTA symbolised Australia's capacity to negotiate close and enduring economic agreements.

"This nation under this government does have the capacity to build ever closer relationships, not only with the United States, but also with the nations of Asia," he said.

AAP hn/sjb/jnb/bwl

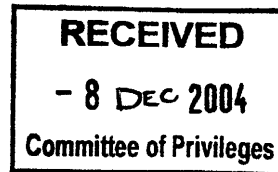
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The Senate

SENATOR RON BOSWELL

Leader of The Nationals in the Senate
Senator for Queensland



7 December 2004

Senator John Faulkner
Chair
Senate Committee of Privileges
Parliament House
Canberra ACT 2600

Dear Senator Faulkner

I refer to your letter relating to matters arising from the Select Committee on the Free Trade Agreement between Australia and the United States of America.

In respect of the private deliberations of the Select Committee on Friday 30 July 2004 I did not disclose any account of the private deliberations to any person not authorised by the committee, nor do I have any knowledge of anyone who might have disclosed such information.

Yours sincerely

Senator Ron Boswell
Leader of The Nationals in the Senate

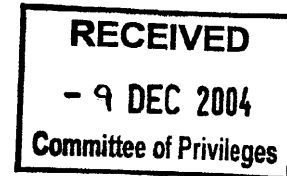


SENATOR STEPHEN CONROY

Deputy Opposition Leader in the Senate
Shadow Minister for Communications and Information Technology

8 December 2004

Senator John Faulkner
Chair
Committee of Privileges
Parliament House
Canberra 2600 ACT



Dear Senator Faulkner *John*

I refer to the letter from the Committee of Privileges relating to matters arising from the Select Committee on the Free Trade Agreement between Australia and the United States of America (the "FTA").

The Committee has raised three matters:

- the press conference held on 2 August 2004;
- the document circulated at the press conference (the "**statement of recommendations**"); and
- certain press reports relating to deliberations of the Committee on 30 July 2004.

This letter addresses each of these issues in turn.

The first matter raised relates to the press conference on 2 August 2004. The purpose of the press conference was for the Labor Senators on the Select Committee (Senator O'Brien, Senator Cook and myself) to discuss our recommendations in relation to the FTA.

Although I have not viewed a transcript or video recording of this press conference, I recall discussing my views on the FTA. I also recall that journalists raised questions about internal Labor Party matters.

The second matter raised relates to the document which was circulated at the press conference on 2 August 2004. The document circulated at this press conference was a statement of recommendations in relation to the FTA by Labor Party Senators. (A copy of this document is enclosed with this letter.)

Prior to the press conference, a member of my staff rang the Clerk of the Senate, Mr Harry Evans, to discuss the disclosure of recommendations in relation to the FTA by Labor Party Senators.

Mr Evans advised that recommendations by the Labor Party Senators in relation to the FTA could be disclosed, although the Committee's draft report could not be disclosed.

Following this conversation, the statement of recommendations was distributed at the press conference.

The title of the document which was distributed at the press conference is: *"Recommendations of Labor Senators on the Senate Select Committee on the Free Trade Agreement between Australia and the United States of America."* The 15 page document lists 43 recommendations proposed by the Labor Party Senators.

The title and content of the document clearly indicate that it is a statement of recommendations by the Labor Party Senators. It is not a draft report of the Committee. The statement of recommendations had not been submitted to the Committee nor had it been considered by the Committee. The document simply set out recommendations by the Labor Senators in relation to the FTA.

Following the press conference, Mr Evans rang my office and said that the statement of recommendations which was released at the press conference also included references to the draft committee report. Mr Evans referred my staffer to five references, in the statement of recommendations, to the draft committee report.

Senator Ridgeway, in his letter dated 3 August 2004, refers to the statement of recommendations and raises the same five references to the draft committee report. Senator Ridgeway's letter also states that the document circulated at the press conference *"refers to the content of the remainder of committee's draft report"*.

In my view, whilst the statement of recommendations (which was circulated at the press conference) refers to the draft Committee report, no matters of content are disclosed.

In conclusion, it is my view that neither the press conference nor the statement of recommendations, tended to substantially interfere with the work of the committee or actually cause any substantial interference (nor was this their purpose).

The third matter raised in the letter, relates to press reports concerning deliberations of the Committee which occurred on 30 July 2004. I have no knowledge of this matter. Furthermore, my response to each of the three questions in the letter relating to the press reports is no.

Yours sincerely


Stephen Conroy



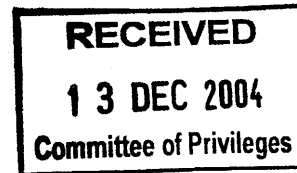
AUSTRALIAN SENATE

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hc/let/14452

13 December 2004



Senator the Hon J. Faulkner
Chair
Committee of Privileges
The Senate
Parliament House
CANBERRA ACT 2600

Dear Senator Faulkner

**SELECT COMMITTEE ON THE FREE TRADE AGREEMENT —
STATEMENT BY SENATOR CONROY**

Thank you for your letter of 9 December 2004, in which the committee seeks my comments on a letter dated 8 December 2004 from Senator Conroy in relation to the committee's inquiry concerning the report of the Select Committee on the Free Trade Agreement between Australia and the United States.

Senator Conroy's letter refers to two conversations which I had with a member of his staff, one before and one soon after the press conference conducted by Labor Party members of the committee on 2 August 2004.

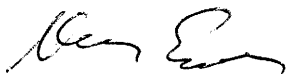
In the first conversation, the staff member rang me to inform me that the Labor Party senators were proposing to hold a press conference and release a document about their recommendations on the free trade agreement, and asked whether there would be any problem with this. I indicated that there would be a serious problem with the unauthorised disclosure of the report of the committee. I said that, if they insisted on holding the press conference and releasing the document, they should cast both the document and their statements at the press conference in the form of statements of the Labor senators' views and positions on the free trade agreement, and not refer to anything in the committee's report.

Following the press conference, I was shown a copy of the distributed document, and then rang the staff member to point out that the document had done the very thing which I warned against doing, namely, it referred to the content of the report of the committee. I pointed out specific instances where the document appeared to disclose material in the committee's report. I indicated that this could be raised as an unauthorised disclosure of the report.

Subsequently, when asked about the document and the press conference by other senators, I advised that they could constitute unauthorised disclosures.

Please let me know if the committee requires any further information in relation to this matter.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Harry Evans', with a stylized flourish at the end.

(Harry Evans)