

STATEMENT BY THE PRESIDENT

MATTER OF PRIVILEGE RAISED BY SENATOR THISTLETHWAITE

By letter dated 5 November 2012, Senator Thistlethwaite, the former chair of the Select Committee on Electricity Prices, raised a matter of privilege under standing order 81. The matter of privilege concerns the unauthorised disclosure of the Chair's draft report before its final adoption by the committee.

The committee became aware of an article and online video commentary by Lenore Taylor of the *Sydney Morning Herald*, discussing the committee's recommendations, and published on 31 October 2012 before the committee met to adopt the report. Although the report was due to be tabled the following day, the committee undertook inquiries, as required by resolutions of the Senate of 20 June 1996 and 17 September 2007, in an effort to explain the disclosure. The committee reported to the Senate that it had not been able to discover the source of the disclosure but concluded that the disclosure was a serious breach of its confidence. Senator Thistlethwaite further indicated that the unauthorised disclosure not only impeded the committee's freedom to deliberate but reflected adversely on the value of the committee's inquiry.

In determining whether a notice of motion to refer the matter to the Privileges Committee should have precedence, I am required to have regard only to the following criteria in Privilege Resolution 4:

- (a) the principle that the Senate's power to adjudge and deal with contempts should be used only where it is necessary to provide reasonable protection for the Senate and its committees and for senators against improper acts tending substantially to obstruct them in the performance of their functions, and should not be used in respect of matters which appear to be of a trivial nature or unworthy of the attention of the Senate; and
- (b) the existence of any remedy other than that power for any act which may be held to be a contempt.

With regard to the first criterion, the Senate has identified the unauthorised disclosure of a report of the private proceedings of a committee as a matter which may be treated by the Senate as a contempt. While the Senate's resolution of 17 September 2007 provides further guidance on the types of unauthorised disclosure for which the contempt jurisdiction should primarily be reserved, the resolution only serves to reinforce the seriousness of unauthorised disclosures and their obstructive potential for the work of Senate committees.

With regard to the second criterion, there would normally be an alternative remedy available in the form of a process established by the Senate for committees to deal with cases of unauthorised disclosure, and for such disclosures not to be raised as matters of privilege until after the committee concerned had consulted the Privileges Committee. This process is provided for in the resolution of 17 September 2007 and involves reference to the Privileges Committee's 122nd report on the subject for guidance on assessing such matters. In this case, however, that remedy is not available. Although the Select Committee on Electricity Prices was able to undertake certain inquiries before presenting its final report, it ceased to exist at that point and could not undertake the further steps of consultation and deliberation envisaged by the 2007 resolution. The Senate's contempt jurisdiction therefore provides the only remedy for cases of unauthorised disclosure involving the final reports of select committees.

I have therefore determined that a motion to refer the matter to the Privileges Committee should have precedence over other business for the day on which it is given. Before I call Senator Thistlethwaite to give notice of the motion, I remind the Senate that this determination of precedence is not a judgment of the substantive issues or merits of the matter, beyond the threshold judgment that it is not of a trivial nature or unworthy of the attention of the Senate. It is for the Senate to make the judgment whether a matter merits referral to the Privileges Committee.

I table the correspondence and call Senator Thistlethwaite to give notice of the motion.