

The Senate

Committee of Privileges

Possible unauthorised disclosure of the
draft report of the Select Committee on
Electricity Prices

152nd Report

March 2013

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ISBN 978-1-74229-789-7

This document was produced by the Committee of Privileges, and printed by the Senate Printing Unit, Parliament House, Canberra

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Report

Background

1.1 On 21 November 2012 the following matter was referred to the committee for inquiry and report:

Whether there was any unauthorised disclosure of the draft report of the Select Committee on Electricity Prices and, if so, whether any contempt was committed in that regard.¹

1.2 The investigation of unauthorised disclosures is a subject that has attracted detailed consideration by this committee, most recently in a 2005 inquiry which considered the principles that should apply.² The committee has always considered that any unauthorised disclosure may, in some circumstances, constitute a serious contempt of the Senate. The committee has also been highly critical of breaches of confidentiality in committee processes, and of the betrayal of trust among committee members this often involves. It does not follow, however, that every unauthorised disclosure warrants investigation as a contempt.

1.3 The law and practice of parliamentary privilege is intended to protect the parliament's processes from obstruction and interference, and it is that principle of protection which guides the Senate in determining questions relating to contempt. The Senate's characterisation of unauthorised disclosures as contempts is based on an assessment of the interference that such disclosures can cause to the work of committees.

1.4 In its 122nd report the committee described the evolution of its own views and of Senate practice in relation to unauthorised disclosures, and recommended measures to assist committees in assessing the harm which might flow from such disclosures. As this is the first such matter referred since the Senate adopted those recommendations, the committee takes the opportunity to remind senators of relevant matters of practice and procedure.

Consideration of contempt matters

1.5 In undertaking an inquiry into a possible contempt, the Privileges Committee has regard to the *Parliamentary Privileges Act 1987* and relevant Senate resolutions. Chief among these are the Privilege Resolutions, adopted by the Senate on 25 February 1988, which declare the manner in which the Senate will observe its privileges, and provide guidance to committees on the principles involved and procedures which must be followed.

1.6 In considering whether particular acts (or omissions) may constitute a contempt, the committee has particular regard to:

1 *Journals of the Senate*, 21 November 2012, pp. 3343-44.

2 Senate Committee of Privileges, 122nd report, *Parliamentary privilege – unauthorised disclosure of committee proceedings*, June 2005, PP No. 137/05.

- section 4 of the *Parliamentary Privileges Act 1987*, which provides a statutory definition for contempt
- the criteria to be taken into account when determining matters relating to contempt (Privilege Resolution 3)
- the list of possible contempts in Privilege Resolution 6.

1.7 The contempt jurisdiction of the Senate is designed to protect the work of senators and the processes of the Senate and its committees against obstruction and interference. This is emphasised both in section 4 of the Act and in Privilege Resolution 3.

Investigation of unauthorised disclosures as contempts

1.8 The Senate has provided guidance, in Privilege Resolution 6, as to the categories of acts that may be treated as contempts. That resolution declares that breaches of certain prohibitions, and attempts or conspiracies to do the prohibited acts, may be treated by the Senate as contempts.

1.9 In relation to the unauthorised disclosure of committee proceedings, Privilege Resolution 6 provides:

(16) A person shall not, without the authority of the Senate or a committee, publish or disclose:

- (a) a document that has been prepared for the purpose of submission, and submitted, to the Senate or a committee and has been directed by the Senate or a committee to be treated as evidence taken in private session or as a document confidential to the Senate or the committee;
- (b) any oral evidence taken by the Senate or a committee in private session, or a report of any such oral evidence; or
- (c) any proceedings in private session of the Senate or a committee or any report of such proceedings,

unless the Senate or a committee has published, or authorised the publication of, that document, that oral evidence or a report of those proceedings.³

1.10 The Senate has supplemented this guidance with two additional resolutions. The first of these, agreed to on 20 June 1996, establishes the principle that committees have a responsibility to investigate any unauthorised disclosure for themselves and to undertake an assessment of the actual or potential substantial interference with their work before deciding whether to raise a matter of privilege. The second resolution, of 17 September 2007,⁴ reinforces that principle and provides detailed guidance to

3 The unauthorised disclosure of a draft report comes within the description in paragraph (16)(c) of proceedings in private session of a committee that have not been authorised for publication.

4 This resolution was initially adopted as a sessional order on 6 October 2005 before being adopted as a continuing order on 17 September 2007.

committees about the types of unauthorised disclosures that should and should not be raised.

The 2007 resolution

1.11 While confirming that *any* disclosure of evidence given to a committee, documents prepared by it or private deliberations may be treated as a contempt, the Senate indicated in the 2007 resolution that the following types of unauthorised disclosures should not be raised as matters of privilege, unless there are particular circumstances involving actual or potential substantial interference with a committee's work:

- (a) disclosure of a committee report in the time between the substantial conclusion of the committee's deliberations on the report and its presentation to the Senate;
- (b) disclosure of other documents prepared by a committee and not published by the committee, where the committee would have published them, or could appropriately have published them, in any event, or where they contain only research or publicly-available material, or where their disclosure is otherwise inconsequential;
- (c) disclosure of documents and evidence submitted to a committee and not published by the committee, where the committee would have published them, or could appropriately have published them, in any event;
- (d) disclosure of private deliberations of a committee where the freedom of the committee to deliberate is unlikely to be significantly affected.

1.12 The resolution also establishes a process for a committee concerned about an unauthorised disclosure to consult with the Privileges Committee prior to raising a matter of privilege. That requirement is based on the possibility that the Privileges Committee would itself initiate the inquiry in sufficiently serious circumstances. The committee's 122nd report sets out the principles it will apply in the course of such consultations.⁵

1.13 The effectiveness of the 2007 resolution in establishing a process for dealing with these matters is evidenced by the fact that there have been no referrals to this committee of unauthorised disclosures since 2005, when the sessional order preceding the 2007 resolution was agreed to.⁶ On the other hand, there have been several reports from committees of how they have dealt with unauthorised disclosures.

1.14 A practical difficulty arises, however, when a committee affected by an unauthorised disclosure ceases to exist before it is able to undertake the consultation required under the 2007 resolution and complete its deliberations. This was the situation in which the select committee found itself.

5 Senate Committee of Privileges, 122nd report, paragraphs 3.45 – 3.48; 3.51 – 3.52.

6 The committee considered an aspect of the 2007 resolution in its 151st report, although unauthorised disclosure was not directly raised in the terms of reference for that inquiry. *See* Senate Committee of Privileges, 151st report, PP No. 95/12, paragraphs 1.35–1.46.

The matter of privilege

1.15 By letter dated 5 November 2012, Senator Thistlethwaite, the former chair of the Select Committee on Electricity Prices, raised a matter of privilege, concerning the unauthorised disclosure of the committee's draft report.⁷ The letter described the matter in the following terms:

The committee's report was pre-empted by an article written by Lenore Taylor and published in the *Sydney Morning Herald* online edition on 31 October 2012 and which included video excerpts of Ms Taylor speaking about the contents of the report. At that point the committee became aware of the article, it was yet to have its final meeting to adopt the draft report.

1.16 The commentary in the video appeared to compare some of the recommendations of the unpublished report with a package of measures the government apparently proposed to announce some days later.

1.17 The select committee reported on its investigations into the matter in Chapter 7 of its report.⁸ The committee wrote to 'the persons whom the committee understood to have been provided with the Chair's draft prior to its scheduled tabling in the Senate', including committee members and their staff, and the committee secretary and secretariat staff. The committee also wrote to two ministers seeking an explanation of the disclosure, without providing any further context as to why such inquiries were considered necessary.

1.18 The report also refers to commentary by ABC Radio's Fran Kelly on the morning of tabling, but indicates that the committee resolved not to investigate this further unauthorised disclosure because it 'did not wish to delay tabling of its important report on electricity prices'. Thus, there appear to have been concerns about multiple unauthorised disclosures.

1.19 In determining whether a matter should be given precedence as a matter of privilege, the President is required to consider the criteria specified in Privilege Resolution 4, and only those criteria. They are:

- (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.

1.20 In relation to the first criterion, the President noted:

7 That letter appears at Appendix 1.

8 Senate Select Committee on Electricity Prices, Report, *Reducing energy bills and improving efficiency*, November 2012, PP No. 407/12, Chapter 7. That chapter appears at Appendix 2.

...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.⁹

1.21 The second criteria concerns the availability of remedies other than the contempt jurisdiction to deal with the matter. The President again drew the Senate's attention to the 2007 resolution, noting that:

...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.

1.22 A select committee does not have the capacity to undertake the inquiries, consultation and deliberation envisaged by the 1996 and 2007 resolutions once it has presented its final report. While the Select Committee on Electricity Prices did make inquiries of its members, staff and two ministers about the unauthorised disclosure, it was unable to consult with this committee or deliberate on any such consultation. As the President concluded:

The Senate's contempt jurisdiction therefore provides the only remedy for cases of unauthorised disclosure involving the final reports of select committees.

1.23 On the basis that those two criteria had been satisfied, the President determined that a motion to refer the matter to the Privileges Committee should have precedence over other business on the day for which it is given.

1.24 Senator Thistlethwaite gave a notice of motion in the following terms:

(1) That the following matter be referred to the Committee of Privileges for inquiry and report:

Whether there was any unauthorised disclosure of the draft report of the Select Committee on Electricity Prices and, if so, whether any contempt was committed in that regard.

(2) That, for the purpose of this inquiry, the Committee of Privileges have power to consider and make use of the minutes of private meetings of the Select Committee on Electricity Prices, correspondence referred to in paragraphs 7.6 to 7.8 of the committee's report and any other document relevant to the question of possible unauthorised disclosure of the committee's draft report.¹⁰

9 The President's statement appears at Appendix 3.

10 *Journals of the Senate*, 20 November 2012, p. 3312.

1.25 The Senate agreed to the motion on 21 November 2012.¹¹

Conduct of the inquiry

1.26 The Committee's usual processes in relation to contempt matters have been set out on numerous occasions.¹² The role of the committee is primarily inquisitorial. When the Senate refers to the committee a matter giving rise to allegations of contempt, it is the committee's role to establish the facts and to investigate any particular allegations or suspects which emerge.

1.27 The committee is under no illusions, however, about the inherent difficulty of undertaking such a task. One of the principal problems identified in the 122nd report is the difficulty for committees – and not least for the Privileges Committee itself – in establishing the facts in unauthorised disclosure matters, and particularly in identifying the sources of leaks.¹³ It was this difficulty, and the committee's experience of multiple fruitless investigations into disclosures to the media, which led to the 2005 inquiry and informed the recommendations in the 122nd report.

1.28 The committee therefore determined that it should approach the present case by applying, to the extent possible, the principles reflected in the 2007 resolution. Accordingly, the committee resolved to consider whether further investigation of the matter was warranted, having regard to:

- its own assessment of the actual or potential interference with the work of the select committee, and
- the approach it had declared it would apply if consulted by another committee on such a matter.

1.29 The committee undertook preliminary inquiries to enable it to make that assessment.

Material before the committee

1.30 The motion referring the matter authorised the committee to seek access to relevant records of the select committee, which were in the custody of the Clerk of the Senate.

1.31 Having sought and received these documents, the committee invited submissions on the matter from former members of the select committee; the two ministers to whom the select committee had written; and the two journalists mentioned in chapter 7 of the select committee's report. This correspondence and the responses received are published in Appendix 4.

11 *Journals of the Senate*, 21 November 2012, p. 3343-4.

12 *See*, for example, Senate Committee of Privileges, 142nd report at paragraphs 1.23 – 1.25 and, more generally, Senate Committee of Privileges, 125th report, *Parliamentary privilege: Precedents, procedures and practice in the Australian Senate 1966–2005*, PP No. 3/2006, Chapter 5.

13 *See*, for example, the contribution of the then chair of the Privileges Committee, at Senate Committee of Privileges, 122nd report, paragraph 1.20.

1.32 Chapter 7 of the select committee's report records that that committee's investigations did not reveal the source of the disclosure, and that conclusion is supported by the records of the select committee. In correspondence from this committee former members of the select committee were asked whether they had any role in, or information about, the unauthorised disclosure. No member admitted to any such role. Only one former member – Senator Milne – provided a substantive response, suggesting Executive government intervention in the committee's processes, interference with the committee's freedom to deliberate and damage to the reputation of committees. In correspondence to the committee, the relevant minister denies any knowledge of, or involvement in, the matter.

Ms Taylor's response

1.33 The journalist whose publication led to the investigation raised the shield of journalistic ethics and made no other comment.

1.34 The committee now regards such responses from the media as inevitable, but they are often unsatisfactory. Journalists raising their ethics as a shield are essentially asking the parliament to respect their confidences while wilfully disregarding the right of the parliament to insist on its own; however the committee does not consider it necessary to consider that matter further in the context of this inquiry.

Interference with the work of committees

1.35 The Senate's characterisation of unauthorised disclosures as matters that may be treated as contempts is based on an assessment of the interference such disclosures can cause to the work of committees. As noted in paragraph 1.11, the 2007 resolution provides that the unauthorised disclosure of a draft report should not be raised as a matter of privilege 'unless there are particular circumstances involving actual or potential substantial interference with a committee's work.' The Privileges Committee considers that to be the appropriate test to apply in determining whether the matter warrants further investigation.

1.36 In this case it might be concluded that, because the committee was able to adopt a unanimous report and complete its work on schedule, there was no substantial interference with its work. However, this was not the view set out in the report of the select committee, which concluded that 'the disclosure of the chair's draft was a serious breach of the committee's confidence'¹⁴ and determined to raise the issue as a matter of privilege.

1.37 In his letter to the President, the former chair stated that the article 'pre-empted' the report, and that, in the committee's view, the disclosure of the chair's draft 'not only impeded its freedom to deliberate but reflected adversely on the value of the committee's inquiry'.

1.38 It is on the basis of those views that the President was able to conclude that the matter of privilege met the criterion in Privilege Resolution 4(a).¹⁵

14 Senate Select Committee on Electricity Prices, Report, paragraph 7.11.

15 As noted at paragraphs 1.19 – 1.23, above.

1.39 It is apparent, however, that the majority of those members do not now consider that the disclosure actually interfered with the committee. In their responses to this committee, four members of the former committee, including the chair, stated that the disclosure did not interfere, or did not substantially interfere, with the committee's work. Three members and two participating members noted concerns with what might be characterised as the potential for interference, citing process matters and a reduction in the impact of the report, but again did not appear to consider that any actual interference had occurred.

1.40 Only one member – Senator Milne – expressed concerns about actual interference. Her response is dealt with further below.

1.41 This is an echo of the situation which often arose prior to the adoption of the 2007 resolution. As noted in the committee's 125th report:

5.35 Particularly frustrating for the committee in recent cases has been its inability to find that unauthorised disclosures have led to substantial interference, or the potential for such, with the work of committees because of widely differing perceptions by the members of those committees.¹⁶

1.42 One of the aims of the 2007 resolution is to provide additional guidance to committees on assessing these matters. The opportunity to consult the Privileges Committee would ordinarily provide a mechanism for confirming that assessment. While correspondence with former members of the select committee is a poor substitute for that mechanism, it has enabled the committee in this case to conclude that the unauthorised disclosure did not substantially interfere with the select committee's work.

1.43 Absent a finding that the circumstances of the disclosure substantially interfered with the select committee's work, this committee is unable to conclude that the matter warrants further investigation as a possible contempt.

Potential interference with committees

1.44 Whatever effect an unauthorised disclosure has on the work of a particular committee, it also has the potential to inflict broader damage on the integrity of committee processes and the authority and credibility of committees more generally. It is for this reason 'potential substantial interference' forms part of the assessment envisaged in the 1996 and 2007 resolutions.

1.45 In assessing the potential for the unauthorised disclosure of draft reports to interfere with inquiry processes, this committee has previously distinguished between the different stages at which such a disclosure might occur: for instance, an early leak is more likely to inhibit a committee's freedom to deliberate. It appears in this case, however, that the select committee had substantially completed its work and was not influenced in its deliberations by the discovery of the disclosure. The committee does not consider that disclosures of this character – however undesirable – are likely to

16 Senate Committee of Privileges, 125th report, paragraph 5.35.

substantially interfere with committee processes and, again, is unable to conclude that the matter warrants further investigation in this case.

Consultations between committees

1.46 The select committee undertook initial investigations into the apparent disclosure but was unable to discover its source. Because the committee ceased to exist upon the presentation of its report, it was unable to consult with the Privileges Committee as envisaged by the 2007 resolution and to complete its deliberations.

1.47 In its 122nd report, this committee set out the approach it intended to take during such consultations.¹⁷ As noted in that report, the basis for proposing such consultations is that:

...the Committee of Privileges has had wide experience in dealing with such matters and may be able to assist other committees in making judgments as to the appropriateness of raising questions which, at first sight, might be considered serious but subsequently may not warrant further investigation.¹⁸

1.48 Having undertaken the preliminary investigations outlined above, the committee has concluded that this is not a matter on which it would have recommended further action, had it been possible to undertake consultations with the select committee.

1.49 In particular, the committee is not persuaded that it should depart from the following position set out in its 122nd report:

Deliberations and draft reports

3.51 Unauthorised disclosure and publication of the deliberations and draft reports of a committee, regardless of the stage at which disclosure occurs, should be a matter for internal discipline unless the disclosure and publication of those deliberations or draft reports:

- (a) also discloses actual or identifiable in camera evidence; or
- (b) discloses deliberations which may have an adverse effect on, or raise the expectations of, individuals who are the subject of or may be affected by the observations or recommendations in a committee's report.

3.52 Again, any committee which consults the Committee of Privileges on this matter can assume that, unless the leaker of the information is discovered, the committee will be reluctant to undertake an inquiry unless in camera evidence is involved...¹⁹

17 See Senate Committee of Privileges, 122nd report, paragraphs 3.43 – 3.52.

18 Senate Committee of Privileges, 122nd report, paragraph 3.48.

19 Senate Committee of Privileges, 122nd report, paragraphs 3.51 – 3.52.

1.50 The material received by the committee gives it little cause to consider it would have any more success than the select committee in identifying the source of the disclosure.

Intervention in committee processes

1.51 As has been noted, the response from Senator Milne expressed concerns about government intervention in the select committee's processes. Senator Milne submits that 'It has become the norm for the Executive to involve themselves in the work of committees and to seek to influence the outcome of inquiries' and suggests that this interference 'undermines the integrity of the Senate committee system and reflects a significant cultural shift away from the independence of the Senate's processes'.

1.52 The committee is highly critical of any conduct which impedes the freedom of a committee to deliberate. On the other hand, there is no bar on any member of any committee pressing a party position during a committee's deliberations, however much that may limit the scope of the consensus a committee may be capable of reaching.

1.53 While Senator Milne provides one possible explanation, the committee notes that her conclusions are not supported by other material put before the committee. In those circumstances, and again in the absence of evidence of substantial interference with the select committee's work, this committee does not consider that line of inquiry warrants further investigation in this case.

Procedural matters for select committees

1.54 The case has revealed a gap in relevant procedure, in that the 2007 resolution is not available as a remedy where a committee has ceased to exist. In similar circumstances in the future it might be appropriate for such a committee to seek from the Senate a brief extension of time for the limited purpose of complying with that resolution.

1.55 The committee stops short of proposing this as a recommendation, leaving it to the members of such a committee, and the Senate itself, to determine such matters on a case-by-case basis.

1.56 Should such a matter again come before this committee, the committee intends to follow the process it has undertaken in this case of applying as best it can the procedures and principles of the 2007 resolution before determining whether to further investigate any apparent unauthorised disclosure as a possible contempt.

Conclusion and recommendation

1.57 Applying the principles reflected in the resolution of the Senate of 17 September 2007, the committee has concluded that the matter referred does not warrant further investigation. The committee is unable to conclude, on the evidence before it, that a contempt of the Senate has been committed and **recommends** to the Senate that a contempt not be found.

(Senator Gary Humphries)

Chair



Matt Thistlethwaite Senator for NSW

Monday 5 November 2012

Senator the Hon John Hogg
President of the Senate
Australian Senate
Parliament House
Canberra ACT 2600



Dear Mr President

John

I write as the former chair of the Select Committee on Electricity Prices to raise a matter of privilege under standing order 81.

In chapter 7 of the committee's report as tabled on 1 November 2012, the committee drew attention to an instance of unauthorised disclosure of the chair's draft report. The committee's report was pre-empted by an article written by Lenore Taylor and published in the *Sydney Morning Herald* online edition on 31 October 2012 and which included video excerpts of Ms Taylor speaking about the contents of the report. At that point the committee became aware of the article, it was yet to have its final meeting to adopt the draft report.

The committee considered the matter at meetings on 31 October and resolved to investigate the source of the unauthorised disclosure. The steps it took are outlined in chapter 7 of its report, a copy of which is attached.

The committee considered responses received to its inquiries and concluded that, although it was not able to discover the source of the unauthorised disclosure, the disclosure of the chair's draft was a serious breach of the committee's confidence.

The committee has followed the resolution of the Senate of 17 September 2007 to the extent that it was able to before it ceased to exist on the presentation of its final report. The committee noted the sorts of unauthorised disclosures that should not be raised as matters of privilege but considered that this unauthorised disclosure fell within those categories of disclosure for which the contempt jurisdiction of the Senate should be reserved. In particular, the committee considered that the unauthorised disclosure not only impeded its freedom to deliberate but reflected adversely on the value of the committee's inquiry.

Although the resolution of 17 September 2007 contemplates that a committee affected by an unauthorised disclosure should consult with the Committee of Privileges as to whether a matter should be pursued, the Select Committee on Electricity Prices was unable to take this step before it ceased to exist. This is a particular difficulty for select committees whose final report is affected by an unauthorised disclosure.

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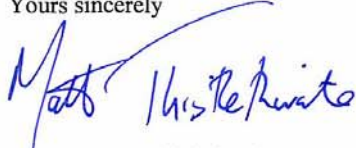
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I therefore ask that you consider this matter with a view to granting precedence for a motion to refer to the Privileges Committee the issue of whether an unauthorised disclosure of the draft report of the Select Committee on Electricity Prices occurred and whether any contempt was committed in that regard.

Yours sincerely

A handwritten signature in blue ink that reads "Matt Thistlethwaite". The signature is written in a cursive style with a large, sweeping initial "M" and a long horizontal flourish extending to the right.

Senator Matt Thistlethwaite

Appendix 2 – excerpt from select committee report

Unauthorised disclosure of the Chair's draft

Introduction

7.1 On 31 October 2012, the committee became aware of a possible unauthorised disclosure of the Chair's draft because of an article published by Lenore Taylor in *The Sydney Morning Herald*, 'Switch off and get paid', referring to the contents of the draft report.

7.2 The committee, in accordance with *Procedural Orders of Continuing Effect No 3 — Unauthorised disclosure of committee proceedings, documents or evidence*, has sought to discover the source of the disclosure.

Background

7.3 On the evening of 29 October 2012, the Chair's draft was provided to certain senators via email by the Committee Secretary.

7.4 On 31 October 2012, an article and video by Lenore Taylor titled 'Switch off and get paid' were published on the website of *The Sydney Morning Herald*.¹ The article referred to the contents of the Chair's draft, in particular 'government-backed recommendations from a special inquiry to be tabled in the Senate tomorrow'.² The article went on to summarise some of the recommendations in the Chair's draft.

7.5 In light of Ms Taylor's article, the committee considered that an unauthorised disclosure had occurred and resolved to investigate the source of this disclosure.

Investigation of unauthorised disclosure of a committee document

7.6 The committee wrote to the persons whom the committee understood to have been provided with the Chair's draft prior to its scheduled tabling in the Senate and subsequent publication on 1 November 2012 asking if they could explain the disclosure. Those persons were:

- committee members and their staff; and
- the Committee Secretary and staff of the secretariat.

7.7 The committee also wrote to the Hon Martin Ferguson AM MP, Minister for Resources and Energy, and the Hon Greg Combet AM MP, Minister for Climate Change and Energy Efficiency asking if they or their staff could explain the unauthorised disclosure.

7.8 The committee received responses from the following:

1 Lenore Taylor, 'Switch off and get paid', *The Sydney Morning Herald*, 31 October 2012.

2 Lenore Taylor, 'Switch off and get paid', *The Sydney Morning Herald*, 31 October 2012.

- Senators Thistlethwaite, Cormann, Edwards, Gallacher, McEwen, Milne, Thorp and Williams;
- Mr Matthew Marozzi and Ms Suzie Trifunovic from the office of Senator Gallacher;
- the Secretary, Senate Select Committee on Electricity Prices;
- the Hon Martin Ferguson AM MP, Minister for Resources and Energy, and the Hon Greg Combet AM MP, the Minister for Climate Change and Energy Efficiency.

7.9 The committee notes that, in responding, Senator Milne called for the committee to also investigate a possible unauthorised disclosure related to an Australian Broadcasting Corporation (ABC) radio report by Fran Kelly on 1 November 2012. As the committee did not wish to delay tabling of its important report on electricity prices, the committee resolved not to investigate this possible unauthorised disclosure.

7.10 On the basis of the responses received, the committee has not been able to discover the source of the unauthorised disclosure.

Conclusion

7.11 The committee has considered the responses received and noted the terms of *Procedural Orders of Continuing Effect No 4 — Unauthorised disclosure of committee proceedings*. The committee concludes that the disclosure of the Chair's draft was a serious breach of the committee's confidence. Therefore, the committee has determined to raise the unauthorised disclosure of the Chair's draft as a matter of privilege under standing order 81.

Senator Matthew Thistlethwaite
Chair

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.

Appendix 4 – Correspondence



AUSTRALIAN SENATE

COMMITTEE OF PRIVILEGES

PARLIAMENT HOUSE
CANBERRA ACT 2600
TEL: (02) 6277 3360
FAX: (02) 6277 3199
E-mail: priv.sen@aph.gov.au

pvltsenmt_18313

29 November 2012

PERSONAL AND CONFIDENTIAL

Senator M Thistlethwaite
Suite S1 35
The Senate
Parliament House
Canberra ACT 2600

Dear Thistlethwaite

As you know, on 21 November 2012 the Senate referred the following matter to the Committee of Privileges for inquiry and report:

Whether there was any unauthorised disclosure of the draft report of the Select Committee on Electricity Prices and, if so, whether any contempt was committed in that regard.

The statement by the President of the Senate, Senator the Hon John Hogg, made on 20 November 2012 and associated documents tabled on that day are enclosed for your information.

The Privileges Committee has obtained the records of the Select Committee's investigation under authority of the Senate.

The Committee of Privileges has decided to invite you to make any comments you may have, and provide any relevant documents, on issues arising from the matter. Specifically, the committee would appreciate a written response from you to the following questions:

- Did you disclose to any person, not authorised by the committee to receive it, a copy of the draft report of the Select Committee on Electricity Prices?
- Do you have any evidence of the unauthorised disclosure of a copy of the draft report and, if so, could you give particulars?

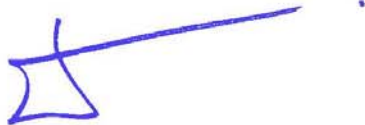
- Do you have any other comment to make in relation to the matters raised in chapter 7 of the report of the select committee and the investigation by that committee of the apparent unauthorised disclosure?
- In your assessment, did the unauthorised disclosure of the draft report amount to an act tending substantially to interfere with the work of the committee, or actually causing substantial interference, either at the time of the unauthorised disclosure or subsequently and, if so, how?

The committee would also appreciate your account, as the former Chair of the Select Committee, of the decisions taken and processes followed by the committee in investigating the unauthorised disclosure of the report.

The committee would like to receive your response as early as possible but, in any case, no later than 14 December 2012. It would be of help to the committee if you were to forward your response to the Secretary to the Committee, Mr Richard Pye, Parliament House, Canberra, ACT 2600.

While all responses received are confidential until the committee authorises their release, the committee normally assumes that they will be made public at an appropriate stage of an inquiry, unless there are compelling reasons not to publish them in whole or in part. If you need any further information on the matter, you may care to contact the secretary on (02) 6277 3360 or by email: priv.sen@aph.gov.au

Yours sincerely



(Gary Humphries)



AUSTRALIAN SENATE

COMMITTEE OF PRIVILEGES

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pvletothfk_18313

3 December 2012

PERSONAL AND CONFIDENTIAL

Ms Fran Kelly
ABC Breakfast Radio
PO Box 9994
Sydney NSW 0001

via email kelly.fran@abc.net.au

Dear Ms Kelly

As you may be aware, on 21 November 2012 the Senate referred the following matter to the Committee of Privileges for inquiry and report:

Whether there was any unauthorised disclosure of the draft report of the Select Committee on Electricity Prices and, if so, whether any contempt was committed in that regard.

A statement by the President of the Senate, Senator the Hon John Hogg, made on 20 November 2012 and associated documents tabled on that day are enclosed for your information.

The Senate may treat the unauthorised disclosure of a report of a Senate committee as a contempt of the Senate. The Privileges Committee is asked to investigate the circumstances surrounding the unauthorised disclosure of a draft report of the Senate Select Committee on Electricity Pricing.

Paragraph 7.9 of that reports states:

7.9 The committee notes that, in responding, Senator Milne called for the committee to also investigate a possible unauthorised disclosure related to an Australian Broadcasting Corporation (ABC) radio report by Fran Kelly on 1 November 2012. As the committee did not wish to delay tabling of its important

report on electricity prices, the committee resolved not to investigate this possible unauthorised disclosure.

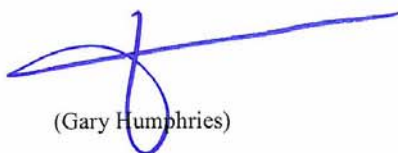
On the basis of that reference, the Privileges Committee has resolved to invite you to make any comments you may have, and provide any relevant documents, on issues arising from the matter. Specifically, the committee would appreciate a written response from you to the following questions:

- Did you disclose to any person, not authorised by the committee to receive it, a copy of, or material from, the draft report of the Select Committee on Electricity Prices?
- Do you have any evidence of the unauthorised disclosure of the draft report and, if so, could you give particulars?
- Do you have any other comment to make in relation to the matters raised in chapter 7 of the report of the select committee and the investigation by that committee of the apparent unauthorised disclosure?

The committee would like to receive your response as early as possible but, in any case, no later than 14 December 2012. It would be of help to the committee if you were to forward your response to the Secretary to the Committee, Mr Richard Pye, Parliament House, Canberra, ACT 2600.

While all responses received are confidential until the committee authorises their release, the committee normally assumes that they will be made public at an appropriate stage of an inquiry, unless there are compelling reasons not to publish them in whole or in part. If you need any further information on the matter, you may care to contact the secretary on (02) 6277 3360 or by email: priv.sen@aph.gov.au

Yours sincerely



(Gary Humphries)



AUSTRALIAN SENATE

COMMITTEE OF PRIVILEGES

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pvletotht_18313

3 December 2012

PERSONAL AND CONFIDENTIAL

Ms Lenore Taylor
Press Gallery
Suite S2 115
Parliament House
Canberra ACT 2600

via email lenore.taylor@fairfaxmedia.com.au

Dear Ms Taylor

As you may be aware, on 21 November 2012 the Senate referred the following matter to the Committee of Privileges for inquiry and report:

Whether there was any unauthorised disclosure of the draft report of the Select Committee on Electricity Prices and, if so, whether any contempt was committed in that regard.

A statement by the President of the Senate, Senator the Hon John Hogg, made on 20 November 2012 and associated documents tabled on that day are enclosed for your information.

The Senate may treat the unauthorised disclosure of a report of a Senate committee as a contempt of the Senate. The Privileges Committee is asked to investigate the circumstances surrounding the unauthorised disclosure of a draft report of the Senate Select Committee on Electricity Pricing.

Paragraphs 7.3 – 7.5 of that reports state:

7.3 On the evening of 29 October 2012, the Chair's draft was provided to certain senators via email by the Committee Secretary.

7.4 On 31 October 2012, an article and video by Lenore Taylor titled 'Switch off and get paid' were published on the website of *The Sydney Morning Herald*. The article referred to the contents of the Chair's draft, in particular 'government-backed recommendations from a special inquiry to be tabled in the Senate tomorrow'. The article went on to summarise some of the recommendations in the Chair's draft.

7.5 In light of Ms Taylor's article, the committee considered that an unauthorised disclosure had occurred and resolved to investigate the source of this disclosure.

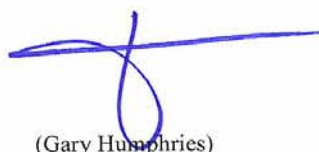
On the basis of that reference, the Privileges Committee has resolved to invite you to make any comments you may have, and provide any relevant documents, on issues arising from the matter. Specifically, the committee would appreciate a written response from you to the following questions:

- Did you disclose to any person, not authorised by the committee to receive it, a copy of, or material from, the draft report of the Select Committee on Electricity Prices?
- Do you have any evidence of the unauthorised disclosure of the draft report and, if so, could you give particulars?
- Do you have any other comment to make in relation to the matters raised in chapter 7 of the report of the select committee and the investigation by that committee of the apparent unauthorised disclosure?

The committee would like to receive your response as early as possible but, in any case, no later than 14 December 2012. It would be of help to the committee if you were to forward your response to the Secretary to the Committee, Mr Richard Pye, Parliament House, Canberra, ACT 2600.

While all responses received are confidential until the committee authorises their release, the committee normally assumes that they will be made public at an appropriate stage of an inquiry, unless there are compelling reasons not to publish them in whole or in part. If you need any further information on the matter, you may care to contact the secretary on (02) 6277 3360 or by email: priv.sen@aph.gov.au

Yours sincerely



(Gary Humphries)



AUSTRALIAN SENATE

COMMITTEE OF PRIVILEGES

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pvlsetsenrb_18313

29 November 2012

PERSONAL AND CONFIDENTIAL

LETTER SENT TO ALL MEMBERS OF THE FORMER SELECT COMMITTEE

Dear Senator

As you may be aware, on 21 November 2012 the Senate referred the following matter to the Committee of Privileges for inquiry and report:

Whether there was any unauthorised disclosure of the draft report of the Select Committee on Electricity Prices and, if so, whether any contempt was committed in that regard.

A statement by the President of the Senate, Senator the Hon John Hogg, made on 20 November 2012 and associated documents tabled on that day are enclosed for your information.

The select committee investigated the matter by writing to committee members and reported its conclusions in chapter 7 of its report. The Privileges Committee has obtained the records of that investigation under authority of the Senate.

The Committee of Privileges has decided to invite you to make any comments you may have, and provide any relevant documents, on issues arising from the matter. Specifically, the committee would appreciate a written response from you to the following questions:

- Did you disclose to any person, not authorised by the committee to receive it, a copy of the draft report of the Select Committee on Electricity Prices?
- Do you have any evidence of the unauthorised disclosure of a copy of the draft report and, if so, could you give particulars?

- Do you have any other comment to make in relation to the matters raised in chapter 7 of the report of the select committee and the investigation by that committee of the apparent unauthorised disclosure?
- In your assessment, did the unauthorised disclosure of the draft report 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 and, if so, how?

The committee would like to receive your response as early as possible but, in any case, no later than 14 December 2012. It would be of help to the committee if you were to forward your response to the Secretary to the Committee, Mr Richard Pye, Parliament House, Canberra, ACT 2600.

While all responses received are confidential until the committee authorises their release, the committee normally assumes that they will be made public at an appropriate stage of an inquiry, unless there are compelling reasons not to publish them in whole or in part. If you need any further information on the matter, you may care to contact the secretary on (02) 6277 3360 or by email: priv.sen@aph.gov.au

Yours sincerely



(Gary Humphries)



AUSTRALIAN SENATE

COMMITTEE OF PRIVILEGES

PARLIAMENT HOUSE
CANBERRA ACT 2600
TEL: (02) 6277 3360
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pvletmingc_18313

3 December 2012

PERSONAL AND CONFIDENTIAL

The Hon G Combet AM
Minister for Climate Change and Energy Efficiency
Minister for Industry and Innovation
House of Representatives
Parliament House
Canberra ACT 2600

Dear Minister

As you may be aware, on 21 November 2012 the Senate referred the following matter to the Committee of Privileges for inquiry and report:

Whether there was any unauthorised disclosure of the draft report of the Select Committee on Electricity Prices and, if so, whether any contempt was committed in that regard.

A statement by the President of the Senate, Senator the Hon John Hogg, made on 20 November 2012 and associated documents tabled on that day are enclosed for your information.

The Senate may treat the unauthorised disclosure of a report of a Senate committee as a contempt of the Senate. The Privileges Committee is asked to investigate the circumstances surrounding the unauthorised disclosure of a draft report of the Senate Select Committee on Electricity Pricing.

Paragraph 7.7 of that reports states:

7.7 The committee also wrote to the Hon Martin Ferguson AM MP, Minister for Resources and Energy, and the Hon Greg Combet AM MP, Minister for Climate Change and Energy Efficiency asking if they or their staff could explain the unauthorised disclosure.

The context of the committee's decision to write to you is not immediately apparent.

On the basis of that reference, the Privileges Committee has resolved to invite you to make any comments you may have, and provide any relevant documents, on issues arising from the matter. Specifically, the committee would appreciate a written response from you to the following questions:

- Did you disclose to any person, not authorised by the committee to receive it, a copy of, or material from, the draft report of the Select Committee on Electricity Prices?
- Do you have any evidence of the unauthorised disclosure of the draft report of the Select Committee on Electricity Prices and, if so, could you give particulars?
- Do you have any other comment to make in relation to the matters raised in chapter 7 of the report of the select committee and the investigation by that committee of the apparent unauthorised disclosure?

The committee would like to receive your response as early as possible but, in any case, no later than 17 December 2012. It would be of help to the committee if you were to forward your response to the Secretary to the Committee, Mr Richard Pye, Parliament House, Canberra, ACT 2600.

While all responses received are confidential until the committee authorises their release, the committee normally assumes that they will be made public at an appropriate stage of an inquiry, unless there are compelling reasons not to publish them in whole or in part. If you need any further information on the matter, you may care to contact the secretary on (02) 6277 3360 or by email: priv.sen@aph.gov.au

Yours sincerely



(Gary Humphries)



AUSTRALIAN SENATE

COMMITTEE OF PRIVILEGES

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3 December 2012

PERSONAL AND CONFIDENTIAL

The Hon M Ferguson AM
Minister for Resources and Energy
Minister for Tourism
House of Representatives
Parliament House
Canberra ACT 2600

Dear Minister

As you may be aware, on 21 November 2012 the Senate referred the following matter to the Committee of Privileges for inquiry and report:

Whether there was any unauthorised disclosure of the draft report of the Select Committee on Electricity Prices and, if so, whether any contempt was committed in that regard.

A statement by the President of the Senate, Senator the Hon John Hogg, made on 20 November 2012 and associated documents tabled on that day are enclosed for your information.

The Senate may treat the unauthorised disclosure of a report of a Senate committee as a contempt of the Senate. The Privileges Committee is asked to investigate the circumstances surrounding the unauthorised disclosure of a draft report of the Senate Select Committee on Electricity Pricing.

Paragraph 7.7 of that reports states:

7.7 The committee also wrote to the Hon Martin Ferguson AM MP, Minister for Resources and Energy, and the Hon Greg Combet AM MP, Minister for Climate Change and Energy Efficiency asking if they or their staff could explain the unauthorised disclosure.

The context of the committee's decision to write to you is not immediately apparent.


On the basis of that reference, the Privileges Committee has resolved to invite you to make any comments you may have, and provide any relevant documents, on issues arising from the matter. Specifically, the committee would appreciate a written response from you to the following questions:

- Did you disclose to any person, not authorised by the committee to receive it, a copy of, or material from, the draft report of the Select Committee on Electricity Prices?
- Do you have any evidence of the unauthorised disclosure of a copy of the draft report of the Select Committee on Electricity Prices and, if so, could you give particulars?
- Do you have any other comment to make in relation to the matters raised in chapter 7 of the report of the select committee and the investigation by that committee of the apparent unauthorised disclosure?

The committee would like to receive your response as early as possible but, in any case, no later than 17 December 2012. It would be of help to the committee if you were to forward your response to the Secretary to the Committee, Mr Richard Pye, Parliament House, Canberra, ACT 2600.

While all responses received are confidential until the committee authorises their release, the committee normally assumes that they will be made public at an appropriate stage of an inquiry, unless there are compelling reasons not to publish them in whole or in part. If you need any further information on the matter, you may care to contact the secretary on (02) 6277 3360 or by email: priv.sen@aph.gov.au

Yours sincerely



(Gary Humphries)



Senator Alex Gallacher

Labor Senator for South Australia

3/69 Fullarton Road
KENT TOWN SA 5067
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Fax: +61 8 8431 1622

Parliament House
CANBERRA ACT 2600
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Postal Address
PO Box 2141
KENT TOWN SA 5067

senator.gallacher@aph.gov.au

Senator Gary Humphries
Chair of Committee of Privileges
Parliament House
CANBERRA

3rd of December 2012

Dear Chair,

Thank you for your letter outlining the unfortunate situation where there was an unauthorised disclosure of the draft report from the Select Committee on Electricity Prices.

I can assure you that I have not disclosed any documents nor discussed the chair's draft to anybody outside the committee or the electorate office. I am disappointed that an individual has broken the trust of the committee by disclosing the chair's draft to the media.

I also do not have any evidence of the unauthorised disclosure and I have no further comment that can assist the investigation.

I do believe the unauthorised disclosure of the draft report did amount to an act tending substantially to interfere with the work of the committee and acted to cause substantial interference, as the process of draft to final report is a meticulous operation. A draft report circulated outside the committee can potentially misrepresent the wording and context to the final report's desired outcome.

Yours Sincerely,

Alex Gallacher
Senator for South Australia





SENATOR ANNE McEWEN
LABOR SENATOR FOR SOUTH AUSTRALIA
CHIEF GOVERNMENT WHIP IN THE SENATE



3 December 2012

Richard Pye
Secretary
Senate Committee of Privileges
Parliament House
CANBERRA ACT 2600

Dear Richard

I am in receipt of the letter dated 29 November 2012 from Senator Gary Humphries regarding the Committee Inquiry into alleged unauthorised disclosure of the draft report of the Select Committee on Electricity Prices.

In answer to Senator Humphries' questions I respond:

- 1 To my knowledge I did not disclose to any person, not authorised by the Committee to receive it, a copy of the draft report of the Select Committee on Electricity Prices.
- 2 I do not have any evidence of the unauthorised disclosure of a copy of the draft report.
- 3 I have no comment to make in relation to the matters raised in Chapter 7 of the report of the Select Committee and the investigation by the Committee of apparent unauthorised disclosure.
- 4 In my assessment the apparent unauthorised disclosure did not substantially interfere with the work of the Committee. The Committee had substantially concluded its deliberations at the time of the disclosure.

Yours sincerely

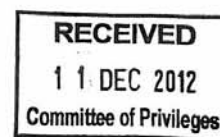
Anne McEwen
SENATOR FOR SOUTH AUSTRALIA

ADELAIDE OFFICE
PO BOX 55, TORRENSVILLE PLAZA SA 5031
101 HENLEY BEACH ROAD
MILE END SA 5031
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CANBERRA ACT 2600
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FAX: 02 6277 3425
EMAIL: Senator.McEwen@aph.gov.au



SENATOR THE HON. RON BOSWELL
THE NATIONALS
SENATOR FOR QUEENSLAND



07 December 2012

Mr Richard Pye
Committee Secretary
Senate Standing Committee of Privileges
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Secretary,

I refer to a letter from the Chairman of the Standing Committee of Privileges dated the 29th of November 2012.

I did not take part in any Committee discussions on the Select Committee on Electricity Prices. I was a participating member on two occasions.

I did not disclose to any persons a copy of the Draft Report of the Select Committee.

I have no evidence of the unauthorised disclosure of a copy of the Draft Report.

I have no other comment to make.

Regards,

A handwritten signature in blue ink, appearing to read 'R. Boswell'.

Senator the Hon Ron Boswell
Senator for Queensland

Suite S1-44 Parliament House
CANBERRA ACT 2600
Tel: (02) 6277 3046
Fax: (02) 6277 5724
Email: senator.boswell@aph.gov.au

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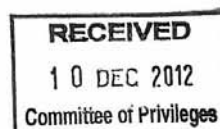


Senator Sean Edwards



5 December 2012

PERSONAL AND CONFIDENTIAL



Mr Richard Pye
Secretary to the Committee of Privileges
PARLIAMENT HOUSE
CANBERRA ACT 2600

Dear Mr Pye,

I refer to Mr Gary Humphries' letter dated 29 November 2012 regarding the unauthorised disclosure of the draft report of the Select Committee on Electricity Prices.

I outline below my response to your questions contained in the above mentioned letter.

- I did not disclose to any person, not authorised by the committee to receive it, a copy of the draft report of the Select Committee on Electricity Prices;
- I did not, nor do I currently have any evidence of the unauthorised disclosure of a copy of the draft report;
- I do not wish to make any further comments in relation to the matters raised in chapter 7 of the report of the select committee and the investigation by that committee of the apparent unauthorised disclosure; and
- I believe that although the unauthorised disclosure of the draft report was unethical and a clear breach of convention, it did not interfere with the work of the committee.

I have no objections to the publishing of my responses as the committee may see appropriate.

Kind regards,

Senator Sean Edwards
Liberal Senator for South Australia

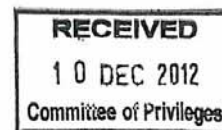
Senator for South Australia

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Email: senator.edwards@aph.gov.au



SENATOR CHRISTINE MILNE
Australian Greens Senator for Tasmania



Mr Richard Pye
Secretary
Senate Committee of Privileges
Parliament House
CANBERRA ACT 2600

10 December 2012

Dear Secretary

In response to a letter from the Chair, Senator Humphries, regarding an unauthorised disclosure of the draft report of the Select Committee on Electricity Prices I provide the following comments.

I did not disclose, nor can explain the disclosure of, the Chair's draft report. Furthermore, I am assured that none of my staff disclosed the Chair's draft report.

The article published by Lenore Taylor in the Sydney Morning Herald on 31 October states "the report is similar to the package to be put first to energy ministers on November 3, to a special business advisory forum on December 6 and to the Council of Australian Governments the next day." In order to draw this comparison, Ms Taylor would need to have been told both what the package for November contained and the proposed recommendations from the Committee. The Minister for Resources and Energy, or his office, would likely have had access to this information. It is highly doubtful that the non Ministerial backbench members of the Select Committee would have had, over one month in advance of its intended announcement to premiers and energy ministers, access to this information.

The Select Committee's agreement to contact Ministerial offices in the first instance of our investigation, and the readiness with which the Committee agreed, demonstrates that in the eyes of Committee members it is not unusual or abnormal for Minister's to receive copies of the Chair's draft report before they are considered by the Committee.

It has become the norm for the Executive to involve themselves in the work of Senate Committees and to seek to influence the outcomes of inquiries. This Executive interference undermines the integrity of the Senate Committee system and reflects a significant cultural shift away from the independence of the Senate's processes.

I do believe that the unauthorised disclosure of the draft report substantially interfered with the work of Committee. The publication of the article allowed the Executive to frame the public debate and left Committee members with the knowledge that whatever work they had done the recommendations were framed by the Minister of the day. It also meant that the Committee in considering the Chair's draft report was unlikely to go further than the Government would accept as the Government Chair and ALP backbench members would not contradict their Minister. In my experience, the consideration by a Committee of a Chair's draft report can result in significant debate and amendment to the draft document in order to reach majority consensus. That deliberative process was hindered by the unauthorised disclosure of the report.



I urge the Committee of Privileges to also consider in its investigations additional disclosure on the ABC Fran Kelly program, in a story 'Pioneering Energy Technology Heads Overseas' aired at 7:41am. The audio of the program can be found here:
<http://www.abc.net.au/radionational/programs/breakfast/pioneering-energy-technology-heads-overseas/4345272> This radio program is another example of unauthorised disclosure prior to the tabling of the report.

The blatant unauthorised disclosure of the Chairs draft report before being considered by the Committee is extremely serious. I urge the Privileges Committee to reinstate the accepted practice that the Chair's draft report is for the Committee and confidential to the Committee and should be beyond Ministerial intervention.

Yours sincerely

A handwritten signature in black ink, appearing to read "Christine Milne".

Senator Christine Milne
Leader of the Australian Greens



Senator Larissa Waters

Australian Greens Senator for Queensland



Senator Gary Humphries
Committee of Privileges
Via email: priv.sen@aph.gov.au

10 December 2012

Dear Senator Humphries,

I write in response to your letter to my office, dated 29 November 2012, relating to an unauthorised disclosure of the Chair's draft report from the Select Committee on Electricity Prices.

I did not disclose, nor can explain the disclosure of, the Chair's draft report. Furthermore, I am assured that none of my staff disclosed the Chair's draft report.

I strongly recognise that committee confidentiality is an important element of the Senate process and hope the matter is resolved promptly.

Kind regards,

SENATOR LARISSA WATERS
Australian Greens Senator for Queensland



SENATOR SCOTT LUDLAM
AUSTRALIAN GREENS
SENATOR FOR WESTERN AUSTRALIA

Mr Richard Pye
Secretary
Senate Committee of Privileges
Parliament House
CANBERRA ACT 2600

11 December 2012

Dear Secretary

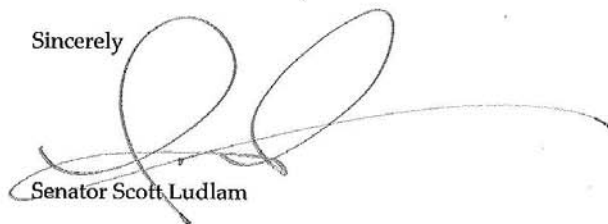
Senator Humphries, Chair of the Committee of Privileges, wrote on 29 November 2012 seeking my response to the unauthorised disclosure of a copy of the Select Committee on Electricity Prices draft report.

I did not disclose, nor can explain the disclosure of, the Chair's draft report. Furthermore, I am assured that none of my staff disclosed the Chair's draft report.

I do believe that the unauthorised disclosure of the Chair's draft report substantially interfered with the work of the committee. The publication of the news reports prior to the committee's consideration of the report must have impeded the committee's ability to freely deliberate and may have prevented the committee in considering alternate recommendations or other amendments.

The interference of the Executive, the media or others in committee work has serious implications for the effectiveness and reputation of the Senate Committee system.

Sincerely



Senator Scott Ludlam



December 11, 21012

Mr Richard Pye,
Parliament House
Canberra. ACT
2600

In response to the letter from the secretary of the committee of privileges, Senator Gary Humphries, I must inform you that I cannot disclose the source or sources of my story. This is a basic issue of journalistic ethics. If I can help you in any other way please let me know,

Yours sincerely,

A handwritten signature in blue ink that reads "L R Taylor". The signature is written in a cursive style.

Lenore Taylor.



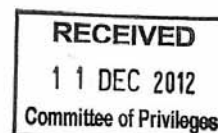
Parliament of
Australia

Senator the Hon. Lin Thorp
Labor Senator for Tasmania



07 December 2012

Mr Richard Pye
Parliament House
Canberra, ACT 2600



Dear Richard,

I did not disclose to any person, not authorised by the committee to receive a copy of the draft report of the Select Committee on Electricity Prices.

I have no evidence of the unauthorised disclosure of a copy of the draft report.

I have no other comment to make in relation to the matters raised in chapter 7 of the report of the select committee and the investigation by that committee of the apparent unauthorised disclosure.

In my assessment, the unauthorised disclosure of the draft report amounted to an act tending substantially to interfere with the work of the committee and resulted in reducing the impact of the report.

Yours Sincerely,

Lin Thorp
Labor Senator for Tasmania

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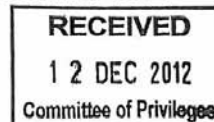
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Senator.Thorp@aph.gov.au



Matt Thistlethwaite Senator for NSW

12 December 2012



Gary Humphries
Chair
Senate Committee of Privileges
c/o Richard Pye
Parliament House
CANBERRA ACT 2600

Dear Mr Humphries, *Gary*

Thank you for your letter of 29 November 2012 regarding the Committee of Privileges Inquiry into the unauthorised disclosure of the draft report of the Select Committee on Electricity Prices.

Regarding the questions posed in your letter I respond as follows:

1. I did not disclose to any persons not authorised by the Committee to receive it, the draft report of the Select Committee on Electricity Prices.
2. I do not have any evidence of the unauthorised disclosure of the draft report.
3. Chapter 7 of the final report of the Select Committee outlines the circumstances in which the committee became aware of a possible unauthorised disclosure of the draft report and the actions taken by the committee to investigate this in accordance with *Procedural Orders of Continuing Effect No. 3. Unauthorised disclosure of committee proceedings.*

As stated in the clause 7.10 of the report the committee was unable to determine the source of the unauthorised disclosure.

At the final meeting of the committee on 1 November 2012 Senator Milne informed the committee of an ABC radio report by Fran Kelly on 1 November 2012 that Senator Milne believed may have involved the unauthorised disclosure of the committee draft report. No other members of the committee present at that meeting were aware of the Fran Kelly report.

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At that final meeting Senator Milne requested that the committee undertake a further inquiry into the possible unauthorised disclosure of the Committee draft report relating to the Fran Kelly report.

According to the resolution of the Senate establishing the Select Committee of Electricity Prices the committee was to be dissolved upon the tabling of the committee's final report in the Senate. This was scheduled to occur on 1 November 2012.

In respect of Senator Milne request for a further investigation in to the Fran Kelly report the committee determined that it did not wish to delay the tabling of the committees' report later that day therefore it would not undertake a further investigation as requested by Senator Milne, but that it would refer the matter to the Senate's Committee of Privilege for investigation.

That is the basis on which this matter comes before your committee.

4. I do not believe that the unauthorised disclosure of the draft report substantially interfered with the work of the committee. My final draft report was circulated to the committee members via email from the Committee Secretariat at 8:05pm on 29 October 2012. The Lenore Taylor article appeared in the Sydney Morning Herald on 31 October 2012. The Committee met to consider the Chairs draft report at 9:30am on 31 October 2012. The Chair's draft report was adopted at that meeting with minor amendments. No recommendations in the draft report were deleted and no new recommendations were added. The final draft report incorporating the amendments agreed to by the committee earlier that day was circulated by the Committee Secretariat at 7:21pm on 31 October 2012, and agreed to without amendment on the following day, 1 November 2012. On this basis I fail to see how the unauthorised disclosure affected the committees work.

Should you require further information please contact my office.

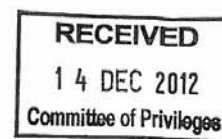
Yours Sincerely



Matt Thistlethwaite
Senator for New South Wales



SENATOR MATHIAS CORMANN
Liberal Senator for Western Australia
Shadow Assistant Treasurer
Shadow Minister for Financial Services and Superannuation



Senator Gary Humphries
 Chair
 Privileges Committee
 Parliament House
 CANBERRA ACT 2600

Dear Chair

Thank you for your letter in relation to the unauthorised disclosure of proceedings from the Senate Select Committee on Electricity Prices and the subsequent investigation by the Privileges Committee.

I wish to reiterate that neither I nor any of my staff have any knowledge regarding the disclosure of the Chair's draft report.

In regards to your specific questions:

- ***'Did you disclose to any person, not authorised by the committee to receive it, a copy of the draft report of the Select Committee on Electricity Prices?'***

No.

- ***'Do you have any evidence of the unauthorised disclosure of a copy of the draft report and, if so, could you give particulars?'***

No.

- ***'Do you have any other comment to make in relation to the matters raised in Chapter 7 of the report of the select committee and the investigation by that committee of the apparent unauthorised disclosure?'***

No.

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- *'In your assessment, did the unauthorised disclosure of the draft report 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 and, if so, how?'*

I was unaware that the breach had occurred until after the full report (including dissenting report) had been finalised and was ready for and due to be tabled. I can obviously not speak for the committee as a whole, but the breach did not impact on my contribution to the committee.

Kind regards



Mathias Cormann
Senator for Western Australia

11 December 2012



THE HON MARTIN FERGUSON AM MP
MINISTER FOR RESOURCES AND ENERGY
MINISTER FOR TOURISM



PO BOX 6022
PARLIAMENT HOUSE
CANBERRA ACT 2600

Senator Gary Humphries
Senate Standing Committee of Privileges
Parliament House
Canberra ACT 2600

12 December 2012

Dear Senator Humphries *Gary,*

I refer to your letter of 3 December 2012, regarding the Senate Standing Committee of Privileges inquiry into whether there was any unauthorised disclosure of the draft report of the Select Committee on Electricity Prices.

I did not disclose to any person a copy of, or material from, the draft report.

I do not have any evidence of the unauthorised disclosure of a copy of the draft report.

I do not have any further comment to make in relation to matters raised in chapter 7 of the report of the select committee or the investigation by that committee of the apparent unauthorised disclosure.

As requested, I have forwarded a copy of my response to Mr Richard Pye, Secretary of the Senate Standing Committee of Privileges.

Yours sincerely

Martin Ferguson

Telephone: (02) 6277 7930 Facsimile: (02) 6273 0434



NICK XENOPHON
Independent Senator for South Australia
AUSTRALIAN SENATE

Our ref: NC-H/SW

Senator Gary Humphries
Chair
Committee of Privileges
PARLIAMENT HOUSE
CANBERRA, ACT 2600

Dear Chair,

I write in response to your letter of November 29. My responses to your questions are as follows:

Did you disclose to any person, not authorised by the Committee to receive it, a copy of the draft report of the Select Committee on Electricity Prices?

- No.

Do you have any evidence of the unauthorised disclosure of a copy of the draft report and, if so, could you give particulars?

- I have no evidence of the unauthorised disclosure of the draft report.

Do you have any other comment to make in relation to the matters raised in Chapter 7 of the report of the select committee and the investigation by the committee of the apparent unauthorised disclosure?

- No.

In your assessment, did the unauthorised disclosure of the draft report amount to an act tending to substantially interfere with the work of the committee, or actually causing substantial interference, either at the time of the unauthorised disclosure or subsequently, and if so, how?

- Unauthorised disclosure of a report in itself undermines the work of the committee. There is an appropriate process for reports to be released and public comment and debate to ensue. An unauthorised disclosure undermines that process.

Yours sincerely,

NICK XENOPHON

7 / 2 / 2013

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