

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

COMMITTEE OF PRIVILEGES

**POSSIBLE UNAUTHORISED DISCLOSURE
OF DRAFT REPORT OF LEGAL AND
CONSTITUTIONAL LEGISLATION COMMITTEE**

100TH REPORT

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POSSIBLE UNAUTHORISED DISCLOSURE OF DRAFT REPORT OF LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE

Introduction

1. On 26 June 2001 the Senate referred the following matter to the Committee of Privileges, on the motion of the Chair of the Legal and Constitutional Legislation Committee, Senator Payne:

Having regard to the matter submitted to the Senate on 25 June 2001, whether there was an unauthorised disclosure of a draft report of the Legal and Constitutional Legislation Committee, and whether any contempt was committed in that regard.¹

Background

2. On 15 June 2001, in a letter to the President of the Senate, Senator Payne raised the matter of an unauthorised disclosure of a draft Chair's report on the Sex Discrimination Amendment Bill (No. 1) 2000, as follows:

The Chair's draft of the above report was emailed to most of the members of the Committee at 10.53 p.m. on Monday 19 February 2001. On 20 February, during Estimates hearings, I was contacted by a journalist who advised that he was aware of the contents of the report including its conclusions. It appears that the information he had related to the emailed version, and not to hard copies that were provided to members on the morning of 20 February.²

3. Further in her letter, she stated:

In my conversation with the journalist I specifically advised him that the report had confidential status and that I would not discuss it with him. He acknowledged his awareness of this and of the fact that he could be seen as committing a contempt by publishing information specifically relating to the report.³

4. Notwithstanding the journalist's understanding that the draft report was confidential and that he might potentially be in contempt of the Senate, an article under his by-line clearly based in part on the content of the draft report appeared in *The Australian* on 22 February 2001.

5. The Legal and Constitutional Legislation Committee met during a break in estimates hearings, that is, before the article based on the draft report appeared in *The*

1 Appendix A, p. 2

2 *ibid.*, pp. 3-4.

3 *ibid.*

Australian, to discuss the matter. It made admirably exhaustive but ultimately unsuccessful attempts to discover who might have disclosed the draft report. Relevant persons associated with the receipt of the draft report in electronic form responded, advising that they had no knowledge of how the draft report might have found its way to the journalist concerned. All responses except one, which was undated, were dated between 21 and 23 February 2001. All appear to have been available to the Legal and Constitutional Legislation Committee when it met on 1 March to consider whether the disclosure had a tendency substantially to obstruct its work.

6. The outcome of that meeting was as follows:

As the Chair of the Legal and Constitutional Legislation Committee, I wish to advise that the Committee agreed on 1 March that the unauthorised disclosure both affected the Committee's operations and also had the potential to adversely affect the Committee's work.⁴

7. The committee's conclusion was based on the following:

The Committee's work was directly interrupted through the need to undertake an inquiry into the disclosure during Estimates hearings (it met on 19 February at the beginning of a break in the Estimates hearings, and agreed that the procedures set out in Order of Continuing Effect 3(1) would be implemented). In addition, the concern particularly experienced by me as Chair, reduced the time available for consideration of the draft and my capacity to consider additional material.⁵

8. The letter went on to suggest that:

I believe the potential to cause disruption to the Committee's work arose from the possibility of members requiring additional time, which would have been undesirable considering that an extension of almost three months had been obtained in early December 2000. In the event, one member and two participating members did seek an extension of time to report, but the Committee considered this would be undesirable, and the report was tabled on time.⁶

9. The President gave precedence to the notice of motion on 25 June,⁷ and the matter was referred to the Committee of Privileges accordingly on 26 June 2001.

Conduct of inquiry

10. On receipt of the reference, the Committee of Privileges wrote to the editor in chief of *The Australian*, as well as to all current members, and the secretary, of the

4 *ibid.*

5 *ibid.*

6 *ibid.*

7 *ibid.*, p. 1.

Legal and Constitutional Legislation Committee, seeking comment on the matter. All responses to the committee's letter are included at Appendix B to this report,⁸ and the committee also draws attention to the earlier documents tabled in the Senate.

11. No current members of the Legal and Constitutional Legislation Committee were able to shed any further light on the unauthorised disclosure. The committee secretary drew attention to certain matters relating to the preparation of the report, both before and after the unauthorised release, but in the view of the Committee of Privileges these do not take the question of the unauthorised disclosure to the journalist any further.

12. Legal representatives of *The Australian* also responded.⁹ In summary, the response appears to suggest that no contempt has been committed because interruptions to the committee's work, identified in Senator Payne's letter to the President, were not so substantial as to constitute improper obstruction of the committee. The response did not address the decision by the committee as a whole that the unauthorised disclosure 'both affected the Legal and Constitutional Legislation Committee's operations and also had the potential to adversely affect the committee's work'.

Conclusion

13. The Committee of Privileges has concluded that, even though on its face the obstruction of the Legal and Constitutional Legislation Committee was not overwhelming, it was sufficiently serious to warrant a finding that it constituted improper interference with the work of the committee, as declared by that committee. This is particularly the case given that, as indicated in letters from the Chair of the Legal and Constitutional Legislation Committee, the journalist admitted to knowing that the report had been improperly disclosed, with publication of information based on the report thereby constituting a contempt of the Senate. There can, therefore, be no question that the publication was deliberate.

14. The Committee of Privileges has made its views on unauthorised disclosure and publication known on several occasions, notably in its 74th report¹⁰ and most recently in its 99th report,¹¹ tabled on 30 August 2001. It does no more here than to draw attention to its criticism of both a person who improperly discloses a report and a person who improperly receives and publishes it. It is clear from the committee's previous comments that it regards seriously improper disclosure and publication of draft committee reports. This is especially pertinent given the decision to publish with such blatant disregard of the warning by the Chair of the Legal and Constitutional Legislation Committee, before publication, that the draft had been improperly

8 Appendix B, pp. 5-12.

9 Appendix C, pp. 13-16.

10 74th report of the Committee of Privileges, tabled 9 December 1998, PP No. 180/1998.

11 99th report of the Committee of Privileges, tabled 30 August 2001, PP No. 177/2001.

disclosed. However, in the light of that committee's futile attempts to find the source of the improper disclosure, and the Privileges Committee's own equally unsuccessful attempts, in the present case as also in previous cases, it can see little point in pursuing that element of the inquiry.

FINDINGS

15. The Committee of Privileges makes findings in the following terms:

- (a) That an article appearing in *The Australian* of 22 February 2001, written by the political correspondent, was based on a draft report of the Legal and Constitutional Legislation Committee.
- (b) That the Legal and Constitutional Legislation Committee did not authorise the release of the document; nor did it authorise that its content be divulged.
- (c) That the unauthorised disclosure to the political correspondent was probably deliberate, but that the Committee of Privileges is unable to find the source of that deliberate disclosure.
- (d) That the publication of the information in *The Australian*, based on the unauthorised disclosure, was deliberate and was made in the full and direct knowledge, as conveyed to the journalist by the Chair of the Legal and Constitutional Legislation Committee before the publication occurred, that the document had not been authorised for publication.
- (e) That the person or persons who disclosed the information to the political correspondent has or have committed a contempt of the Senate.
- (f) That Nationwide News Pty Limited, the publisher of *The Australian*, as the organisation responsible for the actions of its employee, the political correspondent, has committed a contempt of the Senate.

These findings have been communicated to Mr David Armstrong, editor in chief of *The Australian*, as required by Privilege Resolution 2(10).

Penalty

16. In the present case, the committee has decided not to recommend any penalty in respect of either the unknown discloser of the draft report, or the publishers of *The Australian*. Even though the committee takes very seriously the obvious disregard of the rules which govern all persons dealing with the Parliament, it considers that the findings of contempt are in themselves sufficient to express the view of the committee and ultimately the Senate. It is self-evident that these contempts are not of the same order of seriousness as the improper disclosure and publication which were the subject of the 99th report and which led the committee to recommend penalties. However, the committee draws attention to the last paragraph of that report in the following terms:

If, following the presentation of this report to the Senate, any further matters of improper disclosure involving newspapers published by Nationwide News Pty Limited are subsequently referred to the Committee of Privileges as possible contempts, and the committee so finds, it will seek the Senate's endorsement of a recommendation that the publisher's access to the part of the precincts under the management and control of the President of the Senate be restricted.¹²

As the 99th report makes clear, the committee did not contemplate recommending the imposition of this sanction in respect of any matter already referred to it. This present matter falls into that category and thus any proposed sanction does not apply.

Robert Ray
Chair

12 *ibid.*

APPENDICES

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