

**THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA**

**THE SENATE**

**COMMITTEE OF PRIVILEGES**

**POSSIBLE UNAUTHORISED  
DISCLOSURE OF IN CAMERA  
PROCEEDINGS OF THE  
ECONOMICS REFERENCES COMMITTEE**

**93<sup>RD</sup> REPORT**

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# **POSSIBLE UNAUTHORISED DISCLOSURE OF IN CAMERA PROCEEDINGS OF THE ECONOMICS REFERENCES COMMITTEE**

## **Introduction**

1. On 11 May 2000, after debate, the Senate referred the following matter to the Committee of Privileges:

Having regard to the material presented to the Senate by the President on 11 May 2000, whether there was an unauthorised disclosure of in camera proceedings of the Economics References Committee, and, if so, whether any contempt was committed and whether any action should be taken by the Senate in consequence.<sup>1</sup>

The matter was raised by Senator Gibson, Deputy Chair of the Economics Reference Committee, on 6 April 2000.

2. The President of the Senate, Senator the Honourable Margaret Reid, made a determination to give the matter precedence on 11 May 2000. Under Standing Order 81, matters about which the President makes a determination on the last sitting day before the Senate adjourns for a week or more may be the subject of a motion without notice. This is to ensure that a matter of privilege may not be the subject of unnecessary delay before being referred to the Committee of Privileges. In all other circumstances, notice of such motion must be given. There is, however, some disadvantage in moving motions without notice, because it is difficult for the Senate to make a considered judgment that a matter should be referred.

## **Background**

3. In making her statement to the Senate on 11 May, the President advised that:

The matter is an unauthorised disclosure of evidence taken in camera by the committee. Press reports indicate that Senator Murphy, a member of the committee, disclosed that a particular witness gave evidence to the committee in camera. Senator Gibson's letter indicates that Senator Murphy has confirmed that he made such a disclosure. Senator Murphy, by letter dated 11 April 2000, has set out the circumstances of the disclosure.<sup>2</sup>

In giving the motion precedence, the President noted:

Past decisions of the Senate and the Privileges Committee indicate that the disclosure of in camera committee evidence is a matter which is always

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<sup>1</sup> Appendix A, p. 8

<sup>2</sup> Appendix B, p. 9.

taken extremely seriously and which meets the criteria which I am required to consider.

She then went on to point out that:

It may be thought that there is no point in referring the matter to the Privileges Committee because there is nothing for the committee to inquire into, in that a senator has conceded that he made the unauthorised disclosure,

but also observed:

The Senate may well consider, however, that the Privileges Committee should be called upon formally to find the fact and the circumstances of the unauthorised disclosure and to advise the Senate on what action, if any, should be taken.<sup>3</sup>

The President tabled the relevant letters.

4. In raising the matter of privilege, Senator Gibson advised that Senator Murphy had pointed out that another publication had previously revealed that the person concerned had given in camera evidence to the committee. Senator Gibson explained that he was, nonetheless, raising the matter as a potential contempt because it undermined future witnesses' confidence in the committee's ability to protect the identity of in camera witnesses. Senator Gibson further advised that the Economic References Committee considered it appropriate that he raise the matter directly with the President.<sup>4</sup>

5. Senator Murphy, in confirming Senator Gibson's account, stated that:

[T]he circumstances in which I found myself were such that it was very difficult to avoid confirming the identity of the individual concerned.

The context in which I confirmed the identity of the witness was as follows. I received a phone call from a journalist who advised of his intention to publish a story that purported to describe the nature of the evidence given by the witness. That proposed story was factually incorrect and would, in my view, have damaged the Committee's reputation if published in the form proposed. At the time, I considered that I had little option but to set the record straight.<sup>5</sup>

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<sup>3</sup> *ibid.*

<sup>4</sup> Appendix B, p. 13.

<sup>5</sup> *ibid.*, p. 15.

He then noted that:

My statement merely reiterated what was already public knowledge. As far back as 19 November 1999, an article published in *Business Review Weekly* had stated that the individual concerned had given evidence.

He concluded:

The Committee and I have gone to considerable lengths to protect the identity of *in camera* witnesses where they have requested anonymity. I did not casually or lightly confirm the identity of the witness and would not have done so if it had not been apparent that his identity as a witness was already public knowledge.<sup>6</sup>

6. Senator Murphy reiterated this account when debating the motion to refer the matter to the Committee of Privileges. During other discussions in the chamber, one member of the Economics References Committee, Senator Murray, made the point that Senator Murphy's actions were designed to:

protect the integrity of the committee, the integrity of the committee members and the integrity of the tax officer [public servant involved].<sup>7</sup>

## Conduct of inquiry

7. In considering the matter, the committee noted advice from the President that the Economics References Committee had substantially, although not completely, conformed to a resolution of the Senate of 20 June 1996 which requires committees to investigate unauthorised disclosures of committee evidence or documents. The Committee of Privileges in turn sought comment from members of the committee at the relevant time, and received responses from Senator Gibson and Senator Murphy, Senator Murray, who drew attention to his comments in the chamber when the matter was referred, and Senator Chapman, who noted that the disclosure should not have occurred.<sup>8</sup> As the source of the unauthorised disclosure was already identified, the committee did not see any need to make further inquiries.

8. Senator Murphy, who responded on 19 June 2000, indicated that he had little more that he could add to his original letter to the President. He asked, however, that some matters be taken into consideration. Firstly, he made the point that:

In conducting its inquiry into the operations of the ATO [Australian Taxation Office], the Economics References Committee received a large body of its evidence on an *in camera* basis, none of which has made it into the public arena.<sup>9</sup>

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<sup>6</sup> *ibid.*, p. 16.

<sup>7</sup> *ibid.*, p. 11.

<sup>8</sup> Appendices C-F, pp. 17-22.

<sup>9</sup> Appendix C, p. 17.

He advised that:

It was assertions by a journalist from *The Age* that led me to be in technical breach of the Standing Order 81 and Privilege resolution 6(16)(b), as explained in my letter of 11 April 2000 to the President.<sup>10</sup>

He then suggested that he did not believe that the identification of the witness had any effect on the work of the committee or its report.

9. This view was supported by Senator Gibson, in his response to the committee. He expanded on his earlier reasons why he felt it incumbent on him, as Deputy Chair of the Economics References Committee, to raise the matter as a question of privilege:

I remain of the view that disclosure of the identity of an in camera witness can have the effect of undermining future witnesses' confidence in the ability of the Senate Committee system to maintain anonymity when this is requested. This has the potential to impinge on the ability of this and other Committees to gather sensitive information in the future as witnesses may have less confidence that what they say or their identities will not be disclosed. My concern is that witnesses may hesitate to come forward or give frank evidence if the Committee's integrity in such matters is open to question.<sup>11</sup>

10. He made the point that it was only the identity of the witness that was revealed, not the content of his evidence which remained in camera, and concluded as follows:

In bringing this matter forward, it was not my intention to attack Senator Murphy personally, but rather to reaffirm the principle that Committees must take the protection of in camera evidence and the protection of witnesses seriously. However, in Senator Murphy's case, I accept that he was placed in a difficult situation. In fairness to him, I acknowledge that he takes his responsibilities as Chairman seriously, including the safeguarding of in camera evidence. His personal integrity is not in doubt.<sup>12</sup>

## Comment

11. Before receiving Senator Gibson's response, the Committee of Privileges was somewhat at a loss to understand why the matter, as originally raised, had become the subject of a reference to the committee. It was perhaps unfortunate that there was not more opportunity for deliberation before the matter was formally referred. This was the subject of discussion between the Chair of the Privileges Committee and the President, during the Finance and Public Administration Legislation Committee

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<sup>10</sup> *ibid.*

<sup>11</sup> Appendix E, p. 20.

<sup>12</sup> *ibid.*, p. 21.



hearing on the estimates of the Department of the Senate.<sup>13</sup> Senator Ray suggested that, given the lapse of time between receipt of the letter from Senator Gibson and her decision to give the matter precedence, it would have been desirable for the usual notice of motion to be given, to enable senators to evaluate the matter. Madam President acknowledged the difficulties that had arisen, and gave an assurance that procedures in her office would be streamlined to ensure that this situation did not arise again.

12. Having received Senator Gibson's response, the Committee of Privileges now appreciates that his concern in raising the matter was to protect the integrity of committee proceedings. Given the committee's previous experience in relation to in camera proceedings of Senate committees, which led in 1987 to the unauthorised disclosure of in camera evidence being included in the *Parliamentary Privileges Act 1987* as a criminal offence, the committee accepts that the circumstances surrounding any such release must be examined carefully.

13. In particular, the committee acknowledges that it is difficult for other committees to pursue unauthorised disclosure of in camera proceedings by persons other than committee members without themselves being prepared to take action against committee members who have similarly disclosed in camera information. As the committee itself observed in its 74<sup>th</sup> report, tabled in the Senate in December 1998:

[P]rima facie, it would expect that any incident of improper release of *in camera* evidence would be brought by any other committee quickly to the attention of the Senate and ultimately to the Committee of Privileges, with a view possibly to criminal action if the matters raised are sufficiently grave as to justify such a course.<sup>14</sup>

## Conclusion

14. Having considered all the matters raised by Senators Gibson and Murphy, the Committee of Privileges has concluded that a finding of contempt against Senator Murphy is not appropriate. As both senators have pointed out, the name of the in camera witness had previously been published in November 1999, before the Economic References Committee's report was tabled on 9 March 2000, and no action was taken against any person at that time. Furthermore, the senators have concluded that in the specific circumstances of the case no harm was done to the committee's proceedings, and both they and another member of the committee, Senator Murray, have pointed out that at no stage has any in camera evidence been disclosed without the authority of the committee.

15. The Committee of Privileges suggests that, while it is understandable that Senator Murphy was anxious to defend the integrity of committee proceedings, and of

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<sup>13</sup> Estimates hearing, 22 May 2000, p. 4.

<sup>14</sup> 74<sup>th</sup> report of the Committee of Privileges, PP No. 180/1998, p. 7, para. 1.33.

a senior public servant who might otherwise have been inappropriately maligned by media distortion of those proceedings, his decision to respond by revealing or confirming the name of a witness who had given in camera evidence was not without cost. The committee understands the difficulties involved for a chair of any committee when he/she is contacted by a journalist pressing for instantaneous comment on controversial matters. The committee considers, however, that it might have been wise, given the circumstances, for Senator Murphy to seek the opinion of the Economics References Committee before making any comment or, if that proved to be impracticable, to advise the Deputy Chair as a matter of urgency, and other members of the committee as soon as possible, after the disclosure had occurred.

16. In reaching this conclusion, the committee is pleased to observe the concern evidenced by members of the Economics References Committee, and that committee's otherwise excellent record in conforming with the Parliamentary Privileges Act and Senate Privilege Resolutions, in the handling of sensitive in camera evidence.

### **Finding**

17. The Committee of Privileges has concluded that no contempt of the Senate should be found in respect of this matter.

Robert Ray  
**Chair**

## APPENDICES

Appendix	Document	Pages
<b>A</b>	Extract from Journals of the Senate No. 116, 11 May 2000	8
<b>B</b>	<p>Extract from Senate <i>Hansard</i>, 11 May 2000, pp. 13776-8</p> <p>Tabled documents:</p> <ul style="list-style-type: none"> <li>➤ Letter dated 6 April 2000 from Senator Gibson to Senator the Hon. Margaret Reid, President of the Senate</li> <li>➤ Letter dated 11 April 2000 from Senator Murphy to Senator the Hon. Margaret Reid, President of the Senate</li> </ul>	<p>9-12</p> <p>13-14</p> <p>15-16</p>
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**For copies of the above appendices please contact the committee secretariat on (02) 6277 3360**