

*The Senate*

**COMMITTEE OF PRIVILEGES**

**REPORT UPON ARTICLES IN**

***THE SUNDAY AUSTRALIAN***

**AND**

***THE SUNDAY REVIEW* OF 2 MAY 1971**

**Dated 13 May 1971**

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*Brought up and ordered to be printed*  
*13 May 1971 a.m.*

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## MEMBERS OF THE COMMITTEE

Senator the Hon. T. C. Drake-Brockman, D.F.C. (*Chairman*)

Senator G. H. Branson

Senator the Hon. I. J. Greenwood, Q.C.

Senator L. K. Murphy, Q.C.

Senator J. O'Byrne

Senator P. E. Rae

Senator D. R. Willesee

Senator J. M. Wheeldon, who was a member of the Committee, was at his own request discharged from attendance upon the Committee on 6 May 1971 (*and see Minutes of Proceedings of the Committee of 4 and 6 May*).

## THE SENATE

### REPORT FROM THE COMMITTEE OF PRIVILEGES

The Committee of Privileges has the honour to present the following Report to the Senate.

1. On 4 May 1971, Senator Marriott, the Chairman of the Select Committee on Drug Trafficking and Drug Abuse in Australia, moved the following motion in the Senate:

'That the article on page 1 of *The Sunday Australian* of 2 May 1971, and the article on page 845 of *The Sunday Review* of 2 May 1971, dealing with the proposed report of the Senate Select Committee on Drug Trafficking and Drug Abuse in Australia, be referred to the Committee of Privileges for investigation and report.'

2. The Senate agreed to the motion, and the Committee held its first meeting on the following day. The Committee, by majority, interpreted its reference from the Senate as raising only the possible breach of privilege by the newspapers referred to in the motion and considered that the reference did not entitle the Committee to inquire into and report upon the question of how the information contained in the draft report came to the knowledge of, or into the hands of, the newspapers concerned.

3. The Committee held six meetings and heard evidence from Senator Marriott, Mr J. R. Walsh, the Managing Editor of *The Sunday Review* and Mr H. B. Rothwell, the Editor of *The Sunday Australian*. The Committee notified the publisher of *The Sunday Australian*, Mirror Newspapers Ltd, and the publisher of *The Sunday Review*, IPEC Ltd, of the proceedings of the Committee, and offered to them the opportunity of producing evidence or making any submission to the Committee. Each Company informed the Committee that it did not wish to do so.

4. The Committee, as a result of its consideration of the relevant documents and its examination of witnesses, has resolved unanimously that the publication in *The Sunday Review* and *The Sunday Australian*, of contents of a draft report of a Select Committee of the Senate, prior to its presentation to the Senate, constitutes a breach of the privileges of the Senate. Premature publication of a report or the contents of a document containing a draft report from a Senate Committee is a breach of privilege, unless the Senate has approved that course or has authorised the Committee to publish the same. It is no answer to suggest that the consequences of such action are avoided if only part of the report is published or if extracts are prefaced by words indicating anticipation of Committee recommendations.

5. In making its findings as to the privileges of the Senate, the Committee had regard, inter alia, to statements in Erskine May's *Parliamentary Practice* 17th Edition, at page 665, under the heading 'Premature publication of reports of Committees', as follows:

'Any publication of a draft report, which has been submitted to a committee, before such report has been agreed to by the committee and presented to the House, is treated as a breach of privilege'.

and at pages 119-120, under the heading 'Premature Publication of a Committee's Proceedings or Evidence', as follows:

'The publication of proceedings of committees conducted with closed doors or of draft reports of committees before they have been reported to the House will, however, constitute a breach of privilege'.

The Committee also noted Senate Standing Order No. 308, which reads as follows:

'The evidence taken by any Select Committee of the Senate and documents presented to such Committee, which have not been reported to the Senate, shall not, unless authorised by the Senate or the Committee, be disclosed or published by any member of such Committee, or by any other person.'

and *Australian Senate Practice*, by J. R. Odgers, at p. 468, as follows:

'The publication of a Committee's report before its presentation to the House is unquestionably a breach of privilege'.

6. The Committee was told by each editor that he did not advert to the possibility of a breach of parliamentary privilege being involved in the premature publication of the relevant article. The Managing Editor of *The Sunday Review* stated that no disrespect to the Senate was intended and that, if a breach of privilege was involved, he would wish to tender an unqualified apology on behalf of himself and his newspaper. The Editor of *The Sunday Australian* indicated that if the Committee found him to be in breach of privilege he would be ready to apologise.

7. The Committee is greatly concerned that the premature publication of a Select Committee report was not even adverted to by the newspaper editors as possibly involving a breach of parliamentary privilege. The Committee considers the position analogous to the premature publication of a Court judgment.

8. Bearing in mind the fact that the Senate has already developed a significant system of Standing and Select Committees, and that this development appears certain to continue, the Committee is concerned that such clear cases of premature publication should have occurred at this time. The Committee hopes that its finding in this matter will constitute a warning against any future disclosure or premature publication.

9. The powers, privileges and immunities of the Senate are those of the House of Commons, at the establishment of the Commonwealth of Australia. Additionally, the Senate may make rules and orders with respect to the mode in which its powers, privileges and immunities may be exercised and upheld (Sections 49 and 50 of the Constitution). There is no question as to the power of the Senate to commit to prison any persons guilty of a breach of privilege. The Committee does not regard the character of the breach of privilege in this case or the circumstances in which it occurred as justifying imprisonment.

10. The Senate has the undoubted power to reprimand or admonish, and, in addition, the President of the Senate has, in the past, excluded from the precincts of the Senate representatives of offending newspapers.

### **The Committee Reports to the Senate—**

(1) That the publication, prior to presentation to the Senate, of contents of *the Report of the Senate Select Committee on Drug Trafficking and Drug Abuse in Australia*, in *The Sunday Australian* of 2 May 1971 and in *The Sunday Review* of 2 May 1971, constitutes a breach of the privileges of the Senate.

(2) That the editor and publisher of each of the newspapers are the persons who are to be held responsible and culpable in such breach of privilege.

(3) That the editor or managing editor, and the publishers, of the newspapers were:

*The Sunday Australian*—Editor: Mr H. B. Rothwell.

Publisher: Mirror Newspapers Ltd.

*The Sunday Review* —Editor: Mr J. R. Walsh.

Publisher: IPEC Ltd.

(4) That the Senate has the power, in the enforcement of its privileges, to commit to prison, to fine, to reprimand or admonish, or otherwise to withdraw facilities held, by courtesy of the Senate, in and around its precincts.

### **and recommends—**

That, having regard to the nature of the breaches of privilege in this case, and the circumstances in which they occurred, Mr J. R. Walsh and Mr H. B. Rothwell be required to attend before the Senate, on their own behalf and on behalf of their publishers, to be reprimanded by the Presiding Officer.

### **The Committee further reports—**

That it considers that any such breach should, in the future, save in exceptional circumstances, be met by a much heavier penalty, such as a substantial fine, but as this is the first such breach to come to the attention of the Senate, the Committee considers that the situation would be adequately met by severe reprimand.

T. C. DRAKE-BROCKMAN

*Chairman*

13 May 1971

# MINUTES OF PROCEEDINGS

## PRIVILEGES COMMITTEE

Minutes of meeting held in Senate Committee Room L.17 on Tuesday, 4 May 1971, at 7 p.m.

*Present:* Senators Branson, Drake-Brockman, Greenwood, Murphy, Rae and Willesee.

### 1. *Resolutions of the Senate:*

The Clerk of the Committee read extracts from the Journals of the Senate relating to:

(a) Appointment of the Committee.

(b) The reference of a matter to the Committee, on 4 May 1971, as follows:

3 PRIVILEGE—ARTICLE: IN 'THE SUNDAY AUSTRALIAN' AND 'THE SUNDAY REVIEW'—REFERENCE TO THE COMMITTEE OF PRIVILEGES: Senator Marriott raised a matter of privilege based upon articles published in *The Sunday Australian* and *The Sunday Review* of 2 May 1971. Senator Marriott produced a copy of each newspaper and gave the names of the printers and publishers.

Senator Marriott moved—That the article on page 1 of *The Sunday Australian* of 2 May 1971, and the article on page 845 of *The Sunday Review* of 2 May 1971, dealing with the proposed report of the Senate Select Committee on Drug Trafficking and Drug Abuse in Australia, be referred to the Committee of Privileges for investigation and report.

Question—put and passed.

(c) The granting of power to the Committee to send for persons, papers and records.

### 2. *Election of Chairman:*

On the motion of Senator Branson, after debate, Senator Drake-Brockman was elected Chairman of the Committee for the duration of the period of the present inquiry.

### 3. *Apology from Senator Wheeldon:*

Senator Willesee informed the Committee that Senator Wheeldon tendered his apology for non-attendance, as he felt he should not, as a member of the Select Committee on Drug Trafficking and Drug Abuse in Australia, participate in an inquiry into alleged premature publication of a draft report of that Committee.

Senator Branson made a statement to the Committee that, although he was also a member of the Select Committee, he did not think it was necessary for him to absent himself from the inquiry unless a clear situation arose in which case such action should be taken.

### 4. *Consideration of Newspaper Articles:*

The Committee discussed in general the question whether the articles referred to the Committee constituted a breach of privilege and possible courses of action which the Committee might take to establish such a breach.

Senator Rae gave notice that he proposed to move for the preparation of material relating to certain aspects of privilege and the attendance of witnesses.

*It was agreed:* That the Clerk of the Committee should assemble material to assist the Committee in its deliberations.

On the motion of Senator Greenwood it was resolved—That Senator Marriott, the Chairman of the Select Committee on Drug Trafficking and Drug Abuse in Australia, be forthwith invited to appear before the Committee.

5. *Appearance of Senator Marriott:*

Senator Marriott appeared before the Committee.

Senator Marriott indicated that he was not prepared to produce any Committee documents without the approval of the Senate.

On the motion of Senator Greenwood, it was resolved—That action be taken to have the Senate authorise the Chairman, or other member of the Select Committee on Drug Trafficking and Drug Abuse in Australia, to appear before the Privileges Committee to answer such questions and to produce such documents as the Committee directs or requires.

6. *Adjournment:*

The Committee adjourned at 8 p.m. until Wednesday, 5 May, at 1 p.m.

*Confirmed:*

TOM DRAKE-BROCKMAN

*Chairman*

## PRIVILEGES COMMITTEE

Minutes of meeting held in Senate Committee Room L.17 on Wednesday, 5 May 1971 at 1 p.m.

*Present:* Senator the Hon. T. C. Drake-Brockman, in the Chair  
Senator Branson  
Senator the Hon. I. J. Greenwood  
Senator Murphy  
Senator Rae  
Senator Willesee

1. *Minutes:*

The Consideration of the Minutes of the previous meeting was deferred.

2. *Statement by Chairman:*

The Chairman informed the Committee that pursuant to the Resolution of the Committee at the previous meeting, the following motion had been moved and carried in the Senate:

30 PRIVILEGES COMMITTEE: Ordered, on the motion, by leave, of the Minister for Works (Senator Wright)—That the Senate authorise the Chairman of the Select Committee on Drug Trafficking and Drug Abuse in Australia to appear before the Privileges Committee to answer such questions and to produce such documents as the Committee directs or requires.

3. *Appearance of Senator Marriott:*

The Chairman of the Select Committee on Drug Trafficking and Drug Abuse in Australia, Senator Marriott, appeared before the Committee, made a statement, and answered questions.

Senator Marriott tabled the following documents:

- (a) Marked copies of *The Sunday Australian* and *The Sunday Review*.
- (b) Document marked 'Confidential' and headed 'The Committee's recommendations are—'.
- (c) Document headed 'Senator Georges' Reservations—Chapters 4 and 6'.
- (d) Master copy of Report, as sent to the Government Printer.
- (e) Copy of final, printed Report, to be tabled in the Senate on Thursday, 6 May.

Senator Marriott withdrew.

The Committee considered the matters raised during the appearance of Senator Marriott.

4. *Minutes:*

The Minutes of the previous meeting were read and confirmed.



5. *Preparation of Material:*

Senator Rae moved—That the Committee require a paper to be prepared by the Clerk of the Committee, as a matter of urgency, on:

- (a) the general principles applying to breach of privilege of the type alleged in the reference;
- (b) the inquiries to be made to determine whether in the present case there has been a breach of privilege;
- (c) the nature and extent of the powers of the Committee to inquire, and to act, as to the alleged breach of privilege; and
- (d) the nature and extent of the rights to legal representation of any witness before the Committee.

Discussion ensued—

6. *Adjournment:*

The Committee adjourned at 2.15 p.m. until Thursday, 6 May, at 1 p.m.

*Confirmed:*

TOM DRAKE-BROCKMAN

*Chairman*

The following documents were circulated by the Clerk of the Committee:

1. Copy of the Report from the House of Commons Privileges Committee on the Dalyell case, together with a copy of a memorandum submitted to the Committee by the Clerk of the House of Commons on various aspects of privileges and including a synopsis of cases illustrating the Rules of Privilege regarding disclosure of proceedings or evidence.
2. Copy of extracts from Erskine May's *Parliamentary Practice* on—Premature publication of Reports from Committees. (at pp. 119, 665.)
3. Copy of Sections 49 and 50 of the Commonwealth Constitution.
4. Copy of extracts from *Australian Senate Practice*, by J. R. Odgers, on Privilege (at pp. 461-474), and on representation of witnesses by Counsel.
5. Extract from House of Representatives' Report on the Fitzpatrick-Browne case, relating to appearance of Counsel
6. Copy of extract from *The Table*, relating to a privilege case on publication of a Committee Report in Sierra Leone.
7. Copy of extract from *The Table*, relating to a case in the Legislative Assembly of the Indian State of Uttar Pradesh.

## PRIVILEGES COMMITTEE

Minutes of meeting held in Senate Committee Room L.17 on Monday, 10 May, 1971, at 2.30 p.m.

*Present:* Senator the Hon. T. C. Drake-Brockman, in the Chair.

Senator Branson

Senator the Hon. I. J. Greenwood

Senator Murphy

Senator O'Byrne

Senator Willesee

Apology received from Senator Rae.

1. *Minutes:*

The Minutes of the previous meeting were read, amended, and confirmed.

2. *Appearance of Mr J. R. Walsh:*

Mr J. R. Walsh, Managing Editor, *The Sunday Review* was called, made an affirmation, and was examined.

Mr Walsh then withdrew.

3. *Appearance of Mr H. B. Rothwell:*

Mr H. B. Rothwell, Editor, *The Sunday Australian*, was called, sworn and examined. Mr Rothwell was accompanied by his legal adviser, Mr B. R. Gallen, who also addressed the Committee.

Mr Rothwell and Mr Gallen then withdrew.

4. *Future witnesses:*

(a) Following discussion, it was *resolved*, on the motion of Senator Greenwood, that urgent reply-paid telegrams be sent to Mirror Newspapers Ltd. (publishers of *The Sunday Australian*) and IPEC Ltd. (publishers of *The Sunday Review*) indicating that the Committee had heard evidence from the editors of *The Sunday Australian* and *The Sunday Review* and asking whether the publishers wish the Committee to hear any evidence or submissions on their behalf before the Committee concludes its inquiry.

(b) Senator Greenwood moved—That the Committee request Mr Forsyth and Mr Reeves of *The Sunday Australian* to attend before the Committee as soon as possible, and, if they be unwilling to attend, that action be taken to summon them to appear.

Motion negatived, Senator Branson asking that his support for the motion be recorded in the Minutes.

5. *Preparation of Report:*

The Committee discussed the possible form of the Report to the Senate. Discussion adjourned.

6. *Next meeting:*

*Resolved:* That the next meeting be held on Tuesday, 11 May, at 7 p.m.

7. *Adjournment:*

The Committee adjourned at 5.45 p.m.

*Confirmed:*

TOM DRAKE-BROCKMAN

*Chairman*

## PRIVILEGES COMMITTEE

Minutes of meeting held in Senate Committee Room L.17, on Tuesday, 11 May 1971, at 7 p.m.

*Present:* Senator the Hon. T. C. Drake-Brockman, in the Chair

Senator Branson

Senator the Hon. I. J. Greenwood

Senator Murphy

Senator O'Byrne

Senator Rae

Senator Willesee

1. *Minutes:*

The Minutes of the previous meeting were read, amended, and confirmed.

2. *Future Witnesses:*

(a) The Chairman advised the Committee that, in answer to telegrams sent to Mirror Newspapers Ltd. and IPEC Ltd., replies had been received indicating that neither Company wished to produce any evidence or submissions to the Committee.

(b) Senator Greenwood moved—That Mr Higgins, Secretary to the Select Committee on Drug Trafficking and Drug Abuse, Mr Hoy, Assistant Secretary to the Committee, Dr Spalding and Mr Custance, Advisers to the Committee, and Mrs Powell, Steno-Secretary to the Committee, appear before this Committee.

Motion negatived, Senior Rae asking that his support for the motion be recorded in the Minutes.

3. *Preparation of Report:*

The Committee discussed the form and contents of its Report to the Senate.

*Resolved:* On the motion of Senator Greenwood—That the Committee include with its Report its Minutes of Proceedings.

*Resolved:* On the motion of Senator Greenwood—That the Chairman prepare a draft report, as soon as possible, for submission to the Committee.

4. *Next meeting:*

*Resolved:* That the next meeting be held on Wednesday, 12 May, at 6.45 p.m.

5. *Adjournment:*

The Committee adjourned at 8 p.m.

*Confirmed:*

TOM DRAKE-BROCKMAN

*Chairman*

## PRIVILEGES COMMITTEE

Minutes of Meeting held in Senate Committee Room L.17 on Wednesday, 12 May 1971, at 6.45 p.m.

*Present:* Senator the Hon. T. C. Drake-Brockman, in the Chair  
Senator Branson  
Senator the Hon. I. J. Greenwood  
Senator Murphy  
Senator O'Byrne  
Senator Rae  
Senator Willesee

1. *Minutes:*

The Minutes of the previous meeting were read and confirmed.

2. *Consideration of Draft Report:*

The Chairman submitted his Draft Report to the Committee.

The Committee proceeded to consider the Draft Report paragraph by paragraph.

Senator Rae moved for the inclusion of seven paragraphs, as circulated, in substitution for certain paragraphs.

The Committee considered these and other suggestions for amendments.

The Draft Report, as amended, was agreed to.

*Resolved:* That the Committee table its Report to the Senate tomorrow, 13 May, at the earliest practicable opportunity.

The Committee adjourned.

Certified as a true record of the proceedings.

TOM DRAKE-BROCKMAN  
*Chairman*