

**THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA**

**THE SENATE**

**COMMITTEE OF PRIVILEGES**

**POSSIBLE UNAUTHORISED DISCLOSURE OF A SUBMISSION TO THE  
JOINT COMMITTEE ON THE NATIONAL CRIME AUTHORITY**

**(54TH REPORT)**

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## CHAPTER ONE

### Introduction

2.1 On 3 March 1994, the following matter was referred to the Committee of Privileges on the motion of the Deputy Chairman of the Joint Committee on the National Crime Authority, Senator Vanstone:

Whether there was an unauthorised disclosure of a submission to the Joint Committee on the National Crime Authority, whether a contempt was committed by the disclosure, and whether there is any remedy for that disclosure.

2.2 In her letter to the President of the Senate on behalf of the NCA Committee, Senator Vanstone outlined the concerns giving rise to the reference, as follows:

Early in 1991 the Committee advertised and wrote seeking submissions from interested persons and organisations in relation to an inquiry it was conducting into 'Legal Casinos and Organised Criminal Activity'. On 31 May 1991 the Committee secretariat received a submission from Mr Les Ayton. In his covering letter, Mr Ayton stated that he was making the submission in response to the Committee's invitation to him.

Copies of the submission were provided on a confidential basis to members of the Committee by its secretariat. At no time did the Committee publish or authorise the publication of this submission. Neither House of the Parliament has disclosed or authorised the disclosure of the submission.

The membership of the Committee lapsed on 8 February 1993, pursuant to the *National Crime Authority Act 1984, s. 53(4)(a)* due to the dissolution of the House of Representatives.

During the period when the Committee effectively did not exist, on 4 March 1993 in the South Australian Legislative Council, the Hon. K.T. Griffin quoted from the submission, which he noted had 'not previously been released'. He sought and was granted leave by the Council to table the submission and the covering letter.

Also on 4 March 1993, the Hon. D. Brown quoted from the submission in the South Australian Legislative Assembly, saying he had been advised that the report had 'not been made public'. He did not seek to table the document.

2.3 The President, in giving precedence to a notice of motion to refer the matter to the Committee of Privileges, drew attention to the possibility that any disclosure found to be a contempt in the course of this Committee's inquiry might also be regarded as a criminal offence under the *Parliamentary Privileges Act 1987*. He went on to point out, however, that the alternative remedy of prosecution under the Act has not been regarded as a readily-available remedy in the past, and drew particular attention to its inapplicability in the present case because the unauthorised disclosure was alleged to have taken place in a State Parliament. He warned that this might also mean that the Senate would be unable to apply any remedy if the facts were as stated by the Joint Committee, but suggested that this was a matter which the Committee of Privileges would consider.

2.4 Senator Vanstone's letter, her speech to the Senate when giving the notice of motion and the President's statement giving the matter precedence are included in the volume of documents accompanying this report.

### **Conduct of inquiry**

2.5 The Committee wrote to the present Chairman of the National Crime Authority, Mr Cleeland, seeking any comments or documents from the NCA Committee. A substantial number of documents on the matter was released to the Committee of Privileges, including:

the submission, under cover of a letter dated 29 May 1991, made to the NCA Committee in confidence by Mr L D Ayton, at that time Superintendent, Internal Affairs Unit, Western Australia Police, and received in camera by that committee, together with copies of the letter and submission as forwarded to NCA Committee members, and as tabled in the South Australian Legislative Council;

various media reports of the submission;

- the report of the inquiry into the matters related to the establishment and valuation of the Adelaide casino, conducted by Ms E F Nelson, QC, as a result of the disclosure of Mr Ayton's submission;
- advice to the Chairman of the NCA Committee from all members and staff of the committee that they had not released Mr Ayton's submission;
- statements from the staff of the committee concerning advice on the possible involvement of a journalist in the dissemination of the information;
- extracts from the minutes of proceedings of the NCA Committee, recording that all submissions are treated as in camera evidence unless specifically authorised for disclosure; and
- a letter to the Chairman of the NCA Committee from the Honourable Trevor Griffin MLC, the South Australian Attorney-General and Minister for Consumer Affairs, on behalf of himself and the now Premier and Deputy Premier of South Australia, refusing to further discuss or disclose the documents.

2.6 In refusing the NCA Committee's request, Mr Griffin advised that 'unless authorised and directed by the South Australian Parliament, the South Australian Ministers could not be required to, and will not, give evidence to the Joint Committee in relation to any aspect of the receipt or disclosure of the documents'. This advice accords with similar advice given to Senate committees, and with the advice given to the NCA Committee by Mr Dennis Rose, QC, then Acting Solicitor-General.

2.7 The Committee of Privileges was also mindful of the majority report of the then Constitutional and Legal Affairs Committee which declared that the privileges of State parliamentarians could not be overridden by the Commonwealth (Parliamentary Paper No. 235 of 1985).

2.8 The NCA Committee also made available to this Committee relevant extracts from the South Australian *Hansards*, and has continued to keep the Committee informed as other material has become available. The Committee appreciates the NCA Committee's cooperation in this matter.

2.9 Following receipt of the relevant documents the Committee of Privileges wrote, on 22 March 1994, to Mr L D Ayton, by then acting Deputy Commissioner,



inviting him to make a submission on the question. In addition, the Chairman of the NCA Committee, Mr Cleeland, responded to the committee's earlier invitation to make a submission.

2.10 While noting that the NCA Committee itself had attempted to discover the source of the disclosure, the Committee of Privileges decided to write to all members of the NCA Committee at the time the documents were disclosed, seeking information as to whether either the member or staff had disclosed the documents to any person. The Committee also wrote again to the Premier, Deputy Premier and Attorney-General of South Australia, and also to the Honourable Chris Sumner who as Attorney-General in the previous South Australian government had taken a continuing interest in the matter. Finally, the Committee wrote to Mr Chris Nicholls, formerly a journalist with *The Australian*, who, an anonymous source had alleged, had had access to the documents tabled in the South Australian Parliament before tabling.

2.11 All members of the NCA Committee at the time again advised this Committee that neither they nor their staff had disclosed the documents. The Chief Executive Officer of the South Australian Attorney-General's Department, responding on behalf of the Attorney-General, advised that the Attorney-General did not wish to make any submission in addition to his letter to the Joint Committee on 7 February 1994. That letter, as well as asserting the principle of State parliamentary privilege, included a statement from Mr Griffin that he was 'able to inform the Committee that the documents in question did not reach the hands of the Members of Parliament from any past or present member of the Joint Committee'.

2.12 The Premier and Deputy Premier of South Australia responded on 1 and 27 June 1994 respectively, indicating they had nothing further to add to Mr Griffin's letter. Mr Sumner made a detailed and comprehensive submission to the Committee. Initially, Mr Nicholls advised that he was unable to assist in the matter, but subsequently, in answer to a series of questions put to him by the Committee, answered all the Committee's queries.

2.13 All relevant documents are included in the volume of documents accompanying this report.

## **Background**

2.14 The sequence of events which led to the reference to the Committee of Privileges occurred over a long period, as follows:

· Early 1991

The National Crime Authority Committee decided to inquire into legal casinos and organised criminal activity and sought submissions accordingly, by both advertisement and letter.

· 31 May 1991

The NCA Committee secretariat received a confidential submission from Superintendent Ayton, under cover of a letter dated 29 May 1991. The letter and submission were circulated on a confidential basis to committee members.

· 4 June 1992

The NCA Committee reported to each House that it did not intend to pursue the reference in the 36th Parliament, but recommended that the matter be reviewed during the 37th Parliament.

· 19 January 1993

Mr Chris Nicholls, *The Australian*, Adelaide, rang the NCA Committee secretariat to ask when hearings on the casino matter were to be held. He was advised of the Committee's June decision.

· 8 February 1993

The NCA Committee lapsed, on the dissolution of the House of Representatives.

- 10 February 1993

Mr Nicholls rang the NCA Committee Secretariat again, to ask whether publication of submissions made to a parliamentary committee was protected under parliamentary privilege. The Secretary advised that submissions were protected only if authorised for publication by the committee.

- 4 March 1993

The letter and submission were tabled, by leave, in the South Australian Legislative Council by the Honourable K.T.Griffin, MLC, at that time Shadow Attorney-General. The then Leader of the Opposition, Mr Dean Brown, MLA, quoted from the submission in the South Australian Legislative Assembly.

2.15As a result of matters raised in the submission, and subsequent discussions in the South Australian Parliament, the South Australian Casino Supervisory Authority decided on 26 March 1993 to inquire into matters raised in certain written material provided to the authority by the Shadow Treasurer, Mr Stephen Baker, MLA, who subsequently provided further written material. On 10 May 1993, it was determined by the then South Australian Treasurer that, because of legal difficulties associated with the Authority's conducting the inquiry, an independent inquiry be conducted by Ms E F Nelson, QC, Chairman of the Authority.

2.16Her report, dated 20 September 1993, tabled in the South Australian Parliament on 6 October 1993, contained certain, 'not completely accurate' (see annotated list accompanying documents provided by the NCA Committee Secretariat) quotations from the Ayton submission. According to the list of material considered by Ms Nelson, as outlined in her report, the submission was provided by Mr Stephen Baker, MLA.

2.17 After Ms Nelson's report was tabled, the chronology of events continues as follows:

- 12 October 1993

Mr Ayton, by now Assistant Commissioner, (Crime Operations) in the Western Australian Police Department, wrote to the secretary to the NCA Committee protesting 'in the strongest possible terms' about the unauthorised disclosure of the submission.

- 28 January 1994

An opinion, dated 28 January 1994, was received by the NCA Committee from Mr Dennis Rose, QC, Acting Solicitor-General on the operation of section 13 of the *Parliamentary Privileges Act 1987*, in relation to the unauthorised disclosure of Assistant Commissioner Ayton's submission.

- 3 - 9 February 1994

The NCA Committee wrote to the relevant members of the South Australian Parliament, committee members and staff as described above.

- 3 February 1994

Mr Rose's opinion was transmitted by Mr Peter Cleeland, Chairman of the NCA Committee, to the Presiding Officers.

- 8 February 1994

An anonymous telephone call was received within the NCA Committee Secretariat, naming Mr Chris Nicholls as the source of the improper disclosure of the submission.

- 21 February 1994

Mr Rose's opinion was tabled in the Senate.

- 1 March 1994

The Deputy Chairman of the NCA Committee, Senator Vanstone, raised the question of improper disclosure as a matter of privilege under standing order 81. The President gave precedence to the notice of motion, and the matter was referred by the Senate on 3 March 1994.

## CHAPTER TWO

### Matters for consideration

3.1 That the disclosure of Superintendent Ayton's submission to the NCA Committee raises matters of the highest moment is indisputable. The improper disclosure of documents received in camera has been regarded by Parliament with such seriousness that it is one of only two offences - the other being improper interference with a witness - which have been proscribed under the *Parliamentary Privileges Act 1987* as a criminal offence.

3.2 The purpose of the Parliament in singling out these two contempts of Parliament and proscribing them as criminal offences is the same in each case: a commitment to protect its witnesses. As this Committee has often stated, the privileges of Parliament are not designed to protect the rights of its members. Rather, they are intended to protect the integrity of parliamentary proceedings and to ensure that the Parliament can carry out its functions without improper obstruction. A particular example of such obstruction is action which interferes with the information-gathering role of a House or committee because a person supplying that information is not confident that he or she will not be penalised or threatened as a result of providing information. It is for this reason that both the Parliament, through the *Parliamentary Privileges Act*, and the Committee of Privileges, when examining matters referred to it by the Senate, have always placed the highest priority on protection of witnesses.

3.3 In the present case, when determining whether the contempt had occurred, the Committee regarded as relevant the views of Mr Ayton. His letter of 12 October 1993 to the Secretary of the NCA Committee contained the following comments:

On 6 October, 1993, I was asked questions by Perth Media concerning material contained in a confidential report supplied by me to the Joint Committee.

From discussion with you and others, it has been established that this confidential document was leaked from the Joint Parliamentary Committee to a member of the State

Parliament of South Australia without my consent or without the consent of the Joint Committee.

I wish to protest in the strongest possible terms of this breach of confidentiality. The lack of confidence which will ensue following this unauthorised release where other persons are required to give evidence or information to the Joint Parliamentary Committee, could be extensive and extremely counter productive.

3.4 In response to an invitation from the Privileges Committee to make a submission, on 8 April 1994 Mr Ayton added to his earlier comments as follows:

My prime concern in laying the initial complaint is set out in my letter to the Secretary [quoted above]. Members of this community, particularly persons in sensitive and privileged positions must have confidence that information supplied by them under a guarantee of confidentiality can rely upon the guarantee.

... My submission to the Joint Committee on the National Crime Authority was at their request and given with a guarantee of confidentiality. The submission was made with the same best interests of the Australian community in mind. I stand by the comments today.

The leaking of the documents from the Joint Parliamentary Committee for what can only be described as base political expediency will do much to shake the confidence of members of the public and public officers in the processes of Government. Certainly, I will feel somewhat more reserved in responding to a request by Parliamentary Committees in the future to supply information on a confidential basis.

... The major issue is the credibility of Government process. I suggest to you that your Committee of Privileges has an opportunity to make a significant statement about the integrity, ethics, accountability and processes of Government. This is your prime task; my discomfort is irrelevant.



3.5 It may be noted that Mr Ayton refers to conversations which established that the document had emanated from the Committee itself, and not from another source. As the Chairman of the NCA Committee, Mr Cleeland, put it in his letter of 5 April 1994:

I believe it is self-evident from the documents that the NCA Committee secretariat has already provided to your Committee that there was an unauthorised disclosure of Mr Ayton's submission and his covering letter.

Given the Chairman's statement, and the Committee's own examination of the relevant documents, the Committee has concluded that there was an unauthorised disclosure of the documents submitted to the National Crime Authority Committee.

3.6 Mr Cleeland goes on to say:

I am concerned that if the source of the unauthorised disclosure is not found and the person(s) concerned punished, the NCA's goodwill will cease to operate, and the NCA will fall back to its former strict construction of sections 51 and 55 of the Act and no longer provide the Committee with any (or as much) meaningful information. I consider that it is vital for the effective functioning of the Committee that it be perceived as able to maintain the security of confidential material submitted to it, whether that material comes from the NCA or elsewhere. Accordingly, I consider that the unauthorised disclosure has a tendency substantially to interfere with the work of the Committee.

3.7 The above views were reinforced by the only other substantive submission received by the Committee of Privileges, a submission dated 18 July 1994 from the Hon. Chris Sumner, which summarises his concerns as follows:

The major point that I wish to emphasise in my comments to you is that the leaking of this document should be treated as a serious matter and a serious breach of privilege. I say that, in particular, because of the information which the Joint Parliamentary Committee on the National Crime Authority might receive from time to time. It is clear that this information may be highly sensitive with the

capacity to undermine the law enforcement effort or damage the reputation of individuals concerned if it is made public. If Members of Parliament cannot be trusted with this sort of information, then it clearly calls into question the extent to which sensitive information of a law enforcement or security kind can be made available to parliamentary committees.

### Comment

3.8 The Committee of Privileges shares the views expressed by all three contributors to its inquiry, and has concluded that the unauthorised release of the submission constitutes the most serious example of an improper act tending substantially to obstruct a committee in the performance of its functions which this Committee has encountered since the passage of the *Parliamentary Privileges Act 1987* and the Senate Privilege Resolutions of 1988.

3.9 The Committee, in previous reports, has suggested that only in extreme circumstances would it be prepared to make a finding that a serious contempt had been committed without an examination of the intent of the person or persons who might have disclosed such material. As indicated in paragraph 2.17 below, the Committee has been unable to discover the identity of the person or persons who disclosed the document, and the option of determining intent is thus not available to the Committee in the present case. It has received evidence from all members of the NCA Committee at the relevant time that they or their staff were not involved in any disclosure; it has also received similar assurances from the staff of the Committee. In addition, it notes the advice from the South Australian Attorney-General that no members of the NCA Committee were involved in the improper disclosure to the members of the South Australian Parliament.

3.10 This leaves the anonymous advice of 8 February 1994 to the research officer to the NCA Committee as follows:

... you may be interested to know that the person who gave the NCA report <sic> to the people in South Australia was a journalist - Chris Nicholls. He got the report from a member of the Committee.

3.11As indicated in the introduction to this report, the Committee made contact with Mr Nicholls. Initially, he advised that he was unable to assist the Committee. Subsequently, in responding to specific written questions from the Committee, he advised that he had received a document which may have been a copy of the submission while working on a freelance assignment with *The Australian* concerning the issue of Australian casinos. While he could not recall the date on which he received the submission, his contact with the NCA Committee Secretariat suggests that it was before the documents were tabled in the South Australian Parliament. He advised this Committee that he had no idea about the status of the submission, nor where it came from, and indicated that 'because of the uncertain status of the document and its authenticity it was not published by *The Australian* newspaper'.

3.12In response to the Committee's question as to whether he was in any way involved in documents being passed to members of the South Australian Parliament, he responded that 'he did not pass this document [i.e. the submission he received] on to any member of the South Australian Parliament'. The Committee sought further clarification from Mr Nicholls, who advised on 26 June 1995 that the documents were destroyed, about one to two months after he had received them. Mr Nicholls also advised that he had not provided access to any other person. The Committee notes that it is possible that the person or persons who transmitted the submission and covering letter to Mr Nicholls used the same method to transmit the documents to members of the South Australian legislature.

3.13The Committee emphasises that it has no capacity to require members of another legislature to appear before it or to answer questions. It notes that the relevant members of the South Australian Parliament have stated that they would not do so voluntarily. In respect of the members of the NCA Committee and the Committee secretariat, in the absence of any evidence to the contrary the Committee accepts their assurances that neither they nor their staff released the documents.

## Conclusions

3.14As indicated in paragraph 2.5, the Committee of Privileges has concluded that there has been an unauthorised disclosure of a submission made to the National Crime Authority Committee and received as in camera evidence. The Committee is unable to conclude whether the disclosure of the material was intentional or accidental; in view, however, of the serious consequences,

for the witness concerned and the integrity of the proceedings of the NCA Committee as expressed in Mr Cleeland's letter, the Committee has determined that it should make a finding that a serious contempt has occurred.

3.15 The Committee has noted Mr Rose's view that it would be possible to prosecute the offence under the Parliamentary Privileges Act, and this is reflected in the Committee's recommendation below. The Committee considers, however, that no useful purpose would be served in pursuing the matter further under the Parliamentary Privileges Act unless the person or persons involved in disclosing the documents to the members of the South Australian Parliament become known. It is clear that the disclosure of the document in the South Australian Parliament, protected as it was by parliamentary privilege, cannot be dealt with as either a contempt of the Senate or a criminal offence.

### **Finding**

3.16 The Committee has **found** that a submission, under cover of a letter dated 29 May 1991, from the then Superintendent L D Ayton of the Western Australian Police and received in camera by the Joint Committee on the National Crime Authority, was improperly disclosed and that such disclosure constituted a serious contempt.

3.17 The Committee has been unable to establish the source of the improper disclosure, owing particularly to the constraints on its capacity to examine members of the South Australian legislature responsible for publishing and referring to the two documents under the privilege of each House of the South Australian Parliament.

### **Recommendation**

3.18 If the source of the improper disclosure is subsequently revealed, the Committee **recommends** that the matter again be referred to it, with a view to a possible prosecution for an offence under section 13 of the *Parliamentary Privileges Act 1987*. This Committee has never before taken the step of recommending that an offence should be prosecuted under the Parliamentary Privileges Act rather than through the Parliament's own contempt powers. The Committee considers the offence of such gravity, however, that action of this nature would be warranted.

**Baden Teague  
Chairman**