

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

COMMITTEE OF PRIVILEGES

**POSSIBLE UNAUTHORISED DISCLOSURE
OF DRAFT PARLIAMENTARY
COMMITTEE REPORT**

84TH REPORT

MARCH 2000

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ISSN 1038-9857
ISBN 0 642 71068 6

This document was produced from camera-ready copy prepared by the Committee of Privileges, and printed by the Senate Printing Unit, Parliament House, Canberra.

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CONTENTS

	Page
Introduction	1
Background	1
Conduct of inquiry	3
Comment	5
Recommendations	6
Findings	7
Penalty	8

POSSIBLE UNAUTHORISED DISCLOSURE OF DRAFT PARLIAMENTARY COMMITTEE REPORT

Introduction

1. On 2 September 1999 the Senate referred the following matter to the Committee of Privileges:

Whether there were unauthorised disclosures of, and dealings with, a draft report of the Employment, Workplace Relations, Small Business and Education References Committee in relation to its inquiry into regional employment and unemployment, and, if so, whether any contempts were committed by those unauthorised disclosures and dealings.¹

Background

2. Senator Collins, Chair of the Employment, Workplace Relations, Small Business and Education References Committee (Employment Committee), first raised the matter with the President of the Senate on 29 June 1999. The letter incorporated the terms of a resolution agreed to by the Employment Committee on 28 June 1999, as follows:

That the Committee declares that its proceedings in regard to its inquiry into regional employment and unemployment have been [a]ffected by the confirmed unauthorised disclosure of the chair's draft report to the Department of Employment, Workplace Relations and Small Business and its unconfirmed disclosure to the Department of Education, Training and Youth Affairs;

that the Committee authorises its chair to inquire [of] members and the secretariat their liability to any responsibility for the disclosure of this draft report; and

that the Chair advise the President, in accordance with Standing Order 81, its conclusion whether there has been substantial interference with its inquiry.²

The letter advised the President that assurances had been received from all members of the committee and the secretariat that they had no knowledge of the unauthorised disclosure.

3. On 30 June, however, the Employment Committee received two letters from then Senator Karen Synon advising that a staff member in her office had inadvertently

1 *Volume of Submissions and Documents*, p. 1.

2 *ibid.*, p. 7.

disclosed the report.³ Senator Synon ceased to hold office as a senator on that day. Each letter included an apology to the Employment Committee and gave details of the circumstances leading to the handing-over of the draft report, with the second also including a request that that committee reconsider its decision to seek precedence to the matter of privilege.

4. On behalf of the Employment Committee, the Chair agreed to this proposal and the committee met again on 10 August to consider the matter further. In a letter to the President of the same day, the Chair confirmed the committee's request that the matter be given precedence. It noted the accidental disclosure of the material, accepting that "inexperienced staff, or poorly informed staff, may occasionally involve senators in breaches of standing orders or senate convention",⁴ and asked that former Senator Synon and her staff member be not further pursued. The Chair advised that the committee was "far more concerned" with what appeared from the second of Senator Synon's letters to have been "improper attempts by the office of [the relevant minister] to obtain early and premature information on the recommendations in the report".⁵ The letter suggested that "a plea of 'inexperience' is not credible when applied to a member of a ministerial staff".⁶

5. The Employment Committee also expressed its concern about the receipt of the draft report by senior officers of the minister's department who were asked to analyse the report, suggesting that:

If ignorance of parliamentary privilege is as widespread in the senior echelons of the public service as this incident would appear to reveal, then the Committee believes that this inquiry may assist the continuing educative process.⁷

6. This second letter to the President confirmed the Employment Committee's original view that its inquiry had been compromised, thereby falling within the criteria that both the President and the Committee of Privileges are required to consider.⁸ In reaching its decision to proceed with the reference, the Employment Committee conformed to the requirements of the resolution of the Senate of 20 June 1996 that the committee itself should investigate unauthorised disclosure and come to a conclusion as to whether the disclosure had a tendency substantially to interfere with the work of the committee or the Senate, or actually caused substantial interference.⁹

3 *ibid.*, pp. 5-6.

4 *ibid.*, p. 3.

5 *ibid.*

6 *ibid.*

7 *ibid.*, p. 4.

8 Privilege Resolutions 3 and 4, Standing and Other Orders of the Senate, February 2000, pp. 104-105.

9 *ibid.*, Order No. 3, pp. 118-119.

Conduct of inquiry

7. On receiving the reference, the Committee of Privileges wrote to the Chair of the Employment Committee, and also to the relevant minister and secretary of the department. The committee asked the Chair to comment specifically on the timing of the disclosure of the draft report. This matter was of particular relevance because on 1 December 1998 the committee had reported to the Senate on several cases of improper disclosure,¹⁰ and the Chair had written to every member of each House of Parliament, while the Clerk of the Senate had written to the secretary of each executive department, drawing their attention to that report. In the case of all members of the Parliament, the Chair had attached a brief summary, prepared by the Senate Committee Office, of the requirements for personal staff in the handling of committee documents.

8. In her response of 11 October 1999,¹¹ Senator Collins advised that the Employment Committee had “no knowledge of the time when the draft report was handed over; only of the time of its circulation within the Department”. It is clear, however, that the report was not handed over until sometime in June 1999 at the earliest — well after the minister and his department had been alerted to the Privileges Committee’s 74th report. The circumstances were as follows. Early in the week of 21 June 1999, an officer of the relevant department had asked a research officer in the Employment Committee secretariat whether it was possible to receive an advance copy of the report. The research officer, after consulting the secretary, informed the requesting officer that “reports were not released until they were tabled”.¹² On 24 June, another officer of the department, experienced in Senate committee practice, rang to ask the Employment Committee secretary about the status of the report, which had been circulated to him. The secretary then contacted a senior officer of the department, who arranged for the recall and shredding of the documents (see paragraph 11 below).

9. Also on 11 October, the minister responded to the Privileges Committee, confirming the circumstances outlined in Senator Synon’s letter to the Employment Committee of 30 June, with one notable difference of interpretation. The minister advised that the handing-over of the document was “completely unsolicited by [his] staff and was at the instigation of [Senator Synon’s staff]”.¹³

10. According to the minister, who told the Committee of Privileges that he knew nothing of the matter until his department advised him of the unauthorised disclosure, his staffer said that he “was not warned of the privileged nature of the draft report he was handed”.¹⁴ The staffer then handed the document to one of the departmental

10 74th report of the Committee of Privileges. PP No. 180/1998.

11 *Volume of Submissions and Documents*, p. 17.

12 *ibid.*

13 *ibid.*, p. 18.

14 *ibid.*

liaison officers in the minister's office, who in turn passed it to the department seeking an appraisal of the issues raised in the draft report.

11. In his response of 8 October to the Committee of Privileges, the secretary of the relevant department gave a similar account, indicating in particular that "there was no indication of [the document's] privileged status". He went on to advise that, on receipt of the document, the department began to prepare comments, and also sent it to another department for comment. According to the departmental secretary, it was only on making contact with the committee secretariat "to discuss the contents of the report" that the department "recognised that the document may have been privileged".¹⁵ All copies of the draft were then retrieved and immediately shredded.

12. Before making its report to the Senate, the Committee of Privileges wrote again to the Chair of the Employment Committee, and to the minister and secretary of the relevant department. It asked Senator Collins the form in which the draft report was provided to the minister's office. It also asked both the minister and the secretary to address the 74th report of the Committee of Privileges.

13. Senator Collins stated that the draft had been provided to committee members:

...in a photocopied A4 format marked 'draft' on the front cover. It was not distributed electronically to Committee members and it is therefore highly unlikely to have been provided to the minister's office in that form.¹⁶

14. The minister, in his response, emphasised that neither the ministerial staffer nor the departmental liaison officer was informed by Senator Synon's staff member of the privileged nature of the document they were handed. The minister has given an assurance that "as a matter of course [I] will be taking necessary action to ensure that all staff are aware of the privilege requirements with respect to parliamentary committee proceedings".¹⁷

15. The departmental secretary has responded giving an outline of departmental efforts to ensure awareness of parliamentary procedures and processes, recognising that training is a continuing process. He repeated his earlier advice in the following terms:

We were not aware of the source and authorship of the document in question and therefore of the potential for breach of privilege.

As soon as the authorship became known we suspended all handling of the document and destroyed all copies.¹⁸

15 *ibid.*, p. 16.

16 *ibid.*, p. 25.

17 *ibid.*, p. 23.

18 *ibid.*, p. 24.

Comment

16. The Committee of Privileges pursued the matter so assiduously because of its declaration in its 74th report that it regarded that report as a blueprint for all ministers, members of parliament and departments for their handling of documents which might have been disclosed without authority. It was for this reason that the Chair wrote specifically to every member of parliament asking that they take note of the contents of the 74th report and including as an aid to staff a brief summary of procedures relating to handling committee documents and proceedings. The committee emphasises that it is incumbent on all members of parliament to take responsibility for, and warn, all staff in their office of the need to treat parliamentary committee documents in the same way as, say, cabinet or other highly confidential documents.

17. While accepting the view of the Employment Committee that Senator Synon's inexperienced staff member was dealing with a document the nature of which he was unaware — and this is a matter of concern to the Committee of Privileges in the light of the efforts it made to notify all senators of the 74th report — the committee is puzzled about how it reached the minister's office. To the committee, the obvious question that even the most inexperienced staff member could be expected to ask the relevant senator is what he/she is supposed to do with a document about which he/she knows nothing. However, it is at least conceivable that a staff member perusing a substantial paper on a topic of interest to the office of a senior minister might wish to ingratiate him/herself with the office by handing over the document unsolicited. This is even more likely if, as implied by Senator Synon's letter, the staff member had previously been pressured to reveal the committee proceedings.

18. Having acknowledged that possibility, the committee finds it difficult to believe the glib explanations from both the minister's office and the departmental secretary as to what happened next. It has been put to the committee that neither the ministerial staffer nor the departmental liaison officer was aware of the privileged status of the document. Given that the Employment Committee's deliberations were of major relevance to the minister's portfolio, and that a document marked "draft" came from the office of a senator, it stretches credulity that the minister's office did not pursue its provenance with greater commitment. All committee members are, of course, mindful of the deluge of paper that must be processed in a minister's office. But the committee cannot accept that a substantial document, given to a senior ministerial staffer by an inexperienced staff member of a senator about to leave the Senate, would be, as it were, farmed out to the department for analysis without demur.

19. Similar comments apply to the department itself. The committee notes the observation made by the Chair of the Employment Committee, quoted earlier in this report, that it took a middle range public servant to query the status of the document by ringing the committee secretary. This does not sit well with the department's explanation that an officer rang solely to discuss matters arising from the report, particularly as there clearly had been earlier contact about whether the secretariat itself could make the draft available. However, the department's culpability was modified to some degree by its actions to retrieve and destroy all copies of the draft as soon as it was told that the document was privileged.

20. As is obvious from these comments, the committee is disturbed about what has occurred in the present case. It supports the grave view which the Employment Committee took about the matter, involving at best a cavalier approach at all levels to handling a confidential parliamentary document, and possibly improper pressure on a relatively junior staff member in a senator's office to behave improperly.

21. The committee accepts that, in the course of preparing and considering majority and dissenting reports, senators will have recourse to expertise available to them from government and non-government sources, in addition to evidence directly received during committee hearings. But it is an entirely different matter for ministers, shadow ministers or their staff to demand that a copy of the report be provided during the course of committee deliberations on a matter. The committee regards any such executive pressure as improper.

Recommendations

22. When concluding its deliberations on the matter in December 1999, the committee had noted with interest the department's assertion that it had undertaken training in parliamentary procedures. The department had advised in a return to order of 30 November 1999 that, in the period December 1998 to November 1999, "15 SES officers have undertaken various formal studies of the principles of government and the operation of the Parliament".¹⁹ According to records available to the committee at that time, of the more than fifty departmental SES officers eight had attended the Public Service and Merit Protection Commission seminars on Public Servants' Accountability, Rights and Responsibilities, while a further officer had attended a Senate SES seminar. The committee is pleased to report to the Senate that, on 21 February 2000, the Secretary and most SES officers of the department attended a specialised, focussed course arranged by the Department of the Senate, and expects that no further problems will now arise.

23. The committee also notes that the primary difficulty leading to the matter being referred to it appears to have arisen initially in the office of a relatively new senator. An inexperienced staff member, dismantling an office which was busy with Senate sittings until the last possible moment before the senator's term expired, gave a confidential parliamentary document without authority to a minister's office. This action caused the second difficulty: both the ministerial and departmental staffers within the minister's office did not know the procedure for handling the document.

24. When writing to all members and senators earlier this year, the committee also wrote to chiefs of staff of the Prime Minister and the Leader of the Opposition, drawing their attention to the 74th report, and asking them to ensure that its contents were disseminated to other offices. The Leader of the Opposition's chief of staff responded by providing the committee with a copy of a letter he had sent to all shadow ministry staff. The committee has followed up and extended the original

¹⁹ See *Journals of the Senate* No. 90, 30 November 1999, p. 2160.

communications by writing again to the chiefs of staff, and also to senior advisers to all minor parties and independent senators, asking them to ensure that all personal staff are aware of the requirements.

25. Given that the committee considers that there is a particular duty of care owed by ministerial and shadow ministerial staff in particular, and in the light of this most recent breach of confidentiality, the Committee of Privileges has decided to make a **recommendation** as follows:

That the chiefs of staff of both the Prime Minister and the Leader of the Opposition make arrangements with the Department of the Senate to conduct a half day seminar on parliamentary procedure, similar to the one at present conducted by the department for officers of the senior executive service and above, and ensure that one officer (preferably the chief of staff) from each ministerial or shadow ministerial office participate in the seminar.

26. The Committee of Privileges also has some concerns about the method by which the draft report was disseminated to members of the Employment Committee. In its 74th report, the committee drew attention to the practice now followed by the Economics References Committee, as a result of an unauthorised disclosure of a draft report, of marking all pages of such a report as “confidential”. It **recommends** that all committees formally adopt this procedure, and also suggests that care be taken when transmitting sensitive documents of this nature by e-mail.

Findings:

27. The Committee of Privileges finds as follows:

- (a) That a staff member of a former senator disclosed without authority a draft report of the Employment, Workplace Relations, Small Business and Education References Committee to a staff member of a minister;
- (b) that the ministerial staff member in turn disclosed without authority that draft report to a departmental liaison officer who inappropriately forwarded it to the relevant department;
- (c) that officers of the department disclosed without authority the draft report, both internally and to another department;
- (d) that the persons to whom the draft report was disclosed without authority should have been aware, and probably were aware, of the status of the document;
- (e) that training within the department, as outlined in its response to the order of the Senate of 1 December 1998 relating to public servants’ accountability, rights and responsibilities, has clearly been inadequate to ensure awareness of parliamentary requirements at senior levels; and

- (f) that the handling of the draft report, both in the minister's office and in the department, constitutes culpable negligence, and therefore a contempt of the Senate has been committed.

28. In accordance with Privilege Resolution 2(10), the committee transmitted the findings to the Minister and the department. It also forwarded a working draft of this report, to explain the context in which the findings had been made.

Penalty

29. The Committee of Privileges has decided to prepare the present report in general terms. This has partly arisen because of the desire of the Employment Committee not to pursue the former senator's staff member any further. Given this constraint, which under the circumstances the Committee of Privileges has considered appropriate, the committee thought it unjust to name and pursue, in the body of the report, other persons involved in the matter, although relevant documentation is included in the volume of submissions and documents accompanying this report.

30. The only way in which the committee could have considered recommending a penalty was to conduct a more exhaustive inquiry, and make more specific findings, than it was prepared in this case to do. Accordingly, the committee **recommends** that no penalty be imposed in respect of the matter referred. As its earlier, trenchant, comments have indicated, however, the committee is gravely concerned at the sequence of events that has given rise to what it regards as a substantial interference with the operations of the Employment, Workplace Relations, Small Business and Education References Committee.

31. This latest matter has caused the committee to consider the next steps it might need to take in recommending penalties for contempt of the Senate. Accordingly, the committee has commissioned a paper on the range of penalties both available and imposed in other jurisdictions, within Australia and overseas. It intends to report to the Senate on the general question of penalty following receipt and consideration of that paper.

Robert Ray
Chair