



18 February 2004

Secretary  
Finance and Public Administration Senate Legislation Committee  
Department of the Senate  
Parliament House  
Canberra ACT

## Senate Finance and Public Administration Committee Hearings 16 February 2004

### Senator Ray : Questions on Notice

At the Committee hearings on 16 February 2004 Senator Ray asked ONA two questions that were taken on notice –

1. ‘.... were any copies circulated to anyone, requested by anyone or delivered to anyone in the week before the Bolt article appeared?’ Hansard p 129
  - Mr Varghese, Director-General ONA, stated to the Committee that ONA’s records have reference to a document being circulated in June (Hansard p 128). We wish to confirm that a copy of the particular report referred to by Senator Ray was requested by and provided to an authorised recipient on 20 June 2003. This information is contained in the records provided to the AFP as part of their on-going investigation into this matter.
  
2. ‘whether in the various Acts that cover you – criminal acts, espionage acts – is it a potential criminal offence to receive?.....if a journalist received a Top Secret AUSTEO code-worded document could it be read as a breach of the law..’
  - We are advised that the official secrets provisions of the Crimes Act could apply – specifically section 79 (5) or (6). The relevant provisions of Section 79 read as follows
    - (2) If a person for a purpose intended to be prejudicial to the safety or defence of the Commonwealth or a part of the Queen’s dominions:
      - (a) communicates a prescribed sketch, plan, photograph, model, cipher, note, document or article, or prescribed information, to a person, other than:
        - (i) a person to whom he is authorized to communicate it;

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- or
- (ii) a person to whom it is, in the interest of the Commonwealth or a part of the Queen's dominions, his duty to communicate it;
- or permits a person, other than a person referred to in subparagraph (i) or (ii), to have access to it;
- (b) retains a prescribed sketch, plan, photograph, model, cipher, note, document or article in his possession or control when he has no right to retain it or when it is contrary to his duty to retain it; or
- (c) fails to comply with a direction given by lawful authority with respect to the retention or disposal of a prescribed sketch, plan, photograph, model, cipher, note, document, or article; he shall be guilty of an indictable offence.

Penalty: Imprisonment for 7 years.

- (3) If a person communicates a prescribed sketch, plan, photograph, model, cipher, note, document or article, or prescribed information, to a person, other than:
- (a) a person to whom he is authorized to communicate it; or
- (b) a person to whom it is, in the interest of the Commonwealth or a part of the Queen's dominions, his duty to communicate it;
- or permits a person, other than a person referred to in paragraph (a) or (b), to have access to it, he shall be guilty of an offence.

Penalty: Imprisonment for 2 years

- (5) If a person received any sketch, plan, photograph, model, cipher, note, document, article or information, knowing or having reasonable ground to believe, at the time when he receives it, that it is communicated to him in contravention of section 78 (espionage) or subsection (2) of this section, he shall be guilty of an indictable offence unless he proves that the communication was contrary to his desire.

Penalty: Imprisonment for 7 years.

- (6) If a person receives any sketch, plan, photograph, model, cipher, note, document, article or information, knowing, or having reasonable ground to believe, at the time when he receives it, that it is communicated to him in contravention of subsection (3), he

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shall be guilty of an offence unless he proves that the communication was contrary to his desire.

Penalty: Imprisonment for 2 years.



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