



**House of Representatives
Standing Committee of Privileges
and Members' Interests**

**Report concerning the possible unauthorised
disclosure of the internal proceedings of the
Committee**

August 2012

The Parliament of the Commonwealth of Australia

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House of Representatives
Standing Committee of Privileges and Members' Interests

August 2012
Canberra

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ISBN 978-0-642-79759-9 (Printed version)

ISBN 978-0-642-79760-5 (HTML version)

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Membership of the Committee

Chair Ms Yvette D’Ath MP

Deputy Chair Mr Patrick Secker MP

Members Mr John Alexander OAM MP (till 23 May 2012)
Ms Anna Burke MP
Mr Darren Cheeseman MP
Hon Joel Fitzgibbon MP (nominee of Leader of the House)
Mr Geoff Lyons MP
Mr Don Randall MP
Hon Philip Ruddock MP (from 23 May 2012)
Hon Alex Somlyay MP (nominee of Deputy Leader of the Opposition)
Mr Mike Symon MP
Mr Tony Windsor MP

Committee Secretariat

Secretary	Mr David Elder
Research Officer	Ms Claressa Surtees
Administrative Officer	Mrs Lynnette Eager
	Ms Laura Gillies

Introduction

- 1.1 On 24 May 2012 the Chair of the Committee raised in the House a matter of privilege concerning the apparent unauthorised disclosure of the internal proceedings of the Committee's private meeting held on the previous night.¹ The disclosure was in articles by Ms Michelle Grattan in the on-line version of *The Age* and in the print edition of *The Age* of 24 May 2012. Copies of the two articles are at Appendix A.
- 1.2 The Chair expressed disappointment about the disclosure, particularly in light of the discussion the Committee had about the importance of confidentiality in the Committee's consideration of the sensitive issues it was inquiring into.
- 1.3 The Chair indicated that the Committee would pursue the matter internally and report back to the House as necessary.
- 1.4 The Deputy Chair indicated his full support for the remarks of the Chair.

The Committee's examination

- 1.5 In pursuing possible matters of unauthorised disclosure, committee's are asked to examine two matters:
 - 1) whether there is sufficient evidence that will enable the source or sources of the disclosure to be ascertained; and
 - 2) whether the disclosure has caused substantial interference with the work of the particular committee, with the committee system more generally, or with the work of the House.

¹ House of Representatives Debates, 24 May 2012, p. 5459.

- 1.6 In relation to the first matter, the source of the disclosure, the Committee was unable to obtain evidence that might reveal the source or sources.
- 1.7 Each Member of the Committee and each secretariat staff member has signed a statutory declaration to the effect that they did not disclose the internal proceedings of the meeting of 23 May 2012 to any person who was not authorised to be made aware of those proceedings.
- 1.8 In addition the Committee asked Ms Michelle Grattan to appear and give evidence in relation to any information she could provide about the source of the disclosure. In her evidence to the Committee, Ms Grattan confirmed she was the author of the two articles in question. She indicated that the articles were completed the previous evening around 8.00 or 8.15 pm, approximately 30-40 minutes after the Committee's meeting had concluded. In responding to questions about her sources for the articles, Ms Grattan stated that she was not able to discuss any matters to do with her sources. Ms Grattan stated that:
- ... the whole question of sourcing of material involves confidentiality and that journalists do not breach that confidentiality. This is how we operate in my trade ... We accept the consequences of them.
- 1.9 In relation to the second matter, the impact of the disclosure, the Committee considers that the particular circumstances make this matter very serious. The meeting from which the disclosure appears to have taken place was the first meeting of the Committee after the referral of an inquiry by the House into a matter of great sensitivity. The Committee also explicitly discussed at that meeting the importance of confidentiality in relation to its proceedings during the course of the inquiry. The disclosure, therefore, has been damaging to the Committee.

Observations and conclusions

- 1.10 The Committee has not sought a formal reference from the House in relation to this matter. The reason for not seeking a reference is that the Committee considers that it is very unlikely that evidence will come to light about the source or sources of the disclosure. Nevertheless, given the timing of the conclusion of the Committee's meeting, the completion of the articles by Ms Grattan and the fact that no written record of the Committee's meeting had been created at that point, the disclosure could only have been made orally from a member of the Committee or one of the secretariat staff either directly to Ms Grattan, or indirectly to Ms Grattan via another party to whom the disclosure was made.
- 1.11 As the Committee does not have a reference on this matter, it makes no formal findings.
- 1.12 However, the Committee has a number of observations, and wishes to make recommendations to the House.
- 1.13 On a number of occasions the Committee has expressed its frustration about inquiries it has conducted into unauthorised disclosures of committee information. These of course have been inquiries into disclosures from other committees, not an inquiry into a disclosure from the Committee of Privileges and Members' Interests itself, but the issues are the same.
- 1.14 In a report in 1994 concerning the unauthorised publication of material from the then Joint Committee of Public Accounts (the 1994 report), the Committee (then the Committee of Privileges) noted:
- The Committee acknowledges the difficulty that can be faced in seeking to ascertain the sources of such disclosures. Those guilty are unlikely to identify themselves. Media representatives can be expected to claim that their professional code of ethics prevents them from revealing the identity of such sources ...²
- 1.15 Similar sentiments have been expressed in a number of reports since 1994 and the Committee expresses the same frustration on this occasion reflecting the same issues.
- 1.16 In the 1994 report the Committee also noted in relation to the Australian Journalists Association Code of Ethics 'that neither House has accepted the existence of such professional rules or conventions as justifying the

² House of Representatives Standing Committee of Privileges, *Report concerning unauthorised publication of material concerning the Public Accounts Committee*, May 1994, p. 6.

refusal to reveal sources'.³ Since then, the Parliament has enacted legislation to provide protection to journalists' sources in relation to court proceedings. However, that protection does not extend to the powers that parliamentary committees have to compel journalists to reveal their sources. In light of the evidence, the Committee chose not to press further the matter of Ms Grattan's sources.

- 1.17 While the person or persons who disclosed the material in the first place are the most culpable in these matters, the Committee reiterates the view in the 1994 report that 'It is also important that where it is necessary to do so the Houses are willing to proceed against those who knowingly **publish** the material'.⁴ In this case the Committee specifically asked Ms Grattan about her knowledge of the restriction on the publication of committee proceedings that have not been reported to the House and she responded:

I have thought about this matter, obviously, since. If I was aware, I had forgotten that awareness. I was aware that one does not pre-empt committee reports. I do not know I was ever aware of dealing with the question of committee proceedings. I do not swear that I was not, but if I was, I had forgotten it.

- 1.18 The Committee does not find this explanation from one of the Press Gallery's most senior and experienced journalists very satisfactory, but it chose not to pursue the matter further on this occasion.

- 1.19 However, the Committee wishes to make it very clear to Press Gallery journalists and their publishers that a potential contempt can be committed in the act of publishing material from parliamentary committees that has not been authorised for publication. The Committee's view is supported by its equivalent committee in the Senate. In a report on the issues of parliamentary privilege raised by the unauthorised disclosure of committee proceedings, the Senate Committee of Privileges noted that:

The committee remains of the view, declared in the 74th report, that both the leaker and the receiver of the information are culpable and should be treated accordingly.⁵

- 1.20 In addition to a possible contempt being found as a result of publication of unauthorised material, it would be open to the Committee to recommend penalties to be imposed for a contempt. Again, as was noted in the 1994 report, the House is not without remedy in respect of persons who publish unauthorised material:

³ *ibid.*

⁴ *ibid.* [Emphasis added]

⁵ Senate Committee of Privileges, *Parliamentary privilege – unauthorised disclosure of committee proceedings*, 122nd Report, June 2005, p. 47.

One option is the withdrawal of access to the building. A mechanism could be set in place under which, should it be established, that a particular person or organisation has deliberately published such material and known that this was against the relevant rules, the persons in question would have their Parliament House passes withdrawn for a specified period.⁶

- 1.21 In the 1994 report the Committee also recommended that a briefing be held for members of the Parliamentary Press Gallery on procedural matters and particularly on the positions concerning the unauthorised disclosure of committee evidence and proceedings.⁷ The Committee supports efforts to raise the awareness of Press Gallery journalists of the restrictions placed on the publication of unauthorised evidence and proceedings of committees.
- 1.22 The Committee has recommended in earlier reports that the House adopt a resolution (copy of earlier proposed resolution at Appendix B) concerning the unauthorised disclosure or publication of committee evidence or proceedings. The House has not yet adopted such a resolution.
- 1.23 The Committee again recommends that the House adopt a resolution relating to unauthorised disclosure (copy of proposed resolution at Appendix C). In addition to the terms of the previously recommended resolution, the Committee has added specific provisions relating to the publication of unauthorised material and the implications for journalists and the media. The adoption of the resolution will make it clear to journalists and the media which publish unauthorised information that publication is, of itself, potentially a contempt which can be punished by the House with appropriate sanctions.
- 1.24 In addition to the resolution, the Committee also recommends that changes be made to the process for the approval of Parliamentary Press Gallery/Media Passes to require the pass holder to be aware of the prohibition of unauthorised disclosure of committee proceedings and also that, as part of the approval and renewal processes, the pass holder is informed that a breach can result in sanctions. The Committee also notes that there is a role for the Press Gallery Committee which sponsors the passes of members of the Gallery, to advise new members to the Gallery about their responsibilities.

⁶ Committee of Privileges, 1994 report, op. cit., pp. 6-7.

⁷ *ibid*, p. 7.

Recommendation 1

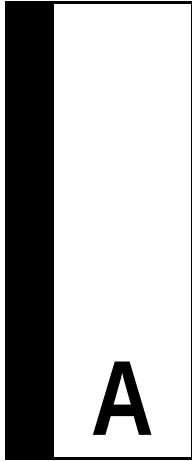
The Committee recommends that the House adopts the resolution concerning the consideration of the unauthorised disclosure or publication of committee evidence or proceedings which is Appendix C to the report.

Recommendation 2

The Committee recommends that changes be made to the process for approval of Parliamentary Press Gallery/Media Passes to require the pass holder to be aware of the prohibition of unauthorised disclosure of committee proceedings and also that, as part of the approval and renewal processes, the pass holder is informed that a breach can result in sanctions.

YVETTE D'ATH MP

Chair



The Articles in *The Age* of 24 May 2012

rather than a police crackdown.

PICTURE: MICHAEL CLAYTON-JONES

HEALTH SERVICES

HSU officials ask to front inquiry

ALP resists advertising for witnesses on Thomson

By **MICHELLE GRATTAN**
POLITICAL EDITOR

SECRETARY of the Health Services Union, Kathy Jackson, and senior official Marco Bolano say they want to appear before the House of Representatives privileges committee inquiry into whether Craig Thomson has misled Parliament.

Mr Thomson strongly attacked both officials in his Monday statement, accusing Ms Jackson of misusing union funds and Mr Bolano of threatening to ruin him and set him up with "a bunch of hookers".

Ms Jackson, who provided evidence against Mr Thomson to the Fair Work inquiry, will be writing to the committee to ask to give evidence. Mr Bolano, who this week accused Mr Thomson of "drowning in a river of delusion", said he wanted to respond to the MP's conspiracy theory.

Nine Network's *A Current Affair* executive producer Grant Williams yesterday spent 90 minutes in Mr Thomson's Parliament House office, when he tried to show him an interview with an escort, who has also provided a statutory declaration. Mr Thomson declined to view the DVD and denied fresh allegations that were put to him about at least one escort transaction that has not been been previously identified. The program so far has not put the allegations to air.

The privileges committee is testing Mr Thomson's denials



Kevin Rudd passes Craig Thomson yesterday.

PICTURE: ANDREW MEARES

against the Fair Work inquiry's findings that he misused nearly \$500,000 of Health Services Union money.

The committee met last night and resolved to write to manager of opposition business Christopher Pyne asking him to specify where Mr Thomson had allegedly deliberately misled. Labor members would not agree to a Coalition push for the committee to advertise immediately for witnesses and submissions.

The committee agreed to ask Mr Thomson and a Liberal, Craig Kelly, to respond to allegations they failed to comply with the requirements of the members' interests register.

Opposition Leader Tony Abbott said he did not think the committee should "re-litigate all the matters that were so extensively investigated" but named people he said it would be "open" to the committee to call. These included

Mr Thomson, Terry Nassios, who did the Fair Work inquiry, the Seven Network, accused of hovering under Mr Thomson's bathroom window when his pregnant wife was showering, and those whom Mr Thomson named among his loyal supporters, one of whom later denied having any contact with him for 25 years.

In a gruelling parliamentary tactical battle, the government tried to gag an opposition attempt to have Prime Minister Julia Gillard make a statement on the affair. It lost two gag votes, but used up the time available to the Coalition. Replying to questions, Ms Gillard repeated her argument that Parliament should not be judge and jury on the matter. The opposition beefed up its representation on the privileges committee, putting on former attorney-general Philip Ruddock in place of John Alexander.

Green sorry for attacking own party

[[The Age](#) | [Text-only index](#)]

HSU officials ask to front inquiry

Date: May 24 2012

Michelle Grattan

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Earlier proposed resolution concerning the consideration of the unauthorised disclosure or publication of committee evidence or proceedings

- (1) That the House adopt the following resolution concerning the consideration of the unauthorised disclosure or publication of committee evidence or proceedings:
 - (a) Notwithstanding the provisions of standing orders 95, 96 and 97A, a complaint concerning the unauthorised disclosure or publication of evidence taken by a committee, or proceedings of a committee or documents concerning a committee, must be raised at the first opportunity at a meeting of the committee in question; and the House must be advised that the matter is to be raised, or has been raised, with the committee.
 - (b) A committee concerning which a complaint of unauthorised disclosure or publication has been made must consider whether the matter has caused substantial interference with its work, with the committee system or with the work of either House, or whether it is likely to have such an effect.
 - (c) If a committee wishes to consider such a matter further, it must seek to ascertain the source of any unauthorised disclosure and in order to do so letters must be written to all members of the committee and its staff asking if they have any knowledge as to the source of the disclosure.

- (d) If a committee concludes that the unauthorised disclosure or publication in question has caused substantial interference, or is likely to do so, and it wishes the matter to be proceeded with, it must set out its findings in a Special Report which must be presented to the House at the first available opportunity. Such a Special Report should spell out precisely what facts constitute substantial interference and precisely what has led the committee to conclude that substantial interference has occurred, details of the steps the committee has taken to ascertain the source of any unauthorised disclosure, the committee's views as to the benefits of any further action on the matter, and its views as to the prospects of the source(s) of the disclosure(s) being discovered.
- (e) In considering complaints in this area, and notwithstanding the provisions of standing order 96, the Speaker should not allow precedence to a motion on such a matter unless, in the light of the information presented to the Speaker, he or she is of the opinion:
 - (i) that there is sufficient evidence that will enable the Committee of Privileges to ascertain the source or sources of the disclosure(s); or
 - (ii) that the circumstances of the case are such that the issues of the protection of the committee system, or the protection of committee sources or witnesses are such as would warrant reference to the Committee of Privileges.

Proposed resolution concerning the consideration of the unauthorised disclosure or publication of committee evidence or proceedings

- (1) That the House adopt the following resolution concerning the consideration of the unauthorised disclosure or publication of committee evidence or proceedings:
 - (a) Notwithstanding the provisions of standing orders 51, 52 and 53, a complaint concerning the unauthorised disclosure or publication of evidence taken by a committee, or proceedings of a committee or documents concerning a committee, must be raised at the first opportunity at a meeting of the committee in question; and the House must be advised that the matter is to be raised, or has been raised, with the committee.
 - (b) A committee concerning which a complaint of unauthorised disclosure or publication has been made must consider whether the matter has caused substantial interference with its work, with the committee system or with the work of either House, or whether it is likely to have such an effect.
 - (c) If a committee wishes to consider such a matter further, it must seek to ascertain the source of any unauthorised disclosure and in order to do so letters must be written to all members of the committee and its staff asking if they have any knowledge as to the source of the disclosure.

- (d) If a committee concludes that the unauthorised disclosure or publication in question has caused substantial interference, or is likely to do so, and it wishes the matter to be proceeded with, it must set out its findings in a Special Report which must be presented to the House as the first available opportunity. Such a Special Report should spell out precisely what facts constitute substantial interference and precisely what has led the committee to conclude that substantial interference has occurred, details of the steps the committee has taken to ascertain the source of any unauthorised disclosure, the committee's views as to the benefits of any further action on the matter, and its views as to the prospects of the source(s) of the disclosure(s) being discovered.
- (e) In considering complaints in this areas, and notwithstanding the provisions of standing order 51, the Speaker should not allow precedence to a motion on such a matter unless, in the light of the information presented to the Speaker, he or she is of the opinion:
 - (i) that there is sufficient evidence that will enable the Committee of Privileges and Members' Interests to ascertain the source or sources of the disclosure(s); or
 - (ii) that the circumstances of the case are such that the issues of the protection of the committee system, or the protection of committee sources or witnesses are such as would warrant reference to the Committee of Privileges and Members' Interests.
- (f) In circumstances where a matter has been referred to the Committee of Privileges and Members' Interests under paragraph (1) (e), the Committee should have regard to the question of publication of the evidence or proceedings as well as the disclosure and consider:
 - (i) whether it is appropriate to make a find of contempt in relation to the publication of evidence or proceedings; and
 - (ii) whether recommendations are made to the House for the imposition of appropriate penalties on the journalists or news media involved.

