
The Parliament of the Commonwealth of Australia

Unauthorised disclosure of confidential committee document

House of Representatives
Standing Committee on Regional Australia

May 2013
Canberra

© Commonwealth of Australia 2013

978-1-74366-004-1 Printed version

978-1-74366-005-8 HTML version

This work is licensed under the Creative Commons Attribution-NonCommercial-NoDerivs 3.0 Australia License.



The details of this licence are available on the Creative Commons website:
<http://creativecommons.org/licenses/by-nc-nd/3.0/au/>.



Contents

Membership of the Committee	v
List of recommendations	vii

THE REPORT

1	Unauthorised disclosure of confidential committee document.....	1
	Background	1
	Consequence of the disclosure	2
	Source of disclosure.....	2
	Members and staff	2
	Mr Probyn	3
	Source of publication	4
	Benefits of further action.....	5

APPENDICES

	Appendix A – Articles published in the <i>West Australian</i>.....	7
	Appendix B – Letter from the Member for Wannan	11



Membership of the Committee

Chair Tony Windsor MP

Deputy Chair Steve Gibbons MP

Members Hon Justine Elliot MP

Barry Haase MP

Kirsten Livermore MP

Michael McCormack MP

Rob Mitchell MP

Dan Tehan MP

Committee Secretariat

Secretary Glenn Worthington

Inquiry Secretary Siobhán Leyne



List of recommendations

1 Unauthorised disclosure of confidential committee document

Recommendation 1

The Committee recommends that the Speaker of the House of Representatives refer the matter of an unauthorised disclosure of a confidential report of the Standing Committee on Regional Australia to the Standing Committee on Privileges and Members Interests for further investigation.

Recommendation 2

The Committee recommends that the House of Representatives adopt the Standing Committee on Privileges and Members' Interests August 2012 report titled: *Report concerning the possible unauthorised disclosure of the internal proceedings of the Committee* in order to give guidance to the House and its committees in dealing with the unauthorised disclosure of committee proceedings and to better educate the Parliamentary Press Gallery about the prohibition on the unauthorised disclosure of committee proceedings.

Unauthorised disclosure of confidential committee document

Background

- 1.1 On 11 February 2013 an article by Mr Andrew Probyn appeared in *The West Australian* entitled 'Windsor declares tax war on "cancer" of FIFO'. The article contained details of the Committee's confidential report on its inquiry into fly-in, fly-out/ drive-in, drive-out workforce practices in regional Australia including the name of the report, details of recommendations and the name of a Member who had dissented from the report. Copies of the articles are at Appendix A.
- 1.2 The Committee's report was adopted on Wednesday, 6 February 2013 and a final copy with the dissent was provided confidentially to all Members on Friday, 8 February 2013. Members were advised that the report was confidential until tabling, which took place on Wednesday, 13 February 2013.
- 1.3 Details contained in the article made it clear that the journalist had obtained either a detailed briefing or a copy of the Committee's confidential report. Mr Probyn confirmed that he had not seen a copy of the report but had received information on its content.
- 1.4 On Monday, 11 February 2013, the Chair advised the House that a possible matter of privilege had arisen that would be considered by the Committee.

Consequence of the disclosure

- 1.5 The Committee considered whether the disclosure had the potential to substantially interfere with its work, the work of the committee system or the work of the House.
- 1.6 As the Committee had concluded its deliberations on the report, the unauthorised disclosure did not interfere with its work on that matter. However, negative media reporting of the contents of the Committee's report based on a partial account provided to the journalist left Committee members in the invidious position of not being able to correct the record until the report's presentation.
- 1.7 The capacity of Members to work collaboratively and be able to conduct private proceedings in an open and frank manner has also potentially been impeded as a result of this disclosure.
- 1.8 On this basis, the unauthorised disclosure and publication of this disclosure is likely to cause substantial interference with the future work of the Committee.
- 1.9 In addition, the Committee considered the impact of the disclosure on the committee system. Standing Order 242 requires that committee documents, including reports, not be disclosed until they are reported to the House or authorised by the Committee. For individuals to take it upon themselves to disclose and circulate a confidential committee report undermines the integrity of the committee system.
- 1.10 In relation to the further publication of the unauthorised disclosure, the Committee is aware that the consistent reporting of confidential committee reports in the 43rd Parliament has all but eliminated the practice of committees issuing embargoed copies of reports to the media. This has limited the ability of the media to publicise in a fully informed way the very important work of committees once reports are published through proper means.

Source of disclosure

Members and staff

- 1.11 All Members, their staff and Committee Office staff who had access to the adopted report prior to its presentation signed statutory declarations relating to the unauthorised disclosure.
- 1.12 All of these declarations bar one confirmed that the individual did not disclose the report to Mr Probyn, nor any other person to whom the

person making the declaration was not authorised to make such disclosure.

- 1.13 The statutory declaration made by the Member for Wannon, Mr Dan Tehan MP, confirmed that he had made no disclosure to Mr Probyn. However, Mr Tehan did declare that in the course of considering his dissenting report he had consulted with a third party. In addition, Mr Tehan wrote a letter of apology to the Committee. This letter is included at Appendix B.
- 1.14 Mr Tehan's admission of an unauthorised disclosure should be treated as being of the utmost seriousness. While the unauthorised disclosure has not substantially interfered with the Committee's work on this specific inquiry, it has impacted adversely on the trust between committee members and has potentially eroded the committee system as described in the previous section.

Mr Probyn

- 1.15 The Committee resolved that the journalist be asked to reveal the source of the disclosure. The Secretary wrote to Mr Probyn on 13 February 2013.
- 1.16 Mr Tony McCarthy, Group General Counsel for Mr Probyn's employer, West Australian Newspapers Limited, responded on 26 February 2013. Mr McCarthy argued that Mr Probyn was 'bound by a professional obligation of the utmost confidence preventing him from revealing his confidential sources.'
- 1.17 Mr Probyn was invited to appear before the Committee at an in-camera hearing on 13 March 2013 and was questioned as to the source of the information revealed in his article. He again refused to reveal his source, noting that he is bound by a professional code of ethics preventing him from revealing his sources.
- 1.18 In response to this claim the Committee notes the Standing Committee on Privileges and Members' Interests recent report which stated:
- 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 refusal to reveal sources". 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.¹

- 1.19 House of Representatives Practice cites *May* in establishing that: ‘witnesses are bound to answer all questions put to them...’² that: Mr Probyn’s refusal to provide the information requested of him could be seen as contempt of the Parliament.

Source of publication

- 1.20 Unlike the difficulty in establishing the source of the disclosure, the source of the publication of the disclosure is clear.
- 1.21 The Privileges Committee reported on the publication of an unauthorised disclosure by a senior journalist in the Parliamentary Press Gallery.³ In that case, the Privileges Committee made the following observations:
- without the person or persons who disclosed the material revealing themselves, it can be difficult to ascertain who is the source;
 - whilst the person who discloses the information is most culpable, the House must be willing to proceed against those who knowingly **publish** the material.
- 1.22 Not only was an article published utilising unauthorised material, but an editorial and cartoon appeared in the same newspaper. At his appearance before the Committee, Mr Probyn indicated that he understood that the material was an unauthorised disclosure, but nonetheless, the *West Australian* chose to publish three separate pieces relating to the confidential information.
- 1.23 The Committee notes that in his appearance before it, Mr Probyn, argued that, whilst aware of the rules prohibiting the publication of confidential committee information that, in his opinion, he and the *West Australian* had not committed contempt against the House. This view was supported by Mr Probyn’s legal counsel, Mr Tony McCarthy who was provided an opportunity at the conclusion of a hearing to make a statement. Mr McCarthy argued that a succession of Senate Privileges Committee reports agreed with Mr Probyn’s opinion in this matter.

1 House Standing Committee on Privileges and Members’ Interests (Privileges Committee), *Report concerning the possible unauthorised disclosure of the internal proceedings of the Committee*, August 2012, para. 1.16.

2 *May’s Parliamentary Practice*, 24th ed, p. 820, cited in *House of Representatives Practice*, 6th ed. Ed. B. C. Wright, Department of the House of Representatives, Canberra, 2012, p. 674.

3 Privileges Committee, *Report concerning the possible unauthorised disclosure of the internal proceedings of the Committee*, August 2012, para. 1.17.

1.24 While this Committee makes no finding about the matter of contempt as it is rightly a matter for the Speaker to consider whether a prima facie case exists, it wishes to express in the strongest terms that it is not for journalists and publishers to determine which rules of the House they will abide by in their pursuit of a story. Mr Probyn's and Mr McCarthy's attitude in this regard demonstrates a disturbing attitude towards the rules of the House. In addition, the findings of the Senate Privileges Committee and Procedural Orders of Continuing Effect agreed by the Senate are far from the first point of reference in considering issues pertaining to the House and its committees.

Benefits of further action

1.25 The Regional Australia Committee considers the disclosure and publication of its confidential report to a journalist to be an extremely serious matter that undermines the integrity of the committee system. While it has not been able to determine the source of the disclosure, there is a strong case for providing consequences for the publisher of the confidential information.

1.26 The Committee notes the frustration expressed by the Privileges Committee in its August 2012 report about the unauthorised disclosure of confidential committee information and supports its recommendations to the House regarding:

- the adoption of a resolution concerning the consideration of the unauthorised disclosure or publication of committee evidence or proceedings; and
- changes to the process for parliamentary press gallery and media pass holders requiring passholders to be aware of the prohibition on the unauthorised disclosure of committee proceedings.

1.27 The Committee would further note that given the differing practices between the House and the Senate on unauthorised disclosures and the apparent confusion held by Mr McCarthy on the application of Senate procedures to the House, in cases where requirements of the House are clearly stated, that any such process also make clear this distinction.

1.28 The significant benefit of consideration of further action on this matter would be to confirm to the Parliamentary Press Gallery the seriousness with which the House takes acts of publication of unauthorised disclosures.

Recommendation 1

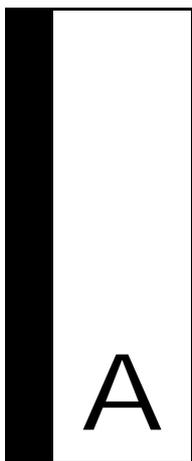
The Committee recommends that the Speaker of the House of Representatives refer the matter of an unauthorised disclosure of a confidential report of the Standing Committee on Regional Australia to the Standing Committee on Privileges and Members Interests for further investigation.

- 1.29 In addition, the Committee is recommending that the House adopt the August 2012 report of the Standing Committee on Privileges and Members' Interests: *Report concerning the possible unauthorised disclosure of the internal proceedings of the Committee*. The adoption by the House of the recommendations contained within that report would have greatly assisted the Committee in its consideration of this matter.

Recommendation 2

The Committee recommends that the House of Representatives adopt the Standing Committee on Privileges and Members' Interests August 2012 report titled: *Report concerning the possible unauthorised disclosure of the internal proceedings of the Committee* in order to give guidance to the House and its committees in dealing with the unauthorised disclosure of committee proceedings and to better educate the Parliamentary Press Gallery about the prohibition on the unauthorised disclosure of committee proceedings.

**Tony Windsor MP
Chair
15 May 2013**



Appendix A – Articles published in the *West Australian*



Windsor declares tax war on 'cancer' of FIFO

EXCLUSIVE

■ **Andrew Probyn**
Federal Political Editor

Resources companies are at risk of losing lucrative tax perks worth hundreds of millions of dollars as a result of a Government-dominated committee report likening fly-in, fly-out work practices to cancer.

The West Australian understands that the committee headed by rural independent MP Tony Windsor will recommend that fringe benefits tax exemptions be scrutinised, with a view to eliminating them. Removing FBT exemptions could risk making some mining operations unprofitable, threatening jobs.

The regional Australia committee's majority report, to be made public on Wednesday, is sub-titled "Cancer to the Bush or Saviour to the City?" and is critical of the social and economic effects of FIFO and drive-in, drive-out workforces.

It says tax policies, especially the FBT exemptions introduced from 1986, have contributed to the explo-

sion in FIFO workers in places like the Pilbara in WA and the Bowen Basin in Queensland. FBT exemptions apply to transporting, accommodating and catering for FIFO workers and can be worth thousands of dollars for every employee.

Fortescue Metals Group has calculated the flights and accommodation costs for a FIFO worker in the Pilbara is \$48,000. This cost would be about double if FBT exemptions were removed. FMG told the committee that the cost of employing a residential employee was \$150,000 because the company paid "substantial" tax on housing subsidies which were not FBT-exempt.

According to the Chamber of Energy and Minerals WA, about 52 per cent, or 46,800, of the almost 90,000 workers in the State's minerals sector in 2011 were employed on FIFO rosters.

WA Liberal MP Barry Haase is one of the three coalition MPs on

the committee. It is understood that Victorian Liberal Dan Tehan wrote a dissenting report.

Mr Windsor signalled several months ago that FBT exemptions and other tax incentives were in his committee's sights. "We want to ensure that Australians living in regional and remote communities are assisted, not disadvantaged, by taxation policy," he said in August.

Some remote councils have complained that FIFO employees do not pay rates in their place of work yet use all of the local infrastructure.

Minerals Council of Australia's chief executive, Mitch Hooke, said it was a myth that mining was "hollowing out" regional Australia.

Mr Hooke said a study by KPMG had debunked this idea, showing that in mining regions there were higher incomes, greater education-

▶ **CONTINUED** P4

Windsor tax war on FIFO

◀ **FROM** P1

al attainment, lower unemployment and more families and working-aged residents than in regional Australia. In the Pilbara, the permanent resident population grew 7.3 per cent per year between 2006 and 2011 compared with 0.8 per cent

for the rest of regional Australia.

"Any report on FIFO that likens it to a cancer on regional Australia should be treated with deep scepticism," Mr Hooke said. "Far from being a cancer, FIFO is one of the principal mechanisms for spreading the benefits of the boom."



EDITORIAL

Stripping tax perks from FIFO puts resources industry at risk

A Federal parliamentary committee headed by the independent New England MP, Tony Windsor, will tomorrow release a report on fly-in, fly-out work practices in the resources industry. His majority report has been given the dichotomous sub-heading “Cancer to the Bush or Saviour to the City”.

FIFO is neither a cancer nor a saviour, it is a way of getting people from where they reside to where they work. It just happens to be that a lot of people like living in cities, with all their amenities, access to education and culture, as well as proximity to their extended families or communities. Also, a lot of mines are in places with limited social infrastructure and expensive accommodation.

Mining delivers substantial employment to regional areas that, often, would otherwise have little or no industry. FIFO arguably reduces the potential local benefits and imposes localised costs that should arguably be born by the wider community, or by the resources companies.

The committee report is likely to recommend the potential elimination of exemptions from the fringe benefits tax for company spending on transporting, housing and feeding FIFO workers.

A decision by the Labor government in 1986 to impose the FBT on housing subsidies for workers in remote communities has been blamed, in part, for the creation of massive FIFO workforces. It is one thing to point to an historical mistake, it is another thing to rush headlong into a new mistake that could endanger the future viability of an industry.

Any debates about the development of projects worth billions of dollars cannot be started with the assumption that they are going to happen and will keep going. Bankers, investors and boards have to be convinced that the numbers stack up, risks are as well known as possible and things can be done to mitigate most possible dangers.

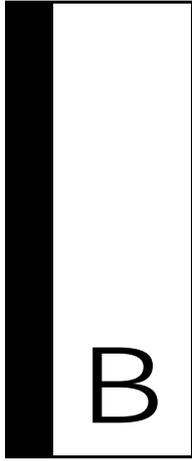
If a Federal Government makes changes to the tax regime to encourage more investment in remote housing and to discourage FIFO, they had better do it in a way that does not damage the viability of projects and gives the industry plenty of time to adjust.

While we have an advantage in being close to China, Australia is facing tough competition from Africa and the Americas for resources dollars and we have to be careful about artificially inflating costs.

It is often not viable to build a town around a remote mine and any such community becomes highly vulnerable to fluctuations in the fortune of the project. Resources companies are vulnerable to sudden shifts in international markets and have highly variable labour demands.

Any changes to tax laws aimed at promoting development in the bush must not be punitive but recognise the myriad factors affecting the industry, including the difficulty of getting access to serviced lots in remote areas and poor planning policies.

Rather than broad generalisations, there will be answers in the detail. As a starting point, we look forward to the contributions of Mr Windsor’s committee.



Appendix B – Letter from the Member for
Wannon

Mr Tony Windsor MP
Chair
House of Representatives
Standing Committee on Regional Australia

15/5/2013

Dear Tony,

I refer to the Committee's investigation of a possible breach of privilege regarding the unauthorised disclosure of committee information.

I assure the Committee that I did not disclose the confidential committee report of the inquiry into fly-in, fly-out workforce practices of the House of Representatives Standing Committee on Regional Australia to Andrew Probyn of the *West Australian* newspaper. I sought advice on my dissenting report on the inquiry but I do not believe that in seeking that advice I in any way substantially interfered with the work of the Committee.

I want to apologise to the Regional Australia Committee and to the House for this possible breach of privilege and give an assurance that no such event will happen again.

Yours Sincerely


Dan Tehan MP