

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**