

The Senate

Legal and Constitutional Affairs
References Committee

Unauthorised disclosure of proceedings
relating to the committee's inquiry into
Australia's arrangement with Malaysia on
asylum seekers

November 2011

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REPORT TO THE SENATE

Unauthorised disclosure of proceedings relating to the committee's inquiry into Australia's arrangement with Malaysia on asylum seekers

Introduction

1.1 On 4 November 2011, the Clerk of the Senate, Dr Rosemary Laing, wrote to the committee concerning comments by the former Commonwealth Ombudsman, Mr Allan Asher, during an interview on ABC Radio National. Mr Asher alleged in the interview that there had been an unauthorised disclosure of committee proceedings concerning the committee's inquiry into Australia's arrangement with Malaysia in relation to asylum seekers. In addition, the Clerk noted that Mr Asher had made comments reflecting adversely on staff of the committee by insinuating that the disclosure originated in the committee secretariat.

1.2 The committee, in accordance with *Procedural Orders of Continuing Effect No 3 – Unauthorised disclosure of committee proceedings, documents or evidence*, has sought to discover the source of the disclosure.

Background

1.3 On 17 August 2011, the Senate referred to the committee Australia's arrangement with Malaysia in relation to asylum seekers for inquiry. The committee held a public hearing for the inquiry on 23 September 2011. Subsequent to the hearing, a written question on notice from Senator Trish Crossin was provided to the Office of the Commonwealth Ombudsman. The question related to communications between the former Commonwealth Ombudsman, Mr Asher, and Senator Sarah Hanson-Young relating to asylum seekers or any matters that were the subject of Senate Estimates or parliamentary inquiries.

1.4 The answer to the question was provided to the committee by email on 30 September 2011 and published on the committee's website on the evening of 11 October 2011.

1.5 As noted above, in an interview on the ABC *Sunday Profile* program of 30 October 2011, the following exchange took place between the former Commonwealth Ombudsman, Mr Asher, and interviewer Ms Julia Baird:

Julia Baird: You're listening to Sunday Profile with me, Julia Baird, and the man who has just resigned as Commonwealth Ombudsman, Allan Asher.

Well, these emails were then leaked and ended up in the hands of Labor senator, Trish Crossin, who asked you to release all communication between your office and any senators or MPs and their offices.

Who leaked these emails?

Allan Asher: Well, we provided the copies at Senator Crossin's request to the Senate Committee.

However, it's clear that a week before the committee even met to consider whether they would deal with the question and the answers – because they had to vote on whether they would release the other confidential, internal communications with the minister's office.

But we were getting inquiries from [a] journalist in Western Australia who clearly knew all about it. And this was at a time when, as I understand it, even the rest of the committee members didn't have it.

So, so far as I know, the only people who knew about the questions and answers were the people in the offices of the ministers and the committee secretariat.

Julia Baird: Do you have any evidence as to where the leak might have come from?

Allan Asher: I don't have any evidence. I only know that the only people who had the information were ministerial offices and the secretariat of the Senate committee.

Investigation of unauthorised disclosure of committee proceedings

1.6 The committee wrote to the persons whom the committee understood to have been provided with the question on notice and answer prior to its publication on the committee's website on 11 October 2011, asking if they could explain the disclosure. Those persons were:

- committee members and their staff;
- the Committee Secretary and staff of the committee;
- the Acting Commonwealth Ombudsman and her staff;
- the Hon Chris Bowen, MP, Minister for Immigration and Citizenship, and his staff;
- the Hon Gary Gray, AO MP, Special Minister of State and Special Minister of State for the Public Service and Integrity, and his staff; and
- Dr Ian Watt, Secretary, the Department of the Prime Minister and Cabinet¹.

1.7 The committee received responses from the following:

1 At the Finance and Public Administration Legislation Committee estimates hearing of 17 October 2011, Ms Renee Leon, Deputy Secretary, Governance, indicated that officers of the Department of the Prime Minister and Cabinet had knowledge of the question and answer before publication on 11 October 2011 (see Senate Finance and Public Administration Legislation Committee, *Committee Hansard*, 17 October 2011, pp 65–66).

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- Senators Boyce, Cash, Crossin, Furner, Gallacher, Hanson-Young and Humphries;
 - Mr James Cullen, on behalf of the Hon Chris Bowen, MP, Minister for Immigration and Citizenship, and his staff;
 - Mr David Williams, Chief of Staff, on behalf of the Hon Gary Gray, AO MP, Special Minister of State and Special Minister of State for the Public Service and Integrity, and his staff;
 - the Secretary, Senate Legal and Constitutional Affairs Committee;
 - Ms Alison Larkins, Acting Commonwealth Ombudsman; and
 - Dr Ian Watt, Secretary, the Department of the Prime Minister and Cabinet.

1.8 The committee notes that, in responding, the Special Minister of State and the Minister for Immigration and Citizenship both relied on the 2001 resolution of the Senate that 'one House of the Parliament may not inquire into or adjudge the conduct of a member of the other house' to decline to answer the committee's enquiries.

1.9 The committee notes that the same resolution does not preclude Ministers sitting in the House of Representatives from responding to enquiries of the committee should they so wish. The committee regrets that the Ministers have chosen on this occasion not to assist the committee with its investigation.

1.10 On the basis of the responses received, the committee has not been able to discover the source of the unauthorised disclosure.

Conclusion

1.11 The committee has considered the responses received and noted the terms of *Procedural Orders of Continuing Effect No 4 – Unauthorised disclosure of committee proceedings*. The committee concludes that the disclosure of the question to, and answer from, the former Commonwealth Ombudsman does not involve actual or potential substantial interference with the work of the committee or the Senate as the committee ultimately published the question and answer, albeit with some personal information not published. Therefore, the committee has determined not to raise the unauthorised disclosure of the question and answer as a matter of privilege under standing order 81.

1.12 However, the committee wishes to respond to comments made by Mr Asher in relation to committee staff. As noted by the Clerk in her letter to the committee, the comments 'reflect adversely on committee staff by insinuating that they may have been responsible for information about Mr Asher's answers on notice being reported in the press'.

1.13 Committee staff were asked if they could explain the disclosure and the Secretary has clearly advised that no member of the committee secretariat made an unauthorised disclosure. The committee is satisfied that this is the case. The committee holds committee secretariat staff in the highest regard. The

professionalism, dedication, and integrity of Senate committee staff is beyond reproach and it is unacceptable that comments on the public record should insinuate otherwise and not be addressed.

Senator Penny Wright
Chair

APPENDIX 1

Letter from the Clerk of the Senate, Dr Rosemary Laing



AUSTRALIAN SENATE

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4 November 2011

Senator P Wright
Chair
Legal and Constitutional Affairs References Committee
Suite S1 61
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Dear Senator Wright

ALLEGATIONS AGAINST COMMITTEE STAFF

I wish to bring to the committee's attention some remarks made in an interview on ABC Radio National by former Commonwealth Ombudsman, Mr Allan Asher, that reflect adversely on committee staff by insinuating that they may have been responsible for information about Mr Asher's answers on notice being reported in the press.

The interview on *Sunday Profile* on 30 October, contained the following exchange:

Julia Baird: You're listening to *Sunday Profile* with me, Julia Baird, and the man who has just resigned as Commonwealth Ombudsman, Allan Asher.

Well, these emails were then leaked and ended up in the hands of Labor senator, Trish Crossin, who asked you to release all communication between your office and any senators or MPs and their offices.

Who leaked these emails?

Allan Asher: Well, we provided the copies at Senator Crossin's request to the Senate Committee.

However it's clear that a week before the committee even met to consider whether they would deal with the question and the answers - because they had to vote on whether they would release the other confidential, internal communications with the minister's office.

But we were getting inquiries from a journalist in Western Australia who clearly knew all about it. And this was at a time when, as I understand it, even the rest of the committee members didn't have it.

So, so far as I know, the only people who knew about the questions and answers were the people in the offices of the ministers and the committee secretariat.

Julia Baird: Do you have any evidence as to where the leak might have come from?

Allan Asher: I don't have any evidence. I only know that the only people who had the information were ministerial offices and the secretariat of the Senate committee.

If the committee considers that there has been any unauthorised disclosure, then I draw to its attention the procedures set out in resolutions of the Senate of 20 June 1996 and 17 September 2007 for the investigation of such disclosures.

I would consider it very unfortunate if this slur against professional and dedicated staff of the Department of the Senate were allowed to go unaddressed.

Yours sincerely



(Rosemary Laing)

