

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

COMMITTEE OF PRIVILEGES

**POSSIBLE UNAUTHORISED DISCLOSURE OF
DOCUMENTS OR DELIBERATIONS OF
SENATE SELECT COMMITTEE ON THE DANGERS
OF RADIOACTIVE WASTE**

(60TH REPORT)

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- Letter from Senator Grant Chapman, dated 27 November 1995.

POSSIBLE UNAUTHORISED DISCLOSURE OF DOCUMENTS OR DELIBERATIONS OF SELECT COMMITTEE ON THE DANGERS OF RADIOACTIVE WASTE

Introduction

1. On 30 June 1995, the following matter was referred to the Committee of Privileges:

Whether there was an unauthorised disclosure of the documents or private deliberations of the Select Committee on the Dangers of Radioactive Waste, and, if so, whether any contempt was committed by that unauthorised disclosure.

2. The reference to the Committee was given precedence by the President of the Senate, Senator the Hon. Michael Beahan, following the raising of the matter by Senator Grant Chapman, Chairman of the Select Committee on the Dangers of Radioactive Waste. The President advised that the evidence for any unauthorised disclosure of documents or private deliberations of the committee was a press release by the Minister for Justice.

3. The President drew attention to Senator Chapman's advice that he was not raising any question relating to the conduct of a minister in the House of Representatives, who, as the President pointed out, could not properly be subject to any inquiry by the Senate. Rather, the President emphasised the unauthorised disclosure which Senator Chapman claimed must have preceded the Minister's press release.

Background

4. The Select Committee on the Dangers of Radioactive Waste is at present examining:

- (a) the extent to which radioactive waste is being produced, stored, transported, treated and disposed of in Australia;
- (b) the nature, efficiency and effectiveness of the administration, monitoring and control of such production, storage, transport, treatment and disposal, and whether these are adequate to protect the public interest; and
- (c) what existing guidelines and legislation require revision by government to better protect the future public interest in an area of intrinsic potential danger to public health and the environment.

5. At a meeting held on 27 June 1995, the Radioactive Waste Committee agreed to order the production of certain documents by the Australian Federal Police, the National Crime Authority and the Department of Defence. The resolution also included a request for the production of documents by the Queensland Criminal Justice Commission, the Queensland State Police, the New South Wales State Police, the Minister for Justice, and the Attorney-General. It was proposed in the resolution that the documents be not further published and that they be treated as evidence taken in camera.

6. On 28 June 1995 the Minister for Justice issued a press statement which contained the following comment:

Senator Chapman has proposed using a senate select committee inquiry he chairs — the Inquiry into the Dangers of Radioactive Waste — to demand the production of a whole range of documents ... from the Australian Federal Police, the National Crime Authority, and the Defence Department.

7. The question of possible unauthorised disclosure of the proceedings of the committee, as evidenced by the Minister's press release, was raised by Senator Chapman on 28 June 1995; the President's statement giving precedence to the motion was made on 29 June; and the matter was referred to this Committee on 30 June, the last day of the budget sittings.

Conduct of inquiry

8. When the Senate resumed sittings in August 1995, the Committee of Privileges gave consideration to the matter. It was not clear to the Committee whether any investigation had been made by the Radioactive Waste Committee as to the source of the disclosure and as to whether that committee had decided that the disclosure had a tendency substantially to interfere, or actually interfered, with the committee's work. This Committee had previously suggested to the Senate that such an examination by committees should be undertaken before raising possible unauthorised disclosure as a matter of privilege (see 20th report, PP No. 461/1989). The Committee of Privileges therefore wrote to the Radioactive Waste Committee, seeking its comments.

9. After seeking and being granted several extensions of time to enable the Radioactive Waste Committee to consider the matter, the Chairman, Senator Chapman, made a substantive response, on behalf of the Radioactive Waste Committee, on 27 November 1995. That response, which is included with this report, made the following points:

- (a) the Radioactive Waste Committee discussed the matter at length at three private meetings;
- (b) no evidence was presented to the Radioactive Waste Committee to demonstrate that any person was deterred from providing information to the inquiry or that the Minister's statement influenced the Australian Federal Police in their refusal to provide documents to the committee;
- (c) subsequent to the unauthorised disclosure of the Radioactive Waste Committee's resolution, it was able to obtain some of the relevant information; and
- (d) the Australian Federal Police provided other relevant information in camera.

The Chairman advised the Committee of Privileges that the Radioactive Waste Committee was "unable to determine who leaked the document".

Comment

10. The Committee of Privileges notes that information which the Radioactive Waste Committee regarded as relevant to its inquiry has now been made available to that committee. The Committee has further noted the Radioactive Waste Committee's conclusion that no-one was deterred from providing information to the inquiry. Thus, this Committee is able to conclude that there was no evidence to suggest that any improper disclosure had either a tendency substantially to interfere or actually interfered with the work of the Radioactive Waste Committee. It also notes that the Radioactive Waste Committee has been unable to discover the source of any such disclosure.
11. While it has been this Committee's practice itself to follow up with members and staff whether unauthorised disclosure has occurred, in the present case the Committee has decided not to do so. This is because of its request, in its letter of 28 August 1995, for advice of any investigations carried out by the Radioactive Waste Committee in an attempt to establish the source of the disclosure. It appears that the Radioactive Waste Committee did not undertake this exercise until after the matter was referred to the Committee of Privileges. Thus it would appear to be unnecessary to duplicate such investigations.
12. In drawing the Radioactive Waste Committee's attention to its 20th report, this Committee summarised suggested guidelines contained in that report for committees faced with possible contempt of their proceedings. It is possible that, had the Radioactive Waste Committee followed those procedures, the matter might not have been referred to this Committee for investigation. Accordingly, the Committee has decided that after several years of experience, during which most committees have followed the guidelines, it might now be appropriate that the Senate formally endorse their operation. The Committee has therefore made a recommendation in relation to this matter (see paragraph 14 below).

Finding

13. On the basis of the response dated 27 November 1995 by the Chairman of the Committee on the Dangers of Radioactive Waste (Senator Chapman) to the letter from the Committee of Privileges of 28 August 1995, this Committee has concluded that no question of contempt is involved in the matter referred to it on 30 June 1995.

Recommendation

14. The Committee of Privileges recommends that the Senate endorse the following procedures, as outlined in the Committee's 20th report tabled on 21 December 1989, to be followed by committees in respect of matters on which such committees may wish action to be taken, in the form of the following resolution:

- (1)(a) A committee affected by any unauthorised disclosure of proceedings or documents of, or evidence before, that committee shall seek to discover the source of the disclosure, including by the chair of the committee writing to all members and staff asking them if they can explain the disclosure;
 - (b) the committee concerned should come to a conclusion as to whether the disclosure had a tendency substantially to interfere with the work of the committee or of the Senate, or actually caused substantial interference;
 - (c) if the committee concludes that there has been potential or actual substantial interference it shall report to the Senate and the matter may be raised with the President by the chair of the committee, in accordance with standing order 81.
- (2) Nothing in this resolution affects the right of a senator to raise a matter of privilege under standing order 81.
- (3) This resolution shall have continuing effect.

Baden Teague
Chairman

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