

## 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.<sup>1</sup> 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.

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<sup>1</sup> 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 ...<sup>2</sup>
- 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

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<sup>2</sup> 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'.<sup>3</sup> 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'.<sup>4</sup> 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 74<sup>th</sup> report, that both the leaker and the receiver of the information are culpable and should be treated accordingly.<sup>5</sup>

- 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:

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<sup>3</sup> *ibid.*

<sup>4</sup> *ibid.* [Emphasis added]

<sup>5</sup> Senate Committee of Privileges, *Parliamentary privilege – unauthorised disclosure of committee proceedings*, 122<sup>nd</sup> 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.<sup>6</sup>

- 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.<sup>7</sup> 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.

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<sup>6</sup> Committee of Privileges, 1994 report, *op. cit.*, pp. 6-7.

<sup>7</sup> *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