

**INQUIRY INTO SPECIAL REPORT NO. 14 OF THE  
PUBLIC ACCOUNTABILITY COMMITTEE**

**Organisation:** Clerk of the Parliaments

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LEGISLATIVE COUNCIL

OFFICE OF THE CLERK

7 December 2022

D22/68610

The Hon Peter Primrose MLC  
Chair  
Privileges Committee  
Legislative Council  
Parliament House  
SYDNEY NSW 2000

Dear Chair

**Submission – Inquiry into the unauthorised disclosure of *in camera* evidence**

I understand that at a meeting of the Privileges Committee on Monday 14 November 2022, the Committee considered the unauthorised disclosure of *in camera* evidence given before the Public Accountability Committee on 29 June 2022 and resolved that I be invited to make a submission on the issues raised in a Discussion Paper on the matter provided to the Committee by the secretariat.

I have had the benefit of reading the Discussion Paper and the 'Issues for further consideration' listed at Part 7.

As a general comment, I see no reason for the Privileges Committee to depart from the current established procedures for dealing with unauthorised disclosures, as set out in the standing orders, the guidelines to the Committee's 2002 report entitled 'Report on guidelines concerning unauthorised disclosure of committee proceedings' and *New South Wales Legislative Council Practice*.

The guidelines make it clear that unauthorised disclosure of committee proceedings may significantly affect individual committee participants, the integrity of the committee system and the public interest. As such, unauthorised disclosure may constitute a contempt. The guidelines also set out procedures to be followed in the event of an unauthorised disclosure, both by the affected committee and if necessary, by the House and the Privileges Committee.

As I understand the circumstances of this particular matter, the Public Accountability Committee was unable through its own investigation to determine the source of the unauthorised disclosure. In those circumstances, the Committee made a special report to the House and the House chose to refer the matter to the Privileges Committee.

The leaking of *in camera* evidence is undoubtedly a matter of the utmost seriousness to be deplored in the strongest possible terms. It must I think be assumed that any leak of *in camera* evidence significantly undermines a committee in the conduct of an inquiry. However, in the absence of the source of the unauthorised disclosure being identified, it is not clear that adopting an automatic or '*prima facie*' finding of contempt against a party or parties unknown would advance the matter in any meaningful sense.

That is not to say that a finding of contempt against a party or parties unknown may not be made. Ultimately, however, such matters should remain for the Privileges Committee and the House itself to determine on a case-by-case basis. It is notable that the House and the Parliament have not adopted a definition of contempt either in the standing orders or in statute, thereby retaining the maximum flexibility for the House to determine what constitutes a contempt.

The Discussion Paper also raises the utility of taking evidence *in camera* and whether the Privileges Committee wishes to recommend the adoption of specific guidelines as to when evidence should be heard in private, or alternatively whether the Privileges Committee should recommend that no committee be able to take evidence *in camera* at all.

On the face of it, the current arrangements which give committees discretion as to whether to take evidence *in camera* appear appropriate. I can think of a range of scenarios in which it is appropriate for committees to take evidence *in camera*. They include:

- Where committees wish to protect against adverse mention.
- Where issues may be *sub judice* or potentially even before the courts.
- Where committees are legitimately protecting commercial matters or the public interest more generally.
- Where committees are protecting vulnerable witnesses. There have been numerous inquiries where committees have had vulnerable witnesses such as teachers and nurses appearing with the protection of confidentiality.
- Where a witness is asked in private to explain the reasons for objecting to answering questions, as per the procedural fairness resolution.

However, I note that the above list is not definitive. There may be other circumstances in which it may also be appropriate for committees to take evidence privately. To limit the discretion of individual committees in this regard would risk detracting from the inquiry process.

I trust this information is of assistance to the Committee. Please do not hesitate to contact me if you require any further information.

Yours sincerely,

**David Blunt**  
Clerk of the Parliaments