

The Senate

Procedure Committee

Publication of questions on notice and answers:
protection by parliamentary privilege

Second report of 2003

August 2003

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THE SENATE
PROCEDURE COMMITTEE
SECOND REPORT OF 2003

The committee reports to the Senate on the following matter.

**PUBLICATION OF QUESTIONS ON NOTICE AND ANSWERS:
PROTECTION BY PARLIAMENTARY PRIVILEGE**

The attention of the committee has been drawn to a gap in the protection by parliamentary privilege of the process of asking and answering questions on notice.

In respect of questions on notice and their answers, the following acts of publication are protected by parliamentary privilege under section 16(2) of the *Parliamentary Privileges Act 1987* and standing orders 43(2) and (3) and 74(1), (2) and (3):

- the publication of the question by the senator to the Table Office
- the publication of the question by the Table Office to the responsible minister, department or agency
- the publication of the question in the Notice Paper
- the publication of the answer to the Table Office
- the publication of the answer to the senator
- the publication of the question and the answer in Hansard
- any subsequent publication of the question and the answer after they appear in the Notice Paper and Hansard.

The following acts of publication are not protected by parliamentary privilege:

- any other publication of the question before it appears in the Notice Paper
- any other publication of the answer before it appears in Hansard.

Some such publications, for example, of the answer to interested persons or organisations, may attract some other forms of privilege, but of a qualified kind, that is, the privilege depends on the motive for publication.

Senators are therefore advised not to publish questions and answers before their appearance in the Notice Paper or Hansard if they contain material which might be actionable.

In relation to questions on notice, this does not cause any significant inconvenience, because those questions normally appear in the Notice Paper within days after they are lodged. If the appearance of the printed Notice Paper is delayed by a long adjournment of the Senate (for example, the winter and summer long adjournments), the questions appear in the electronic form of the Notice Paper.

There remains a difficulty with the answers to questions. Such answers are provided to the senators who asked the questions as soon as the answers are lodged, but do not appear in

Hansard until the publication of the Hansard for the next sitting day. This means that the publication of the answers by senators, or anyone else, may not be protected by parliamentary privilege for some months, and senators have to be careful in providing the answers to anyone else.

The solution to this problem is for the Senate to authorise the publication of the answers as soon as they are received. Any publication of the answers would then attract parliamentary privilege, because any publication of documents ordered to be published by the Senate is so protected. This could be done by a simple amendment of standing order 74(3), with the addition of the words shown in the following text:

The reply to a question on notice shall be given by delivering it to the Clerk, a copy shall be supplied to the senator who asked the question, **the publication of the reply is then authorised**, and the question and reply shall be printed in Hansard.

The committee recommends this amendment of the standing order to the Senate.

John Hogg
Deputy President
Chair of the Committee