The Senate

Committee of Privileges

Whether there was any improper influence in relation to political donations made by Mr Graeme Wood and questions without notice asked by Senator Bob Brown and Senator Milne

150th Report

March 2012

MEMBERS OF THE COMMITTEE

Senator the Hon David Johnston **(Chair)** (Western Australia)

Senator the Hon John Faulkner (**Deputy Chair**) (New South Wales)

Senator the Hon George Brandis (Queensland)
Senator Brandis did not participate in the committee's inquiry into this matter

Senator Alexander Gallacher (South Australia)

Senator Scott Ludlam (Western Australia)

Senator Marise Payne (New South Wales)

Senator the Hon Nick Sherry (Tasmania)

Senator Anne Urquhart (Tasmania)

The Senate
PO Box 6100
Parliament House
CANBERRA ACT 2600

Telephone: (02) 6277 3360
Facsimile: (02) 6277 3199
Email: priv.sen@aph.gov.au
Internet: www.aph.gov.au

ISBN 978-1-74229-608-1

This document was produced by the Committee of Privileges, and printed by the Senate Printing Unit, Parliament House, Canberra

Summary

The Committee of Privileges reports to the Senate on 'matters raised by Senator Kroger relating to political donations made by Mr Graeme Wood, arrangements surrounding the sale of the Triabunna woodchip mill by Gunns Ltd and questions without notice asked by Senator Bob Brown and Senator Milne'.[1]

The central allegation underlying the reference was that Senator Brown entered into an arrangement for the Australian Greens to receive political donations, by reason of which he (and other senators) agreed to limit their independence in the discharge of their duties as senators. In undertaking the inquiry the committee was also required to consider whether any person improperly influenced senators, or attempted to do so, in relation to the matters raised; and whether any contempts may have been committed in relation to those matters. The committee also considered a number of procedural matters which arose in relation to the matter.

The committee does not consider that there is any cogent evidence to support the contentions set out in the terms of reference. Such questions as arose from the material provided by Senator Kroger in raising the matter are answered by the accounts of the three people named in the reference.

Having found that the evidence did not support the contentions in the terms of reference, the committee concluded that no question of contempt arises in respect of the matter referred.

The committee **recommends**:

(a) that the Senate endorse the findings at paragraphs 1.56 and 1.59 and the conclusion at paragraph 1.60 of this report; and

(b) that the Procedure Committee review the processes for raising and referring matters of privilege, as set out in paragraphs 2.23 and 2.24.

Structure of report

The committee's consideration of the matter is set out below, principally in chapter 1. According to its usual practice, the committee has made some general observations on relevant aspects of the law of parliamentary privilege. Correspondence and submissions on the matter also raised a number of questions of procedure. These are also addressed, principally in chapter 2.

---

1 The terms of reference are set out in paragraph 1.1 of the report.

Chapter 1

The matter before the committee

Reference

1.1 The following matter was referred to the committee on 24 November 2011:

> Having regard to matters raised by Senator Kroger relating to political donations made by Mr Graeme Wood, arrangements surrounding the sale of the Triabunna woodchip mill by Gunns Ltd and questions without notice asked by Senator Bob Brown and Senator Milne:
>
> (a) whether any person, by the offer or promise of an inducement or benefit, or by other improper means, attempted to influence a senator in the senator's conduct as a senator, and whether any contempt was committed in that regard; and
>
> (b) whether Senator Bob Brown received any benefit for himself or another person on the understanding that he would be influenced in the discharge of his duties as a senator, or whether he entered into any contract, understanding or arrangement having the effect, or possibly having the effect, of controlling or limiting his independence or freedom of action as a senator or pursuant to which he or any other senator acted as the representative of an outside body in the discharge of their duties as senators, and whether any contempt was committed in those regards.[1]

1.2 The 'matters raised by Senator Kroger' were those set out in a letter to the President, dated 22 November 2011, to which was attached a collection of documents, primarily press clippings, media releases and transcripts of interviews.

1.3 On 23 November, the President informed the Senate that he had determined that a motion to refer the matter should have precedence as a matter of privilege. The raising of the matter of privilege and the decision of the President to give the matter precedence attracted some commentary and criticism. The committee makes some observations on those issues in chapter 2.

1.4 After making his statement, the President tabled the letter and attachments and Senator Kroger gave a notice of motion, which was listed as a matter of privilege on the Notice Paper for the following day.

---

1 *Journals of the Senate*, 24 November 2011, p. 1945.

1.5 On 24 November 2011, Senator Kroger moved the motion as a formal motion and it was agreed to, giving effect to the reference. Senator Brown sought leave to make a statement in relation to the motion, but leave was refused.[2]

The committee's approach

1.6 The committee has commented before on the challenges of undertaking inquiries into matters which involve allegations of improper conduct by senators, being prosecuted by senators. In its 123rd report, the committee observed:

> Cases involving allegations of contempt by one senator against another are unusual territory for this committee, and may raise the difficult prospect for the committee of having to prefer one senator's account over another's.[3]

1.7 In that case, however, the facts were not in dispute. Similar observations were made in the committee's 142nd report. In that case, the committee made it clear that it did not dispute the senator's account of the contested matters.[4] The committee recorded its approach as follows:

> The committee has endeavoured, however, to approach these inquiries in the same non-partisan way that it has approached all of its other inquiries. It has attempted to establish the facts of the matters by its usual means and to apply its critical faculties in the interests of protecting and preserving the integrity of the Senate and its processes.[5]

1.8 The committee approached this inquiry in the same manner, that is, in accordance with its usual practices and the resolutions of the Senate of 25 February 1988 (the 'Privilege Resolutions') which direct its work.[6] According to those practices, the committee's method of operation in relation to possible contempt matters typically involves the following stages:

- a general inquiry into the matters referred, during which the committee gathers and considers evidence
- examination of any particular allegations which emerge against any person or persons
- consideration of whether any particular acts (or omissions) may constitute contempts.

---

2 *Journals of the Senate*, 24 November 2011, p. 1945.

3 Senate Committee of Privileges, 123rd report, PP 224/2005, paragraph 1.23.

4 Senate Committee of Privileges, 142nd report, PP 396/2009, paragraphs 1.6 to 1.9 and elsewhere.

5 142nd report, paragraph 1.9.

6 This approach is documented in the committee's 125th report, *Parliamentary privilege: Precedents, procedures and practice in the Australian Senate 1966–2005*, PP No. 3/2006.

1.9 After considering the evidence gathered in the initial stages of an inquiry, the committee may determine that there are no allegations that require further examination and report this finding to the Senate.

1.10 Should the committee determine that allegations against any person merit further examination, these are investigated in accordance with the requirements of the Privilege Resolutions, which incorporate principles of natural justice.

1.11 Should the committee determine it necessary to consider whether particular acts (or omissions) may constitute a contempt, the committee has regard to:

- section 4 of the *Parliamentary Privileges Act 1987*, which provides a statutory definition for contempt
- the criteria to be taken into account when determining matters relating to contempt (Privilege Resolution 3) and
- the list of possible contempts in Privilege Resolution 6.

Conduct of the inquiry

1.12 As is usual in possible contempt matters, the committee commenced its inquiries by contacting persons who the committee was aware may be affected by the reference, advising them of the terms of reference and inviting written comments. Accordingly, on 24 November 2011, the committee wrote to Senator Brown, to Senator Milne and to Mr Graeme Wood inviting comments 'as soon as practicable, but in any event before the end of January 2012.'

1.13 The committee received and entered into correspondence with Senator Brown and with Mr Roland Browne, a lawyer representing Senators Brown and Senator Milne, on a number of matters relating to the inquiry process. These are, in the main, dealt with in Chapter 2.

1.14 By letter dated 23 December 2011, Mr Browne indicated that Senator Brown and Senator Milne would be seeking an extension of time to respond to the reference. On 20 January 2012, Mr Browne nominated 14 February as the date of the extension sought. The committee received two submissions on behalf of Senator Brown and Senator Milne: a submission on procedural matters, dated 8 February 2012 (the ***first submission***) and a further submission, dated 27 February 2012, which, among other things, addressed the substantive matters before the committee (the ***second submission***). On 1 March 2012 the committee resolved to publish these submissions on its web pages, together with the statement made by the President and the material from Senator Kroger raising the matter.

1.15 A representative for Mr Wood informed the committee that he would be unable to provide a statement to the committee in line with its original timeframe. The committee received a letter from Mr Wood, dated 9 March 2012. The committee published the letter online on 14 March 2012.

1.16 A volume of documents and evidence accompanies this report.

The matter before the committee

1.17 In his statement of 23 November 2011, the President described the matter in the following terms:

> The matter concerns a possible relationship between Senator Bob Brown and Mr Graham Wood and whether, on the one hand, Senator Brown sought a benefit from Mr Wood in the form of political donations on the understanding that he would act in Mr Wood's interests in the Senate or, on the other hand, whether Mr Wood, through large political donations, improperly influenced Senator Brown and other Australian Greens senators, including Senator Milne, in the discharge of their duties as senators, including by the asking of questions without notice.
>
> ...there is no question that the matters raised by Senator Kroger are very serious ones. The freedom of individual members of parliament to perform their duties on behalf of the people they represent and the need for them to be seen to be free of any improper external influence are of fundamental importance. Matters such as these go directly to the central purpose of the law of parliamentary privilege, which is to protect the integrity of proceedings in parliament.[7]

1.18 The committee considers that the allegations are very serious. It is also notable that the allegations go to possible areas of contempt which have not previously been addressed by the committee.

1.19 The Senate, subject to section 4 of the Parliamentary Privileges Act, has the power to determine that particular acts constitute contempts. The Senate has provided guidance, in Privilege Resolution 6, as to the categories of acts that may be treated as contempts. Resolution 6 declares that breaches of certain prohibitions – and attempts or conspiracies to do the prohibited acts – may be treated by the Senate as contempts. The terms of reference for the inquiry draw upon the language of Resolution 6(2), *Improper influence of senators*; and Resolution 6(3), *Senators seeking benefits etc*.

Improper influence of senators

1.20 Resolution 6(2) is in the following terms:

> (2) A person shall not, by fraud, intimidation, force or threat of any kind, by the offer or promise of any inducement or benefit of any kind, or by other improper means, influence a senator in the senator's conduct as a senator or induce a senator to be absent from the Senate or a committee.

1.21 An attempt to do the prohibited act may also be treated by the Senate as a contempt.

1.22 The Senate and the committee have on a number of occasions considered possible contempt cases involving attempts to influence senators by way of

7 *Senate Debates*, 23 November 2011, p. 9380.

intimidation, force or threat. From the first such case, considered by a select committee in 1904, the Senate has taken 'a robust view as to whether senators have been improperly obstructed.'[8] However, the committee has not previously had cause to consider allegations of improper influence 'by the offer or promise of any inducement or benefit'.

Senators seeking benefits etc.

1.23 Resolution 6(3) is in the following terms:

> (3) A senator shall not ask for, receive or obtain, any property or benefit for the senator, or another person, on any understanding that the senator will be influenced in the discharge of the senator's duties, or enter into any contract, understanding or arrangement having the effect, or which may have the effect, of controlling or limiting the senator's independence or freedom of action as a senator, or pursuant to which the senator is in any way to act as the representative of any outside body in the discharge of the senator's duties.

1.24 Again, the committee has not previously considered allegations made against any senator in the terms of this part of the resolution.

1.25 In the context of the current matter, the committee observes that the conduct declared to be prohibited by these provisions can be seen as two sides to the same coin: a person shall not improperly offer or give a benefit, nor shall a senator improperly seek or receive one. In each paragraph of the terms of reference, the committee is asked to consider, in effect, whether an improper arrangement was sought, or put in place, in respect of the matters raised by Senator Kroger. The committee turns to the evidence on that point.

The letter from Senator Kroger

1.26 It is apparent from Senator Kroger's letter raising the matter that her main focus is on Privilege Resolution 6(3):

> My concern goes to matters of Senators seeking benefits, etc. (and possibly improper influence of senators), as laid out in the resolutions on Parliamentary Privilege agreed to by the Senate on 25th February 1988 [the letter quotes resolution 6(3)].
>
> Specifically I believe that Senator Brown negotiated the acceptance of a benefit on behalf of the Greens, thus entering into an arrangement with Mr Graeme Wood which had the effect of controlling or limiting his independence, specifically in relation to the sale of the Triabunna woodchip mill, and pursuant to which Senator Brown acted as the representative for

8 See 125th report, paragraphs 4.27 to 4.29.

> Mr Wood. This arrangement also affected the actions of Senator Christine Milne and other Greens senators.[9]

1.27 The first part of Senator Kroger's letter comprises a section headed 'The evidence', which sets out newspaper accounts of discussions which occurred between Mr Wood and Senator Brown prior to Mr Wood making a donation to the Australian Greens.

1.28 Senator Kroger concludes:

> It is therefore apparent that Senator Brown entered into "an arrangement" with Mr Wood. I note that it is usual practice for political parties to bar their parliamentarians from such dealings with donors, precisely to avoid perceptions of arrangements being made which might benefit donors.
>
> I contend that this donation, not only had the effect of, both influencing and appearing to influence the conduct of Senator Brown in the Senate and elsewhere, it also in turn influenced the conduct of Senator Milne in the Senate and elsewhere, and other Greens senators in the Senate.[10]

1.29 The next part of Senator Kroger's letter argues that Senator Brown 'repeatedly acted to advantage the bid by Mr Wood's Triabunna Investments Pty Ltd and to damage his competitor's efforts to secure the Triabunna woodchip mill', alleging 'a contradictory pattern of behaviour, including behaviour in the Senate , [which] can only be explained as a serious, continuing, coordinated, and ultimately successful attempt to act as Mr Wood's representative in breach of the resolution on Parliamentary privilege'. The alleged 'contradictory' behaviour focused on what is described as an 'about face [by] Senator Brown and the Greens' in relation to right of Gunns Ltd to compensation for giving up its logging contracts.[11]

1.30 In support of the above allegations, the remainder of the letter sets out a chronology of events and invites certain inferences to be drawn from the actions of Senator Brown and Senator Milne in participating in debate and asking questions in the Senate, and of votes of the Australian Greens senators.

1.31 Attached to the letter are various documents, primarily press clippings, media releases and transcripts of interviews referred to in the chronology of events.

1.32 Senator Kroger concludes:

> Regardless of whether or not the Greens and Mr Wood's interests were aligned, there is evidence that there was a benefit and an arrangement which

9 Letter to the President from Senator Kroger, dated 22 November 2011, p. 1.

10 Letter to the President from Senator Kroger, p. 3.

11 Letter to the President from Senator Kroger, p. 4.

had the effect of controlling Senator Brown's independence and which led him to act as a representative of Mr Wood's Triabunna Investments.[12]

Submission from Senators Brown and Milne

1.33 The second submission made on behalf of Senator Brown and Senator Milne addresses the substantive matters before the committee. It sets out an alternative account of the contested matters.[13] Annexures 1 and 2 contain statements from Senator Brown and from Senator Milne, respectively.

1.34 In his statement Senator Brown describes his meeting with Mr Wood in May 2010:

> 3. At no time did Ben [Oquist, Senator Brown's Chief of Staff] or I discuss with Mr Wood any benefit to Mr Wood or to his business interests or to anyone in return for him donating money to the Greens. There was no suggestion or hint of any favour sought or future cooperation to be given. I would not countenance this state of affairs, in any event. Neither would Ben.
>
> 4. At the time of the discussions with Mr Wood, in May 2010, I had no knowledge that the Triabunna woodchip mill was going to be put on the market by Gunns Limited. I had no knowledge that Mr. Wood was going to set up a company with Jan Cameron and try to purchase the woodchip mill. I had no knowledge that Forestry Tasmania would involve itself in a consortium ... to try to purchase the woodchip mill with government assistance.
>
> 5. The first knowledge I had of the sale of the Triabunna woodchip mill was 6 months later, in November 2010...[14]

1.35 In her statement, Senator Milne responds to allegations of the existence of an improper arrangement:

> 4. I have no knowledge of, nor have I been involved in any discussion about, any favour or assistance being provided by the Australian Greens of the Tasmanian Greens or Senator Bob Brown (or anybody for that matter) to Graeme Wood or any company or person connected to him. I would never agree to or condone such an arrangement. I do not believe any such arrangement ever existed.

1.36 Senator Milne goes on to state:

> 5. The assertion that Senator Bob Brown, or anybody else, influenced me in my duties as a Senator is wrong. The questions I ask in the Senate, the points of order I take and the contributions I make to debate are not directed

---

12 Letter to the President from Senator Kroger, p. 12.

13 *See* second submission made on behalf of Senators Brown and Milne, principally at paragraphs 38 to 63.

14 Second submission, Annexure 1, p. 1.

> by anybody. I follow my conscience and The Australian Greens Policy Platform.
>
> 6. For the 24 years of my public life, my statements have been directed towards forest conservation, ending the woodchipping of Tasmania's native forests, ending subsidies to the forest industry through public funds...
>
> 7. My statements, questions, speeches and motions in the Parliament are consistent with my long standing position.[15]

1.37 Each statement sets out an account of the senators' actions and the motives for them. The submission observes that the actions of Senator Brown and Senator Milne were consistent with their own longstanding policy positions and with longstanding policy commitments of the Greens.[16]

1.38 The submission argues that there is no evidence of any causal connection between the donation to the Australian Greens in August 2010 and the conduct of Australian Greens senators from mid-2011. It notes the timing of the announcement by Gunns Ltd., in November 2010, of the proposed sale of the woodchip mill, and concludes that:

> The purported conflation of the 2010 donation with the 2011 conduct conveniently ignores the simple and obvious fact that, at the time of the 2010 donation, the events the subject of the questions [asked in the Senate] were not even remotely in prospect or foreseeable, thereby rendering any causal relationship between the two to be fanciful.[17]

1.39 The submission goes on to argue that 'the Kroger letter makes highly selective and inaccurate use of the sources relied upon'.[18] In relation to the allegations of 'contradictory behaviour mentioned at paragraph 1.29, above, the submission argues, that the allegations are largely based on 'two flawed factual premises':

> The Kroger letter refers to this as an "about face", asserted to be explicable only by reference to the 2010 donation. But there is simply no factual basis for the existence of the alleged conditions.[19]

1.40 The submission observes that:

> ...the Kroger letter asks the Committee to disregard the obvious, well known and public explanation for that outcome, namely that the 2011 conduct was nothing more than the continuing pursuit of longstanding policy objectives of the Greens concerning the environmental damage that

15 Second submission, Annexure 2, p. 1.

16 Second submission, at paragraphs 64 and 65 and in Annexures 3, 4 and 5.

17 Second submission, paragraphs 22 and 25; *see also* paragraphs 35 and 36.

18 Second submission, paragraph 27.

19 Second submission, paragraphs 29 to 32 and 57 to 63.

> Gunns' mill and woodchipping had caused in Tasmania and of opposing the use of public funds to maintain the woodchip industry.[20]

1.41 The submission concludes that:

> ..the material before the Committee patently does not support the asserted causal connection...
>
> Further, the statements [from Senator Brown and Senate Milne] not only conclusively contradict the adverse inferences and assertions sought to be made in the Kroger letter, but they positively demonstrate that there is no case to answer... [21]

The letter from Mr Wood

1.42 In his letter to the committee, Mr Wood states:

> I completely reject any suggestion that there was any impropriety in the donation I made to the Australian Greens in 2010. I also completely reject any suggestion that I attempted to influence any Senator by offering an inducement or benefit. Any such suggestions or claims are untrue.

1.43 Mr Wood goes on to state:

> I have examined the material put forward by Senator Kroger. It lacks any evidence of any impropriety on my part, or any evidence that the donation was part of an arrangement. It provides no factual basis for any suggested interference with a Senator's performance of their duties. I believe there are no allegations in that material that warrant investigation, and there is no basis for any further investigation by the Committee.
>
> Indeed the claims in the material do not even pass the basic test of timing. The donation was made in mid-2010. The transaction that was supposedly the reason for the donation was not anticipated then, and first arose many months later.

Consideration of matters

1.44 As noted above, it is unusual for the committee to find itself in the position of having to prefer one senator's account of matters over another's. However, in the absence of persuasive evidence to the contrary, the committee would have no cause to dispute an account given by a senator of matters within his or her own personal knowledge. This is consistent with the approach the committee has previously taken in relation to allegations involving senators.

1.45 The committee does not have such evidence before it in this case. While the allegations made in Senator Kroger's letter are serious ones, the committee does not consider that the material submitted to support those allegations amounts to more than

---

20 Second submission, paragraph 37.

21 Second submission, paragraphs 68 and 69.

circumstantial evidence. The committee considers that any questions which do arise as a result of that material are answered by the responses of the three people named in the terms of reference.

The existence of an improper arrangement

1.46 As has been noted, each paragraph of the terms of reference requires the committee to consider, in effect, whether an improper arrangement was sought, or put in place. In seeking to establish that an improper arrangement exists, Senator Kroger's case rests on three matters:

- conduct of Australian Greens senators in the Senate, in asking questions and voting on matters, which appeared to serve (or at least align with) Mr Wood's interests in relation to the purchase of the woodchip mill
- as part of that conduct, apparently contradictory positions being taken in relation to compensation flowing to Gunns Ltd for the sale of the mill (again, appearing to serve Mr Wood's interests)
- the perception that Senator Brown had entered into a relationship which limited his independence, by virtue of his personally discussing the donation with Mr Wood.

1.47 While Senator Kroger's letter offers some evidence that conduct occurred which aligned with Mr Wood's interests, it does not provide evidence of a causal connection. The second submission from Senators Brown and Milne demonstrates that the conduct of Senator Brown, Senator Milne and the other Australian Greens senators was in line with longstanding policy positions held by those senators and by the Australian Greens party. The submission also provides an explanation for what are described by Senator Kroger as contradictory positions; and again, this explanation is consistent with longstanding policy positions.

1.48 Where Senator Kroger's letter raises a question around the perceptions arising from Senator Brown personally discussing these matters, it merely invites the inference that Senator Brown entered into an improper arrangement, rather than providing evidence. In the absence of evidence to the contrary, the committee sees no reason to dispute Senator Brown's account of the discussions with Mr Wood and his assurance that he and Mr Wood neither discussed, nor entered into, any agreement by which the independence of Senator Brown, Senator Milne or other Australian Greens senators was compromised. Similarly, the committee sees no reason to dispute Senator Milne's accounts of her actions.

1.49 For his part, Mr Wood also completely rejects any suggestion of impropriety. Again, the committee has before it no cogent evidence which would cause it to dispute Mr Wood's account.

Political donations

1.50 The submission observes that Senator Kroger's letter invites the committee to 'draw an adverse inference from the fact that Mr Wood perceived it to be in his best interests to make the donation'. It goes on to observe:

> The motive for any political donation will almost always be perceived to be because the donation helps a party whose policies or election the donor, for its, his or her own reasons, supports;
>
> Accordingly, for a donor to perceive that the making of a donation will be in the donor's interests is merely to state the *raison d'être* for political donations by donors.[22]

1.51 The committee considers that this is an unremarkable position. Mr Wood, in his letter to the committee, makes a similar observation:

> I expect the committee would agree that making a legal donation to a political party cannot alone raise an inference of contempt or improper interference with a Senator's performance of their duties. If that were so, every Senator whose party received donations would be compromised.

1.52 Such matters only become problematic if there is an inappropriate *quid pro quo* arrangement. The committee finds that there is no cogent evidence of such an arrangement in this case.

1.53 The letter from Senator Kroger comments on the 'perceptions' involved in having a parliamentarian involved in discussions with donors:

> I note that it is usual practice for political parties to bar their parliamentarians from such dealings with donors, precisely to avoid perceptions of arrangements being made which might benefit donors.[23]

1.54 While that may be so, if evidence (in another case) were found of a party entering into an arrangement which compromised the independent action of its senators, the committee does not consider that the particular party structure (or the identity of the person or persons involved in establishing that arrangement) would be the determinant of whether a contempt might be found. Rather, the case would depend upon the facts of the particular matter.[24]

Findings and conclusions

1.55 The committee considers that the evidence before it does not establish a causal connection between the donation made by Mr Wood, and the conduct in the

---

22 Second submission, paragraph 36.

23 Letter to the President from Senator Kroger, p. 3.

24 The committee notes, however, the longstanding caution expressed by the committee and the Senate about applying the principles prohibiting improper influence to the practices of political parties. *See* 103rd report, at paragraphs 1.43 to 1.50.

Senate about which Senator Kroger complains. The committee does not consider that there is any cogent evidence to support the contentions set out in the terms of reference. Such questions as arose from the material provided by Senator Kroger in raising the matter are answered by the accounts of Senator Brown, Senator Milne and Mr Wood.

Senators seeking benefits etc.

1.56 As has been noted above, the focus of Senator Kroger's letter was on paragraph (b) of the terms of reference. In relation to paragraph (b), as outlined above, the committee **found** that the evidence before it did not support either of the following contentions:

- that Senator Brown received any benefit for himself or another person on the understanding that he would be influenced in the discharge of his duties as a senator
- that Senator Brown entered into any contract, understanding or arrangement having the effect, or possibly having the effect, of controlling or limiting his independence or freedom of action as a senator or pursuant to which he or any other senator acted as the representative of an outside body in the discharge of their duties as senators.

1.57 To the extent that questions were raised on these matters in the letter from Senator Kroger, those questions were answered by the accounts of Senator Brown and Senator Milne.

Improper influence of senators

1.58 The question of improper influence was included in paragraph (a) of the reference, but the letter raising the matter seemed to the committee to include this element almost as an afterthought. As noted, however, the committee considered this allegation and the allegations in paragraph (b) as two sides of the same coin. Given that the committee has found that the evidence does not support allegations that an improper arrangement existed, nor that one was sought, the committee accepts the position put by Mr Wood rejecting any suggestion of impropriety.

1.59 In relation to paragraph (a) of the terms of reference, the committee **found** that there was no evidence that Mr Wood, by the offer or promise of an inducement or benefit, or by other improper means, attempted to influence a senator in the senator's conduct as a senator.

Conclusion

1.60 Given that the committee has found that the evidence before it did not support the contentions in either paragraph of the terms of reference, the committee **concludes** that **no question of contempt arises** in regard to the matter referred.

Chapter 2

Practice and procedure

Reference

2.1 In this chapter the committee makes some observations on matters that have arisen during the inquiry and in correspondence and submissions on the matter. The areas covered are:

- the respective roles of the President and the Senate in dealing with matters of privilege
- matters raised by Senator Brown relating to notification of the matter raised by Senator Kroger
- judicial review of the contempt jurisdiction of the Senate
- the participation of a committee member in this inquiry
- the reimbursement of legal costs.

Dealing with matters of privilege

2.2 On 23 November 2011 the President made a statement to the Senate indicating that he had determined that the matter raised by Senator Kroger should have precedence as a matter of privilege. That determination attracted a level of criticism and commentary, and was the subject of debate in the Senate when Senator Brown moved that the Senate dissent from the President's determination that a matter raised by Senator Brown not be given precedence.

2.3 The committee considers that much of this criticism arises from a misunderstanding of the role of the President. The committee considers that steps could be taken to better explain the role of the President, the limitations inherent in the criteria the President is required to consider, and the questions that are – quite properly – left to the determination of the Senate. The committee also considers that the procedures of the Senate should be reviewed to ensure that the opportunity is available whenever a matter of privilege comes before the Senate for that matter to be debated so it can be properly addressed by senators.

Raising matters of privilege

2.4 Matters of privilege are referred to the committee in accordance with standing order 81, which requires a senator to first raise the matter in writing with the President and await the President's determination whether the matter be accorded 'precedence of other business' before taking any further action.

2.5 It is important to understand the nature of the President's determination in such matters. It is often mischaracterised as endorsing the reference of the matter

raised; assessing the merits of the matter; or determining that a *prima facie* case exists. It is none of these things. It is, rather, an assessment that (according to relevant criteria) the matter should take priority over other items for debate in the Senate.

2.6 Under the current routine of business for the Senate, the practical effect of this determination is of little moment. If a matter is given precedence, the senator raising it is able to give a notice of motion to refer the matter to the Privileges Committee for investigation, and that notice takes precedence over other business at particular times in the Senate's routine of business. If the President determines that a matter ***not*** be given precedence, a senator may nonetheless give a notice to refer the matter, and that notice has precedence in the next category of business. As privilege matters are relatively rare, the distinction is chiefly one of nomenclature: in either case, debate on the matter would be called on in roughly the same position in the Senate's routine of business.

2.7 The committee accepts, however, that the mechanism is not well understood outside of the Senate. The committee is concerned that incorrect perceptions of the President's determination lead to unwarranted criticism.

Current practice

2.8 The current provisions came into effect in 1988 with the adoption of the Privilege Resolutions, which are modelled on the recommendations of the Joint Select Committee on Parliamentary Privilege.[1] An express aim of those recommendations was to remove the requirement that the President had to form the opinion that a *prima facie* case that warranted further investigation existed before granting a matter precedence in debate.[2]

2.9 The notes explaining the proposed Privilege Resolutions, circulated prior to their adoption by the Senate in February 1988, observed:

> **Proposed resolution 4: Matters to be taken into account by the President in determining whether a motion arising from a matter of privilege should be given precedence of other business**
>
> The [Joint Select] Committee did not recommend any specification of the matters to be taken into account in determining whether a motion should have precedence, but it would seem to be desirable to give the President

1 Joint Select Committee on Parliamentary Privilege, *Final Report*, PP219/1984.

2 '...rather than ruling whether or not a prima facie case exists, we propose that the Presiding Officer should instead rule whether or not precedence be accorded to a motion relating to a complaint of a breach of privilege or other contempt.' Joint Select Committee, *Final Report*, paragraph 7.37.

Other recommendations sought to remove the process of making a determination of precedence from the 'heat' of Senate debate, by requiring matters be raised in writing and not referred to in the Senate until the President's determination as to precedence has been given, *see* paragraphs 7.28 – 7.37.

> some guidance in exercising this discretion, and to use the same criteria as the Senate itself would adopt to determine whether a contempt has been committed, except those which would involve any judgement of the content of an alleged contempt[emphasis added]. The proposed resolution has been drafted accordingly.[3]

2.10 In its 125th report, the committee noted:

> In making a decision as to whether a matter which a senator has raised should have precedence, the President is bound under resolution 4 to have regard to two criteria only [emphasis added]:
>
> - the principle that the Senate's power to adjudge and deal with contempts should be used only where it is necessary to provide reasonable protection for the Senate and its committees and for senators against improper acts tending substantially to obstruct them in the performance of their functions, and should not be used in respect of matters which appear to be of a trivial nature or unworthy of the attention of the Senate; and
> - the existence of any remedy other than that power for any act which may be held to be a contempt.[4]

2.11 The President does not have a discretion to take other matters into account, and, in particular, the President is precluded from considering in any inquisitorial way the content of the alleged contempt. In essence, the President's determination goes to the character of the matter, and not to its merits.

The matter raised by Senator Kroger

2.12 Although it is not the role, nor the practice, of the committee to consider or endorse the President's determinations, the committee considers that the criteria, properly understood, were correctly applied in relation to the matter raised by Senator Kroger. The President explained the basis for his decision in the following terms:

> With respect to paragraph (a), there is no question that the matters raised by Senator Kroger are very serious ones. The freedom of individual members of parliament to perform their duties on behalf of the people they represent and the need for them to be seen to be free of any improper external influence are of fundamental importance. Matters such as these go directly to the central purpose of the law of parliamentary privilege, which is to protect the integrity of proceedings in parliament. They meet the test posed in paragraph (a) of the need to provide reasonable protection for the Senate against improper acts tending substantially to obstruct it in the performance of its functions.
>
> With respect to paragraph (b), while there are various criminal offences that may be relevant, the asking of questions without notice by Senators Brown

3 125th report, p. 109.

4 125th report, paragraph 2.12.

> and Milne is central to the case put by Senator Kroger. Such actions are 'proceedings in parliament' within the meaning of a Article 9 of the Bill of Rights 1688 and section 16 of the Parliamentary Privileges Act 1987, and there is therefore no capacity for them to be examined for the purpose of any criminal investigation or proceedings. As a consequence, the only remedy for the alleged conduct lies within the Senate's contempt jurisdiction.[5]

2.13 The second submission questions whether the President, in considering the criteria in Resolution 4(a), should have determined that the matter 'was truly worthy of the attention of the Senate.'[6] The committee considers that contention to be unsustainable. The President may not inquire into the merits of the matter, but must make his assessment only on its character. This committee cannot accept that allegations of this nature made by one senator against another are unworthy of the Senate's attention.

2.14 How the Senate then deals with such matters is appropriately a question for the Senate. A separate decision is required, on different criteria, before a matter can be referred.

2.15 Although the President, in determining precedence, is bound to have regard ***only*** to the criteria in Resolution 4, the Senate – in deciding whether to refer the matter to the Privileges Committee, and ultimately in deciding whether a contempt has been committed – is not so constrained. The Senate must have regard to the above criteria and additionally must consider:

> (c) whether a person who committed any act which may be held to be a contempt:
>
> (i) knowingly committed that act, or
>
> (ii) had any reasonable excuse for the commission of that act.[7]

2.16 The Senate may also take other matters into account in making these decisions, including matters going to the merits of the case.

Perception

2.17 As noted above, the committee accepts that the mechanism of granting precedence, and the distinction between the President's determination and the Senate's decision whether or not to refer a matter, is not well understood outside of the Senate. This can give rise to the mischaracterisations referred to above.

2.18 The committee acknowledges the potential for damage to the reputations that can arise where people misunderstand the President's determination as an assessment

---

5 *Senate Debates*, 23 November 2011, p. 9380.

6 Second submission, paragraph 74.2.

7 Privilege Resolution 3.

of the matters. Equally, the committee considers there is the potential for damage to reputations arising from a misunderstanding of the reference of a matter by the Senate. The assessment by the Senate that a matter be referred to the Privileges Committee should similarly be seen as an assessment that the Senate considers the matter to require further investigation, but it is often perceived as a judgment of the matter referred.

2.19 It may be beneficial if the President, in making a statement according a matter precedence, gave more emphasis to: the nature and effect of his determination; the limited discretion Presidents have in deciding these matters; and the fact that it remains for the Senate to assess whether or not the matter be referred. The committee **recommends** that the President consider adopting this practice.

Political matters

2.20 In the majority of cases, the decision to refer a matter to the committee for investigation is uncontroversial. This should not be surprising, as most matters are raised by Senate committees, which have already undertaken a preliminary investigation. It might therefore be assumed that further investigations of such matters has broad support. In a footnote in its 125th report, the committee notes:

> The procedures adopted in 1988 for dealing with privilege matters were designed to take such matters out of partisan controversy. Except in rare cases, they have generally been successful in doing so.[8]

2.21 It is perhaps notable that, on those occasions the Senate has declined to refer matters after the President has given precedence, the matters proposed to be referred have been matters of partisan controversy[9] or allegations involving senators.[10]

2.22 It is probable that no set of principles or resolutions can entirely assist where matters involve highly political considerations. Questions of a political character are, however, properly determined by the Senate itself and not by the President. The committee considers, however, that the Senate should – so far as is possible – ensure that it has the relevant facts before it prior to deciding whether to refer a matter to this committee, including by ensuring the opportunity to debate these matters is always available.

Debate on privilege matters

2.23 The committee notes that, given the quite contrived routine of business which now applies in the Senate, the effect of determining that a matter have precedence is somewhat blunted. In earlier times, such a matter would be called on as the first

---

8 125th report, paragraph 4.116, footnote 102.

9 *Journals of the Senate*, 7 September 2005, p.1050

10 *Journals of the Senate*, 26 March 1998, 3462–63; *Journals of the Senate*, 25 June 2009, pp. 2194–95; *see also* 142nd report, paragraphs 1.3 and 1.5.

debate of a sitting day, ensuring that senators would have an opportunity, should they so wish, to address the matter. On 24 November 2011 – the final ordinary sitting day for the year – it appears that the routine of business would not have allowed the time to debate the matter at hand.

2.24 The committee considers that the opportunity to debate proposed references is important, both in enabling senators to properly put their views on the record and in explaining the processes involved in referring such matters. To that end, it may be appropriate that matters granted precedence be called on at the commencement of the relevant sitting day, rather than as the first item in a category possibly not called on until late in the day. The committee **recommends** that the Procedure Committee consider whether the standing orders should be amended in this regard to ensure that, when a matter such as this is granted precedence, it means precedence over all other business.

Matters raised with the committee by Senator Brown

2.25 Senator Brown wrote to the Chair on 24 November 2011, in the following terms:

> The notice of Senator Kroger's proposal to the President that this matter be referred to the Committee was given to the press before the President made his statement to the Senate.
>
> Neither Senator Milne nor I were notified by the President or his office that he had received Senator Kroger's request or that his statement would be made in the Senate.
>
> Will the Committee make recommendations to prevent this anomalous and unfair process outcome from recurring?

2.26 The President responded to one of these matters in a statement to the Senate on 25 November 2011:

> Senator Bob Brown also wrote to me about the presence of journalists in the gallery when I made my statement on a matter of privilege on Wednesday. I do not know if or why there were journalists in the gallery and, in any case, there is no question of privilege involved. At most it is a question of courtesy to the Senate or lack thereof.

Matters involving senators

2.27 Although it is not provided for in the standing orders, the committee considers that it would be appropriate, where the President makes a statement in the Senate in relation to a matter of privilege which names, or appears to involve, senators, for the President inform those senators that such a statement will be made, and when that will occur. This would be analogous to the convention – no longer consistently observed – that a senator intending to criticise another senator in debate should inform that senator. The committee **recommends** that the President adopt this practice.

Attendance of press in the gallery

2.28 Under standing order 81(3), the President informs the senator who raises a matter of privilege before making a statement about the matter in the Senate. The committee considers that the purpose of that provision is to enable the senator to prepare a notice of motion in relation to the matter and to attend in the Senate chamber to give that notice.

2.29 The standing order prohibits the senator referring to it in the chamber prior to the President making that statement. Although there is no provision prohibiting reference to the matter outside of the Senate during this period, the committee agrees that such an action demonstrates a lack of courtesy to the Senate in relation to matters which ought be reported to the Senate before they are discussed or reported elsewhere.

Matters raised by lawyers to Senator Brown and Senator Milne

2.30 A number of matters of procedure and practice were raised in correspondence with the committee and in the two submissions made on behalf of Senator Brown and Senator Milne. The committee does not intend to dwell on all of them, as for the most part they have no bearing on the outcome of the present matter in which the committee has determined no question of contempt arises.

2.31 However the committee takes the opportunity to make some comments about the limited nature of judicial review of the contempt jurisdiction of the Senate.

Contempt jurisdiction

2.32 The two submissions put forward the thesis that the committee, in investigating matters giving rise to allegations of contempt:

(a) is exercising judicial powers which arise from the statutory definition of contempt contained in section 4 of the *Parliamentary Privileges Act 1987*

(b) must have regard to the 'criminal nature of the power and jurisdiction it is exercising under that Act'[11] and

(c) must apply the criminal standard of proof to its deliberations.[12]

2.33 The line of argument is not new, but in this case it extended to a suggestion that the High Court now supervises the Senate's processes in investigating and adjudging contempt matters and would have a role in considering whether a member of a committee investigating such allegations ought recuse him- or herself from deliberations on the matter.

---

11 Second submission, paragraph 4.4.

12 Second submission, paragraphs 13 and 14.

2.34 It has always been the view of this committee that, although aspects of the exercise of the Senate's contempt jurisdiction may appear to be judicial in character, they are, in fact, proper incidents of the legislative function. The committee has long cautioned against drawing too close an analogy between the rules of the courts (in relation to contempt of court) and the powers and practices of the Houses (in relation to contempt of Parliament), notwithstanding that the purposes of those respective contempt powers are closely aligned (that is, they exist to enable each institution to protect the integrity of its own proceedings).

2.35 The committee is of the view that the matters suggested in paragraph 2.32 and 2.33 do not flow from the enactment of the Parliamentary Privileges Act, which instead implements a mechanism for more limited judicial review.

Judicial review of the grounds for contempt

2.36 Pursuant to section 4 of the *Parliamentary Privileges Act 1987*, any conduct may constitute an offence against a House (that is, a contempt) if it amounts to, or is intended or likely to amount to, an improper interference with the free exercise by a House or committee of its authority or functions, or with the free performance by a member of the member's duties as a member.

2.37 This provision restricts the, previously unrestricted, category of acts which may be treated as contempts. It is also subject to judicial interpretation, principally by way of section 9 of the Act. The mechanism in the Act provides for a limited judicial review of the grounds upon which contempt may be found. As noted in *Odgers' Australian Senate Practice*, the provision 'opens the way for a court to determine whether particular acts are improper and harmful to the Houses, their members or committees'.[13]

2.38 It must be doubted how far a court, in reviewing the grounds for a contempt of the Senate, could review the internal processes of the Senate. In *Fitzpatrick and Browne*[14] the High Court observed '...given an undoubted privilege, it is for the House to judge of the occasion and of the manner of its exercise.' This is not changed by the Parliamentary Privileges Act. In fact, section 9 of the Act clarifies what the courts may review. The committee notes the assessment of these matters made by the late Emeritus Professor Enid Campbell:

> Section 9 was clearly intended to make it possible for a court of law to adjudge whether the conduct of which an offender has been found guilty is capable of being regarded as in contempt of a house. On the other hand nothing in the Act allows the courts to decide whether it was appropriate for a house to impose a penalty or whether the penalty imposed was excessive. Nor is it open to court to consider whether the house which imposed a penalty has complied with principles of procedural fairness or with internal

13 Harry Evans (ed.), *Odgers' Australian Senate Practice*, 12th edition, p. 64.

14 *R v Richards; ex parte Fitzpatrick and Browne* (1955) 92 CLR 157 at 162.

> house rules concerning the manner in which charges of contempt are to be handled.
>
> When called upon to decide whether a house has exceeded its penal jurisdiction, courts may well take the view that the inquiries cannot extend to review of the procedures which were adopted within the house for adjudication of the complaint. The view of the courts may be that such enquiries are prohibited by Article 9 of the English Bill of Rights 1689. This provision applies in all Australian polities.[15]

2.39 The committee considers this to be a sound assessment of the current position, and one which appropriately recognises the traditional relationship between the institutions. In response to the suggestion that the Senate and the committee are exercising judicial powers, the committee also notes and endorses the following passage from *Odgers'*:

> ...it is said that in judging and punishing contempts of Parliament, the Houses are exercising a judicial function, and as political bodies they are unfit to exercise a judicial function. It is clear that the Houses are political bodies and that they are by constitution not adapted to act as courts of law, but the very premise of this criticism is questionable. The question of what acts obstruct the Houses in the performance of their functions may well be seen as essentially a political question requiring a political judgment and political responsibility. As elected bodies, subject to electoral sanction, the Houses may be seen as well fitted to exercise a judgment on the question of improper obstruction of the political processes embodied in the legislature.[16]

2.40 The committee agrees, however, that, were it to recommend that the Senate find that a person had committed a contempt, and further recommend the imposition of a penalty under the Act, both the committee and (should it act on those recommendations) the Senate ought have regard to the possibility of judicial review.

2.41 This need not entail, as the second submission suggests, the committee and the Senate applying the particular ***practices*** of courts in relation to natural justice, nor the criminal standard of proof, to its determinations. Rather, the committee should apply the essential ***principles*** of natural justice in a manner appropriate to its inquisitorial role. The committee and the Senate should explain their recommendations and decisions in a manner that meets the requirements of the limited judicial review provided for by the Parliamentary Privileges Act. The committee considers that the flexibility of its method of operation and the protections contained in the Privilege Resolutions are sufficient to this task.

---

15 Enid Campbell, *Parliamentary Privilege*, Federation Press 2003, p. 201.

16 Harry Evans (ed.), *Odgers' Australian Senate Practice*, 12th edition, p. 69.

Participation of Senator Brandis

2.42 The lawyers representing Senators Brown and Milne raised the matter of the participation in the inquiry of Senator Brandis. This was first raised in a letter to the chair, dated 22 December 2011 and in the first submission. Those documents argued that Senator Brandis must recuse himself, or the Senate must remove him from the committee, on the grounds that he had prejudged the matters before the committee.

2.43 It follows from the arguments in the previous section of this report that the committee is not persuaded by the arguments at paragraph 20 of the first submission, and elsewhere, that a decision of Senator Brandis, or of the Senate, that Senator Brandis remain on the Privileges Committee (and participate in this inquiry) would be reviewable by the High Court. It would be untenable for the High Court to reach into the proceedings of the Senate in such a way and contrary to Article 9 of the Bill of Rights and section 16 of the Parliamentary Privileges Act.

2.44 It is well established that the question whether senators should participate in an inquiry in which they may have a real or apparent conflict of interest, or where there might be an apprehension of bias, is a matter for the senators concerned, having regard to the particular circumstances of the inquiry. There is no general rule or convention on this. The matter is canvassed in *Odgers' Australian Senate Practice,* 12th edition, at pp 376-77. The lawyers representing Senators Brown and Milne were provided this information in a letter dated 6 January, but subsequently lodged with the chair the first submission, cited as a 'recusal application', which was received on 8 February 2012.

2.45 On the same day, prior to the receipt of the first submission, Senator Brandis indicated to the chair that he intended to recuse himself from deliberations on this matter. Senator Brandis wrote to the committee on 10 February setting out his decision and the reasons for it. That letter was received by the committee secretariat on 13 February and a copy provided to the lawyers representing Senator Brown and Senator Milne the following day. On 16 February, in response to a question raised on behalf of those senators as to whether Senators Brandis' decision could be made public, the committee resolved to publish a note on the matter, together with a copy of the letter, on the committee's web pages.

2.46 In that letter, Senator Brandis explained the reasons for his decision:

> As you are aware, the law recognizes two categories of case in which a judicial officer or other relevant decision-maker should stand aside from a hearing: where there is actual bias (for instance, where there is a direct conflict of interests) and apprehended bias (where, although there is no actual bias, a reasonable objective observer might conclude that there could be).
>
> Although the Privileges Committee is not, of course, a court or a quasi-judicial tribunal, it is nevertheless of central importance that it both act with neutrality and be seen to so act. For that reason, I consider the legal

> principles to which I have referred provide useful guidance and should generally be followed in a case such as this.

2.47 Senator Brandis did not participate in the committee's deliberations on the matter.

2.48 The committee endorses the advice it has received from Senate Clerks on the matter of the participation of senators in inquiries, which has informed its approach since 1989.[17] Although there is no general convention, those advices record a number of examples of senators exercising their discretion not to participate in inquiries in which there might be a genuine conflict of interest or the apprehension of bias. The committee considers that Senator Brandis' decision provides another sound example of the application of the practices recorded in those advices.

Reimbursement of legal costs

2.49 On 24 November 2011, the committee wrote to Senator Brown and to Senator Milne inviting comments on the matter before it. In December 2011, Senators Brown and Milne engaged counsel to represent them in the matter. All subsequent dealings with those senators was undertaken through their representatives. Correspondence received by the committee and the second submission indicated that Senators Brown and Milne would be seeking reimbursement of their legal costs under Privilege Resolution 2(11). The committee does not have before it an application for reimbursement of those costs, but makes the following comments.

2.50 In its 125th report the committee makes the following observations about the reimbursement of costs of legal representation:

> 5.12 Under Privilege Resolution 2(11), the committee is empowered to recommend to the President reimbursement of costs of legal representation to witnesses before the committee, as follows:
>
> > The Committee may recommend to the President the reimbursement of costs of representation of witnesses before the Committee. Where the President is satisfied that a person would suffer substantial hardship due to liability to pay the costs of representation of the person before the Committee, the President may make reimbursement of all or part of such costs as the President considers reasonable.
>
> 5.13 The committee continues to reaffirm the view taken in its 35th report that, as a general principle, it is disinclined to exercise its power to recommend reimbursement of costs of representation of witnesses before

---

17 Advices from the Clerk of the Senate, published on the committee's web pages. Advice No. 2, *Participation of members of Committee of Privileges in certain inquiries*, 18 January 1989. Advice No. 44, *Potential conflicts of interest*, 20 October 2010.

> the committee,[18] and in fact has recommended reimbursement only once since the Senate adopted the provision.[19]

2.51 The committee again reaffirms that view. The committee's role here is to make recommendations in relation to the criteria cited in the resolution.

Criteria in Resolution 2(11)

2.52 The criteria which the President must take into account in making a decision under Resolution 2(11) relate to 'hardship due to liability to pay the costs of representation' and to the reasonableness of the costs sought. The committee has previously noted that Resolution 2(11):

> ...requires the President to be strict in administering the reimbursement provision, and the committee regards itself as obliged to assist the President in making the determination. The committee accepts the right of all witnesses to be assisted by counsel, and acknowledges that such a right is rendered nugatory if persons are unable to afford to exercise it. The committee emphasises, however, that only in the exceptional circumstances provided in resolution 2(11) can reimbursement of legal costs be agreed to and, in determining whether to make a recommendation to the President, will apply strictly the prescribed criteria.[20]

2.53 The provision was introduced by then Senator Durack, as an amendment to the resolutions originally proposed. In introducing it, Senator Durack observed that the provision sets out the principle 'about the right of legal aid only in relation to need.'[21] The committee does not consider this criterion is met in the current case.

2.54 On the requirement of reasonableness, the committee has previously noted 'that persons who might be the subject of a contempt finding could feel the need to have early access to legal advice', but went on to 'express its concern that persons affected by its inquiries have incurred unnecessary expenditure on legal representation.'[22]

2.55 It seems to the committee that much of the material submitted, particularly the material referred to at paragraphs 1.30 to 1.48 above, was unconnected to the committee's invitation to provide statements to inform the initial stages of the inquiry. It is difficult to see how costs involved in the development of that material could be considered reasonable under the terms of the resolution.

---

18 Senate Committee of Privileges, *35th report*, PP. 467/1991.

19 Senate Committee of Privileges, *21st report*, PP. 461/1989.

20 125th Report, paragraph 5.11.

21 *Senate Debates*, 25 February 1988, p. 628.

22 125th Report, paragraph 5.11.

2.56 The committee also notes that one consequence of the approach taken in this case was that a response to the substantive matters before the committee was not provided until 27 February 2012, delaying the resolution of the case. The provision of statements, such as those contained in Annexures 1 and 2 of the second submission may well have met the committee's requirements in the initial stages of the inquiry, and enabled the matter to have been dealt with more quickly without the need for such costs to be incurred.

Conclusion

2.57 As the committee does not consider that the hardship criterion has been met, the committee, by majority decision, will not be recommending the reimbursement of costs incurred should a specific application be made.

Senator the Hon David Johnston

Chair