

House of Representatives Committee of Privileges and Members' Interests

Legal concerns notice and possible issues of privilege or contempt— matter raised by Mr Hill and referred by House

As Members would be aware, on 14 August, the House referred a matter of privilege to the Committee, in relation to a concerns notice given to the Member for Bruce by lawyers acting on behalf of Mr John Margerison.

The basis for the Member for Bruce's complaint was that the concerns notice foreshadowed legal action for defamation based on the material covered in a number of publications, much or all of which the Member submitted was likely to be covered by parliamentary privilege.

The publications in question were: a media release of the Joint Committee of Public Accounts and Audit; two Twitter/X posts in the name of the Member for Bruce; four Facebook posts in the name of the Member for Bruce; and one YouTube video in the name of the Member for Bruce.

The Committee was asked to consider whether the House should express a view on the matter, and intervene if court proceedings are commenced, in order to protect parliamentary privilege, and whether the threat of legal action may constitute a contempt of the House by way of improper interference with the free exercise of the Joint Committee of Public Accounts and Audit's authority or functions and of the Member for Bruce's duties, and may be seen to set a precedent if not addressed by the House.

The Committee received and considered the concerns notice and the publications to which it refers. The Committee notes that the question of whether the publication of material is likely to attract parliamentary privilege is clearer in some cases than in others.

Parliamentary privilege encompasses the special legal rights which apply to each House of Parliament, its committees and its members.

The powers and protections are in place to enable the Parliament to carry out its functions properly, including debating matters of importance freely, discussing grievances, and conducting investigations effectively, without interference from government, the courts or others. In addition to freedom of speech during proceedings and the preparation of particular documents, the law of parliamentary privilege applies to other acts, such as the properly authorised publishing of parliamentary material.

If documents or other publications are covered by parliamentary privilege, there are restrictions on legal action that could be taken in relation to them. There are also restrictions on the use of those publications in any legal proceedings.

The Committee considers that a properly authorised media release by a parliamentary committee would fall under the definition of 'proceedings in parliament' contained in subsection 16(2) of the *Parliamentary Privileges Act 1987*.

Therefore, the Committee found that it is likely that parliamentary privilege would attach to the media release of the JCPAA.

Any act or omission which obstructs or impedes either House of Parliament in the performance of its functions, or which obstructs or impedes any Member or officer of such House in the discharge of their duty, or which has a tendency, directly or indirectly, to produce such results may be treated as a contempt.

It is the view of the Committee that the threat of legal action contained in the concerns notice, insofar as it pertains to the media release, could have amounted to a serious contempt by both Mr Margerison and his legal representatives.

This would be by way of an improper interference with free exercise by the JCPAA of its authority of functions, and the Member for Bruce's duties as Chair of the Committee.

During the course of its inquiry, Mr Margerison informed the Committee that he had withdrawn the concerns notice given to the Member for Bruce and apologised for the potential interference in the work of the Parliament.

Given these circumstances, the Committee will not be making any formal recommendations to the House on the matter.

However, given its serious nature, the Committee wished to record its views on this matter including, importantly, to stress that the threat of legal proceedings, based on material to which parliamentary privilege attaches, could amount to a serious contempt of the House, be that by an individual bringing those proceedings or their legal representatives.

I commend this report to the House.

Mr Rob Mitchell MP

CHAIR