

**PARLIAMENTARY PRIVILEGE: MATTERS INCIDENTAL TO PROCEEDINGS:
*NTEIU V THE COMMONWEALTH***

The Privileges Committee should be advised of a question of parliamentary privilege which arose in a case in the Federal Court in Melbourne which was heard in late April.

The case is *NTEIU v the Commonwealth and the Minister for Education*, and arises from a suit by a union, the National Tertiary Education Industrial Union, against the federal government. The union sought the production of various documents, and the Australian Government Solicitor on behalf of the Commonwealth claimed that some of the documents should not be produced because of parliamentary privilege. The documents in question consist of draft answers to estimates questions on notice, draft answers to anticipated oral questions at estimates hearings, material for answering a possible parliamentary question and an e-mail message between two officers concerning the updating of the contents of an estimates hearing brief and a possible parliamentary question brief.

The judge in the case, Justice Weinberg, invited the President of the Senate, through the Australian Government Solicitor, to consider whether representations should be made on the parliamentary privilege question.

There was not time for the President to consider separate representation or a detailed submission without inordinately disrupting the hearing of the case, but after consultation with the President the following communication was sent to the Australian Government Solicitor:

The Senate view is that documents 18, 20, 21, 22, 23, 24 and 25 [the documents in question described above] are proceedings in Parliament within the meaning of subsection 16(2) of the *Parliamentary Privileges Act 1987*, in that they are matters done “for purposes of or incidental to, the transacting of the business of a House or of a committee”. They are therefore subject to the restrictions on their use in legal proceedings as set out in subsection 16(3) of the Act.

As the only possible purpose of the production of these documents would be to go behind and call into question proceedings in Parliament, the documents should not be required to be produced.

This letter was handed up to the judge. On the following day the judge accepted the claim of parliamentary privilege in respect of all of the documents except the e-mail message.

The hearing then continued on unrelated matters, with no sign of an appeal against the judge’s determination.