

PROVISION OF INFORMATION TO SENATORS — ACTIONS BY MR ROWLEY

Thank you for your letter of 3 July 2000 in which the Privileges Committee seeks views on further steps which may be taken in relation to the actions brought by Mr Rowley against former Senator O'Chee and Mr Armstrong and the judgment of Jones J.

As you indicated that the committee will not be considering the matter until 17 August, I did not hasten to reply.

When there was still time for Mr Armstrong to lodge an appeal against the judgment of Jones J, the committee could have recommended to the Senate the funding of an appeal by Mr Armstrong. (It was, of course, not open to the Senate, not being a party to the proceedings, to appeal.) I think that the committee was correct in not pursuing this option. Mr Armstrong's action, to have Mr Rowley's action terminated on the ground of abuse of process, was not an appropriate vehicle to determine the parliamentary privilege question, and a determination of that question would not necessarily have resulted even from a successful appeal. There is also the traditional hostility of the law to the funding of legal proceedings by persons not parties to those proceedings; I am not sure whether this is still unlawful in Queensland under an old common law doctrine or some statutory substitute, but it would not be wise for the Senate to enter that arena in any event.

The only feasible step for the Senate to take would become possible if either of Mr Rowley's actions actually came to trial. In that event counsel instructed for the Senate could seek leave to appear as *amicus curiae* to assist the court on the parliamentary privilege question and to make submissions on the appropriate application of parliamentary privilege principles and the relevant statutory provision to the particular actions. This may result in appropriate findings by the court and reversal of Jones J's unsatisfactory judgment. The committee would be aware that there is precedent for such intervention in relevant cases. The committee could recommend this course to the Senate. Such a recommendation could be made and adopted in advance of any indication that Mr Rowley intends to bring the actions to trial.

The only other possible course of action is for the Parliament to legislate to repudiate Jones J's judgment. This would be inadvisable for several reasons. In the first place, the initiation of such legislation would appear to concede that the judgment is a feasible interpretation of the relevant law and might be upheld by a higher court. Such a concession should not be made, and the Senate should be confident in having the judgment overturned if the issue comes before a higher court. Secondly, any such legislation would attempt to spell out the meaning of "for purposes of or incidental to" parliamentary proceedings in the Parliamentary Privileges Act. It is neither possible nor desirable to do so. Any attempt to provide an all-inclusive statement of the content of that expression would rely either on some substitute general expression which would not advance the definition, or on a list of matters included in the expression which would involve the danger of excluding matters which ought to be covered. The Parliament ought to be able to rely on the courts to give appropriate application to the current words of the statute, which are as clear as they can be for the purpose.

It may be helpful to draw to the attention of the committee a judgment given on 25 July 2000 by another justice of the Supreme Court of Queensland, Helman J, in *Criminal Justice Commission and others v Dick*. In that judgment it was held that the conduct of an investigation and the preparation of a report by the Parliamentary Criminal Justice Commissioner, a statutory parliamentary official, for the Parliamentary Criminal Justice Committee of the Queensland Legislative Assembly, was a proceeding in Parliament and therefore not amenable to judicial review. In the light of a statutory provision in Queensland in virtually identical terms to section 16(2) of the *Parliamentary Privileges Act 1987*, declaring the preparation of a report under the authority of the House or a committee to be a proceeding in Parliament, it was hardly open to the court to make any other finding, but the judgment exhibits an understanding of parliamentary privilege which was absent from that of Jones J.

I would be pleased to provide the committee with any further information or assistance in relation to this matter.