

*MCGLADE V HREOC AND LIGHTFOOT*

The committee should be informed of a case in the Human Rights and Equal Opportunity Commission which appeared at first to raise a question of parliamentary privilege and which may yet do so.

Ms H. McGlade brought a complaint before the Commission on the basis that statements by Senator Lightfoot were in breach of the *Racial Discrimination Act 1975*. On first indications it appeared that Ms McGlade might be seeking to rely on statements made by Senator Lightfoot in the Senate to support her action, which would clearly be contrary to the law of parliamentary privilege. The attention of the Commission was drawn to this potential problem. Subsequently, Ms McGlade's action appeared to rely solely on a statement allegedly made by Senator Lightfoot outside the protected parliamentary forum in an interview with a journalist.

In January 1999 Commissioner Johnston dismissed Ms McGlade's complaint on the basis that it was misconceived within the meaning of the Act. In his reasons for dismissing the complaint, Commissioner Johnston indicated an awareness of parliamentary privilege, but referred to the fact that Senator Lightfoot made a statement by way of an apology in the Senate on 28 May 1997 as a reason for concluding that the complaint was misconceived. At the same time, he indicated that, because of parliamentary privilege, Ms McGlade could not question that statement.

The question arises whether Commissioner Johnston was entitled to use the statement in the Senate as a basis for dismissing the complaint. The committee would be aware that section 16(3) of the Parliamentary Privileges Act prevents anyone *relying on* the truth, motive, intention or good faith of proceedings in Parliament. A litigant cannot use proceedings in Parliament to defeat another litigant's action any more than that other litigant can rely on proceedings in Parliament to support the action. It may be contended that Commissioner Johnston was simply referring to the statement in the Senate as a background fact in making his determination under the statute, and not relying on it in the sense of the prohibition. It is a very arguable question.

Ms McGlade appealed against the Commissioner's decision, and as parliamentary privilege did not appear to be an issue in the appeal, the question was not pursued at that stage. On 18 October 2000 Justice Carr of the Federal Court upheld the appeal, set aside Commissioner Johnston's decision, and returned the matter to the Commission for further proceedings. The basis of this judgment was that Commissioner Johnston had erred in law by misinterpreting the meaning of "misconceived" in the Racial Discrimination Act.

The judgment incidentally referred, however, to an argument raised by Ms McGlade that Senator Lightfoot's statement in the Senate was an irrelevant factor which should not have been taken into consideration by Commissioner Johnston in making his decision. Justice Carr observed that the statement could be taken into account as a relevant factor.

This aspect of the judgment raises the possibility that Senator Lightfoot's statement in the Senate may again become an issue in the proceedings before the Commission, and it may again be necessary to remind the Commission of the law of parliamentary privilege.

I will monitor the progress of the case and keep the committee informed.