

RECENT PRIVILEGE CASES

This note is to acquaint the committee with developments in recent cases concerning parliamentary privilege.

Committee on the Judiciary v Miers (the “fired” prosecutors case)

The District Court declined an application by the administration for a stay of the court’s order pending an appeal by the administration against the substantive judgment. The administration appealed against this decision to the Court of Appeals which, on 6 October 2008, granted a stay of the District Court’s order and declined an application by the committee to expedite the hearing of the appeal against the substantive judgment.

The case will now carry over into the next Congress, if the next Committee on the Judiciary of the next House of Representatives renews the inquiry and the subpoenas which led to the case.

Habib v Commonwealth

In an application to the Federal Court for leave to file an amended statement of claim for the purpose of Mr Habib’s action against the Commonwealth, counsel for Mr Habib sought to tender correspondence between the Senate Legal and Constitutional Affairs Committee and witnesses concerning their evidence before the committee, and answers to questions on notice asked during the proceedings of the committee. After seeking advice from the Department of the Senate, counsel for the Commonwealth submitted that the documents were proceedings in Parliament within the meaning of the *Parliamentary Privileges Act 1987*, and could not be used for any purpose prohibited by that Act. Having received submissions by counsel for Mr Habib as to the use to which the material was intended to be put, to draw conclusions and inferences about the actions of Commonwealth officials, the court on 7 October 2008 (Perram J) held that the documents could not be tendered for that purpose.