

# **Comparison of Procedures of the Senate and the House of Representatives in Relation to Parliamentary Privilege**

## **Introduction**

On 25 February 1988, the Senate passed a number of resolutions relating to parliamentary privilege (see attachment 1). The House of Representatives has not passed a similar comprehensive set of resolutions. The practice in the House and in the House Committee of Privileges reflects a considerable body of experience and case law. This practice is recorded in Chapter 19 and Appendix 25 of House of Representatives Practice, 5th edition, pp. 707-754 and 840-881 respectively. The practice is in many respects, similar to that of the Senate.

## **Comparison**

Comparative comments on the practices of the Senate and the House will be made on each of the areas in which the Senate has passed resolutions.

### *Procedures to be observed by Senate Committees for the protection of witnesses*

This resolution provides procedures for witnesses who are appearing before Senate Committee.

The House of Representatives Committee on Procedure has recommended that the House adopt similar procedures to those adopted in the Senate to protect witnesses appearing before House committees. No such procedures have been formally adopted by the House. However, generally House committees follow the procedures that were recommended by the Procedure Committee.

### *Procedures for the protection of witnesses before the Privileges Committee*

This resolution provides procedures for witnesses appearing before the Senate Committee of Privileges.

Again the House has not passed a resolution such as this one. However, in the previous Parliament, the House of Representatives Committee of Privileges agreed that it would follow similar procedures to those adopted in the Senate. A copy of those procedures is at Attachment 2.

Some specific differences between the procedures adopted by the House Committee of Privileges and those adopted by the Senate are:

- there is no provision for a person to attend a hearing where adverse evidence is being given against them (paragraph 3 of Senate resolution). It was considered that paragraph 2 of the Committee of Privilege's resolution was sufficient to ensure adverse evidence was drawn to a person's attention and they were given the opportunity to respond;

- the Committee of Privilege's resolution (paragraph 3) refers to a person being able to be accompanied by an adviser (rather than counsel), although the adviser could be a legal adviser;
- there is provision for committees to take evidence in public hearing, unless there are particular reasons to take evidence in private (Senate resolution paragraph 7); and
- there is no provision for a committee to appoint counsel and have counsel cross-examine witnesses (Senate resolution paragraphs 8 and 9).

*Criteria to be taken into account when determining matters relating to contempt*

This resolution provides criteria to be considered when determining whether matters involve a contempt.

The House has not adopted criteria such as these. However, the House and the Committee of Privileges would no doubt have regard to criteria such as these in considering matters involving possible contempt. They would also have regard to section 4 of the *Parliamentary Privileges Act 1987*.

*Criteria to be taken into account by the President in determining whether a motion arising from a matter of privilege should be given precedence of other business*

This resolution provides criteria for the President of the Senate to use in determining whether a matter should be referred to the Committee of Privileges.

Again the House has not adopted such criteria. However, the Speaker would have regard to similar criteria in considering whether to give precedence to a motion to refer a matter of privilege to the Committee of Privileges. The Speaker must also be satisfied that:

- a prima facie case of contempt or breach of privilege has been made out; and
- the matter has been raised at the earliest opportunity (see Standing Orders 51 and 52 at Attachment 3).

*Protection of persons referred to in the Senate (Right of Reply procedure)*

In the mid 1980s the Joint Select Committee on Parliamentary Privilege recommended that a Right of Reply procedure be adopted by the House. The Senate introduced a Right of Reply procedure in 1988 in response to that recommendation as provided in this resolution.

It was not until 1997 that the House passed a resolution to establish a Right of Reply procedure. The House's resolution is identical to that of the Senate, except that the House's resolution provides for the Committee of Privileges to make its own guidelines with respect to the resolution as long as they are not inconsistent with the resolution. The Committee has determined 8 guidelines.

The main feature of the guidelines (Attachment 4) are:

- applications from Australian individuals only are considered (paras 2 and 3);
- applications must be concise, only go to the matter complained of and contain no offensive material (para 5);
- responses to committee proceedings are not within the procedure (para 7);  
and
- the Committee will have regard to other remedies that may be available to the person and whether these have been used (para 8).

Fourteen (14) matters have been referred to date and the Committee has agreed to a Right of Reply only once (one still pending).

Since 1988, the Senate Committee of Privileges has recommended 44 responses for publication, 6 have not proceeded because the person concerned chose not to pursue the matter further after the committee had made contact, and the committee refused to consider a submission on 3 occasions.

The Senate Committee of Privileges has stated that, having decided to consider a submission referred to it by the President, its only role is to ensure that a response channel is available and that the response is succinct and relevant and does not contain material which, for example, would reflect adversely on either a Senator or any other person. The committee may edit proposed responses to some degree after conferring with the person involved but has committed itself to allowing as much as possible of the person's response to be published, subject to the requirements of the resolution (107th report, p. 3).

#### *Matters constituting contempts*

This resolution lists matters which the Senate declares, as a matter of guidance, to be acts which may be treated as contempts.

The House does not have a similar list of acts that would constitute contempts. However, House of Representatives Practice identifies a similar list of acts that could be seen to constitute contempts (Chapter 19 Parliamentary Privilege, 5th edition pp. 707-754).

#### *Raising matters of privilege*

This resolution specifies the process for raising matters of privilege in the Senate.

The House's practice in the raising of matters of privilege differs somewhat from the Senate's practice.

In the House, matters of privilege can be raised under standing orders 51 and 52 (copy at Attachment 3). If the House is sitting, under standing order 51 a Member raises a matter of privilege in the House. The Speaker may give the matter immediate precedence and invite the Member to move a motion to refer the matter to the

Committee of Privileges or the Speaker may reserve the matter for further consideration and respond to the House at a later stage as to whether procedure will be given to refer the matter to the Committee of Privileges.

If the House is not sitting and is not expected to sit for at least two weeks, under standing order 52 a Member can raise a matter of privilege with the Speaker and the Speaker must refer the matter to the Committee of Privileges if satisfied that a *prima facie* case of contempt or breach of privilege has been made out and the matter requires urgent attention. This action must subsequently be endorsed by the House.

In the Senate, matters of privilege are raised in writing with the President and the President considers whether precedence should be given to a motion to refer the matter to the Senate Committee of Privileges (see paragraph 7 of Senate privilege resolutions).

#### *Motions relating to contempts*

This resolution provides for a seven day period between notice of a motion being given in relation to a person having committed a contempt or to impose a penalty for a contempt and the motion being moved in the Senate.

There is no similar provision in the House. It would appear the provision recognises that motions to determine that a person has committed a contempt or to impose a penalty for a contempt are very serious matters and should not be proceeded with hastily.

#### *Exercise of freedom of Speech*

This resolution cautions Senators about their exercise of the freedom of speech privilege.

There is no similar provision in the House. However, Speakers have often drawn the attention of Members to the need to exercise their right to freedom of speech in a responsible manner (eg House of Representatives Practice, Appendix 25 pp 840-881, for example matters 153 and 163).

#### *Reference to Senate proceedings in court proceedings*

This resolution permits reference being made to proceedings of the Senate and its committees in court or tribunal proceedings without leave of the Senate being sought. However, it does so without detracting from the law as to the use which can be made of those proceedings (that is they cannot be 'questioned or impeached').

The House does not have a similar resolution. Leave of the House is still required when the proceedings of the House or committees is to be produced or referred to in court or tribunal proceedings. This continuing practice may be considered unnecessary as long as the use to which the records will be put does not infringe Section 16 of the *Parliamentary Privileges Act 1987*.

### *Consultation between Privileges Committees*

This resolution permits the Senate Committee of Privileges to confer with the House Committee of Privileges when considering any matter.

A similar resolution is not necessary in the House of Representatives as Standing Order 238 permits House committees (including the Committee of Privileges) to confer with a similar committee of the Senate.

### **Conclusion**

The examination of the practice of the Senate and the House in relation to parliamentary privilege indicates there are significant similarities in the practice.

However, the adoption by the Senate of the privilege resolutions give considerable transparency to the practice and process for the operation of parliamentary privilege in the Senate. As the House has not compiled a similar set of resolutions, the practice of the House and its Committee of Privileges is less readily available.

Committee Secretariat  
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## PARLIAMENTARY PRIVILEGE

### RESOLUTIONS AGREED TO BY THE SENATE ON 25 FEBRUARY 1988

#### 1 Procedures to be observed by Senate committees for the protection of witnesses

In their dealings with witnesses, all committees of the Senate shall observe the following procedures:

- (1) A witness shall be invited to attend a committee meeting to give evidence. A witness shall be summoned to appear (whether or not the witness was previously invited to appear) only where the committee has made a decision that the circumstances warrant the issue of a summons.
- (2) Where a committee desires that a witness produce documents relevant to the committee's inquiry, the witness shall be invited to do so, and an order that documents be produced shall be made (whether or not an invitation to produce documents has previously been made) only where the committee has made a decision that the circumstances warrant such an order.
- (3) A witness shall be given reasonable notice of a meeting at which the witness is to appear, and shall be supplied with a copy of the committee's order of reference, a statement of the matters expected to be dealt with during the witness's appearance, and a copy of these procedures. Where appropriate a witness shall be supplied with a transcript of relevant evidence already taken.
- (4) A witness shall be given opportunity to make a submission in writing before appearing to give oral evidence.
- (5) Where appropriate, reasonable opportunity shall be given for a witness to raise any matters of concern to the witness relating to the witness's submission or the evidence the witness is to give before the witness appears at a meeting.
- (6) A witness shall be given reasonable access to any documents that the witness has produced to a committee.
- (7) A witness shall be offered, before giving evidence, the opportunity to make application, before or during the hearing of the witness's evidence, for any or all of the witness's evidence to be heard in private session, and shall be invited to give reasons for any such application. If the application is not granted, the witness shall be notified of reasons for that decision.
- (8) Before giving any evidence in private session a witness shall be informed whether it is the intention of the committee to publish or present to the Senate all or part of that evidence, that it is within the power of the committee to do so, and that the Senate has the authority to order the production and publication of undisclosed evidence.

- (9) A chairman of a committee shall take care to ensure that all questions put to witnesses are relevant to the committee's inquiry and that the information sought by those questions is necessary for the purpose of that inquiry. Where a member of a committee requests discussion of a ruling of the chairman on this matter, the committee shall deliberate in private session and determine whether any question which is the subject of the ruling is to be permitted.
- (10) Where a witness objects to answering any question put to the witness on any ground, including the ground that the question is not relevant or that the answer may incriminate the witness, the witness shall be invited to state the ground upon which objection to answering the question is taken. Unless the committee determines immediately that the question should not be pressed, the committee shall then consider in private session whether it will insist upon an answer to the question, having regard to the relevance of the question to the committee's inquiry and the importance to the inquiry of the information sought by the question. If the committee determines that it requires an answer to the question, the witness shall be informed of that determination and the reasons for the determination, and shall be required to answer the question only in private session unless the committee determines that it is essential to the committee's inquiry that the question be answered in public session. Where a witness declines to answer a question to which a committee has required an answer, the committee shall report the facts to the Senate.
- (11) Where a committee has reason to believe that evidence about to be given may reflect adversely on a person, the committee shall give consideration to hearing that evidence in private session.
- (12) Where a witness gives evidence reflecting adversely on a person and the committee is not satisfied that that evidence is relevant to the committee's inquiry, the committee shall give consideration to expunging that evidence from the transcript of evidence, and to forbidding the publication of that evidence.
- (13) Where evidence is given which reflects adversely on a person and action of the kind referred to in paragraph (12) is not taken in respect of the evidence, the committee shall provide reasonable opportunity for that person to have access to that evidence and to respond to that evidence by written submission and appearance before the committee.
- (14) A witness may make application to be accompanied by counsel and to consult counsel in the course of a meeting at which the witness appears. In considering such an application, a committee shall have regard to the need for the witness to be accompanied by counsel to ensure the proper protection of the witness. If an application is not granted, the witness shall be notified of reasons for that decision.
- (15) A witness accompanied by counsel shall be given reasonable opportunity to consult counsel during a meeting at which the witness appears.
- (16) An officer of a department of the Commonwealth or of a state shall not be asked to give opinions on matters of policy, and shall be given reasonable opportunity to refer questions asked of the officer to superior officers or to a minister.

- (17) Reasonable opportunity shall be afforded to witnesses to make corrections of errors of transcription in the transcript of their evidence and to put before a committee additional material supplementary to their evidence.
- (18) Where a committee has any reason to believe that any person has been improperly influenced in respect of evidence which may be given before the committee, or has been subjected to or threatened with any penalty or injury in respect of any evidence given, the committee shall take all reasonable steps to ascertain the facts of the matter. Where the committee considers that the facts disclose that a person may have been improperly influenced or subjected to or threatened with penalty or injury in respect of evidence which may be or has been given before the committee, the committee shall report the facts and its conclusions to the Senate.

## **2 Procedures for the protection of witnesses before the Privileges Committee**

In considering any matter referred to it which may involve, or gives rise to any allegation of, a contempt, the Committee of Privileges shall observe the procedures set out in this resolution, in addition to the procedures required by the Senate for the protection of witnesses before committees. Where this resolution is inconsistent with the procedures required by the Senate for the protection of witnesses, this resolution shall prevail to the extent of the inconsistency.

- (1) A person shall, as soon as practicable, be informed, in writing, of the nature of any allegations, known to the committee and relevant to the committee's inquiry, against the person, and of the particulars of any evidence which has been given in respect of the person.
- (2) The committee shall extend to that person all reasonable opportunity to respond to such allegations and evidence by:
  - (a) making written submission to the committee;
  - (b) giving evidence before the committee;
  - (c) having other evidence placed before the committee; and
  - (d) having witnesses examined before the committee.
- (3) Where oral evidence is given containing any allegation against, or reflecting adversely on, a person, the committee shall ensure as far as possible that that person is present during the hearing of that evidence, and shall afford all reasonable opportunity for that person, by counsel or personally, to examine witnesses in relation to that evidence.
- (4) A person appearing before the committee may be accompanied by counsel, and shall be given all reasonable opportunity to consult counsel during that appearance.
- (5) A witness shall not be required to answer in public session any question where the committee has reason to believe that the answer may incriminate the witness.
- (6) Witnesses shall be heard by the committee on oath or affirmation.



- (7) Hearing of evidence by the committee shall be conducted in public session, except where:
  - (a) the committee accedes to a request by a witness that the evidence of that witness be heard in private session;
  - (b) the committee determines that the interests of a witness would best be protected by hearing evidence in private session; or
  - (c) the committee considers that circumstances are otherwise such as to warrant the hearing of evidence in private session.
- (8) The committee may appoint, on terms and conditions approved by the President, counsel to assist it.
- (9) The committee may authorise, subject to rules determined by the committee, the examination by counsel of witnesses before the committee.
- (10) As soon as practicable after the committee has determined findings to be included in the committee's report to the Senate, and prior to the presentation of the report, a person affected by those findings shall be acquainted with the findings and afforded all reasonable opportunity to make submissions to the committee, in writing and orally, on those findings. The committee shall take such submissions into account before making its report to the Senate.
- (11) The committee may recommend to the President the reimbursement of costs of representation of witnesses before the committee. Where the President is satisfied that a person would suffer substantial hardship due to liability to pay the costs of representation of the person before the committee, the President may make reimbursement of all or part of such costs as the President considers reasonable.
- (12) Before appearing before the committee a witness shall be given a copy of this resolution.

### **3 Criteria to be taken into account when determining matters relating to contempt**

The Senate declares that it will take into account the following criteria when determining whether matters possibly involving contempt should be referred to the Committee of Privileges and whether a contempt has been committed, and requires the Committee of Privileges to take these criteria into account when inquiring into any matter referred to it:

- (a) the principle that the Senate's power to adjudge and deal with contempts should be used only where it is necessary to provide reasonable protection for the Senate and its committees and for senators against improper acts tending substantially to obstruct them in the performance of their functions, and should not be used in respect of matters which appear to be of a trivial nature or unworthy of the attention of the Senate;
- (b) the existence of any remedy other than that power for any act which may be held to be a contempt; and

- (c) whether a person who committed any act which may be held to be a contempt:
  - (i) knowingly committed that act, or
  - (ii) had any reasonable excuse for the commission of that act.

**4 Criteria to be taken into account by the President in determining whether a motion arising from a matter of privilege should be given precedence of other business**

Notwithstanding anything contained in the standing orders, in determining whether a motion arising from a matter of privilege should have precedence of other business, the President shall have regard only to the following criteria:

- (a) the principle that the Senate's power to adjudge and deal with contempts should be used only where it is necessary to provide reasonable protection for the Senate and its committees and for senators against improper acts tending substantially to obstruct them in the performance of their functions, and should not be used in respect of matters which appear to be of a trivial nature or unworthy of the attention of the Senate; and
- (b) the existence of any remedy other than that power for any act which may be held to be a contempt.

**5 Protection of persons referred to in the Senate**

- (1) Where a person who has been referred to by name, or in such a way as to be readily identified, in the Senate, makes a submission in writing to the President:

- (a) claiming that the person has been adversely affected in reputation or in respect of dealings or associations with others, or injured in occupation, trade, office or financial credit, or that the person's privacy has been unreasonably invaded, by reason of that reference to the person; and
- (b) requesting that the person be able to incorporate an appropriate response in the parliamentary record,

if the President is satisfied:

- (c) that the subject of the submission is not so obviously trivial or the submission so frivolous, vexatious or offensive in character as to make it inappropriate that it be considered by the Committee of Privileges; and
- (d) that it is practicable for the Committee of Privileges to consider the submission under this resolution,

the President shall refer the submission to that committee.

- (2) The committee may decide not to consider a submission referred to it under this resolution if the committee considers that the subject of the submission is not sufficiently serious or the submission is frivolous, vexatious or offensive in character, and such a decision shall be reported to the Senate.

- (3) If the committee decides to consider a submission under this resolution, the committee may confer with the person who made the submission and any senator who referred in the Senate to that person.
- (4) In considering a submission under this resolution, the committee shall meet in private session.
- (5) The committee shall not publish a submission referred to it under this resolution or its proceedings in relation to such a submission, but may present minutes of its proceedings and all or part of such submission to the Senate.
- (6) In considering a submission under this resolution and reporting to the Senate the committee shall not consider or judge the truth of any statements made in the Senate or of the submission.
- (7) In its report to the Senate on a submission under this resolution, the committee may make either of the following recommendations:
  - (a) that no further action be taken by the Senate or by the committee in relation to the submission; or
  - (b) that a response by the person who made the submission, in terms specified in the report and agreed to by the person and the committee, be published by the Senate or incorporated in Hansard,
 and shall not make any other recommendations.
- (8) A document presented to the Senate under paragraph (5) or (7):
  - (a) in the case of a response by a person who made a submission, shall be succinct and strictly relevant to the questions in issue and shall not contain anything offensive in character; and
  - (b) shall not contain any matter the publication of which would have the effect of:
    - (i) unreasonably adversely affecting or injuring a person, or unreasonably invading a person's privacy, in the manner referred to in paragraph (1); or
    - (ii) unreasonably adding to or aggravating any such adverse effect, injury or invasion of privacy suffered by a person.

## **6 Matters constituting contempts**

Without derogating from its power to determine that particular acts constitute contempts, the Senate declares, as a matter of general guidance, that breaches of the following prohibitions, and attempts or conspiracies to do the prohibited acts, may be treated by the Senate as contempts.

### **Interference with the Senate**

- (1) A person shall not improperly interfere with the free exercise by the Senate or a committee of its authority, or with the free performance by a senator of the senator's duties as a senator.

#### **Improper influence of senators**

- (2) A person shall not, by fraud, intimidation, force or threat of any kind, by the offer or promise of any inducement or benefit of any kind, or by other improper means, influence a senator in the senator's conduct as a senator or induce a senator to be absent from the Senate or a committee.

#### **Senators seeking benefits etc.**

- (3) A senator shall not ask for, receive or obtain, any property or benefit for the senator, or another person, on any understanding that the senator will be influenced in the discharge of the senator's duties, or enter into any contract, understanding or arrangement having the effect, or which may have the effect, of controlling or limiting the senator's independence or freedom of action as a senator, or pursuant to which the senator is in any way to act as the representative of any outside body in the discharge of the senator's duties.

#### **Molestation of senators**

- (4) A person shall not inflict any punishment, penalty or injury upon, or deprive of any benefit, a senator on account of the senator's conduct as a senator.

#### **Disturbance of the Senate**

- (5) A person shall not wilfully disturb the Senate or a committee while it is meeting, or wilfully engage in any disorderly conduct in the precincts of the Senate or a committee tending to disturb its proceedings.

#### **Service of writs etc.**

- (6) A person shall not serve or execute any criminal or civil process in the precincts of the Senate on a day on which the Senate meets except with the consent of the Senate or of a person authorised by the Senate to give such consent.

#### **False reports of proceedings**

- (7) A person shall not wilfully publish any false or misleading report of the proceedings of the Senate or of a committee.

#### **Disobedience of orders**

- (8) A person shall not, without reasonable excuse, disobey a lawful order of the Senate or of a committee.

#### **Obstruction of orders**

- (9) A person shall not interfere with or obstruct another person who is carrying out a lawful order of the Senate or of a committee.

### **Interference with witnesses**

- (10) A person shall not, by fraud, intimidation, force or threat of any kind, by the offer or promise of any inducement or benefit of any kind, or by other improper means, influence another person in respect of any evidence given or to be given before the Senate or a committee, or induce another person to refrain from giving such evidence.

### **Molestation of witnesses**

- (11) A person shall not inflict any penalty or injury upon, or deprive of any benefit, another person on account of any evidence given or to be given before the Senate or a committee.

### **Offences by witnesses etc.**

- (12) A witness before the Senate or a committee shall not:
- (a) without reasonable excuse, refuse to make an oath or affirmation or give some similar undertaking to tell the truth when required to do so;
  - (b) without reasonable excuse, refuse to answer any relevant question put to the witness when required to do so; or
  - (c) give any evidence which the witness knows to be false or misleading in a material particular, or which the witness does not believe on reasonable grounds to be true or substantially true in every material particular.
- (13) A person shall not, without reasonable excuse:
- (a) refuse or fail to attend before the Senate or a committee when ordered to do so; or
  - (b) refuse or fail to produce documents, or to allow the inspection of documents, in accordance with an order of the Senate or of a committee.
- (14) A person shall not wilfully avoid service of an order of the Senate or of a committee.
- (15) A person shall not destroy, damage, forge or falsify any document required to be produced by the Senate or by a committee.

### **Unauthorised disclosure of evidence etc.**

- (16) A person shall not, without the authority of the Senate or a committee, publish or disclose:
- (a) a document that has been prepared for the purpose of submission, and submitted, to the Senate or a committee and has been directed by the Senate or a committee to be treated as evidence taken in private session or as a document confidential to the Senate or the committee;

- (b) any oral evidence taken by the Senate or a committee in private session, or a report of any such oral evidence; or
- (c) any proceedings in private session of the Senate or a committee or any report of such proceedings,

unless the Senate or a committee has published, or authorised the publication of, that document, that oral evidence or a report of those proceedings.

## **7 Raising of matters of privilege**

Notwithstanding anything contained in the standing orders, a matter of privilege shall not be brought before the Senate except in accordance with the following procedures:

- (1) A senator intending to raise a matter of privilege shall notify the President, in writing, of the matter.
- (2) The President shall consider the matter and determine, as soon as practicable, whether a motion relating to the matter should have precedence of other business, having regard to the criteria set out in any relevant resolution of the Senate. The President's decision shall be communicated to the senator, and, if the President thinks it appropriate, or determines that a motion relating to the matter should have precedence, to the Senate.
- (3) A senator shall not take any action in relation to, or refer to, in the Senate, a matter which is under consideration by the President in accordance with this resolution.
- (4) Where the President determines that a motion relating to a matter should be given precedence of other business, the senator may, at any time when there is no other business before the Senate, give notice of a motion to refer the matter to the Committee of Privileges. Such notice shall take precedence of all other business on the day for which the notice is given.
- (5) A determination by the President that a motion relating to a matter should not have precedence of other business does not prevent a senator in accordance with other procedures taking action in relation to, or referring to, that matter in the Senate, subject to the rules of the Senate.
- (6) Where notice of a motion is given under paragraph (4) and the Senate is not expected to meet within the period of one week occurring immediately after the day on which the notice is given, the motion may be moved on that day.

## **8 Motions relating to contempts**

Notwithstanding anything contained in the standing orders, a motion to:

- (a) determine that a person has committed a contempt; or
- (b) impose a penalty upon a person for a contempt,

shall not be moved unless notice of the motion has been given not less than 7 days before the day for moving the motion.

## **9 Exercise of freedom of speech**

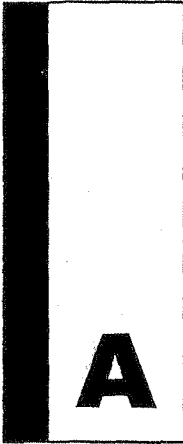
- (1) The Senate considers that, in speaking in the Senate or in a committee, senators should take the following matters into account:
  - (a) the need to exercise their valuable right of freedom of speech in a responsible manner;
  - (b) the damage that may be done by allegations made in Parliament to those who are the subject of such allegations and to the standing of Parliament;
  - (c) the limited opportunities for persons other than members of Parliament to respond to allegations made in Parliament;
  - (d) the need for senators, while fearlessly performing their duties, to have regard to the rights of others; and
  - (e) the desirability of ensuring that statements reflecting adversely on persons are soundly based.
- (2) The President, whenever the President considers that it is desirable to do so, may draw the attention of the Senate to the spirit and the letter of this resolution.

## **10 Reference to Senate proceedings in court proceedings**

- (1) Without derogating from the law relating to the use which may be made of proceedings in Parliament under section 49 of the Constitution, and subject to any law and any order of the Senate relating to the disclosure of proceedings of the Senate or a committee, the Senate declares that leave of the Senate is not required for the admission into evidence, or reference to, records or reports of proceedings in the Senate or in a committee of the Senate, or the admission of evidence relating to such proceedings, in proceedings before any court or tribunal.
- (2) The practice whereby leave of the Senate is sought in relation to matters referred to in paragraph (1) is discontinued.
- (3) The Senate should be notified of any admission of evidence or reference to proceedings of the kind referred to in paragraph (1), and the Attorneys-General of the Commonwealth and the states are requested to develop procedures whereby such notification may be given.

## **11 Consultation between Privileges Committees**

In considering any matter referred to it, the Committee of Privileges may confer with the Committee of Privileges of the House of Representatives.



## Appendix A

### Procedures for the conduct of proceedings of the House Committee of Privileges

In considering any matter referred to it which may involve, or give rise to any allegation of, a contempt, the Committee of Privileges will observe the procedures set out below. In addition, the Committee will follow the general procedures for interaction with witnesses as proposed by the House Committee on Procedure.<sup>1</sup>

- (1) A person shall, as soon as practicable, be informed, in writing, of the nature of any allegations, known to the committee and relevant to the committee's inquiry, against the person, or evidence which reflects adversely on the person, and of the particulars of any evidence which has been given in respect of the person.
- (2) The committee shall extend to that person all reasonable opportunity to respond to such allegations and evidence by:
  - (a) making written submissions to the committee;
  - (b) giving evidence before the committee; and
  - (c) having other relevant evidence placed before the committee.
- (3) A person appearing before the committee may be accompanied by an adviser, and shall be given all reasonable opportunity to consult the adviser during that appearance.

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<sup>1</sup> House of Representatives Standing Committee on Procedure, *It's your House: Community involvement in the procedures and practices of the House of Representatives and its committees*, 1999, Appendix C.



- (4) A witness shall not be required to answer in public session any question where the committee has reason to believe that the answer may incriminate the witness.
- (5) Witnesses shall be heard by the committee on oath or affirmation.
- (6) As soon as practicable after the committee has determined findings to be included in the committee's report to the House, and prior to the presentation of the report, a person adversely affected by those findings shall be acquainted with the findings and be given a reasonable opportunity to respond by written submission or appearance before the committee.
- (7) The committee may agree to the reimbursement of reasonable travel costs of witnesses appearing before the committee.
- (8) Before appearing before the committee a witness will be given a copy of these procedures.

## Chapter 7. Privilege

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### **Chapter outline**

This chapter sets out rules governing matters of privilege.

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#### **51 Privilege matter raised when House is sitting**

- (a) At any time during a sitting, a Member may raise a matter of privilege. The Member shall be prepared to move, without notice, immediately or subsequently, a motion, declaring that a contempt or breach of privilege has been committed, or referring the matter to the Committee of Privileges.
- (b) The Speaker may:
  - (i) give the matter precedence and invite the Member to move a motion as stated in paragraph (a), or
  - (ii) reserve the matter for further consideration.
- (c) If the matter is given precedence, consideration and decision of every other question shall be suspended until the matter of privilege is disposed of, or debate on any related motion is adjourned.
- (d) The Speaker may grant precedence to a privilege motion over other business if satisfied that:
  - (i) a *prima facie* case of contempt or breach of privilege has been made out; and
  - (ii) the matter has been raised at the earliest opportunity.
- (e) If a matter of privilege related to the proceedings of the Main Committee is raised in the Main Committee, the Deputy Speaker must suspend the proceedings and report to the House at the first opportunity.

#### **52 Privilege matter raised when House not sitting**

- (a) When the House is not sitting and is not expected to meet for at least two weeks, a Member may raise with the Speaker a matter of privilege which has arisen since the House last met and which the Member proposes be referred to the Committee of Privileges.
- (b) The Speaker must refer the matter to the Committee of Privileges immediately, if satisfied that:
  - (i) a *prima facie* case of contempt or breach of privilege has been made out; and
  - (ii) the matter requires urgent action.

(c) The Speaker must report the referral to the House at its next sitting. Immediately after the Speaker's report, the Member must move that the referral be endorsed by the House. If the motion is not agreed to, the Committee of Privileges shall take no further action on the matter.

### 53 Complaint against publication

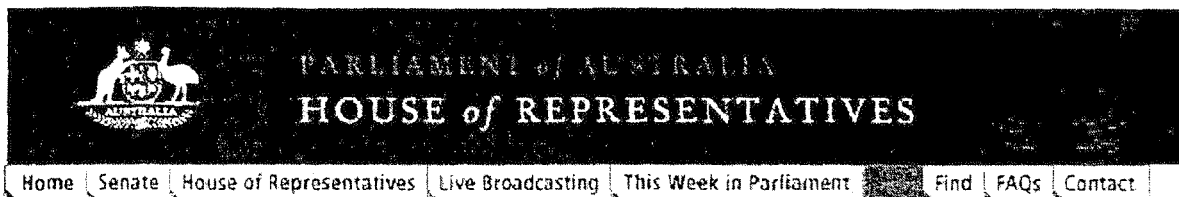
If a Member cites a statement in a published document, in connection with a contempt or breach of privilege, he or she must present to the House an extract of the publication containing the statement and be able to identify the author, printer or publisher.

## 216 Committee of Privileges

(a) A Committee of Privileges shall be appointed to inquire into and report on:

- (i) complaints of breach of privilege or contempt which may be referred to it by the House under *standing order 51* or by the Speaker under *standing order 52*; or
- (ii) any other matter referred to it by or in accordance with a resolution of the House.

(b) The committee shall consist of 11 members: the Leader of the House or his or her nominee, the Deputy Leader of the Opposition or his or her nominee and nine other Members.



## Standing Committee of Privileges

### Right of Reply

The main features of the Right of Reply process are as follows:

- citizens who wish to make a response to comments made about them in the House of Representatives or in the Main Committee may make a submission to the Speaker;
- unless the Speaker considers that the subject is obviously trivial or that the submission is frivolous, vexatious or offensive, the Speaker must refer the submission to the Committee of Privileges;
- the Committee of Privileges must consider the submission. The role of the committee is to recommend whether a response, in terms agreed between the person and the committee, should be published. The committee may confer with the applicant, and the Member involved, but it may not consider or judge the truth of any statement made in the submission or in the House.

The resolution of the House sets out the key features of the mechanism, but the resolution allows the Committee of Privileges to agree on guidelines and procedures to apply to the consideration of applications.

Queries regarding the Right of Reply process can be made to:

Mr David Elder  
Secretary  
House of Representatives Standing Committee of Privileges  
Parliament House  
CANBERRA ACT 2600  
Telephone (02) 6277 4444  
Facsimile (02) 6277 2006  
david.elder.reps@aph.gov.au

Submissions should be addressed to:

Speaker  
House of Representatives  
Parliament House  
CANBERRA ACT 2600  
Telephone (02) 6277 4000  
Facsimile (02) 6277 2050

### Protection of persons referred to in the House

The following resolution was agreed to by the House on 27 August 1997:

- (1) Where a person who has been referred to by name, or in such a way as to be readily identified, in the House, makes a submission in writing to the Speaker:

- (a) claiming that the person has been adversely affected in reputation or in respect of dealing or associations with others, or injured in occupation, trade, office or financial credit, or that the person's privacy has been unreasonably invaded, by reason of that reference to the person; and,
- (b) requesting that the person be able to incorporate an appropriate response in the parliamentary record;

and if the Speaker is satisfied:

- (c) that the subject of the submission is not so obviously trivial or the submission so frivolous, vexatious or offensive in character as to make it inappropriate that it be considered by the Committee of Privileges; and
- (d) that it is practicable for the Committee of Privileges to consider the submission under this resolution,

the Speaker shall refer the submission to that Committee.

- (2) The Committee may decide not to consider a submission referred to it under this resolution if the Committee considers that the subject of the submission is not sufficiently serious or the submission is frivolous, vexatious or offensive in character, and such a decision shall be reported to the House.
- (3) If the Committee decides to consider a submission under this resolution, the Committee may confer with the person who made the submission and any member who referred in the House to that person.
- (4) In considering a submission under this resolution, the Committee shall meet in private session.
- (5) The Committee shall not publish a submission referred to it under this resolution or its proceedings in relation to such a submission, but may present minutes of its proceedings and all or part of such submission to the House.
- (6) In considering a submission under this resolution and reporting to the House the Committee shall not consider or judge the truth of any statements made in the House or of the submission.
- (7) In its report to the House on a submission under this resolution, the Committee may make either of the following recommendations:
  - (a) that no further action be taken by the House or by the Committee in relation to the submission; or
  - (b) that a response by the person who made the submission, in terms specified in the report and agreed to by the person and the Committee, be published by the House or incorporated in *Hansard*,

and shall not make any other recommendations.

- (8) A document presented to the House under paragraph (5) or (7):
  - (a) in the case of a response by a person who made a submission, shall be succinct and strictly relevant to the questions in issue and shall not contain anything offensive in character; and

- (b) shall not contain any matter the publication of which would have the effect of:
- (i) unreasonably adversely affecting or injuring a person, or unreasonably invading a person's privacy, in the manner referred to in paragraph (1); or
  - (ii) unreasonably adding to or aggravating any such adverse effect, injury or invasion of privacy suffered by a person.
- (9) The Committee may agree to guidelines and procedures, not inconsistent with this resolution, to apply to the consideration by it of submissions.
- (10) This resolution shall continue in force unless and until amended or rescinded by the House in this or a subsequent Parliament.

1 September 1997

### **Protection of persons referred to in the House**

#### **Guidelines made under clause 9 of the resolution of the House of 27 August 1997**

#### **Supplementary to the provisions of the resolution of the 27 August 1997**

The Committee of Privileges will consider each application for the publication of a response on its merits, but proposes that the following guidelines apply to the procedure:

- (1) an application must be received within 3 months of the making of the statement to which the person wishes to respond unless, because of exceptional circumstances, the committee agrees to consider an application received later;
- (2) applications should only be considered from natural persons, they should not be considered if lodged by or on behalf of corporations, businesses, firms, organisations or institutions;
- (3) applications should only be considered from persons who are Australian citizens or residents;
- (4) an application must demonstrate that a person, who is named, or readily identified, has been subject to clear, direct and personal attack or criticism, and has been damaged as a result;
- (5) applications must be concise, be in the character of a refutation or explanation only and must be confined to showing the statement complained of and the person's response and must not contain any offensive material;
- (6) applications concerning statements made in the Main Committee may be considered;
- (7) applications should not be considered from persons who wish to respond to a statement or remarks made in connection with the proceedings of a standing or select committee - such persons should contact the committee direct on the matter; and
- (8) in considering applications, the committee will have regard to the existence of other remedies that may be available to a person referred to in the House and whether they have been exercised.