

# Appendix 6



AUSTRALIAN SENATE

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24 May 2012

Senator the Hon Richard Colbeck  
Suite S1 47  
The Senate  
Parliament House  
Canberra ACT 2600

Dear Senator Colbeck

## **Possible false or misleading evidence given to the Rural and Regional Affairs and Transport Legislation Committee**

You have asked for advice on options available to you under the procedures of the Senate to deal with a possible case of misleading evidence given to the Rural and Regional Affairs and Transport Legislation Committee on 23 May 2012 in relation to expenditure under the Government's \$20 million Tasmanian Exporters Assistance package.

Privilege Resolution 6 sets out matters which the Senate may treat as contempts. These include the giving of false or misleading evidence to a committee. Paragraph (12)(c) of the resolution provides that a witness before the Senate or a committee shall not 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.

The Senate Committee of Privileges has investigated numerous allegations of possible false or misleading evidence before committees although it has not found a contempt in any of those cases. It has, however, been highly critical of the lack of knowledge by public servants of their obligations and responsibilities to the parliament and was instrumental in having this recognised as a training priority for senior officers. An essential element of a finding of contempt is that there should be evidence of an intention to mislead a committee. In several cases, the Privileges Committee found that the effect of certain evidence was to mislead the committee concerned, but that the witness did not intend to do so. In these circumstances, no contempt was found.

In your comments to the Rural and Regional Affairs and Transport Legislation Committee this morning, you indicated that you did not think this was a case of officers intentionally misleading the committee, but that events outside the committee overtook the evidence that was given, suggesting a political dimension to the situation.

Senate committees are entitled to expect that the evidence given to them will be comprehensive and accurate and that ministers will take responsibility for ensuring that their officers are fully prepared in order to assist committees. Given that the evidence provided by officers to the committee yesterday does not accord with announcements that appeared in today's press, and witnesses are expected to provide committees with any corrections to their evidence as soon as practicable, the committee could reasonably expect to be provided with a further explanation. In the meantime, however, it would be advisable for the committee to seek an explanation for the discrepancy, both from the departmental officers and from the minister at the table who I understand was Senator Kim Carr, representing the Minister for Infrastructure and Transport, Mr Albanese.

Having received the explanations, the committee should then consider whether it wishes to raise as a matter of privilege a possible case of misleading evidence. A decision by the committee not to proceed in raising a matter of privilege does not prevent you as an individual senator doing so and I can provide further advice on this matter if you so wish.

It would be appropriate for the committee to include an account of this matter in its report on the estimates and you may wish to comment on the matter in a motion to take note of the committee's report on its presentation to the Senate (a motion for which leave would be required). Alternatively, you may wish to speak to the second reading of the appropriation bills and indicate your concerns using that opportunity.

There are numerous other procedures of the Senate that are available to you to either obtain further information about this matter or to voice your concerns about it. These include:

- following up immediately with questions on notice through the estimates process;
- asking a question without notice in relation to the minister's role in the events (and following this up with commentary in debate on a motion to take note of the answer);
- lodging questions on notice in the Senate (which, if they remained unanswered for more than 30 days after they were asked, would give you earlier access to the provisions under standing order 74 for raising these matters in the chamber than your estimates questions on notice — because the clock does not start ticking on these until 30 days after the date set by the committee for submission of answers);
- raising the matter in debate on relevant document, committee report or Auditor-General's report;
- speaking to a matter of public importance under standing order 75 on a topic relating to government performance and integrity;
- raising the matter in matters of public interest (Wednesdays from 12.45 pm) or an adjournment debate;

- framing a motion expressing your views on the management of the process and the arrangements for the announcements of particular expenditures under the fund.

There may also be scope for an order for production of documents if any likely documents can be identified.

If it appears that there is insufficient evidence to support an allegation of deliberate misleading of the committee by the witnesses at the table, there remains the issue of serious discourtesy by the responsible minister to the estimates process, which can be raised using any of the above procedures.

Please let me know if I can provide any further assistance in relation to this matter.

Yours sincerely

*Rosemary Laing*  
Clerk of the Senate

