



OFFICE OF THE CLERK OF THE HOUSE

8 April 2002

Senator the Hon P Cook
Chair
Select Committee on a Certain Maritime Incident
The Senate
Parliament House
CANBERRA ACT 2600

Additional representation from the Clerk of the Senate

It was no surprise to receive late on Friday 5 April the inevitable response from the Clerk of the Senate concerning points I had made on invitation to the Senate Select Committee on a Certain Maritime Incident. Over the years I have noted a number of occasions when the Clerk of the Senate had responded to comments by people who have a different opinion to his own with accusations of misrepresentation, being confused and creating confusion, and being bellicose. On those occasions, as on this one, the only offence has been to have a different opinion. The ploy seems designed to give weight to the Senate Clerk's opinions by personal attacks on those who think differently.

As in the past such attacks have been made on people with at least the same level of skills and training as the Clerk of the Senate and myself, and in some instances with a higher level of intellect than the Clerk of the Senate and myself, I thought myself in good company and was prepared to let the matter rest there. However, I believe that the most recent attack in the letter to you of 5 April reveals a lack of understanding of the more subtle aspects of the principle of comity upon so much of which the opinion of the Clerk of the Senate relies. Because an understanding of this concept is vital to decisions relating to the principal request for advice, I will only deal with that aspect in this note.

I indicated in my initial advice to the committee that the Senate's action in censuring the Prime Minister on 19 March was because of the Senate's perception of the treatment by the Prime Minister, by definition a Member of the House of Representatives, of a Senator. The intent of my interpretation is, I believe, obvious.



My initial advice to the committee also included a quotation from Hatsell to the effect that the principle of the independence of the Houses from each other extended to the officers of either House. In this regard, the action of the House in 1921 in agreeing to a Bill that fixed the salary of the Clerk of the Senate at a lower level than that of the Clerk of the House was an encroachment on the concept of comity, as was the attempt by the Senate to lower the salary of the Clerk of the House to establish parity.

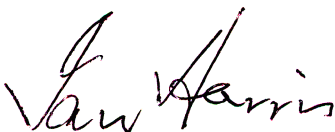
Because I attempted to respond in detail to the requests for information conveyed to me by the secretary to your committee, my response of 3 April was lengthy. If I can summarise my major points, they were as follows:

- Members of Parliament enjoy something closely akin to a legal immunity from being compelled to submit to examination by the House of which they are not a member, or its committees;
- This immunity most probably extends to former Members of Parliament; and
- The immunity may well extend to former members of staff of former Members of Parliament.

I should add that the reasons in favour of the immunity of members of both Houses does not, in my opinion, mean that former members could not be examined in relation to their conduct as members of those Houses. However, the only House in which this can occur is the House in which the person was a member (with a corresponding allowance for people who were members of both Houses).

The important point in the difference in opinion with which you have been presented is not who if anyone is correct, but rather that the correct answer be obtained. It is a matter in which Members of Parliament of both Houses and their former members have an interest. Could I suggest that the committee may wish to seek the opinion of an independent person well versed in Australian constitutional law?

Yours sincerely

A handwritten signature in black ink, appearing to read 'I C Harris', written in a cursive style.

I C HARRIS