CONFIDENTIAL

Mr Ian Harris
Clerk of the House of Representatives

Senate Committee on a Certain Maritime Matter - Obligation of former ministers (and their ministerial staff) to answer questions at an inquiry conducted by parliamentary committees

Comments provided by Professor G J Lindell on advice given by the Clerks of both Houses of the Commonwealth Parliament

1. In an email message dated 26 February, 2002, you asked me to look at the advice you gave to Mr Reith, and the conflicting advice given by the Clerk of the Senate, regarding Mr Reith's obligation to attend and give evidence before the Senate Committee on a Certain Maritime Incident. The comments were sought on a private basis and you indicated that it was not your intention to publish them in any way.

2. I have read the advice in question and the other helpful material supplied in connection with this matter. I am grateful for the photocopied extracts supplied from sources I suggested should be consulted but to which I did not have access in preparing my comments. In view of the urgency of the matter it was agreed with the Deputy Clerk not to defer the provision of these comments until I had consulted certain other books. We thought that I could let you know next week if those books yielded anything material to the views I have expressed in this memorandum.

Relevant issues and summary of my comments

3. I believe the matters dealt with in the relevant advice provided by you and the Clerk of the Senate give rise to issues which can be conveniently summarised in the following way:

   (i) The immunity enjoyed by current members of one House of the Parliament, and, in particular, members who were also Ministers, from being forced to give

evidence before parliamentary committees established by another House of the same Parliament ('*Issue (1)*').

(ii) The continuation of any such immunity after the retirement of the Ministers from Parliament in respect of matters which were relevant to their conduct as Ministers ('*Issue (2*)').

(iii) The application of the same kind of immunity to the staff employed in the Minister's office in relation to the same matters, both before and after the Minister's retirement ('*Issue (3*)') .

(iv) The ability of the Minister to rely on public interest immunity as a ground for refusing to answer questions ('*Issue (4)*').

I should explain that I understand that you would like to have my comments in relation to *Issue (3)* even though it was not actually dealt with in the advice provided by you and the Clerk of the Senate. It is important to emphasise that these issues arise out of a desire by the relevant Senate Committee to examine the conduct of Mr Reith as the former Minister of Defence after the House of Representatives had been formally dissolved and during the general elections which followed. The conduct in question may not have been strictly related to any proceedings of the House of Representatives or his duties a member of that House.

4. My responses to these issues may be briefly summarised as follows:

Issue (1): The existence of the immunity of current members (as distinct from its justification) is not in doubt (paras 6 – 13). In my view the immunity is not strictly confined to the conduct of a member of the Parliament, as a member of Parliament or any matter that forms part of the proceedings of the House of which the Minister was a member. It can extend to any matter in respect of which the Minister could be questioned and be held to account for in the House in which he or she is a member (paras 14 – 15).

Issue (2): I believe there are strong and persuasive arguments to support the immunity advanced by you. But, in the absence of direct judicial or other authority on the matter (other than the contrary view expressed by the Clerk of the Senate), there can be no certainty that either the Senate or ultimately a court, will uphold that immunity (paras 16 - 22).

Issue (3): There are also reasonable arguments to support the application of the same immunity to a member of the Minister's staff, both before and after the retirement from Parliament of the Minister who employed the member of staff. But the position in relation to such persons is much more doubtful than that occupied by the Minister (paras 23 - 30).

Issue (4): The use of public interest immunity remains unresolved, at least in the case of the Commonwealth Parliament, and it is open to Mr Reith to raise that immunity. However I adhere to the view I expressed in the article referred to in your email, namely, that the Houses of the same Parliament are not legally bound to observe the same immunity. I believe that the decision of the New South Wales Court of Appeal in *Egan v Chadwick* may lend partial support for my view, except as regards as regards the documents and deliberations of cabinet. Even if, contrary to my view, such immunity limits the powers of federal parliamentary inquiries, the modern trend of judicial authority is to deny that advice given by senior civil servants to Ministers or communications between Ministers will automatically be accepted as covered by that immunity (paras 31- 3).

5. I would add, by way of summary, that it is highly advisable for Mr Reith to obtain his own legal advice on the issues raised by this matter. This is because of the potentially penal consequences that would involve the exercise of the penal jurisdiction of the Senate and could result from a breach of a lawful direction by the Senate to appear and answer questions. Although the issue of the former Minister's liability to answer questions may be reviewed in a court of law to a limited extent, there can be no assurance that a court will recognise his possible immunity referred to in these comments. Such advice could also elaborate the rights he will have as a witness under the Resolution passed by the Senate on Parliamentary Privilege on 25 February 1988 (paras 34 - 5).

Issue (1): Current members

6. I adhere to the view I expressed in my article on the subject of government witnesses and parliamentary witnesses where I referred to "the probable immunity of members of the of one House of the Federal Parliament from the authority of the other House of the same Parliament" and further stated:

> " The same immunity is acknowledged to exist in relation to the Houses of the British Parliament. The immunity is likely to be based on the need for each House to function independently of, and without interference from, the authority of the other House. It appears to make good sense from a policy point of view as well from an analytical perspective since it may flow directly from the terms of section 49 of the Constitution if, as seems likely, this was an immunity enjoyed by the House of Commons at the establishment of the Commonwealth."

(See "Parliamentary Inquiries and Government Witnesses" (1995) 20 *Melbourne University Law Review* 383 at p 395. The authorities cited in support of this view in notes 51 – 2 included earlier editions of the parliamentary practice manuals of both Houses of the Federal Parliament. A check of the later and current editions of the same works does not disclose the existence of anything that would lead me to alter the view I expressed in the relevant article. See Harris (ed) *House of Representatives: Practice* (4th ed, 2001) ("Harris") at pp 34 – 5, 639 - 642, 729 and Evans, (ed)

Odgers' Senate Practice (10th ed, 2001) ("Evans") at pp 56, 440 – 3 and also now G Carney, *Members of Parliament: law and ethics* (2000) at pp 185 – 6.)

7. The existence of the probable immunity is reflected in the practices and procedures followed by both Houses if a member of the other House of the Federal Parliament is to be called to give evidence before a parliamentary committee. This normally requires a request to be forwarded to the other House for that House to consent to the examination of its member. But apparently the relevant Standing Orders have not been interpreted as requiring such leave if the member is prepared to appear voluntarily. (Harris at pp 639 – 642; Evans at pp 440 – 3). I note in passing that a similar practice may usually be followed by the United States Congress. (W Holmes Brown, *Jefferson's Manual and the House of Representatives of the United of the United States 99th Congress* (1985) at pp120, 152.)

8. It is perhaps easier to recognise the existence of the probable immunity than it is to be sure about its precise status and justification. These matters are important since they may have an important bearing on what in question here, namely:

   (a) the application of the immunity to the examination of matters which involve the conduct of a Minister which may not have been strictly related to any proceedings of the House of Representatives or his duties a member of that House; and

   (b) the continuation of any such immunity after he ceased to be both a member of Parliament and a Minister of the Crown.

9. The Senate Clerk has described the immunity in question as being "a matter of comity between the houses and of respect for the equality of their powers" (see eg Evans at p 442). The term comity may suggest something falling short of a strict legal immunity, more in the nature of a custom or a convention which the Houses of Parliament may be legally free to ignore in an appropriate case. Elsewhere, however, the Senate Clerk refers to it as "probably an implicit limitation on the power of the Houses to summon witnesses" and " the "probable immunity of members" (Evans at pp 56 and 443 respectively).

10. It will be clear from the passage I quoted from my article above that my own view is that it is more properly viewed as a legal restriction on the powers of both Houses of the Parliament under s49 of the Commonwealth Constitution. I would suggest that this view is supported by the view taken in at least one respected source on British parliamentary practice which emphasise strongly the independence of both Houses of that Parliament from each other and the equality of their powers. Thus it is stated

    " The leading principle, which appears to pervade all the proceedings between the two Houses of Parliament, is, That there shall subsist a perfect equality with respect to each other; and that they shall be, in every respect, totally independent

one of the other. – From hence it is, that neither House can claim, much less exercise, any authority over a Member of the other; but if, there is any ground of complaint against an Act of the House itself, against any individual Member, or against any of the Officers of either House, this complaint ought to be made to that House of Parliament, where the offence is charged to be committed; and the nature and mode of redress, or punishment, if punishment is necessary, must be determined upon and inflicted by them. Indeed any other proceeding would soon introduce disorder and confusion; as it appears actually to be done in those instances, where both Houses, claiming a power independent of each other, have exercised that power upon the same subject, but with different views and to contrary purposes." (Hatsell, *Precedents of Proceedings in the House of Commons* (1818) Vol 3 at p 67. See also Harris at pp 34 – 5.)

11. It is also stated in the same work that:

> " The result of the whole, to be collected either from the Journals, or from the History of the Proceedings in the House of Commons, is, 1st, that the Lords have no right whatever, on any occasion, to summon, much less to compel the attendance of, a Member of the House of Commons. 2ndly, That, in asking leave of the House of Commons for that attendance, the message ought to express clearly the 'cause' and 'purpose' for which attendance is desired; in order that, when the Member appears before the Lords, no improper subject of examination may be tendered to him. 3rdly, The Commons, in answer, confine themselves to giving leave for the member to attend, leaving him at liberty to go or not, 'as he shall think fit'. And 4thly, The later practice has been, to wait until the Member named in the message is present in his place; and to hear his opinion whether he chooses to attend or not, before the House have proceeded even to take the message into consideration.
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> As it is essential to the House of Commons, to keep itself entirely independent of any authority which the Lords might claim to exercise over the House itself or any of the Members, they ought to be particularly careful, on this and on all similar occasions, to observe and abide by the practice of their predecessors." (Vol 3 at pp 20 – 1. Apparently the same procedures were adopted by the House of Commons when it wished to examine a member of the House of Lords. See also to the same effect, E May, *A Treatise on the Law, Privileges, Proceedings and Usage of Parliament* (10th ed, 1893)at pp 402 – 3 and (21st ed, 1989) at p 677)

12. The above authorities may help to explain why the Senate in 2001 authorised Senators to appear before the House of Representatives Privileges Committee:

> "subject to the rule, applied in the Senate by rulings of the President, that one House of the Parliament may not inquire into or adjudge the conduct of a member of the other House"

(Quoted in Harris at p 35 and see also Evans at p 442.).

13. In my view this ruling goes to the heart of the issues involved in this matter.

14. There remains the issue of whether:

    - the immunity is strictly confined to the conduct of a member of the Parliament, as a member of Parliament; and

    - does not extend to the conduct of Minister which is did not form part of the proceedings of the House of which the Minister was a member.

    The Clerk of the Senate seems to have suggested as much in the advice he gave on this matter. (See eg letter to Senator Faulkner dated 19 February 2002 at pp 1 – 2. My own view is much closer to the contrary view taken by you.

15. My reason for supporting your view is that the rights, privileges and liabilities of members of the Parliament must be construed against the background of the principles of responsible government. There is now an abundance of authority to show that those principles underlie the Constitutions of the Commonwealth and the Australian States and the aspects of those constitutions which bear upon the workings and operation of the respective parliaments. (See generally eg *Lange v Australian Broadcasting Commission* (1997) 189 CLR 579 at pp 561 – 2 ("constitutionally prescribed system of representative and *responsible* government" – italics added for emphasis); *Egan v Willis* (1998) 73 ALJR 75 paras [35] – [42] at pp 82 – 4, *Egan v Chadwick* [1999] NSWCA 176 (10 June 1999 paras 15 - 47) and generally G Lindell, *Responsible Government* in P Finn (ed), (1995) at p 85 n 42). There are problems regarding the precise extent to which the principles of responsible government are *enforceable* as distinct from merely *recognised* in the courts but those problems are not in point for present purposes. It suffices to indicate that that the responsibility of a member who is also a Minister should take account of all matters in respect of which the Minister could be questioned and be held to account. This would encompass any matters relating to public affairs with which he or she is officially connected … or to any matter of administration for which the Minister is responsible" (Harris at p 525).

Issue (2): Former members who were Ministers

16. In my opinion there are strong and persuasive reasons for recognising that the rationale which supports the probable immunity of current members is wide enough to sustain the continuation of any such immunity after the retirement of the Ministers from Parliament in respect of matters which were relevant to their conduct as Ministers.

17. Shortly stated, those reasons are that the independence and equal authority of each House of the Federal Parliament to be the sole judge of the conduct of its own members could be undermined if the other House could postpone the exercise of that

authority until the retirement of the member in question. The potential ability of the other House to exercise that authority after a member's retirement could act as a significant fetter on the freedom of action of both the member and the House concerned. If, as is the case, one House of the Parliament should not be able to inquire into or adjudge the conduct of a member of the other House in relation to conduct as a member when that person is still a member, it makes no sense to allow that to happen after the person ceases to be a member. In other words the non – recognition of the immunity would render it incomplete and defeat the essential objective sought to be served by that immunity.

18. The fact that immunities enjoyed by certain persons or officers by reason of their position in relation to the performance of their duties and functions must continue to operate after the relevant persons or office holders cease to hold office is also illustrated by the following analogies:

    (a) the privilege which attaches to the proceedings of either House does not cease to operate merely because the actors involved have themselves ceased to be members (or officers) of that House eg as regards the absolute privilege which attaches to statements made in the course of the proceedings of the parliament;

    (b) the power and the ability of either house to protect witnesses who appear before parliamentary committees does not cease to operate after the examination of the witness has been completed;

    (c) a judge's absolute immunity from any liability in relation to anything said or decided by the judge in determining a case does not cease to operate once the judge has retired; and

    (d) the immunities which may exist for federal reasons as regards the inability of a parliament of one level of government to impose discriminatory taxes on public servants employed by the other level of government under Australia's federal system of government may extend to discriminatory taxes levied on pensions paid to retired public servants (as to which see generally *West v Commissioner of Taxation (NSW)* (1937) 56 CLR 657 eg at pp 666, 668, 681 and 687.)

    In each of these cases the protection sought to be accorded to the relevant position or office would be defeated if the immunity only operated while a person occupied the position or office sought to be protected.

19. I would also argue that the failure to observe the continued operation of the immunity in relation to *former* members could lead to the same kind friction and recrimination which underlies one of the reasons for recognising the immunity in relation to *current* members. It seems generally desirable to avoid damaging the harmonious and good relations between the two Houses of the Federal Parliament.

20. One possible obstacle in the way of accepting the view I have advanced relates to the application of the immunity to the examination of conduct which took place after the dissolution of the last Parliament and during the period of the election campaign which followed the dissolution. The immunity asserted here relates to any conduct for which he would have become answerable in Parliament. (See paras 14 – 5.) But because of his retirement from the Parliament he could not have been asked questions in the Parliament which was of course dissolved; and when the government of the day would have been operating under the so – called caretaker conventions of government. To reject the operation of the immunity on this ground seems somewhat narrow and technical, especially as some Minister would ultimately become answerable for the same matter once a new Parliament was convened.

21. Another matter which gives pause for thought relates to the expression of the contrary view by the Clerk of the Senate both recently in his advice to Senator Faulkner and in Evans at p 443. He has flatly asserted that "the probable immunity of members of parliament does not apply to former members". Reference was made in that connection to the appearance of, and the evidence given by, two former Treasurers and a former Prime Minister before the *Senate Select Committee on Certain Foreign Ownership Decisions in relation to the Print Media* in 1994. All of those persons had by then ceased to be Members of the House of Representatives. It seems that one former Treasurer appeared voluntarily but the other two former members appeared only in response to summonses with the former Prime Minister subsequently reappearing before the same Committee voluntarily. With respect, the discussion of the Clerk's view, at least as I have read it, does not go beyond making the assertion and supporting it by reference to the incident referred to above. As regards that incident the matter is not one of mere convention or practice and thus the mere fact that some former members appeared under summons does not necessarily mean that the act of summoning them was lawful.

22. Although the expression of the Clerk's contrary view does not dissuade me from the view you and I have expressed on this matter, the fact does remain that in the absence of direct judicial or other authority on the matter (other than the contrary view expressed by the Clerk of the Senate), there can be no certainty that either the Senate or ultimately a Court, will uphold the immunity we have supported. This point needs to be borne carefully in mind by Mr Reith and his own legal advisers when he decides on the course of action which he will follow. I should also add that even if the immunity discussed above is soundly based, the immunity would not relieve Mr Reith from having obey a summons to attend as a witness at the Senate Committee's hearings. The immunity would however protect him from having to answer questions which related to his conduct as a former Minister and member of the House of Representatives.

Issue (3) Ministerial staff

23. There remains the further question whether any immunity discussed above can apply to the members of the Minister's staff both before and after the Minister's retirement. If the immunity does not exist in relation to the Minister's staff before the Minister retired from Parliament it is hardly likely to apply after that retirement.

24. I believe a reasonable case can also be made to argue that the immunity which operates in relation to Ministers who are currently members of the Parliament should also apply to their staff. The case would need to rely on the inability of Ministers to perform their roles and functions, especially in the complex world of modern government and administration, without personal staff and advisers to assist them.

25. Some slight support for this notion can be derived for this argument by *two considerations*. The *first* relates to the fact that in former times apparently the privilege of Parliament used to attach to the personal servants of peers and of members of the House of the Commons, and also to other persons acting as their agents or upon their behalf. Consequently no such persons could be arrested or otherwise molested whilst Parliament was sitting or during the time when the privilege of the Parliament was in operation. This particular privilege was abolished by reason of s2 of the *Parliamentary Privilege Act* 1770 (UK). See *Halsbury's Laws of England* (2nd ed, 1937) n (t) at pp 348 – 349 and E Campbell, *Parliamentary Privilege in Australia* (1966) at p68. But its abolition still leaves in place the general notion in relation to privileges and immunities not dealt with by that enactment.

26. The second consideration flows from the decision in *Holding v Jennings* [1979] VR 289. It was held in that case that the typing of a statement to be made by a member of parliament is covered by the absolute privilege from liability in defamation which attaches to statements that form part of the proceedings in Parliament. (Under Article 9 of the *Bill of Rights 1689*.). This should not be taken as suggesting, however, that the case decides that the immunities enjoyed by a member of parliament necessarily attach to the staff employed by the member of parliament.

27. If and once the argument is accepted as regards staff employed by *current* members of parliament then the same immunity should apply to the staff employed by *former members* in relation to matters that related to the conduct of the member whilst being a member. The same reasons that were advanced for the continuation of the immunity enjoyed by the member after the same person ceased to be a member would then apply for its continuation in relation to the staff employed by such a member after the member retired from Parliament. (See paras 16 – 22.)

28. There are however a number of grounds that may cast considerable doubt in relation to the view advanced above. *First*, it is difficult to draw a principled distinction

between members of the Minister's personal staff and public servants employed in the Departments of State administered by the Minister. As I indicated in my article referred to earlier it is quite possible that those public servants would not enjoy the same immunities as those enjoyed by the Minister (at p 395). It is not easy to draw a principled distinction between the two classes of public employees. Perhaps the answer to this objection is that such staff employed under the *Members of Parliament (Staff) Act* 1984 are solely responsible for their conduct to the Ministers and other members of Parliament who employ them. The employment of such persons terminates once the Ministers and other members of Parliament who employ them die or cease to hold the respective offices mentioned. Their employment may be terminated at any time at the pleasure of the same Ministers and members of Parliament. (See ss 9, 16 and 23 of that Act.) This is so even though the same employees are employed at public expense.

29. *Secondly*, there is the rejection of the possible immunity by the Clerk of the Senate who also cites an instance where the Senate has ignored a claim based on the same immunity in 1995 as regards the appearance of the Director of the National Media Liaison Service. It is significant to remember however that it appears that it was stated in debate that the relevant resolution in relation to that incident did not set a precedent in summoning ministerial staff. In the view of the Clerk such persons "have no immunity ... either under the rules of the Senate or as a matter of law". (See Evans at p 443). It may be true that the rules of the Senate do not at present refer to the position of such persons or indeed even that of *former* Ministers and members of Parliament. But if the immunity flows from the constitutional relationship between both Houses of the Parliament then the failure of those rules to recognise that immunity could not avail against the Constitution.

30. But be that as it may, all this means that the position in relation to such persons is much more doubtful than that occupied by the Minister.

Issue (4) Public interest immunity

31. In your advice to Mr Reith you quite properly raised the possibility of claiming public interest immunity or, as it is sometimes called, executive privilege. You will recall that in my article I concluded that the question of the extent, if any, to which such immunity or privilege operates as a legal restriction on the power of the Houses of Parliament to require official witnesses to answer questions or produce documents remains an open question. My own view was that it should not operate as restriction of this kind. There is no need here to repeat the extensive analysis of this issue in my article. (See 20 MULR at pp 394 – 404 and esp pp 398 - 9.)

32. It remains the case that there is no judicial resolution of this contentious issue at least as regards inquiries conducted by the Houses of the Federal Parliament and their committees. As you are aware, however, there have been two important cases which dealt with the powers of the New South Wales Legislative Council to compel Ministers to produce documents. The High Court left open whether public interest

immunity could restrict the legal powers of the Legislative Council in *Egan v Willis* (1999) 73 ALJR 75 at pp 86 – 7, 117, 120. The New South Wales Court of Appeal decided in *Egan v Chadwick* [1999] NSWCA 176 (10 June 1999) that the immunity did *not* restrict the powers of the Legislative Council, *except* as regards for the production of Cabinet documents and also the deliberations of Cabinet. There may be other exceptions based on the principles of collective and individual responsibility of Ministers, the nature of which was not, however, made clear. The existence of the latter exceptions was upheld only by a majority (Spigelman CJ and Meagher AJ) with the remaining member of that Court dissenting on the existence of that qualification (Priestley AJ). The relevance of the position of the Houses of the New South Wales Parliaments needs to be approached with some caution since it was acknowledged that the powers of the same Parliament in this regard were those implied by reference to what was reasonably necessary to enable a legislature to function. The powers of the Houses of the Federal Parliament may be more extensive by reason of s49 of the Commonwealth Constitution. (See *Egan v Willis* above at pp 81 – 2). In addition the cases in question were only concerned with the powers of the Legislative Council to compel a Minister to produce certain documents when the Minister was himself a member of the same Council. (See also generally, J McMillan, "Parliament and Administrative Law" in G Lindell and R Bennett (eds), *Parliament: The Vision in Hindsight* (2001) Ch 8 at pp 371 - 5 who also confirms that the general issue remains unresolved for the Federal Parliament.

33. Even if, contrary to my view, the immunity does operate to constrain the powers of a Senate Committee, it would of course still be necessary to substantiate whether the immunity was attracted by the former Minister's conduct. I am not of course in a position to express any view on that issue and I will confine myself to making two few brief comments. First, any attempt to invoke the immunity based on any possible harm that could result to national security and defence and also the conduct of foreign affairs may at the very least require the support of the relevant Ministers who are currently responsible for those matters in the Parliament. Secondly, my general impression regarding the state of the judicial authorities is that merely because the disclosure of evidence would discourage candour on the part of public officials, would not by itself be sufficient to attract the immunity. This means that we have departed from the days which treated the secrecy of the Counsels of the Crown as inviolate; or that we can continue to assume that advice given by senior public officials to Ministers will always attract the immunity. The same will probably be also thought regarding communications between Ministers. Cabinet documents and deliberations will no doubt, however, continue to attract the immunity absent any breach of the criminal law or the need for evidence in a criminal trial. (See generally *Commonwealth v Northern Lands Council* (1993) 67 ALJR 405 and also p 409 as to breach of the criminal law and at pp 406 – 7 as to the candour point.)

Other matters

34. There remains a few other matters that I should mention. *First,* I think it is highly advisable for Mr Reith to obtain his own legal advice on the issues raised by this

matter. This is because of the potentially penal consequences that would involve the exercise of the penal jurisdiction of the Senate and could result from a breach of a lawful direction by the Senate to appear and answer questions. It is true that the issue of the former Minister's liability to answer questions may be reviewed in a court of law to a limited extent (ie justiciable). But this would only arise *if and once* a warrant of imprisonment is issued so as to attract the jurisdiction of the courts as a result of the combined operation of ss 4, 7 and 9 of the *Parliamentary Privileges Act* 1987 (Cth) when read in conjunction with the remarks of the High Court in *R v Richards Ex parte Fitzpatrick and Browne* (1955) 92 CLR 157 at p 162 (as to which see generally my article (1995) 20 MULR at pp 413 – 8). Needless to say, this seems to be a drastic and risky option. Mr Reith may well wish to avoid going down this path especially when it is recalled that there can be no assurance that a court will recognise his possible immunity referred to in these comments.

35. I would not wish to be taken as suggesting that there was anything unwise or improper to provide the advice you gave to Mr Reith. The House of Representatives has a legitimate interest in allowing you to provide information and advice to former member of the House especially where that interest coincides with that the former member. This arises where the former member's conduct is questioned or impugned in relation to the performance of his functions as a member and Minister. But those interests may not always coincide and in view of the potentially penal consequences that could flow from Mr Reith's failure to answer questions, his self interest would be better served by obtaining his own legal advice on these matters. Such advice could also explain the rights he will have as a witness under the Resolution passed by the Senate on Parliamentary Privilege on 25 February 1988.

36. *Secondly,* I have already referred to the basis upon which I have provided the comments outlined in this memorandum. As mentioned in para 1 above they have been provided on a private basis and they should not be published without my permission. Given my retirement, I would generally prefer to avoid becoming involved in a public debate about the matters dealt with in my comments.

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