

CONFIDENTIAL

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

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

1. I refer to my earlier comments on the above matter contained in the memorandum dated 22 March.
2. I indicated in the earlier comments that I might wish to look at further books after I provided those comments. I have now been able to do so with the permission of the Librarian at the South Australian Parliamentary Library. I can now indicate that the books in question did not yield any new material that would have led me to alter any of the views I expressed in my earlier memorandum.
3. I would however make *two observations*. The *first* is that, not surprisingly, the position of members of the South Australian Parliament being required to give evidence to the other House or its Committees, at the turn of the last century, was the same as was explained for members of the British Parliament and explained in para 11 of my earlier comments. (See Blackmore, *Manual of the Practice, Procedure and Usage of the House of Assembly of the Province of South Australia* (2nd ed, 1890) at p 156 and *Manual of the Practice, Procedure and Usage of the Legislative Council of the Province of South Australia* (1889) at p 115. But unfortunately, nothing was said about the position of former members.
4. It is interesting to note in the same connection that a book consulted in relation to the Indian Parliament indicated that at least as at 1967 the same position may have prevailed there with reliance being placed on precisely the same passage from Hatsell as was set out in para of 11 of my earlier comments. One point of difference with the Australian Federal Parliament worth noting, however, is that members of either House of the Indian Parliament are not permitted to give evidence to the other House without the permission of the House of which they are members. They would be considered to be in contempt of the latter House if they acted in breach of this rule. (See M Paul & S Shakhder, *Practice and Procedure of Parliament with particular reference to the Lok Sabha* (1967) at pp 227 – 8. Compare the position as stated for the Australian Federal Parliament at para 7 of my earlier comments.
5. *Secondly*, it will be clear from paras 16 – 22 of my earlier comments on the position of former members (ie in relation to “Issue (2)”) that I believe the House of Representatives has a clear and legitimate interest in protecting a former member against attempts by the other House to examine that person. It is for the House to consider whether it should assert that interest or whether there are reasons which may make it inadvisable or inappropriate for that interest to be asserted in this occasion.

6. Even if such reasons exist, it should be borne in mind that the failure on the part of the House to assert its interest on this occasion could create a precedent which may make it difficult for the House to assert its interest on similar occasions in the future which may be thought for one reason or another to warrant the assertion of that interest.
7. Finally in the same connection, it is worth reiterating that the underlying reasoning I relied on to argue in favour of the immunity which may exist in relation to former members of the both Houses does not mean that such persons could not be examined in relation to their conduct as members of those Houses. It only means that the only House that can do this is the House in which the person in question was a member.

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