PROVIDING INFORMATION TO THE PARLIAMENT

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Introduction

The issues that arise in relation to providing information to the Australian Federal Parliament (**'Parliament'**) involve little or no law. In the large part, they are not particularly difficult, once you understand the underlying principles and the way that the Parliament applies them. It also helps to have a working knowledge of the relevant reference material.[1]

This article addresses the relevant issues under 3 broad headings:

- the ways in which information is provided to the Parliament;
- the bases on which requests by the Parliament for information can be resisted; and
- the consequences of providing information to the Parliament.

The ways in which information is provided to the parliament

Information can be provided to the Parliament voluntarily, say in response to an invitation to make submissions to a parliamentary committee or in the course of providing evidence to a Senate Estimates Committee, or on request. Providing information voluntarily is uncontroversial, except that a few things should be remembered. In the case of information that is requested, requests can be pressed (and the following part of the paper deals with resisting such requests).

Making submissions to Parliamentary committees

The starting point for submissions on behalf of government agencies is the Department of Prime Minister and Cabinet's *Guidelines for Presentation of Government Documents, Ministerial Statements and Government Responses to the Parliament.*[2] This is a general reference point for the preparation of all government documents that are intended for the Parliament.

Beyond these guidelines, the first thing to bear in mind in relation to providing information voluntarily to a Parliamentary committee is that there should be no expectation that a person making a submission will be in any way recompensed for the time and expense incurred in making such a submission. While a committee may pay for a witness to travel in order to give evidence, the general rule is that submissions are made at the expense of the person or organisation making them.

As an interesting side issue, it is important to note that the Senate requires that its committees be advised if a department or other body pays the expenses of a witness not

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attached to that department or other body, 'so that the committees are not misled as to the position of the witnesses and the status of their evidence'.[3]

The second thing to remember is that making a submission to a committee does not automatically mean that parliamentary privilege (which is discussed further below) attaches to that submission. The Senate has published a document entitled *How to make a submission to a Senate Committee inquiry*,[4] which indicates that parliamentary privilege only applies after the relevant committee has formally accepted the submission. The equivalent House of Representatives document, *Preparing a submission to a Parliamentary Committee Inquiry*,[5] does not explicitly make this point, though it does indicate that a committee has a discretion to decide whether or not to accept a submission. The point of this mechanism is to allow a committee to decline to clothe with parliamentary privilege a submission that contains, for example, scurrilous or defamatory material, or because it contains material that is not relevant to the particular inquiry.

While various committees apparently have procedures that allow for automatic acceptance of submissions (ie without a formal motion of the committee), the more prudent approach for persons and bodies making submissions is *not* to assume that a submission to a parliamentary committee has been formally accepted but to await confirmation that this is the case.

The third thing to remember is that, once a submission has been made to a parliamentary committee, it is for the committee to decide whether or not the submission is to be made public. That is, it is not possible to make a submission to a parliamentary committee and for the person or body making the submission then to publish it. Rather, the person or body must wait until the relevant committee has authorised the publication of the submission.[6]

Of course, the combination of the second and third issues above involves the most danger. A person or body should *never* publish a submission made to a parliamentary committee on the assumption that anything contained in the submission would automatically be protected by parliamentary privilege.

This raises the wider issue of the privilege (if any) that attaches to correspondence and information sent to members of the Parliament. Section 16 of the *Parliamentary Privileges Act 1987* (**'Parliamentary Privileges Act'**) provides certain protections in relation to 'proceedings in Parliament', as defined in subsection 16(2) of the Parliamentary Privileges Act, namely:

> all words spoken and acts done in the course of, or for purposes of or incidental to, the transacting of the business of a House or of a committee, and, without limiting the generality of the foregoing, includes:
> (a) the giving of evidence before a House or a committee, and evidence so given;
> (b) the presentation or submission of a document to a House or a committee;
> (c) the preparation of a document for purposes of or incidental to the transacting of any such business; and
> (d) the formulation, making or publication of a document, including a report, by or pursuant to an order of a House or a committee and the document so formulated, made or published.

This is a very wide definition and its limits have been tested in various court cases. In *O'Chee v Rowley*,[7] the Queensland Court of Appeal considered the application of parliamentary privilege to certain documents that had been provided to Senator O'Chee by a constituent and also letters exchanged between the Senator and another Member of Parliament (**'MP'**). The documents were sought in relation to a defamation action by a Cairns fisherman, following statements that Senator O'Chee had made in a radio interview relating to the issue of long-line fishing. Senator O'Chee had addressed this issue in 2 speeches in the Senate and he claimed he had used the documents in making his remarks. However, he

did not table them. Senator O'Chee claimed that the documents were 'proceedings in Parliament' and, as a result, were covered by parliamentary privilege (and, in particular, could not be used in the defamation proceedings).

The Court of Appeal held that if documents came into the possession of an MP who retained them with a view to using them, or the information contained in them, for questions or debate in a House of Parliament, then the procuring, obtaining or retaining of possession were acts done for the purpose of, or incidental to the transacting of the business of that House, as required by subsection 16(2) of the Privileges Act. This means that if correspondence or information is in the possession of an MP to be used for the purpose of transacting the business of a House or a committee, parliamentary privilege would attach. The key issue, however, is making that connection to the business of a House. That being so, it should never be assumed that such correspondence, etc. automatically attracts any sort of privilege.

Information provided to Estimates committees

The general propositions set out above in relation to submissions to parliamentary committees also apply to submissions made to Senate Legislation Committees when those committees are considering Estimates (**'Estimates committees'**). There are some important differences, however. The most significant in this context is the proposition that 'all documents officially received as evidence by [Estimates committees] become public documents accessible to all'.[8] In practice, Estimates committees generally do not decline to accept material or information submitted to it but, rather, publish all material received. Another key difference is that Estimates committees have no power to take evidence *in camera* (discussed further below).[9]

As a side issue, it is interesting to note that, prior to the introduction of the 'Legislation Committee' and 'Reference Committee' structure, in 1994, Estimates committees had no power to 'send for persons and documents'. Only the Legislative and General Purpose Standing Committees had this power. The 1994 reforms therefore significantly increased the power of Estimates committees.

Providing information on request: The power to send for persons and documents

Various parliamentary committees have the power to call for witnesses and documents (in effect, a power of summons or *subpoena*). In the House of Representatives, the power is set out in Standing and Sessional Order 340, which provides:

> **Power to call for witnesses and documents**
>
> **340** (a) A committee or any subcommittee shall have the power to call witnesses and require that documents be produced.
>
> (b) The chair of a committee or subcommittee shall direct the secretary of the committee or subcommittee to invite or summon witnesses and request or require the production of documents, as determined by the committee or subcommittee.

A similar power is provided by Senate Standing Order 25(15), which provides:

> A committee and any sub-committee shall have power to send for persons and documents, to move from place to place, and to meet and transact business in public or private session and notwithstanding any prorogation of the Parliament or dissolution of the House of Representatives.

Senate Standing Order 176 sets out the power to summon witnesses:

Summoning of witnesses

176(1) Witnesses, other than senators, may be ordered to attend before the Senate by summons signed by the Clerk, or before a committee by summons signed by the secretary of the committee.

(2) If a witness fails or refuses to attend or give evidence, the matter shall be reported to the Senate.

The Senate Standing Committee on Regulations and Ordinances and the Senate Standing Committee for the Scrutiny of Bills also have the power to send for persons and documents.[10]

For statutory committees, the power to call for witnesses and documents may be set out in the relevant statute. For the Joint Committee of Public Accounts and Audit, for example, the power to summons witnesses is set out in section 13 of the *Public Accounts and Audit Committee Act 1951*.

Failure to comply with a requirement to appear or to produce documents could, ultimately, result in a person being found in contempt.

It is important to bear in mind that individual Members and Senators have no power to require Government agencies or individual Australian Public Service ('**APS**') employees to provide information. Any requests must come from a parliamentary committee or from a House of the Parliament to have the capacity to compel the production of information.

Orders for return

Senate Standing Order 164 provides:

Order for the production of documents

164(1) Documents may be ordered to be laid on the table, and the Clerk shall communicate to the Leader of the Government in the Senate all orders for documents made by the Senate.

(2) When returned the documents shall be laid on the table by the Clerk.

A request for documents made under Senate Standing Order 164 is called an 'order for return'. When the order is complied with, the result is called a 'return to order'.

House of Representatives Standing and Sessional Order 316 provides:

Papers ordered

316 Papers may be ordered to be laid before the House, and the Clerk shall communicate to the Minister concerned all orders for papers made by the House; and such papers when received shall be laid on the Table by the Clerk.

Orders for return are used in the Senate to require the Government to produce documents. *Odgers' Australian Senate Practice* (10th edition) ('**Odgers**') states:

> Orders for the return of documents are relatively common (In the Parliament of 1993-96, for example, 53 such orders were made, all but 4 being complied with). In the Parliament of 1996-98, 48 orders were made and 5 were not complied with. They are used by the Senate as a means of obtaining information about matters of concern to the Senate. They usually relate to documents in the control of a minister, but may refer to documents controlled by other persons. Documents called for are usually the subject of some political controversy, although there have been several examples of orders made for the production of answers to questions on notice.[11]

The current Supplement to Odgers states:

In the Parliament of 1998-2001, there were 56 orders, and 15 not complied with, the latter figure reflecting increasing resistance by the then government to the orders .....

The issue of resisting requests for information is discussed further below.

Other requirements to provide information - Departmental and agency contracts: The 'Murray motion'

On 20 June 2001, the Senate passed a motion in relation to departmental and agency contracts. The key requirements of the motion (often referred to as the 'Murray motion', as it was moved by Australian Democrats Senator Andrew Murray) are:

- at 6-monthly intervals, there be tabled in the Senate, by Ministers, a list of contracts entered into by agencies governed by the *Financial Management and Accountability Act 1997* for which the Minister is responsible (or that the Minister represents in the Senate) during the previous 12 months and involving consideration in excess of $100,000;
- the list is to contain, in relation to each contract:
  - the contractor and the subject matter of the contract;
  - whether the contract contains confidentiality provisions;
  - whether the contract contains provisions regarded by the parties as confidential;
- if there are confidentiality issues, a statement of the reasons for confidentiality.[12]

Indexed files lists

Originally passed by the Senate on 30 May 1996, a similar requirement applies in relation to indexed lists of departmental and agency files. Twice a year, Ministers must table, on behalf of departments and agencies, a letter advising that an indexed list of all 'relevant' files created in the 6 months prior to 1 January and 1 July has been placed on the Internet.[13]

Agency advertising and public information projects

Similar requirements also apply as a result of a motion passed on 29 October 2003, in relation to advertising and public information projects undertaken on behalf of agencies. A statement must be tabled by the Minister responsible for an agency in respect of each advertising or public information project undertaken by each agency where the cost of the project is estimated or contracted to be $100,000 or more. Within 5 sitting days of the Senate after the relevant project has been approved, a statement must be tabled indicating:

- the purpose and nature of the project;
- the intended recipients of the information to be communicated by the project;
- who authorised the project;
- the manner in which the project is to be carried out;
- who is to carry out the project;
- whether the project is to be carried out under a contract;

- whether such contract was let by tender;
- the estimated or contracted cost of the project;
- whether every part of the project conforms with the Audit and Joint Committee of Public Accounts and Audit guidelines;[14] and
- if the project in any part does not conform with those guidelines, the extent of, and reasons for, the nonconformity.[15]

Resisting requests for information

The Guidelines for Official Witnesses

The starting point for APS employees when considering whether or not there is any basis for resisting a request by a House of the Parliament or by a parliamentary committee that they attend to give evidence is the document published by the Department of the Prime Minister and Cabinet entitled *Government Guidelines for Official Witnesses before Parliamentary Committees and Related Matters - November 1989* (**'Guidelines for Official Witnesses'**).[16] That document sets out a useful framework for dealing with such requests.

According to the Guidelines for Official Witnesses, there are 3 main areas in relation to which there may be restrictions on the information that they can provide to a parliamentary committee, namely:

- matters of policy;
- matters in relation to which public interest immunity may apply; and
- matters involving confidential material, in relation to which it may be desirable to provide evidence *in camera.*

As a matter of practicality, the issue of resisting a request for information is unlikely to come other than from the Senate or from a Senate committee. This reflects the fact that the Government invariably has the numbers in the House of Representatives. For that reason, the discussion in this part of the paper concentrates on the relevant Senate powers and requirements.

In relation to matters of policy, the Guidelines for Official Witnesses refer to paragraph 16 of Resolution 1 of *Resolutions Agreed to by the Senate on 25 February 1988* (**'Privileges Resolutions'**).[17] That Resolution is entitled 'Procedures to be observed by Senate committees for the protection of witnesses'. Paragraph 16 provides:

> 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.

The Guidelines for Official Witnesses provide practical information about how to deal with this issue, when it arises. This paper does not deal with it in any further detail, other than to note that (as with many things relating to the Senate) what will and will not be accepted as being a 'matter of policy' is something for the Senate to determine and not something to which any precise (or predictable) methodology applies.

Public interest immunity

Following on from the proposition set out immediately above, it must be said that the Senate is grudging in its recognition of the concept of public interest immunity. Odgers states:

> [I]t is acknowledged that there is some information held by government which ought not to be disclosed. Such immunity from disclosure was formerly known as crown privilege or executive privilege and is now usually known as public interest immunity. While the Senate has not conceded that claims of public interest immunity by the executive are anything more than claims, and not established prerogatives, it has usually not sought to enforce demands for evidence or documents against a ministerial refusal to provide them.[18]

There is lengthy discussion in Odgers[19] of circumstances in which the Senate has *not* been prepared to concede that public interest immunity operates to prevent information being provided to it or to one of its committees. This paper does not deal with the detail of those arguments. The bottom line is that it is a matter in relation to which the Senate reserves the final say. The Guidelines for Official Witnesses do, however, provide some useful information about how to approach this issue. Particular points that should be borne in mind are:

- claims of public interest immunity should be made by the responsible Minister (after consultation with the Attorney-General and the Prime Minister);
- the Attorney-General's Department (and the Office of Legal Services Coordination) has a special role (as a result of paragraph 7 of the *Legal Services Directions*) in relation to claims for public interest immunity and must be consulted; and
- various of the grounds under which documents are exempt from release under the *Freedom of Information Act 1982* (**'FOI Act'**) are of assistance in establishing a case for withholding information from the Parliament on public interest immunity grounds (but bear in mind that the Senate no more recognises the grounds of exemption contained in the FOI Act than it does public interest immunity).

Statutory secrecy provisions

The Guidelines for Official Witnesses also identify statutory secrecy provisions as a possible basis for withholding information from the Parliament. There are many statutory provisions that prohibit the disclosure of information, usually also creating criminal offences for the disclosure of information obtained under the relevant statute by officers who have access to that information in the course of duties performed in accordance with the statute. In the early 1990s, it was a point of contention between the Senate and the (then) Government as to whether statutory provisions of this type prevented the disclosure of information covered by the provisions to a House of the Parliament or to a parliamentary committee in the course of a parliamentary inquiry.

Not surprisingly, the position maintained by the Senate and its advisers was that statutory secrecy provisions had no effect on the powers of the Houses and their committees to conduct inquiries, with the effect that general secrecy provisions did not prevent committees seeking the information covered by such provisions or persons who have that information providing it to committees. The basis of that view was that the law of parliamentary privilege provided absolute immunity to the giving of evidence before a House or a committee (meaning that there could be no punishment for giving such evidence).

The Government's position was set out in a series of opinions from the Solicitor-General, to which the Clerk of the Senate responded and (in general) disagreed with. The detail of the disagreement (or at least the Senate's perspective of it) is set out in Odgers.[20]

In essence, the Senate's position was that the submission of a document or the giving of evidence to a House or a committee is part of 'proceedings in Parliament' and, as a result, attracts the wide immunity from all impeachment and question. To punish someone, under a statutory secrecy provision, for providing information would be an interference with parliamentary privilege. The Senate argued that it is a fundamental principle that the law of parliamentary privilege is not affected by a statutory provision unless the provision alters that law by express words. In support of this, the Clerk of the Senate argued that section 49 of the *Constitution* provides that the law of parliamentary privilege can be altered only by a statutory declaration by the Parliament. He then argued that general secrecy provisions did not amount to express words ousting the privilege.

The Government argument in response was that if the Parliament, cognisant of the existence of the privilege, passed a law containing a secrecy provision, with sanctions for its breach, that was 'express words' altering the application of Parliamentary privilege. If it was not, it was alteration by a 'necessary implication' drawn from the statute. The Clerk of the Senate rejected this view, essentially on the basis of the threat that the interpretation posed to the power of the Houses and their committees.

The final position is that there has been significant back-tracking in the government legal advice, providing the Clerk of the Senate with yet another victory over the lawyers. Suffice to say that you should be cautious about denying information to a Senate committee on the basis that it would offend against a statutory secrecy provision, certainly one that is framed in general terms.

Sub judice *convention*

The concept of '*sub judice*' is generally raised in the context of a matter not being able to be dealt with or discussed because it involves a matter that is before the courts. The source of the concern is that such dealing might prejudice the matter that is before the court. It is a term that should be invoked with *extreme* caution. It should certainly not be invoked as 'the *sub judice* **rule**', as the Senate will be quick to point out that there is only a *sub judice* **convention**. Odgers states:

> The *sub judice* convention is a restriction on debate which the Senate imposes upon itself, whereby debate is avoided which could involve a substantial danger of prejudice to proceedings before a court, unless the Senate considers that there is an overriding requirement for the Senate to discuss a matter of public interest.
>
> The convention is not contained in the standing orders, but is interpreted and applied by the chair and by the Senate according to circumstances.
>
> The concept of prejudice to legal proceedings involves an hypothesis that a debate on a matter before a court could influence the court and cause it to make a decision other than on the evidence and submissions before the court. A danger of prejudice would not arise from mere reference to such a matter, but from a canvassing of the issues before the court or a prejudgment of those issues.[21]

Leaving aside the Senate's position for a moment, the basis of the *sub judice* convention is best summed up in the following quote:

> Parliament should be the supreme inquest of the State, whilst not poisoning the wells of justice before they have begun to flow.[22]

That is the real point. The role of the Parliament as the 'supreme inquisitor' is not denied. What is important, however, is that the Parliament does not carry out that role in such a way as to divert (or thwart) the 'normal' course of justice.

The Senate does, however, routinely question any notion that its activities should be resisted or delayed on the basis that court proceedings are on foot in relation to the same issues. Again, this paper will not canvass those issues in any detail[23] but some basic points should be borne in mind. Apart from the proposition that it is a convention rather than a rule, it is important to note that the Senate requires the matter to be actually before a court and not that proceedings merely be likely or contemplated.

Second, the Senate does not regard the convention as operating if a matter is before a judge, rather than a magistrate or a jury. The basis of this proposition is that, because of his or her background and training, a judge is unlikely to be influenced by anything occurring outside of the court. In a similar vein, the Senate tends not to accept *sub judice* as applying to coronial inquiries, on the basis that a coroner is conducting an 'administrative' rather than a judicial function.[24]

Third, it is not enough to demonstrate simply that a matter is before the courts. It must also be demonstrated that there is a real danger that the matter will be prejudiced by the Senate dealing with it *and* that the public interest in the Senate continuing to do so is outweighed by that prejudice.

While these seem like fairly tough hurdles to overcome, it is comforting to note that the Senate has, in fact, exercised a significant degree of restraint in relation to matters before the courts.

Other matters:* In camera *evidence

Paragraph (7) of the Senate's Privileges Resolution No 1 provides for evidence to be given *in camera*. It provides:

> 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.

Paragraph (8) then places an important caveat on that proposition:

> 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.

In other words, what the Senate giveth, the Senate can taketh away. It is interesting to note that, in the House of Representatives, Standing and Sessional Order 339 provides for evidence to be taken *in camera*. However, in addition to that provision, the House has made the following resolution in relation to the taking of *in camera* evidence:

> Where a committee has agreed to take evidence in camera, and has given an undertaking to a witness that his or her evidence will not be disclosed, such evidence will not be disclosed by the committee or any other person, including the witness. With the written agreement of the witness, the committee may release such evidence in whole or in part.[25]

The resolution also provides for Members of the House to be referred to the Committee of Privileges, and penalised, for disclosing *in camera* evidence.

It is also important to note that, as indicated above, Senate Estimates committees cannot receive evidence *in camera*. The authority for this proposition is Senate Standing Order 26(2) which provides that Estimates committees shall hear evidence in public session. In the

absence of a formal power to hear evidence *in camera*, the Senate regards this as a requirement that Estimates committees can only take evidence in public session.

Commercial confidentiality

It may also be of interest to note that, on 30 October 2003, the Senate passed the following resolution in relation to confidentiality:

> The Senate and Senate committees shall not entertain any claim to withhold information from the Senate or a committee on the grounds that it is commercial-in-confidence, unless the claim is made by a minister and is accompanied by a statement setting out the basis for the claim, including a statement of any commercial harm that may result from the disclosure of the information.[26]

This is also something to be borne in mind.

Privacy Act implications

Another interesting side issue is that the Office of the Privacy Commissioner regards a requirement to provide information to the Parliament as being a requirement to provide information 'by law' for the purposes of the exceptions to the limitations on use and disclosure of personal information, under paragraphs 10.1(c) and 11.1(d) of the Information Privacy Principles.[27]

What are the consequences of providing information to the Parliament?

It has already been noted that making a submission to a parliamentary committee carries with it a limitation on what then can be done with the submission. That is, a person or body that makes a submission cannot publish the submission to anyone else without the permission of the relevant committee (or without the relevant committee publishing it first). The more significant ramifications of providing information to the Parliament are, of course, the operation of parliamentary privilege.

Parliamentary privilege

The principal objective of Parliamentary privilege is to ensure that the provision of information to the Parliament and its committees is unfettered. It operates to ensure that no-one should ever not provide information because he or she was afraid of the consequences (legal or otherwise) of doing so. The fundamental proposition is that **a person cannot be subject to legal or other sanctions for supplying information to the Parliament or one of its committees.**

This means that a person cannot be physically threatened, or sued for defamation or sacked from his or her job because he or she has given evidence to the Parliament or to a parliamentary committee. That proposition is relatively uncontroversial. The more problematic issue is the potential for section 16 of the Parliamentary Privileges Act to limit the use that can subsequently be made in courts and tribunals of information provided to the Parliament.

As indicated above, section 16 of the Parliamentary Privileges Act operates to limit the use of 'proceedings in Parliament' in a court or tribunal. It provides (in part):

> **Parliamentary privilege in court proceedings**
>
> **16(1)** For the avoidance of doubt, it is hereby declared and enacted that the provisions of article 9 of the Bill of Rights, 1688 apply in relation to the Parliament of the Commonwealth and, as so applying,

are to be taken to have, in addition to any other operation, the effect of the subsequent provisions of this section.

(2) For the purposes of the provisions of article 9 of the Bill of Rights, 1688 as applying in relation to the Parliament, and for the purposes of this section, proceedings in Parliament means all words spoken and acts done in the course of, or for purposes of or incidental to, the transacting of the business of a House or of a committee, and, without limiting the generality of the foregoing, includes:

(a) the giving of evidence before a House or a committee, and evidence so given;

(b) the presentation or submission of a document to a House or a committee;

(c) the preparation of a document for purposes of or incidental to the transacting of any such business; and

(d) the formulation, making or publication of a document, including a report, by or pursuant to an order of a House or a committee and the document so formulated, made or published.

(3) In proceedings in any court or tribunal, it is not lawful for evidence to be tendered or received, questions asked or statements, submissions or comments made, concerning proceedings in Parliament, by way of, or for the purpose of:

(a) questioning or relying on the truth, motive, intention or good faith of anything forming part of those proceedings in Parliament;

(b) otherwise questioning or establishing the credibility, motive, intention or good faith of any person; or

(c) drawing, or inviting the drawing of, inferences or conclusions wholly or partly from anything forming part of those proceedings in Parliament.

The effect of subsection 16(3) was considered in some detail in the House of Representatives Standing Committee of Privileges' 2000 *Report of the inquiry into the status of the records and correspondence of Members*. In that Report, the House of Representatives Privileges Committee stated:

> The effect of subsection 16(3) is not that parliamentary proceedings may not be disclosed or produced in courts or other tribunals (they can be used in limited circumstances, for example to establish matters of fact). However, they may not be used to question the truth or motive of any part of the proceedings, or the persons involved in the proceedings, nor to draw inferences or conclusions from the proceedings.[28]

Practical relevance of the operation of section 16

The practical relevance of the operation of section 16 of the Parliamentary Privileges Act is in situations where a Parliamentary committee may seek to inquire into a matter that is likely to end up before the courts. The issue is that the presentation of evidence to the committee that would also be relevant to the court proceedings will almost certainly operate to limit the use that can be made of that evidence in the curial proceedings. In particular, those seeking to refer to or rely on the evidence must not do so in such a way as to cast doubt on what was put to the committee.

This issue has arisen in the context of inquests and also in the context of the Senate Select Committee on Superannuation and Financial Services' inquiry into Solicitors' Mortgage Schemes in Tasmania.[29] It is also discussed in some detail in Chapter 6 of Emeritus Professor Enid Campbell's new text *Parliamentary Privilege*.[30]

Conclusion

The principles discussed in this article are hardly rocket science. Little (if any) law is involved. That said, there are some traps that need to be avoided and some mistakes that

are often made. It is important that persons dealing with the Parliament familiarise themselves with the relevant reference material (and particularly the various sources referred to above), in order to avoid the traps and the mistakes.

Endnotes

1 Particularly *Odgers' Australian Senate Practice.*
2 Available at http://www.pmc.gov.au/pdfs/guidelines.rtf.
3 *Procedural Order of Continuing Effect*, No 5, made on 29 April 1999. These Orders can be found at the rear of *Senate Standing Orders*, available at http://www.aph.gov.au/Senate/pubs/standingorders.pdf.
4 Available at http://www.aph.gov.au/Senate/committee/index.htm.
5 Available at http://www.aph.gov.au/house/committee/documnts/howsub.htm.
6 See House of Representatives Standing and Sessional Order 346 and Senate Standing Order 37.
7 (1997) 150 ALR 199.
8 See *Senate Brief No 5 - Consideration of Estimates* (February 2001), available at http://www.aph.gov.au/senate/pubs/briefs/brief5.htm.
9 Ibid.
10 See Senate Standing Orders 23(5) and 24(7), respectively.
11 At 453.
12 The motion appears at the rear of Senate Standing Orders as *Procedural Order of Continuing Effect* No 8.
13 The relevant motion appears at the rear of Senate Standing Orders as *Procedural Order of Continuing Effect* No 7.
14 Being the guidelines set out in Report No 12 of 1998-99 of the Auditor-General, entitled *Taxation Reform: community education and information programme*, and Report No 377 of the Joint Committee of Public Accounts and Audit, entitled *Guidelines for Government Advertising*, respectively.
15 The relevant motion appears at the rear of Senate Standing Orders as *Procedural Order of Continuing Effect* No 9.
16 Available at http://www.pmc.gov.au/pdfs/OfficialWitness.pdf.
17 The Privileges Resolutions are reproduced at the end of the Senate Standing Orders, available at http://www.aph.gov.au/Senate/pubs/standingorders.pdf.
18 At 456.
19 See especially at 456-60 and 481-500.
20 At 48-51.
21 At 224.
22 Quoted in Mullen, V, 'The Parliamentary *sub judice* convention and the media (or 'The Wells of Justice, Parliamentary Poison and the Wicked Witch of the Press')', (1996) 19(2) *UNSW L Jo* 303.
23 See Odgers at 224-9.
24 See Senate Rural and Regional Affairs and Transport Legislation Committee, *Hansard* (Estimates), 31 May 2001, p 478.
25 Resolution of 3 December 1998. See, generally, Harris, I (ed), *House of Representatives Practice* (4th edition), at 659-61 (available at http://www.aph.gov.au/house/pubs/PRACTICE/4Pr01.pdf).
26 Senate, *Hansard*, 30 October 2003, p 17220.
27 See *Plain English Guidelines to Information Privacy Principles 8 – 11*, pp 40-1. Available at http://www.privacy.gov.au/publications/ipp8_11.pdf.
28 At 10.
29 See, generally, http://www.aph.gov.au/senate/committee/superfinan_ctte/index.htm).
30 2003, The Federation Press, Sydney.