



AUSTRALIAN SENATE

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Senator Rachel Siewert  
Chair  
Standing Committee on Community Affairs  
The Senate  
Parliament House  
Canberra ACT 2600

Dear Senator Siewert

#### ALLEGATIONS OF CRIMINAL CONDUCT MADE IN SUBMISSIONS

The committee has sought advice on options for dealing with allegations of criminal conduct made in submissions to its inquiry into forced adoption policies and practices. I understand that many of the allegations relate to the period 1950 to 1970 and to actions that have taken place in the various states and territories.

Committees occasionally receive evidence which they consider should be drawn to the attention of another body for possible investigation, and a number of approaches have been taken in the past. One issue that needs to be borne in mind is the status of the evidence received by the committee. If the committee has indeed received submissions alleging criminal conduct, then it is important to note that this material itself cannot form the basis of an investigation by another body. That body cannot use the committee evidence in the course of its investigations or for the purpose of any subsequent legal proceedings because the evidence given is protected by parliamentary privilege. Any such use of that evidence is unlawful under section 16 of the *Parliamentary Privileges Act 1987*. However, there is nothing to prevent an investigatory agency pursuing the same facts independently, for example, by separately interviewing those concerned and pursuing independent lines of inquiry.

In these circumstances, committees have also exercised caution in receiving such material in the first place. As noted on page 405 of *Odgers' Australian Senate Practice* (12th edition), particularly where active criminal proceedings are concerned, there is a danger that defendants may deliberately place material before a committee in the hope of placing it beyond the reach of the courts and thereby disrupting court proceedings.

Given the age of the allegations before the committee, it is possible that some statute of limitations may apply in some jurisdictions but if the committee believes that there is a public interest in the allegations being brought to the attention of the appropriate investigatory authorities, then it should do so. There is nothing to stop the committee drawing the evidence to the attention of those authorities and suggesting that they may wish to investigate the matters further. In taking this action of its own accord, the committee would want to consider any possible adverse consequences for witnesses as a result of its provision of the material to a third party and to balance where the greater public interest lies.

As an alternative to providing the evidence directly to an investigatory body, the committee could suggest to the relevant witnesses that they do so themselves. Another variation would be for the committee to provide the material to the body but only after consulting with the witness concerned and obtaining their consent. Finally, the committee may consider that there is no reasonable prospect of the allegations being fruitfully investigated, given their age, and may decide not to refer them to any investigatory body, but to take them as indicative of some of the problems it is inquiring into. In these circumstances, the committee may wish to accept submissions on the basis that they do not name particular individuals.

All of these approaches have been used by committees in the past. In 1994, the Standing Committee on Foreign Affairs Defence and Trade undertook an inquiry into sexual harassment in the Australian Defence Force, in the course of which it received many allegations of such conduct (which in most cases did not amount to criminal conduct but the principle is the same). The committee explained its approach as follows:

The Committee considered very carefully how it should deal with such allegations. The approach the Committee adopted reflected a wish to strike a fair balance between receiving legitimate information that would enable it to fulfil its terms of reference and receiving information that would prejudice the natural justice rights of individuals.

The Committee is bound by the procedures laid down in the parliamentary resolutions of the Senate to provide any individual opportunity for a response to allegations about that individual of an adverse nature. Another important consideration that was taken into account by the Committee is the limitation on the capacity of a parliamentary committee to investigate in detail all the claims and counterclaims that can arise in specific cases. In many instances, therefore, the Committee accepted submissions on the basis that the identities of the individuals named adversely were not revealed. In those cases the Committee made an offer to the complainant to refer the complaint to either the Sex Discrimination Commissioner, the Ombudsman or other appropriate authority to monitor the handling of the case. This approach enabled the committee to form a view as to the kind of complaints that were being made without making determinations on specific allegations. (Report, *Facing the Future Together*, PP No. 147/1994, p. ii)

The principles expressed by that committee remain sound.

In other circumstances, committees have sought responses from the relevant body to such allegations as an alternative to referring matters to investigatory authorities. For example, in

March 2000, the Economics References Committee reported on its inquiry into the operation of the Australian Taxation Office. Amongst issues raised were serious allegations of infiltration of the ATO by persons with criminal connections. The allegations were raised in the media. The committee sought a response from the ATO and, in the absence of any other evidence of such criminal activity being brought to its attention, it concluded that there was no credible evidence to support the media allegations and took the matter no further. However, the committee did receive *in camera* evidence of a possible major fraud against the Commonwealth and, in its report, advised the Senate that it was in the process of requesting the Auditor-General to consider investigating the matter.

Committees do not always report how they handle such allegations and it is therefore not possible to compile a comprehensive list of examples. Senators know from their own experience on committees that these questions arise from time to time and committees deal with them according to the circumstances of the particular case. In the present case, the age of the allegations is a factor for the committee's consideration in determining whether it should refer the allegations itself to the various law enforcement bodies, advise the complainants to do so directly or to make no referral but treat the cases as evidence of particular problems with the system.

For the purposes of the website, the committee may wish to indicate to potential submitters that it cannot investigate individual allegations of criminal behaviour, and that such matters should be raised with the law enforcement agency concerned. Under the resolutions of the Senate, the committee is also obliged to consider any adverse evidence against a person and give that person an opportunity to provide a response. In the circumstances people who wish to provide the committee with information about particular incidents may wish to consider removing names and other identifying material from their submissions before lodging them. Alternatively the committee may decide to accept such submissions with identifying material deleted.

Please let me know if I can provide any further assistance.

Yours sincerely



(Rosemary Laing)