



PRESIDENT OF THE SENATE

PARLIAMENT HOUSE
CANBERRA

rc.pres.17643

21 March 2011

Senator Trish Crossin
Chair
Legal and Constitutional Affairs Legislation Committee
The Senate
Parliament House
Canberra ACT 2600

Dear Senator Crossin

**INQUIRY INTO THE AUSTRALIAN CAPITAL TERRITORY (SELF-GOVERNMENT)
AMENDMENT (DISALLOWANCE AND AMENDMENT POWER OF THE COMMONWEALTH)
BILL 2010**

Thank you for your letter of 17 March concerning an incident during the hearing of the committee into the Australian Capital Territory (Self-Government) Amendment (Disallowance and Amendment Power of the Commonwealth) Bill 2010 on 16 March 2011.

Senator Brandis made certain remarks about the Speaker of the ACT Legislative Assembly, Mr Rattenbury, during the evidence of another witness, Mr Seselja. Although you ruled the remarks out of order as a personal reflection, Senator Brandis did not withdraw them and the committee, at a private meeting, resolved to seek my views on the matter.

As you know, standing order 193(3) provides as follows:

A Senator shall not use offensive words against either House of Parliament or of a House of a state or territory parliament, or any member of such House, or against a judicial officer, and all

imputations of improper motives and all personal reflections on those Houses, members or officers shall be considered highly disorderly.

Although you have asked for my view on the use of the word "impertinence", it is not a question of whether this word should be considered as an offensive word within the meaning of the opening clause of the standing order. The relevant part of the standing order for these purposes is the latter part which refers to personal reflections on Houses, members or officers. As both a member of the ACT Legislative Assembly and an officer of that House (its Speaker), Mr Rattenbury is entitled to the protection that standing order 193(3) provides against such personal reflections. It is apparent from his comment that Senator Brandis was attempting to cast doubt on the credibility of Mr Rattenbury's submission and that he was therefore making a personal reflection on his position as Speaker. Senator Brandis then went on to compound the offence on page 41 of the transcript by saying, "the only extramural function of a speaker is to speak on behalf of the parliament, so for Mr Rattenbury to have said that is impertinent and indeed ignorant". Your ruling that the remarks were a reflection on a member of another parliament and should be withdrawn was entirely consistent with the practices and precedents of the Senate.

The basis of standing order 193 is the principle of comity between arms of government and Houses of parliament. The protection is extended explicitly to state and territory parliaments and their members, reflecting the Senate's position as the states' House. According to Odgers' Australian Senate Practice (12th edition, page 205) the standing order is also designed to "ensure that debate between those who are by virtue of their offices the principal participants in political debate is conducted in a privileged forum of Parliament without personally offensive language". Language is offensive when it offends the standing order. Words which, in themselves, may not be considered as offensive words may nonetheless constitute offensive language for the purpose of the standing order where those words form a personal reflection on a protected person.

As chair, it is your role to maintain order in the committee and that includes applying the standing orders in accordance with the practices and precedents of the Senate. It is a well-established principle that it is for the chair to determine what constitutes offensive words, imputations of improper motives and personal reflections under this standing order. Rulings may be contested but there is a process for doing this and it was disappointing that participants in the hearing continued to challenge your authority as chair. As I said in a statement to the Senate on 1 March this year, "Respect for the chair is fundamental to the effective operation of the

Senate, a matter for which all senators carry responsibility". The same principle applies in committees.

I intend to draw this episode to the attention of the Deputy President and encourage him to raise at a meeting of the Chairs' Committee the rights and responsibilities of chairs, including the right to expect that well-founded rulings (such as yours in this instance) should be respected by committee members.

Yours sincerely

(John Hogg)

cc. Deputy President