

**STATEMENT BY THE PRESIDENT**

**MATTER OF PRIVILEGE RAISED BY SENATOR BRANDIS**

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By letter dated today, the Leader of the Government, Senator Brandis, has raised a matter of privilege concerning the conduct of Senator Dastyari.

Senator Brandis refers to reports that “Senator Dastyari has received payments from private interests to settle public debts”, and notes two such payments disclosed by Senator Dastyari on his statement of interests from the Yuhu Group and the Top Education Institute. Senator Brandis then draws attention to reports in the media today that “Senator Dastyari has asked 115 questions in Senate Estimates hearings which echoed the official policy of the People’s Republic of China on defence and foreign policy matters since he was appointed to the Senate in August 2013”.

The concern advanced by Senator Brandis is that Senator Dastyari may have obtained the benefits referred to above “on the basis that he would advocate for Chinese policy positions within the Australian Parliament as part of the ostensible discharge of his duties as a senator”. The allegation contained in the letter is that:

Senator Dastyari appears to have engaged in conduct amounting to a serious breach of privilege. In accepting payments, he has, to adapt the language of the Privilege Resolutions, limited his independence or freedom of action as a senator.

Senator Brandis has asked that I give precedence to the matter as a Matter of Privilege under the Privilege Resolutions.

In this regard, Senator Brandis draws my attention to Privilege Resolution 6(3), which provides:

A senator shall not ask for, receive or obtain, any property or benefit for the senator, or another person, on any understanding that the senator will be influenced in the discharge of the senator's duties, or enter into any contract, understanding or arrangement having the effect, or which may have the effect, of controlling or limiting the senator's independence or freedom of action as a senator, or pursuant to which the senator is in any

way to act as the representative of any outside body in the discharge of the senator's duties.

That part of Resolution 6 has been considered by the Privileges Committee on only one occasion in the past, being the matter reported in the committees' 150th report, in which the committee dismissed allegations concerning political donations to then Senators Brown and Milne. That report provides some guidance as to the interpretation of the resolution.

My role in determining whether to give precedence to a motion to refer a matter to the Privileges Committee is described in Privilege Resolution 4 (Criteria to be taken into account by the President in determining whether a motion arising from a matter of privilege should be given precedence of other business). I am bound by that resolution to have regard only to the following criteria:

- (a) the principle that the Senate's power to adjudge and deal with contempts should be used only where it is necessary to provide reasonable protection for the Senate and its committees and for senators against improper acts tending substantially to obstruct them in the performance of their functions, and should not be used in respect of matters which appear to be of a trivial nature or unworthy of the attention of the Senate; and
- (b) the existence of any remedy other than that power for any act which may be held to be a contempt.

With respect to the first criterion, the Senate has expressed the view in Privilege Resolution 6(3) that conduct involving a senator seeking or receiving a benefit on the understanding that, or with the effect that, the senator will be influenced in the discharge of his or her duties may be dealt with by the Senate as a contempt. There is no question that such allegations are serious ones. As former President Hogg noted in a statement to the Senate prior to the matter in the 150th report of the Privileges Committee being referred:

The freedom of individual members of the Parliament to perform their duties on behalf of the people they represent, and the need for them to be seen to be free of any improper external influence are of fundamental importance. Matters such as these go directly to the central purpose of the law of parliamentary privilege which is to protect the integrity of proceedings in parliament.

By their very nature, such allegations meet the test posed in paragraph (a) of the need to provide reasonable protection for the Senate against improper acts tending substantially to obstruct it in the performance of its functions.

However, the question whether the particular allegations warrant reference to the Privileges Committee, whether because of their nature or because of the evidence which attaches to them, is a question only the Senate may determine.

With respect to criterion (b), the concerns advanced by Senator Brandis go to questions asked at Senate estimates hearings. Such hearings are “proceedings in parliament” within the meaning of Article 9 of the Bill of Rights, as explicated in section 16 of the *Parliamentary Privileges Act 1987*. There is no capacity for them to be examined in any proceedings out of parliament. The only remedy for the alleged conduct lies within the Senate’s contempt jurisdiction.

The matter therefore meets the two criteria I am required to consider.

The purpose of Privilege Resolution 4 is to ensure that a matter which meets these criteria is given an appropriate opportunity to be dealt with as an item of business so that the Senate may then make a decision on the merits of the case. My decision to grant precedence is not a recommendation that the matter *should* be referred to the Privileges Committee for inquiry, simply that the Senate should be given the *earliest opportunity* to make that decision for itself.

I have determined that a notice of motion to refer the matter to the Privileges Committee should be given precedence over other business on the day for which it is given.

I table the correspondence and invite Senator Brandis give a notice of motion in relation to the matter.