

**MATTERS OF PRIVILEGE RAISED BY THE CHAIR OF THE FINANCE AND PUBLIC  
ADMINISTRATION LEGISLATION COMMITTEE (SENATOR BERNARDI) AND  
SENATOR THE HON JOHN FAULKNER – STATEMENT BY THE PRESIDENT**

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By letters dated 27 and 28 May 2014, the Chair of the Finance and Public Administration Legislation Committee, Senator Bernardi, and Senator the Hon John Faulkner, respectively, raised essentially the same matters of privilege under standing order 81.

The matters of privilege concern the use of closed circuit television footage to monitor a Department of Parliamentary Services employee under investigation for an alleged code of conduct breach while the person placed an envelope under the door of Senator Faulkner's office. The two elements are the possible improper interference with the free performance by a senator of the senator's duties as a senator, and the taking of disciplinary action against the person in connection with the provision of information to a senator.

In determining whether a notice of motion to refer the matter to the Privileges Committee should have precedence, I am required to have regard **only** to the following criteria in Privilege Resolution 4:

- (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 regard to the first criterion, it is fundamental to the law of parliamentary privilege that any act that has the effect or tendency of constituting improper interference with the free performance by a senator of the senator's duties as a senator may be treated as a contempt.

Use of CCTV information in the circumstances complained of must be regarded as a very serious matter. Both Senator Bernardi and Senator Faulkner refer to

possible obstruction and improper interference with senators in carrying out their duties and it is clear that, in this case, action is necessary to provide reasonable protection against the continuation of any improper practices that have this effect.

With regard to the second criterion, there may well be alternative means of pursuing inquiries into what happened in this particular case, including administrative inquiries within DPS using an external investigator. There is also the possibility of further inquiries by the Finance and Public Administration Legislation Committee, whether under its estimates function or its function to monitor the performance of agencies.

However, there is no satisfactory alternative means of protecting the rights of the Senate and senators except through the contempt jurisdiction. Only this jurisdiction provides the capacity to deal with any offence that may have been committed and to take the corrective action necessary to protect the rights and freedoms of senators into the future.

I have therefore determined that a motion to refer the matter to the Privileges Committee should have precedence over other business for the day on which it is given. In this case, the matters of privilege have been raised independently by two senators – one on behalf of a committee – and my suggestion is that a joint notice of motion be given.

Before I call Senator Bernardi/Faulkner, I remind the Senate that this determination of precedence is not a judgement of the substantive issues or merits of the matter, beyond the threshold judgement that:

- it is not of a trivial nature or unworthy of the attention of the Senate;
- it is necessary to take action to protect the Senate and senators against improper acts;
- there is no satisfactory remedy for dealing with the matter other than the contempt jurisdiction.

It is for the Senate to make a judgement whether a matter merits referral to the Privileges Committee.

I table the correspondence and call Senator Bernardi/Faulkner to give notice of the motion.