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**Opening Statement - Secretary's considerations - Parliamentary Privilege**

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Chair and Members of the Finance and Public Administration Committee

I welcome the opportunity to appear before you today to discuss matters relevant to the Department of Parliamentary Services (DPS).

Before I, and the Senior Executive members of DPS respond to your questions, I would like to take the opportunity to provide the Committee with information as to my considerations relevant to Parliamentary Privilege, and its applications during various activities in support of Dr Fiona Roughley's fact-finding investigation into the Incentive to Retire (ITR) payment made, by DPS, to a former departmental Deputy Secretary.

I understand that the Committee may have questions of me regarding my considerations. To assist the Committee, I will table the information and I will draw from it in any responses I provide to the Committee on this matter.

This information is extensive, and in the interests of time, I will not read it into the record. It is also consistent with the department's submission to the Senate Standing Committee of Privileges current Inquiry into Department of Parliamentary Services handling of documents and communications, a copy of which I provided to this Committee on 29 January 2026.

The key references to this question are:

- The *Parliamentary Privileges Act 1987 (Cth)* (the Privileges Act);
- Odgers' Australian Senate Practice (14<sup>th</sup> edition including updates to 30 June 2022) (Odgers');
- Evidence provided to this committee from the Clerk of the Senate on 31 October 2025; and
- The Attorney-General's Department advice, as noted in its public submission to the Senate Standing Committee of Privileges Inquiry into Department of Parliamentary Services handling of documents and communications (available at [Submissions – Parliament of Australia](#)).

In determining the protections to put in place to ensure that the immunity attaching to proceedings in Parliament (as defined in section 16(2) of the Privileges Act) was not breached when supporting the independent fact-finding investigation conducted by Dr Fiona Roughley SC, the principal immunity of proceedings from impeachment and question in courts was carefully considered.

Odgers Australian Senate Practice (14<sup>th</sup> edition including updates to 30 June 2022) states the following about Parliamentary Privilege:

*The term "privilege", in relation to parliamentary privilege, refers to an immunity from the ordinary law which is recognised by the law as a right of the Houses and their members. Privilege in this restricted and special sense is often confused with privilege*

*in the colloquial sense of a special benefit or special arrangement which gives some advantage to either House or its members. Privileges in the colloquial sense, however useful or well-established they might be, have nothing to do with immunities under the law. The word “immunity” is best used in relation to privilege in the sense of immunity under the law, and is used here.*

***Relationship between immunities and powers***

*The immunities of the Houses and their members and the powers of the Houses, particularly the power to punish contempt, although referred to together by the term “parliamentary privilege”, are quite distinct. The power of the Houses in respect of contempts is a power to deal with acts which are regarded by the Houses as offences against the Houses. That power is not an offshoot of the immunities which are commonly called privileges, nor is it now the primary purpose of that power to protect those immunities, which are expected to be protected by the courts in the processes of the ordinary law.*

This was reflected by the Clerk of the Senate in evidence to this committee on 31 October 2025, when he stated:

*Mr Pye: When we talk about parliamentary privilege, we're talking about the bundle of rights and immunities attached to parliamentarians and attached to the houses and their committees to enable them to undertake their work. The most recognised aspect of it is the freedom of speech in parliament, which means that all of you can speak in parliament and people can give evidence to committees, and that evidence can't be questioned or impeached before a court. That's a really obvious and well-known aspect of privilege. The other aspect of privilege goes towards the power that the Senate and the House have to ensure the integrity of their proceedings, which stretch to the powers of the two houses to determine contempts—contempts being conduct which improperly interferes with the ability of the houses and their committees to undertake their functions and improperly interferes with the ability of members and senators to undertake their parliamentary duties.*

Turning to the immunity of proceedings from impeachment and question, (which was referred by the Clerk as the “most well-known aspect”) Odgers’ states:

***Immunity of proceedings from impeachment and question***

*The immunity of parliamentary proceedings from impeachment and question in the courts is the only immunity of substance possessed by the Houses and their members and committees.*

*There are two aspects of the immunity. First, there is the immunity from civil or criminal action and examination in legal proceedings of members of the Houses and of witnesses and others taking part in proceedings in Parliament. This immunity is usually known as the right of freedom of speech in Parliament. Secondly, there is the immunity of parliamentary proceedings as such from impeachment or question in the courts.*

Odgers goes on to explain the impact of the Privileges Act to overturn adverse court judgements and to enact the traditional interpretation of Article 9 of the Bill of Rights 1689, which applies in Australia by virtue of section 49 of the Constitution.

Importantly, section 16(2) of the Privileges Act also provides the definition of the term “proceedings in Parliament”, which had not been authoritatively defined previously.

Odgers then notes:

*The most important provision defines the meaning of “impeached or questioned”. The relevant provision does not explicitly declare that members or witnesses may not be prosecuted or sued for their participation in parliamentary proceedings: that was regarded as beyond doubt and clearly provided by the terms of article 9. By its terms, however, the provision effectively prevents prosecution or suit for proceedings in Parliament. The provision indicates the wider operation of the article and draws the line between the proper and improper admission of evidence of parliamentary proceedings.*

That provision is section 16(3) of the Parliamentary Privileges Act, which provides:

- (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.*

Finally, Odgers’ notes that there are three minor immunities:

**Minor immunities**

*There are three minor immunities of members of the Houses of the Parliament and of witnesses and parliamentary officers. These are:*

- *immunity from arrest in civil causes*
- *exemption from service as a juror*
- *exemption from compulsory attendance in a court or tribunal.*

*The immunity from arrest in a civil cause is now of little significance. The potential for a person to be arrested and imprisoned by a civil, as distinct from a criminal, process is now extremely small, due to changes in the law and the narrow compass which the courts have given to purely civil causes by interpretation. The immunity extends to witnesses required to*

*attend on parliamentary committees and to officers required to attend on the Houses or their committees.*

(...)

*The other two minor immunities seldom arise in practice. There is good ground for retaining them, however: the principle that the Houses should have first right to the services of their members, witnesses and officers, and that those services should not be impeded by the requirements of legal proceedings before a court.*

While section 16(3) of the Privileges Act is limited to proceedings “*in any court or tribunal*”, I considered it to be best practice to apply that section to the external investigation conducted by Dr Roughley SC in the same way that it would apply to a court of tribunal, to ensure that the immunity attaching to proceedings of Parliament was not breached.

In order to do so, I ensured that a process was put in place so that no material which met the definition “*proceedings in Parliament*” in section 16(2) of the Privileges Act was provided to Dr Roughley SC.

The procedure that was put in place involved two phases:

The *first phase* involved electronic forensic searches of the DPS employee data using specialised digital search software programmed with bespoke key word based “search-strings” designed to only identify information relevant to the investigation.

The searches were undertaken by TransPerfect Legal (TPL) using digital search software. TPL did not review the data extracted from DPS or the contents of the data returned from the searches. The data returned via the forensic searches was transferred by TPL into a secure digital review program which the limited team of lawyers from HWL Ebsworth Lawyers (HWLE) was provided access to via a secure link hosted by TPL (search result 1).

The *second phase* involved lawyers from HWLE reviewing the data returned from the forensic search to create a subset of material to be provided to Dr Roughley. This material was reviewed by HWLE to ensure that only DPS staff data relevant to the investigation/s was identified and that no Parliamentarian data or data that could meet the definition of section 16(2) of the Privileges Act was provided to the investigation.

In relation to the steps taken by DPS to protect the immunity in this matter, I refer also to the Attorney-General’s Department advice considering privilege, as noted in its public submission to the Senate Standing Committee of Privileges Inquiry into Department of Parliamentary Services handling of documents and communications.

In response to the question from Senator Hume at this Committee on 31 October 2025:

*Senator HUME: If a senator is just going about their normal everyday duties and they're not under a NACC investigation specifically, can they assume that the information they have on their emails or the documents that they keep on their computers and on our computer systems are privileged?*

the Clerk noted in his evidence:

*Mr Pye: They should be able to assume that they're held on their behalf and that they're held in confidence. A lot of what you do is not privileged, though. If you have correspondence with constituents or if you have correspondence between yourself and the government pushing a policy position that doesn't have that close connection to proceedings themselves, a lot of that material is not going to be privileged in any sense, including that it can be given in evidence before courts, for instance. But you should be able to expect, firstly, that material that is held on email systems, on the parliamentary computing network, is held on your behalf in confidence, and that the material that is privileged. If there is some process, as we had with the Conroy matter some years ago, whereby that information is sought, if the information does have that close connection to the proceedings of the Senate, then privilege will be respected in the way that it's managed.*

In this investigation, information from Parliamentarians was not sought to be used by the investigation. The investigation was about the actions of DPS employees.

The confidentiality of DPS employee data, including emails that might have sent to them from outside of DPS, was maintained through the legal engagement between DPS and HWLE, which ensured the application of legal professional privilege to the material and by the contractual engagement of HWLE, which included, among other steps already detailed to the Committee, confidentiality clauses, prohibiting the disclosure of confidential information to a third party without the prior written consent of the department. TPL was similarly bound to uphold the confidentiality of DPS' employee data through contractual terms.

Jaala Hinchcliffe  
Secretary, Department of Parliamentary Services

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