

CHAPTER 6 – CONCLUSION

6.1 The committee's purpose in giving such a detailed account of the operation of privilege in the Senate is to give guidance to all persons who might be affected by its operations as to the context in which the committee considers matters of privilege. It is difficult for the committee itself to evaluate its effectiveness in considering matters of privilege. As its discussion of each report demonstrates, however, matters of considerable complexity, which have gone to the nature of the relationship between the Parliament, the executive and the judiciary, have been considered in both specific and general terms. While the committee does not claim that it provides the best model for the consideration of matters referred to it, it believes that one of the important purposes of its developed expertise is to enable informed discussion on matters which are common to many legislatures.

6.2 As stated in the 35th report:

The committee would be less than honest if it were to declare that it has welcomed the plethora of matters referred to it. Nonetheless, the variety and constancy of the matters have meant that it has had an opportunity to work out the implications of the new procedures, identify weaknesses, and develop for itself informal guidelines to supplement, in a practical way, the formal rules under which it must work. The committee considers that the process which it has been required to undertake has been worthwhile and has concluded that the ... procedures adopted by the Senate on 25 February 1988 will continue to facilitate the consideration of matters such as these in years to come.¹

6.3 The present committee continues to support that conclusion.

6.4 A feature of all the reports of the committee since the passage of the privilege resolutions has been their unanimity, with the exception of limited reservations by two individual senators, one in respect of the 11th report² and the other in relation to the committee's 42nd report.³ Such unanimity on matters, many of which have related to highly contentious political issues, has, the committee believes, lent authority to its conclusions. As a result, the Senate has never failed to endorse the findings and adopt the recommendations of the committee's reports.

6.5 In looking at the history of privilege in the Australian Senate, several significant points emerge. As was demonstrated in the first privilege case considered by a Senate committee and by subsequent cases, senators are generally expected to fend for themselves in their dealings with the wider public, unless extreme forms of obstruction occur. The Senate and the Committee of Privileges have been gentle with persons who they have judged are unfamiliar with parliamentary processes and have no idea that their actions might constitute contempt. On the other hand, the committee

1 Senate Committee of Privileges, *35th report*, PP 467/1991, p. 23.

2 Senate Committee of Privileges, *11th report*, PP 46/1988, pp. 13-16.

3 Senate Committee of Privileges, *42nd report*, PP 85/1993, pp. 49-55.

in particular has reserved its harshest criticisms for persons who should have been in a position to know the law of privilege and the consequences of flouting that law.

6.6 Although the committee has been forthright in making critical comments about the actions of such persons, it has been reticent in finding contempt because of its belief that a culpable intention should be proved for such a finding to be made. Indeed, this is a requirement in relation to the separate contempts established by the senators' interests resolutions. Suggestions have thus been made from time to time that the committee does not have the impact it should. However, success is not necessarily measured in terms of findings. It has long been acknowledged that valuable principle grows out of case law. The experience of the Senate Committee of Privileges, particularly as a result of the matters which it has considered over the past eighteen years, reinforces the truth of this. The committee has been consistent in its examination of cases, and has attempted to place its determination of matters within the historical context of the privilege which binds and protects all parliaments and the people whom the parliaments represent.

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