



**House of Representatives
Standing Committee of Privileges
and Members' Interests**

**Procedures of the Committee and the House
in relation to consideration of privilege
matters and procedural fairness**

September 2009

The Parliament of the Commonwealth of Australia

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Standing Committee of Privileges and Members' Interests

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Procedures of the Committee and the House in relation to consideration of privilege matters and procedural fairness

- 1.1 In October 2008, the Committee issued a discussion paper on proposed procedures for the House of Representatives Committee of Privileges and Members' Interests to provide natural justice and procedural fairness for those involved in the Committee's processes.
- 1.2 By way of background, in November 2002 the Committee advised the House that it had developed procedures that it would follow for witnesses and others who may be involved with the Committee in its consideration of matters of privilege. The procedures were developed to provide for natural justice and procedural fairness for witnesses before the Committee.
- 1.3 During the 41st Parliament the Committee commenced a review of these procedures.
- 1.4 As part of the review the Committee sought advice on its procedures from two leading academics in the field of parliamentary privilege – Professor Geoffrey Lindell and Professor Gerard Carney.
- 1.5 The Committee invited comment on the paper before asking the secretariat to review the paper and propose a response to the recommendations made by Professors Carney and Lindell. The response included proposed procedures for the Committee's consideration of matters of privilege.

- 1.6 The Committee sought the views of the Clerk and Deputy Clerk of the House on the proposed secretariat response. In summary, the Clerk and Deputy Clerk:
- did not support the transfer of the penal jurisdiction of the House of Representatives from the House to the courts as had been proposed in the paper by Lindell and Carney. (The Clerk of the Senate, in advice to the Committee, also did not support the transfer; the view of the Senate is an important consideration in relation to any proposed change, given that the two House have in common the *Parliamentary Privileges Act 1987*.); and
 - supported appropriate procedures for the Committee to ensure the protection of procedural fairness and natural justice and considered the procedures proposed in the secretariat paper were reasonable.
- 1.7 The Committee indicated its view that it did not support the transfer of the penal jurisdiction of the House of Representatives from the House to the courts. Consequently, the Committee noted the importance of having appropriate procedures to ensure natural justice and procedural fairness for persons involved in the Committee's processes.
- 1.8 The Committee invited comment on proposed procedures for the protection of witnesses before the Committee of Privileges and Members' Interests before it reported back to the House to make recommendations for the formal implementation of the procedures. A copy of the proposed procedures is at Appendix 1.
- 1.9 The Committee also noted that there were some additional procedures that related to the way matters of contempt are dealt with by the House after the Committee has examined the matters and reported. The Committee proposed these matters be covered by a resolution of the House. A proposed resolution is at Appendix 2.
- 1.10 The Committee did not receive any comment on the proposed procedures and now proposes that the House adopt, by resolution, procedures for the Committee and the House in relation to consideration of privilege matters and procedural fairness.

Recommendation

1.11 The Committee recommends that the House adopt, by resolution:

- the procedures for the protection of witnesses before the Committee of Privileges and Members' Interests as set out in Appendix 1; and
- the procedures for the House in consideration of privilege matters as set out at Appendix 2.

Mr B Raguse MP

Chair

September 2009

Appendix 1 - Procedures for the protection of witnesses before the Committee of Privileges and Members' Interests

In considering any matter referred to it which may involve, or give rise to any allegation of, a contempt, the Committee of Privileges and Members' Interests shall observe the procedures set out in this resolution, in addition to any procedures adopted by the House for the protection of witnesses before committees. Where this resolution is inconsistent with any such procedures adopted by the House for the protection of witnesses, this resolution shall prevail to the extent of the inconsistency.

- (1) Any person who is the subject of proposed investigation by the committee must be notified in advance of the specific nature of the allegations made against them, preferably formulated as a specific charge, or if this is not possible, of the general nature of the issues being investigated, in order to allow them to respond.
- (2) The committee shall extend to that person all reasonable opportunity and time to respond to such allegations and charges by:
 - (a) making written submission to the committee;
 - (b) giving evidence before the committee;
 - (c) having other evidence placed before the committee; and
 - (d) having witnesses examined before the committee.

- (3) Where oral evidence is given containing any allegation against, or reflecting adversely on, a person, the committee shall ensure that that person is present during the hearing of that evidence, subject to a discretion to exclude the person when proceedings are held in private, and shall afford all reasonable opportunity for that person, by counsel or personally, to examine witnesses in relation to that evidence.
- (4) A person appearing before the committee may be accompanied by counsel, and shall be given all reasonable opportunity to consult counsel during that appearance.
- (5) A witness shall not be required to answer in public session any question where the committee has reason to believe that the answer may incriminate the witness.
- (6) Witnesses shall be heard by the Committee on oath or affirmation.
- (7) Hearing of evidence by the committee shall be conducted in public session, except where the committee determines, on its own initiative or at the request of a witness that the interests of the witness or the public interest warrant the hearing of evidence in private session.
- (8) The committee may appoint counsel to assist.
- (9) The committee may authorise, subject to rules determined by the committee, the examination by counsel of witnesses before the committee.
- (10) As soon as practicable after the committee has determined findings to be included in the committee's report to the House, and prior to the presentation of the report, a person affected by those findings shall be acquainted with the findings and afforded all reasonable opportunity to make submissions to the committee, in writing and orally, on those findings. The committee shall take such submissions into account before making its report to the House.
- (11) If the committee determines to make a recommendation to the House on a penalty to be imposed on a person, the person affected shall be afforded all reasonable opportunity to make submissions to the committee, in writing and orally, in relation to the proposed penalty. The committee shall take such submissions into account before making its report to the House.
- (12) The committee may consider the reimbursement of costs of representation of witnesses before the committee. Where the committee is satisfied that a person would suffer substantial hardship due to liability to pay the costs of representation of the person before the

committee, or in the interests of justice, the committee may make reimbursement of all or part of such costs as the committee considers reasonable.

- (13) A member who has instigated an allegation of contempt or who is directly implicated in an allegation, shall not serve as a member of the committee for any inquiry by the committee into that matter.
- (14) Before appearing before the committee a witness shall be given a copy of this resolution.

Appendix 2 - Procedures of the House of Representatives for dealing with matters of contempt

- (1) That the House, in considering any matter which may give rise to a contempt of the House, shall observe the procedures set out in this resolution:
 - (a) For any motion that makes a finding of contempt or that imposes any sanction for contempt, seven sitting days notice must be given;
 - (b) If, in considering any matter that may give rise to a contempt, the House wishes to consider further evidence not previously provided to the Committee of Privileges and Members' Interests, the person or persons accused of contempt shall be given the opportunity to respond to that evidence;
 - (c) Where the House proposes to impose a punitive penalty on a person or persons for contempt, the person or persons shall have the opportunity to address the House, either orally or in writing;
 - (d) Where the Committee of Privileges and Members' Interests has made a recommendation for the imposition of a penalty on a person or persons for contempt, the House shall not impose a penalty which exceeds that recommended by the Committee;

- (e) Where the Committee of Privileges and Members' Interests concludes in a report to the House that there is no finding of contempt against a person or persons, the House cannot make any finding of contempt against the person or persons; and
 - (f) Any members who initiated an allegation of contempt should not vote in any divisions on motions relating to any findings, or impositions of penalties, for those contempts; and
- (2) That this resolution has effect and continues in force unless or until amended or rescinded by the House in this or a subsequent Parliament.