

**PROPOSED ENGAGEMENT OF COUNSEL**

Thank you for your letter of 27 March 2002, in which the committee seeks comments on the reference to the committee of 20 March 2002 relating to the proposed engagement of counsel to represent the Senate in proceedings involving parliamentary privilege affecting the Senate or senators.

I do not think that I can provide any observations which are not already apparent to the committee, but I hope that the following may be of some use.

Presumably this proposal would involve having a senior barrister in practice, knowledgeable in the law of parliamentary privilege, who would stand ready to represent the Senate as required in proceedings involving such questions of parliamentary privilege. Such a person would be actually engaged only when an occasion for representation arose, and would be remunerated only for time spent on those occasions.

The only difficulty with this proposal is that when an occasion arises, the designated barrister may be unavailable due to their other work. It would not be feasible to expect the designated barrister to give any kind of undertaking that other work would be put aside or reallocated when an occasion to represent the Senate arose. Even if such an arrangement were possible, it would involve ongoing cost which would not be justified given the rarity of the occasions. That the designated barrister may be unavailable when an occasion arises is simply a risk which would have to be taken. It may be possible to overcome this by designating two or more knowledgeable barristers who would be willing to undertake work for the Senate when needed.

The other problem is to find barristers knowledgeable in parliamentary privilege. There are, however, a few who have a proven track record in advocacy on parliamentary privilege. They could be selected on the basis of that track record.

In relation to cost implications, if the arrangement is on the basis stated, the cost implications would not be significant. The designation of one or more barristers in the manner proposed may reduce costs in the future because it may not be necessary to pay for time taken by other barristers to get “up to speed” on parliamentary privilege when occasions for their services arise. The occasions are rare, and, when they arise, some cost is unavoidable.

I would be pleased to provide any other information the committee may require.