

REIMBURSEMENT OF LEGAL COSTS

(Advice dated 31 July 1989 from the Clerk of the Senate, Harry Evans, to the Chair of the Privileges Committee, Senator Giles)

Thank you for your letter of 21 July 1989 requesting advice on the reimbursement of the costs of representation of witnesses before the Privileges Committee.

I am not certain that I can offer anything worthy of the name of advice, but the following observations may be of some use to the Committee.

Paragraph (11) of the resolution of the Senate relating to the Privileges Committee does not provide any criteria for the Committee to consider in recommending to the President the reimbursement of costs, but provides criteria to which the President is to have regard in making a decision. The two elements of the criteria are:

- (a) the President must be satisfied that a person would suffer hardship due to liability to pay costs; and
- (b) the President may make reimbursement only of such costs as the President considers reasonable.

Thus the President must make a judgment of two matters: the likelihood of substantial hardship and the reasonableness of costs. The President may make a reimbursement of only part of costs even where those costs are regarded as reasonable, but may also reimburse only the reasonable part of costs which have an unreasonable dimension to them.

It would be rational for the Committee to have regard to these criteria in making its recommendation to the President, and to provide to the President not only the information to allow the President to make a judgment, but also to indicate its view as to whether the criteria are met.