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Senator Rachel Siewert
Chair
Community Affairs References Committee
The Senate
Parliament House
Canberra ACT 2600

Dear Senator Siewert

PROTECTION OF WITNESSES BEFORE PARLIAMENTARY COMMITTEES

I have been asked to provide advice in relation to the committee's inquiry into the impact of rural wind farms. I understand that there have been inquiries from potential witnesses who have signed confidentiality agreements with the wind farm operators and who are concerned to establish whether their evidence to the committee would be protected by parliamentary privilege.

The short answer to this question is yes. Section 16 of the *Parliamentary Privileges Act 1987* reasserts the application of Article 9 of the Bill of Rights 1688 to parliamentary proceedings and then goes on to explain what those proceedings include. Article 9 provides that the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place outside Parliament. The effect of this protection is that no action can be taken against any person on the basis of proceedings in Parliament and their participation in such proceedings is immune from suit in any court or tribunal. Examples of protected proceedings under section 16(2) of the Privileges Act include:

- the giving of evidence to a committee, and the evidence so given;
- the presentation or submission of a document to a committee; and
- the preparation of a document for the purposes of or incidental to the transacting of any such business.

If a person who is covered by a confidentiality provision in an agreement gave evidence to a parliamentary committee about the contents of that agreement, they could not be sued for breaching the confidentiality agreement. Furthermore, if they were subject to any penalty,

threat or intimidation as a consequence of their having given evidence to a committee, Privilege Resolution 1(18) provides that a committee must inquire into the circumstances, ascertain the facts and, if those facts disclose that a person may have been improperly influenced or subject to or threatened with penalty or injury in respect of their evidence, the committee shall report the matter to the Senate. The Senate may then deal with the matter as a potential contempt which may attract penalties including fines and imprisonment. The action may also be prosecuted as an offence under section 12 of the Privileges Act although there have been no prosecutions so far.

The protections are very clear but there is always a question of judgement in these matters. If a potential witness is intending to give evidence to the committee that might be in breach of a confidentiality agreement, then the witness may wish to seek the committee's protection by asking to provide such evidence *in camera*. Privilege Resolution 1(7) and (8) set out procedures for committees to follow in such circumstances.

The committee may decide to treat a written submission as a confidential submission, at least in part, and prohibit its publication. The committee may also wish to take any oral evidence from the witness *in camera*. While the confidentiality of such evidence can never be absolutely guaranteed (because it is always theoretically possible for a decision of the Senate to override a committee decision), the committee may consider that this option balances the need to provide appropriate protection to potential witnesses and the public interest in the committee's having access to the information in question. In this context I remind the committee that standing order 37 contains rules about the use of *in camera* evidence in dissenting reports and the same principles apply to majority reports.

Please let me know if I can provide any further assistance.

Yours sincerely



(Rosemary Laing)