

Parliamentary Privilege and Senate Committees

CHAIR (Dr LAING) — For the last session today, we are going to turn to the very important topic of parliamentary privilege and Senate committees, which is something we have not touched on so far during the program. To speak on this topic, we are very fortunate to have senator emeritus Robert Ray back, joined by Senator George Brandis. Former senator Ray holds the record for being the longest serving member and chair of the Senate Standing Committee of Privileges in its history, with approximately 18 years membership and eight years as chair, so he is very well equipped to speak on this topic—as is Senator George Brandis, who is immediate past chair of the Privileges Committee. As the immediate past secretary I must admit, having two of my former chairs here, to experiencing a slight level of anxiety, a bit like being kept in after school, about to be asked what I have not done yet or told I have done something wrong! Notwithstanding that, I shall overcome that and keep a very close eye on the time, given that people have planes to catch and it is the last session for the day. Please welcome Robert Ray to the podium first.

Mr RAY — Thank you, Rosemary. In 1984, after the election, I was lounging in my parliamentary office over in Old Parliament House. There was a knock on the door and one of the intelligentsia from the New South Wales Right faction, just elected, paid me a visit. He said, ‘Mate, mate, I want to go on the Privileges Committee. I’m a former shop steward, a former union official, and I will fight for our conditions, our wages and our entitlements’. I thought to myself: ‘Well, not everyone knows about the Privileges Committee in the Parliament’.

You have heard of a lot of chauvinist statements today, verging on the fact that the Senate is Camelot. I would like you to devalue that just a little. A third of the select committees are set up because serious political problems are thrown up to either government or Opposition, especially minor parties; they have no solutions so they pay them off by setting up a select committee when a reference committee could do just as well for half the price. How we got seven select committees in two months after the 2007 election I will never know. Basically, they were mostly a waste of space.

Leaving Senate chauvinism aside, it is true to say that the Senate Privileges Committee is the doyen of privileges committees in Australia. It is acknowledged by the House of Representatives and by a lot of state privileges committees as having the title of being the leading privileges committee. It is okay, Wayne; I am not about to bag the legislative council again—because it is so far down the food chain it does not deserve my time! However, we have often had visitors from the various state

privileges committees, and I have been very impressed by the fact that they come to Canberra to discuss issues, share information and, without being patronised, learn how the Senate committee has operated over the years. We have also had international visitors pay close attention.

You have to ask: why does the Privileges Committee have this reputation? Essentially, it has been able to accumulate what I call case law. All the hearings it has had on all the issues are documented, and all are reproduced on a yearly or three-yearly basis for everyone to see. So it is very easy to measure the progress of all these issues we have had before us and the responses. It is all there.

The second reason the committee is taken seriously is that the last four chairs of the Senate Standing Committee of Privileges have been ministers—and pretty good ministers at that. They have all been experienced ministers who have been able to guide that committee. It shows that the political parties have taken this seriously.

I have to acknowledge something else here, otherwise I would be dissembling. The reason the Senate Privileges Committee has its reputation is not owing to the efforts of senators, although in part senators have been good to go along with it; it has had key staff support for 30 years. It has had the *crème de la crème* of the Senate staff on the committee—Anne Lynch, Rosemary Laing, and the very sage advice of Senate Clerk Evans. This was Mr Evans' great area of expertise. So this triumvirate was able to establish principles that senators were very comfortable with and which helped them to progress various issues. I do not think there is another committee in the Senate that has so benefited from Senate staff. We heard earlier today about the Senate Scrutiny of Bills Committee and the Senate Standing Committee on Regulations and Ordinances and the specialist hired consultants that helped them—and what I said earlier is true of them too—but this committee had internal support given by the Senate staff.

The committee managed, for the entire time that I was on it, to be bipartisan. That is never easy to do, considering some of the characters—including me; I have hardly been known as Mr Bipartisanship over the years—but we did have a responsibility. What we were looking after was giving the Senate guidance as to how it operated and how it protected its rights and privileges, and you cannot afford to be partisan in that particular way. That bipartisanship never once extended to the Senate chamber when it was considering these issues. If you had some senator who had been a rascal they either got referred to the Senate Privileges Committee or not on the basis of who had the numbers in the Senate.

There was a case of one senator who botched his returns on the pecuniary interest register time and time again. It was only after the third, fourth or fifth—or, I think it was the fifth—time that he finally got referred to the Privileges Committee for a hearing. Of course, in the end we looked at the rules. You had to ‘deliberately’ misinform the committee, and everyone knew that this senator was such a goose he could never have done so, so we found him not guilty. But the chamber has never been consistent.

What are the main issues dealt with by the Privileges Committee? Let’s start with the best, and that is the right of reply. From 1988 on, the right was given for residents of this country, if they were defamed, libelled or otherwise fitted up in the Senate by a senator, to respond by having a right of reply incorporated in Hansard. The House of Representatives had the same right. At one stage there had been 49 rights of reply granted by the Senate and just one by the House of Representatives.

The other big difference was that the Senate Privileges Committee, and thereby the Senate itself, took the robust view: ‘We’ve slagged someone off. They have a slash back and we’ll print what they say provided it is relevant to responding to the original accusation’. So we got some pretty torrid and colourful language in the rights of reply—some very robust ones—but so what? We took the attitude as senators that if we dish it out we will cop it back. We would not start a civil war, by the way, by letting a whole new series of allegations loose in the reply. We had the right as a committee to censor and change the reply or to negotiate changes with the person. This is the most vigorous right of reply process in any parliament anywhere on this globe. I think it is with great pride that the Senate can look back on the progress in this area. The second major area that the committee deals with is in protecting witnesses. Two or three cases have come up over the years where there have been attempts to intimidate witnesses. The committee was very active then.

But, of course, its main concentration in my time—a little less so now—was dealing with leaks: leaks from parliamentary committees about the report, about hearings or about whatever else. At one stage, 10 or 12 years ago, you used to get 10, 12 or 15 of these references a year to try to inquire into where leaks were coming from. But eventually we had had enough of that and we had the rules changed so that I think I am right in saying that nowadays the Privileges Committee looks only at leaks from in camera hearings, and we leave it up to the committees that are leaked from to pursue it.

Of course, there is one golden rule here that I have to reveal today: every leak from every Senate committee came from a senator. It never came from staff. We know this from our experience. It is always a senator. A lot of the time, of course, we know

which senator it is, but a lot of the time we do not have sufficient evidence. It is not a reluctance to take on a colleague on either side of the aisle; it is because, as an investigative body without judicial or police powers, we cannot absolutely get the evidence.

The second problem is that these leaks are run by journalists who claim that they should not have to disclose their sources. That is fair enough. We have never called journalists before the Senate Privileges Committee to force them to reveal their sources. Therefore, that makes it extremely difficult to find out who the leakers are. Even if we did, we would face this dilemma: basically you are making the Privileges Committee judge and jury. Sure, it eventually has to go to the chamber for ratification, but it is difficult to have a committee do the investigation and then have to apply some form of sentence which could vary from jailing to fines to reprimands et cetera.

So we have that dilemma, and it has never been fully dealt with. We have limited investigative powers. How, therefore, does the committee operate when it does not really want to be a judge and jury but has to be? It does the best it can. The general consensus on the Senate Privileges Committee over the years is that it does not want to be in the business of jailing people. Much as we might like to, we really do not think that politically that would be a sensible way. Fines are very difficult. Finding someone guilty of contempt and reprimanding them probably will not have much effect. Of course, one of our most effective techniques is what we call the string-out. If media or other organisations have offended, we would engage with them for a couple of years, run their legal bill up to \$400 000 and then just retreat from the field. It did not always please them, but at least it slowed them down.

I want to finish on this note by talking about parliamentary privilege and the press. We have been talking about leaks. The moment you criticise a newspaper for running a leak, you unleash the hounds from hell. Every media outlet will attack you. None of them will run both sides of the argument. You will be scarified if you ever raise these issues. It is like a pack of hyenas, and you never get your point of view over. What makes it worse is that you might be halfway through the case and they are continuing to vilify. You cannot respond, because you are halfway through a case. How can you come to conclusions until you hear it? The Australian media absolutely believe that no rules apply to them. Therefore, they can print any leak from any committee, because the public have a right to know. But, of course, what it mostly comes down to is that they say the public have a right to know on Monday when the report is going to be tabled on Wednesday. All it is is scoopism: one newspaper or one radio or TV station getting the edge over their rivals. That is what most leaks involve. With the second type of leak, from in camera evidence, they are basically breaching a fundamental rule of the Senate. Committees do not go into in camera hearings lightly; they do so to

protect witnesses and to maximise the evidence that they can get. If all that is published in newspapers then people will not be willing to come along and give in camera evidence.

But of course—I do not know that Senator Brandis had this particular experience—the moment the Senate refers something to you, you set up a hearing, you accord natural justice, you allow the legal representatives from media organisations to come along, you do not call the journalist and you actually find them not guilty. What is the editorial in the *Australian* newspaper two days later? ‘Senator Ray, Lord High Executioner’. But that is get-squareism. It is not justice. It is not public comment. It is them trying to intimidate. This is coming from a news organisation that ran the false Godwin Grech emails and the fake Hanson photos, that broke into people’s voicemail in the UK and that, for heaven’s sake, bought the Hitler diary. To be lectured by them on public morality and the fact that all we are interested in is looking after our own privileged position! There is more to it than that.

If Parliament is to work properly it should be accorded certain privileges, not excessive ones, and they should be protected. It is the job of the Privileges Committee on behalf of the Senate to do that job. But whenever they try to do it the whole pack of hyenas comes down and you are cut to pieces without a right of reply at all. That has been partly, I think, the weakness of the current system. I thank you very much for your attention.

CHAIR — Senator Brandis.

Senator BRANDIS — Thank you, Rosemary. Current and former Senate colleagues, ladies and gentlemen, I am very glad to be following that very robust performance. I have interpreted the topic a little more broadly and I hope it is a neat fit with the presentation that Robert has just given about the work of the Senate Privileges Committee, which is of course the guardian of parliamentary privilege in the Senate. I am going to talk about more broadly the principles of parliamentary privilege and in particular how they bear upon the operation of Senate committees generally, so my talk is not about the Privileges Committee as such. I am going to address in the time available two topics: the sources and content of the modern law of parliamentary privilege and in particular its application to the work of Senate committees; and I want to say a few words if time permits about the 144th report of the Senate Privileges Committee in June this year which looked at—and not for the first time, I might say—legislative attempts to abrogate the operation of parliamentary privilege.

Parliamentary privilege has been defined variously. Erskine May’s definition is as good as any:

Parliamentary privilege is the sum of the peculiar rights enjoyed by each House collectively as a constituent part of the High Court of Parliament, and by Members of each House individually, without which they could not discharge their functions, and which exceed those possessed by other bodies or individuals. Thus privilege, though part of the law of the land, is to a certain extent an exemption from the general law.

It is a very traditional definition of parliamentary privilege. *Odgers* defines parliamentary privilege in these terms. It refers to two significant aspects of the law relating to Parliament, the privileges or immunities of the houses of the Parliament and the powers of the houses of Parliament to protect the integrity of their processes.

The law of parliamentary privilege in Australia derives from section 49 of the Constitution, which provides that the powers, privileges and immunities of the Senate and of the House of Representatives and of the members of the committees of each house should be such as declared by the Parliament and until declared shall be those of the Commons house of Parliament of the United Kingdom and of its members and committees at the establishment of the Commonwealth. So it was always plain that the principles of parliamentary privilege applied equally to the houses and to the committees.

Section 49 of the Constitution remained the source of the law of parliamentary privilege until Parliament did indeed enact in 1987 the Parliamentary Privileges Act, which followed one of the most important reports that this Parliament has ever commissioned, the report of the Joint Select Committee on Parliamentary Privilege in 1984. The most important provision of the Parliamentary Privileges Act is section 16, which provides:

For the avoidance of doubt, it is hereby declared and enacted that the provisions of article 9 of the Bill of Rights, 1688 apply in relation to the Parliament of the Commonwealth and, as so applying, are to be taken to have, in addition to any other operation, the effect of the subsequent provisions of this section.

Then certain implications of article 9 of the Bill of Rights are spelled out in section 16 of the 1987 Act. Article 9 of the Bill of Rights, which was in effect the act of settlement of the glorious revolution, provides, if I might remind you, that ‘the freedom of speech and debates or proceedings in Parliament ought not be impeached or questioned in any court or place out of Parliament’.

Subsection 2 of section 16 of the Parliamentary Privileges Act provides a definition of the meaning of the expression ‘proceedings in Parliament’. It says:

For the purposes of the provisions of article 9 of the Bill of Rights ... and for the purposes of this section, proceedings in Parliament means all words spoken and acts done in the course of, or for purposes of or incidental to, the transacting of the business of a House or of a committee, and, without limiting the generality of the foregoing, includes: (a) the giving of evidence before a House or a committee, and evidence so given; (b) the presentation or submission of a document to a House or a committee; (c) the preparation of a document for purposes of or incidental to the transacting of any such business; and (d) the formulation, making or publication of a document, including a report, by or pursuant to an order of a House or a committee and the document so formulated, made or published.

That definition of ‘proceedings in Parliament’ is an exceptionally wide one and it has been widely interpreted by the courts.

There have been, in recent years, three important decisions by Australian courts which have construed the meaning of section 16 of the Parliamentary Privileges Act. Probably the most important of them, a decision of the Queensland Court of Appeal which, appropriately, dealt with a senator, was a case called *O’Chee v. Rowley*. Mr Rowley sued former Senator O’Chee for defamation and it was necessary for Mr Rowley to plead in his defamation case and to put into evidence certain documents upon which Senator O’Chee had relied for the purposes of a parliamentary speech. Senator O’Chee pleaded section 16 of the Parliamentary Privileges Act and said that because the documents upon which he had relied were used by him for the purposes of a parliamentary speech they were, within the meaning of section 16, part of the proceedings in Parliament.

In the leading judgment of the court Justice McPherson—who is a great scholar of these things—gave as wide a definition of the expression ‘proceedings in Parliament’ as you are likely to find. I will quote a little from his judgment, which is an extremely erudite exposition of parliamentary privilege. He said:

Article 9 of the Bill of Rights prevents proceedings in Parliament from being hindered, impeded or impaired in a court. By s.16(2) of the 1987 Act proceedings in Parliament include the preparation of a

document for purposes of or incidental to the transacting of any business of a House.

O'Chee's speech was in the chamber, not before a committee. The same principles apply to committee proceedings.

More generally, such proceedings include all acts done for such purposes, together with any acts that are incidental to them. Bringing documents into existence for such purposes; or, for those purposes, collecting or assembling them; or coming into possession of them, are therefore capable of amounting to 'proceedings in Parliament'.

Just dwell upon the breadth of that for a moment: to assemble a document or to obtain a document with the intention that it be used in the course of a parliamentary speech or question or in the course of examination of a witness before a parliamentary committee. That act or any act incidental to it is treated as a proceeding in Parliament and thereby invokes the protection of section 16 of the Parliamentary Privileges Act. Justice McPherson went on to say:

Senator O'Chee has sworn that in relation to the documents—

that is, the documents sought to be led in evidence—

he did such things for those purposes. To order him to produce those documents would be to hinder or impede the doing of such acts for those purposes. If the making of the order has not already hindered or impeded the transacting of this matter of Senate business—

this was an appeal from an order—

it is predictable that in future it will do so with respect either to this or to some other matter of business being, or about to be, transacted in a House of the Parliament.

...

Proceedings in Parliament will inevitably be hindered, impeded or impaired if members realise that acts of the kind done here for purposes of Parliamentary debates or question time are vulnerable to compulsory court process of that kind. That is a state of affairs

which, I am persuaded, both the Bill of Rights and the Act of 1987 are intended to prevent.

There have been a few others, but that decision represents where the law sits in Australia at the moment in relation to the breadth of parliamentary privilege. There is little appreciation in Australia of the breadth of those principles as articulated.

There are other provisions of the *Parliamentary Privileges Act 1987* which deal with and protect the proceedings of committees—section 10, which deals with the reports of proceedings of committees; section 12, a very important section, which deals with the protection of witnesses; and section 14(3), which also protects senators, members and witnesses from court proceedings that would impede their attendance before a parliamentary committee.

I want to emphasise the double aspect of the operation of the rules and principles of parliamentary privilege. Because they protect proceedings of the Parliament, in their most obvious way they protect the members of Parliament, the senators and the members of the House of Representatives, not in an individual capacity but insofar as they partake of a corporate capacity as participants in the parliamentary process. But, equally, they protect witnesses. Equally, they protect individual citizens who come before Senate committees. It is not entirely, but it is almost, unknown for citizens to come to the bar of either house of the Parliament. So for all practical purposes the provisions of the Parliamentary Privileges Act also extend very extensive protections to witnesses before Senate committees.

I want to take the last few minutes to address one issue of particular concern. It was an issue of concern to the Privileges Committee when I chaired it and it is an ongoing issue of disputation. It comes right at the borderline, where the privileges and immunities of the Parliament, including witnesses before parliamentary committees, run into executive power, and that is where there are statutory curbs on parliamentary committees by legislation, or sometimes even by administrative fiat, over the evidence that a witness may give to a parliamentary committee. This issue arose earlier this year, when the Privileges Committee was asked to examine the provisions of a tax statute, the Tax Laws Amendment (Confidentiality of Taxpayer Information) Bill 2009. The provisions of the bill, which, as the title suggests, were intended to protect the confidentiality of taxpayers' information, contain some prohibitions in relation to officers of the taxation department responding to questions by parliamentary committees. There were narrowly defined circumstances in which officers were at liberty to respond to questions asked of them in the course of proceedings before a parliamentary committee, and then, beyond that carve-out, there was a general

prohibition upon them doing so. In particular, the relevant operative section of the bill created a general prohibition and then it said:

Subsection (1) has effect despite any power, privilege or immunity of either House of the Parliament, of the members of either House of the Parliament or the committees of either or both Houses of the Parliament, except to the extent that those powers, privileges or immunities can be invoked to compel the disclosure of protected information.

That was a very confusing piece of legislative drafting because it had an intrinsic circularity about it—a point that was not lost on Dr Rosemary Laing, who gave a very thorough and, you would not be surprised to hear, intensely critical assessment of this bill in evidence before the committee. The committee report it is fair to say was intensely critical of the bill and, as far as I can discover from my inquiries earlier in the week, that bill has not further proceeded and the government is yet to respond to that report.

Let me close by making this observation: if there are to be abrogations to the operation of the broad rules of parliamentary privilege then those abrogations should be by way of specific amendment to the Parliamentary Privileges Act itself, which already creates certain exceptions within it. The Parliamentary Privileges Act is a fundamental constitutional statute and it is not to be partially repealed or, as Rosemary will remember some of the Treasury officers at that inquiry were foolish enough to say, impliedly repealed by a narrow and topic-specific statute. If there is a view that certain categories of information ought not to attract the protection of parliamentary privilege then let the Parliamentary Privileges Act be revisited. I would be very reluctant to concede that there are many such categories of information. The better way to handle these things is for Senate committees dealing with confidential information to act in camera.

Let me close by making this final observation: on 25 February 1988 the Senate passed a series of procedural and sessional orders which set out the circumstances in which confidentiality could be claimed in relation to certain categories of documents and set out a procedure for Senate committees dealing with such documents in camera. Those resolutions, both on their face and in the manner in which the practice of the Senate has developed in the years since, are piecemeal and inconsistent and they ought, for the sake of comity and good practice, to be reviewed and codified.

CHAIR — That sounds like another job for the next Privileges Committee. We have a few minutes left in this afternoon's proceedings for questions. Are there any questions?

QUESTION (Mr RAWLINGS) — I am from Civil Liberties Australia. The McPherson decision of course is entirely unworkable in the modern era because you cannot create a document on one computer and send it to another computer for your colleague to work on without breaching parliamentary privilege, which is a nonsense in formulating submissions to the Parliament because that is how we all work. The definition needs reworking or relooking at. That is not my major concern though. My major concern is that when we formulate a submission to a Senate committee we lodge it and instantly, by osmosis in a millisecond over the internet, we have lost copyright, control and any use of it. It goes to the committee and the committee then decides whether it will attract privilege. So in that period, which can be a week or two weeks, effectively debate is stifled and it is a censorship process. That is my concern. What do you think of that process? Do you believe it ought to be amended?

I have one minor question for ex-Senator Ray. In relation to the \$400 000 bills run up against journalists—and by the way I am a former one—is the Parliament subject to the model litigant principles of the government?

Mr RAY — No, it is not—and I did not mention the word 'journalist' once; I said 'media organisations'. You have to take some account of their capacity to pay.

My problem with McPherson is not documents created but documents obtained. I have often worried—or worried then, and have ever since—that, in some way, some criminal documents could be hidden under the guise of parliamentary privilege whereas a normal civil investigation and prosecution would have obtained them. It is not that it has happened; it is just that I do not think it is defined in any particular way.

On your major point, I think it is very important that a document lodged with a Senate committee has to be approved. That takes time, and I understand the awkwardness of your position. It does not stop you arguing the general principles involved; you just cannot disclose the document. We have had, over the years, some documents submitted to Senate committees that have been deliberately defamatory documents. In one case the same document, I think, went to about eight committees from a former ex-Senate colleague of us all. It defamed the Senate, staff, politicians from both sides et cetera. And it was always knocked back.

So I do not think you can get rid of the process of lodging the document and waiting for it to be approved, obtain parliamentary privilege and be circulated. That does not

stop you arguing the generality of the ideas et cetera. I am not sure that there is any other way to foreshorten that particular process without running the risk of extending parliamentary privilege to a whole range of unsavoury documents that are only meant for character assassination.

Senator BRANDIS — I think it is important to remember that these laws and principles exist to protect a process, not to censor anything. By the way, I agree, from my own experience, with what Robert Ray has said about the occasional use of the protections that parliamentary privilege affords to documents for purposes of abuse. Without wishing to be too controversial, I must say that during the so-called Godwin Grech affair, when I chaired the Senate Privileges Committee, I was appalled by a submission from Treasury, signed by Dr Henry as Secretary to the Treasury, which exhibited—and thereby attracted privilege to—hundreds and hundreds of pages of material, almost all of which were in my view gratuitous in the strict sense of that word. It had no bearing upon the inquiry at all but was highly embarrassing to individuals. I suspected at the time that it was included essentially to get square. In my view the committee, striving for a bipartisan approach, did cull some material from the annexures, but there was a lot left in there. Privilege protections were opportunistically attracted to documents that should never have been put on the public record or attracted such privilege.

Courts of law have a process for refusing to accept affidavits, for example, that contain what in lawyers' language is called scandalous material. The Privileges Committee does not have as sophisticated a process, but the use of the Privileges Committee process for overtly malevolent reasons is not just confined to a few nutters in the community. I think Treasury engaged in that during the Godwin Grech inquiry.

QUESTION (Mr TUNNECLIFFE) — I have a question for both Mr Ray and Senator Brandis about ministerial advisers and the claim made by governments that, notwithstanding the power of committees to call for and even summons persons to appear, ministerial advisers cannot be compelled to appear, because they are responsible only to the minister. That has been described as the McMullan principle in Victoria this year. The problem as I see it is that, if the McMullan principle exists, then ministerial advisers are potentially the only group of people who cannot be called to appear before committees because even members of the other chamber can appear by leave of that house. So my question to both of you is: will governments ever concede that the claim is, to say the least, somewhat dubious and will upper houses and/or their committees ever assert their rights to call this group of people or will they simply continue to add weight to the claim that the McMullan principle exists?

Mr RAY — The first thing I would like is some consistency. You do not get that out of the Legislative Council of Victoria. You have compelled—unsuccessfully—staff to attend on the basis of political opportunism and nothing else. That is from a political party that throughout Australia—here under the Howard Government—every other time would resist staff appearing before committees. We as an Opposition never once—at least I didn't—tried to call staff before these committees. It is called comity. It is called tradition. It does not have to be written in laws. I do not care what is written in your Legislative Council laws. It is having two or three pretty hard nuts there just trying to get cheap publicity, calling staff and having a weak bunch of Liberal and National people go along with it when their federal leadership and that of any other state would not countenance it. It should be dismissed.

However, what we should consider is this: if staff are making executive decisions and not just advising ministers, they put themselves in harm's way. This is where the concentration has to be from an educative value over the next few years. I have done it. I have given staff introduction courses—not at your state level but at federal level. I have stressed to staff: you are there to proffer advice and assist but, if you make an individual executive decision and transmit that to the department rather than through your minister, you put yourself in the firing line and so it will be. That is where these sorts of issues have to be addressed et cetera.

The last point to make is: a lot of staff signed on and signed contracts in the knowledge they would not have to appear before parliamentary committees. If that has changed halfway through, they have a right to renegotiate their contract and get more money because of the pressure they are under or you introduce it when you are about to start a new cycle. You say, 'Look, we are employing you all as ministerial staff, but we have to warn you that you may have to front before parliamentary committees'. Just remember the point I made earlier: you do not want to get into a competition of a non-government controlled chamber and a government-controlled other chamber where they set up a series of witch-hunts against each other because they have the numbers to do so. That will demean parliamentary democracy.

Senator BRANDIS — I go along with most, if not all, of that. I think you have to accept that the law protects certain confidential relationships largely for functional reasons because it is simply not functionally possible for those relationships to be conducted for the purposes for which they exist if their confidentiality is not protected. The most obvious example of that is the privilege that exists between a lawyer and a client. A client has to be able to confide in and seek and obtain advice from his lawyer, secure in the knowledge—in, for example, preparing a case in court in particular—that what passes between them is not itself going to be exposed in the court. That is a matter of common sense. People can understand why that must be so.

For all practical purposes, the lawyer is the client's alter ego. The relationship between ministers and ministerial advisers—at least where ministerial advisers, as Robert rightly says, are doing what they are meant to do and that is giving advice—is a bit like that. In fact, it is very much like that. The adviser is for these purposes—and for all practical purposes—the minister's alter ego and no advice could be given to a minister by a confidential adviser in relation to matters of great political sensitivity or matters of public policy or commercial sensitivity unless they were absolutely secure in the knowledge that that would not be exposed to public view so that they must be able to speak with complete freedom.

CHAIR — Our time for the day is up, I am afraid. We end on a fairly sober note. I invite you to join me in applause to thank our last speakers for this afternoon. I would like to thank all of our contributors today for a fabulous day's proceedings.