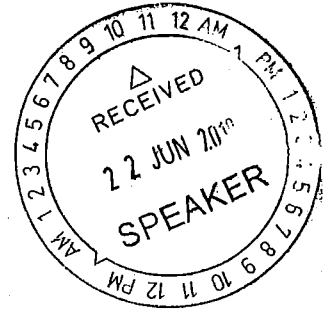
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SEVENTH ASSEMBLY
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Speaker's Response to
Select Committee on Privileges 2010 Report—
Response to Recommendation Nos 1 and 2

Shane Rattenbury MLA
Speaker
Legislative Assembly for the Australian Capital Territory

Recommendations from the Select Committee on Privileges 2010 report relating to the Legislative Assembly

Recommendation 1

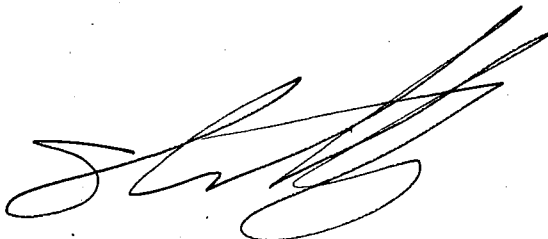
The Committee recommends that the Speaker write to the Chief Executive Officers of all ACT government departments and Territory-owned corporations and remind them of the obligations of witnesses before Assembly committees particularly with regard to matters relating to claims of public interest immunity and that Chief Executive Officers ensure that their staff are properly informed of their obligations.

I have written to all CEOs in terms as per Attachment A.

Recommendation 2

The Committee recommends that the Legislative Assembly adopt a resolution clarifying its position with regard to claims of immunity from answering questions or providing documents made by witnesses, stating that claims of immunity must be made by ministers or the appropriate senior officer of other public agencies and territory owned corporations and that details of the harm that might be caused by providing the information must be included in the claim.

I have placed this matter on the agenda of the Standing Committee on Administration and Procedure.



Shane Rattenbury, MLA
Speaker
Legislative Assembly for the ACT

16 June 2010

ATTACHMENT A

Dear Sir/Madam

The Select Committee on Privileges 2010 was established to investigate allegations of contempt towards the Assembly ensuing from answers given during the 2009-2010 Estimates process by a senior official of an ACT territory-owned corporation.

The Committee recommended that I write reminding you of the obligations of witnesses appearing before Assembly committees, particularly when claims of public interest immunity may be being considered. Accordingly, I draw your attention to the following passage from the Committee's report¹:

"3.31 The Chief Minister's *Handbook for ACT Government Officials on Participation in Legislative Assembly and Other Parliamentary Inquiries* makes quite clear what is expected of public officials appearing before Assembly committees:

As stated earlier, it is intended, subject to the application of certain necessary principles, that there be the freest possible flow of information between the ACT Public Service, the Legislative Assembly and the public. To this end, officials should be open with committees and if unable to answer questions, provide information or **it is inappropriate to do so, should say so and give reasons.**²
[emphasis added]

3.32 While ACTEW is in a slightly different category from the mainstream of the ACT Public Service, it is a wholly-owned Territory entity and is accountable to the Assembly. Its officers are governed by the same rules and expectations when appearing before Assembly committees. The duties of the Managing Director under the Corporations law are certainly an added factor to be taken into account when considering claims of public interest immunity but they are, emphatically, not a reason unilaterally to exempt oneself from the rules regarding evidence given to committees.

3.33 It is an accepted principle that certain categories of information may be subject to public interest immunity and may be withheld from committees, for example cabinet papers and details of discussions in cabinet; matters relating to national security and "materials that might negatively affect the commercial interests in the market place if

¹Evidence of Mr Mark Sullivan to the Select Committee on Estimates 2009-10. Select Committee on Privileges 2010, pp 18-19. Available at

<http://www.parliament.act.gov.au/committees/index.asp?category=Select&assembly=7>

² Cabinet Office, Chief Minister's Department, *Handbook for ACT Government Officials on Participation in Legislative Assembly and Other Parliamentary Inquiries* (2004) p.10

disclosed". This latter category might include information in possession of contractors dealing with ACTEW Corporation or information ACTEW may hold about its contractual partners.

- 3.34 The Chief Minister's *Handbook* makes the process for dealing with claims of public interest immunity, which includes claims based on commercial confidentiality, quite clear:

Under certain circumstances, a request to provide certain oral or documentary evidence may be declined on the grounds that disclosure to the committee would not be in the public interest. Claims that information should be withheld from disclosure on grounds of public interest (*public interest immunity*) should only be made by Ministers (normally the responsible Minister in consultation with the Attorney General and the Chief Minister).³

- 3.35 This principle has been repeatedly asserted in the Commonwealth Parliament, particularly the Senate. *Australian Senate Practice* comments,

A resolution of 30 October 2003 declared that the Senate and its committees would not entertain claims of commercial confidentiality unless made by a minister and accompanied by a ministerial statement of the basis of the claim, including a statement of the commercial harm which might result from the disclosure of the information. **If a committee is satisfied that a statutory authority has such a degree of independence from ministerial direction that it would be inappropriate to have a minister make the claim, the committee may receive the claim from officers of the authority.**⁴ [emphasis added]"

I would be grateful if you could draw this to the attention of officials who may be attending before Assembly committees.

Yours sincerely

Shane Rattenbury MLA
Speaker
25 May 2010

³ Ibid., pp 11-12

⁴ *Odgers's Australian Senate Practice*

<http://www.aph.gov.au/Senate?pubs/odgers/chap1910.htm> accessed 14 April 2010