

with the statute.

Statutory provisions of this type do not prevent the disclosure of information covered by the provisions to a House of the Parliament or to a parliamentary committee in the course of a parliamentary inquiry. They have no effect on the powers of the Houses and their committees to conduct inquiries, and do not prevent committees seeking the information covered by such provisions or persons who have that information providing it to committees.

The basis of this principle is that the law of parliamentary privilege provides absolute immunity to the giving of evidence before a House or a committee. That law was made clear by section 16 of the 1987 Act, which declares that the submission of a document or the giving of evidence to a House or a committee is part of proceedings in Parliament and attracts the wide immunity from all impeachment and question which is also clarified by the Act. It is also a fundamental principle that the law of parliamentary privilege is not affected by a statutory provision unless the provision alters that law by express words. Section 49 of the Constitution provides that the law of parliamentary privilege can be altered only by a statutory declaration by the Parliament. These principles were set out in 1985 in a joint opinion of the then Attorney-General and the then Solicitor-General:

Whatever may be the constitutional position, it is clear that parliamentary privilege is considered to be so valuable and essential to the workings of responsible government that express words in a statute are necessary before it may be taken away In the case of the Parliament of the Commonwealth, s. 49 of the Constitution requires an express declaration.⁷⁹

These principles were called into question by advice given to the executive government by its legal advisers late in 1990. The context of the advice was the operations of the Parliamentary Joint Committee on the National Crime Authority. The *National Crime Authority Act 1984* established a National Crime Authority with power to inquire into matters relating to organised crime. The Act also established a Joint Parliamentary Committee to oversee the Authority on behalf of the Parliament. The provisions establishing the committee were not initiated by the government, but were inserted into the act by an amendment made in the Senate. In the part of the Act establishing the committee there was a provision which limited the powers of inquiry of the committee, by providing that the committee was not to investigate a particular criminal activity or to reconsider the findings of the Authority in relation to a particular investigation. In another part of the Act there was a general secrecy provision, making it an offence for officers of the Authority to disclose information obtained in the course of their duties except in accordance with those duties. Members of the Authority claimed that the general secrecy provision prevented them providing information

⁷⁹ Quoted in a Report by the Senate Standing Committee on Constitutional and Legal Affairs, *Commonwealth Law Making Power and the Privilege of Freedom of Speech in State Parliaments*, PP 235/1985, p. 2.