

40TH PARLIAMENT



Report 59

STANDING COMMITTEE ON PROCEDURE AND PRIVILEGES

*Corruption, Crime and Misconduct Amendment Bill 2017
(Second Referral)*

Presented by
Hon Kate Doust MLC (Chair)
October 2020

Standing Committee on Procedure and Privileges

Members as at the time of this inquiry:

Hon Kate Doust MLC (Chair)

Hon Simon O'Brien MLC (Deputy Chairman)

Hon Martin Aldridge MLC

Hon Adele Farina MLC

Hon Rick Mazza MLC

Staff as at the time of this inquiry:

Mr Nigel Pratt, BA, BJuris, LLB (Clerk of the Legislative Council)

Mr Paul Grant, BA (Hons), LLB (Deputy Clerk)

Mr John Seal-Pollard, BA (Hons) (Usher of the Black Rod)

Address:

Parliament House

4 Harvest Terrace, West Perth WA 6005

Telephone: 08 9222 7300

Email: lcco@parliament.wa.gov.au

Website: www.parliament.wa.gov.au

ISBN 978-1-925580-08-2



CONTENTS

1 Referral and Background..... 1

 The Referral of the Corruption, Crime and Misconduct Amendment Bill 20171

 Background and First Referral.....1

 Report 48.....3

 The Second Referral4

 A Different Approach — Western Australia Police Force Investigations5

2 Counsel’s Opinion..... 5

3 Recommendation 6

Appendix 1 Counsel’s Opinion..... 7

1 Referral and Background

The Referral of the Corruption, Crime and Misconduct Amendment Bill 2017

- 1.1 On 19 May 2020, the Legislative Council, on the motion of Hon Michael Mischin, discharged the Corruption, Crime and Misconduct Amendment Bill 2017 (**Bill**) from the Notice Paper and referred it to the Procedure and Privileges Committee (**PPC**) for inquiry and report in the following terms:
- (1) for consideration of the possible impact of the bill on any current legal proceedings, and to report by no later than Tuesday, 13 October 2020; and
 - (2) the committee has the power to inquire into and report on the policy of the bill.
- 1.2 This was, in fact the second referral of the Bill to the PPC since it had been introduced into the Legislative Council by message from the Legislative Assembly on 28 November 2017.

Background and First Referral

- 1.3 The stated purpose of the Bill is to restore the power and jurisdiction of the Corruption and Crime Commission of Western Australia (**CCC**) to investigate that conduct of Members of the Parliament of Western Australia which may constitute certain offences against the Parliament under Chapter XIII of the *Criminal Code*. Such offences have always been subject to investigation and summary punishment as contempts by the Houses of Parliament themselves under s 8 of the *Parliamentary Privileges Act 1891*.
- 1.4 The CCC's power and jurisdiction over these offences against the Parliament had been lost due to an amendment made in December 2014 to section 3(2) of the *Corruption, Crime and Misconduct Act 2003 (CCM Act)* by the deletion of a single word; "exclusively". The reasons for the amendment were outlined in PPC Report 48, as follows:¹

- 7.5 In relation to the amendments to s 3(2) the Explanatory Memorandum stated:

Subsection (2) is amended by deleting the words "exclusively" and "unless that House so resolves". The existing provisions of subsection 3(2) of the Act have been virtually ineffectual in defining the scope of the CCC's jurisdiction with respect to allegations of misconduct against Members of Parliament. This is because, despite the *Parliamentary Privileges Act 1891* and the *Parliamentary Papers Act 1891*, there currently exists overlapping regulation of unacceptable activities in Parliament through various offences under the *Criminal Code*. The current provisions also wrongly imply that Parliament can waive all privilege by resolution.

- 7.6 On 14 October 2014 the Premier, Hon Colin Barnett MLA, made the following comments regarding parliamentary privilege and the proposed amendments to the CCC Act:

Parliamentary Privilege — Clause 6

Mr C.J. BARNETT — by leave: This statement relates to the legislation and the issue of parliamentary privilege, and I make it to place it on the public record for the purposes of clarification. It is a long statement, so I have sought leave to read the statement. It relates to clause 6. The amendments proposed by clause 6(5) to section 3(2) of the principal act are being made to further clarify and to confirm that

¹ PPC Report 48, p. 56-57.

parliamentary privilege is not affected by the operation of the Corruption and Crime Commission Act.

In brief, the law of parliamentary privilege in Western Australia is that which applied as at 1 January 1989 to the United Kingdom's House of Commons, its members and committees. Article 9 of the *Bill of Rights 1689* is the relevant source of that privilege, and provides that proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament. A proceeding in Parliament therefore enjoys the protection afforded by parliamentary privilege. As a result, members of Parliament cannot be questioned on their motives or actions in undertaking work directly and immediately connected with the work of the house or a parliamentary committee. The same protection is afforded to witnesses before a house or a committee. A statute may make it clear, either by express words or necessary implication, that parliamentary privilege does not apply. For example, there are offences under chapter VIII of the *Criminal Code* providing for offences against the legislature. Among them is section 57, which makes it an offence to give false evidence before Parliament. In order to mount a successful prosecution, it would be necessary to lead evidence of the proceedings in Parliament and expose that evidence to cross-examination and contradiction. Given that proceedings of Parliament are protected by parliamentary privilege and so cannot be impeached or questioned, it would be impossible to mount a successful prosecution unless section 57 indicated that parliamentary privilege does not apply to that section. Given this evidentiary position and the nature of the offence created by section 57, it is arguable that in enacting section 57, Parliament waived its privilege, given the impossibility of obtaining a conviction for such an offence without the prosecution leading evidence of what the accused had said before Parliament. Ordinarily, dealing with false evidence before Parliament or one of its committees is something Parliament would deal with. The "implicit waiver" interpretation of section 57 leaves it open for the police to make inquiries if a charge were being considered. However, it is not a matter for inquiry by any other body, such as the CCC. Its jurisdiction is confined to that provided for in the principal act. The act makes no express or implied waiver of parliamentary privilege. Indeed, the contrary intention is expressed in section 3(2), which provides that —

Nothing in this Act affects, or is intended to affect, the operation of the Parliamentary Privileges Act 1891 or the Parliamentary Papers Act 1891 ...

The amendments proposed by clause 6 to section 3(2) have two legal consequences. First, they further clarify and ensure that in relation to matters over which the Parliament has authority pursuant to its privileges, the CCC has no jurisdiction. Second, as a more general principle of statutory interpretation, they clearly place on the public record that this Parliament intends that its privileges are not to be affected by its legislation unless the Parliament itself decides to do so by express words or necessary implication. As honourable members will appreciate, this is very important because parliamentary privilege provides, for example, the capacity for members of Parliament and witnesses before Parliament to say what they think needs to be said in parliamentary proceedings without being questioned in any court or place out of Parliament. This is an essential element of our representative parliamentary democracy.

- 7.7 It appears to have been the clear intention of the Parliament that from 2014 onwards the Parliament alone would have the power to investigate matters to which parliamentary privilege applied, and that the WA Police alone would be responsible for investigating the *Criminal Code* offences to the extent which that could be practically done – implied waiver of privilege or not.

- 1.5 Section 3(2) of the CCM Act had been enacted primarily to preserve the law of parliamentary privilege and ensure that, other than where expressly excluded by the CCM Act, it continued to have effect. Its original form was as follows:

Nothing in this Act affects, or is intended to affect, the operation of the *Parliamentary Privileges Act 1891* or the *Parliamentary Papers Act 1891* and a power, right or function conferred under this Act is not to be exercised if, or to the extent, that the exercise would relate to a matter determinable **exclusively** by a House of Parliament, unless that House so resolves. [*emphasis added*]

- 1.6 The Bill, therefore, proposes an amendment to the CCM Act to restore the pre-2014 position, being the restoration of the word “*exclusively*” to s 3(2).
- 1.7 The history of the first referral to the PPC was set out in Hon Michael Mischin’s introductory speech in moving the ‘second’ of the referral motions as follows:²

I will briefly remind members of the history of the bill. It was originally introduced into the other place as a component of the Corruption, Crime and Misconduct and Criminal Property Confiscation Amendment Bill 2017, a larger bill that proposed, amongst the matters contained in this bill, conferring powers for the Corruption and Crime Commission to deal with confiscation of proceeds of crime matters. In the course of the debate it became clear that the proposed amendment, the subject of this bill, needed to be considered in greater detail.

On Wednesday, 7 September 2017, the government moved to split that bill, and the component that proposes to extend the power of the Corruption and Crime Commission over members of Parliament was introduced on 28 November 2017. On 20 March 2018, on the motion of the Leader of the House, the bill was referred to the Standing Committee on Procedure and Privileges for report. Originally, the report date was to be 10 April, but that was extended by the house to 10 May 2018, and the committee reported on that date. In short, it found that the bill did not have implications for parliamentary privilege, but in its comprehensive report it made a number of important observations on the question of the protection of parliamentary privilege and the procedures of the house.

Report 48

- 1.8 The PPC’s Report 48 dealt with the first referral of the Bill and was presented on 10 May 2018.³
- 1.9 On 7 September 2017, the Attorney General tabled in the Legislative Assembly a legal opinion from the then Solicitor General to the effect that the reinsertion of the word “*exclusively*” in s 3(2) of the CCM Act by the Bill would not affect parliamentary privilege.⁴ Much of the discussion centred on the CCC currently being unable to investigate those Chapter XIII *Criminal Code* offences by Members of Parliament that were mirrored as summarily punishable contempts of Parliament in s 8 of the *Parliamentary Privileges Act 1891*. A restoration of the CCC’s ability to investigate such offences would not, it was argued, affect parliamentary privilege at all.

² *Hansard*, Western Australia, Legislative Council, 19 May 2020, p. 2770.

³ Western Australia, Legislative Council, Procedure and Privileges Committee, *Corruption, Crime and Misconduct Amendment Bill 2017*, Report 48, 10 May 2018: [https://www.parliament.wa.gov.au/Parliament/commit.nsf/\(Report+Lookup+by+Com+ID\)/899D1306BAD8FB04482582890011F7F5/\\$file/Standing%20Committee%20on%20Procedure%20and%20Privileges%20-%20Report%20No.%2048%20-%20Corruption%2C%20Crime%20and%20Misconduct%20Amendment%20Bill%202017.pdf](https://www.parliament.wa.gov.au/Parliament/commit.nsf/(Report+Lookup+by+Com+ID)/899D1306BAD8FB04482582890011F7F5/$file/Standing%20Committee%20on%20Procedure%20and%20Privileges%20-%20Report%20No.%2048%20-%20Corruption%2C%20Crime%20and%20Misconduct%20Amendment%20Bill%202017.pdf)

⁴ Tabled Paper 581, Legislative Assembly, 7 September 2017, (Attorney General).

- 1.10 The PPC obtained its own legal opinion on the proposed effect of the Bill from counsel, Mr Bret Walker SC. Although expressing some unease about the potential evidential issues during CCC investigations involving Members of Parliament, Mr Walker agreed with the opinion of the Solicitor General that the amendment contained in the Bill would not adversely impact parliamentary privilege:⁵

In my view clause 3(2) of the CCC Act preserves parliamentary privilege and the proposed amendment will not alter this position. The only likely impact on parliamentary privilege of the proposed amendment is that it will give rise to some incidental issues relating to the identification of parliamentary privilege and the proper use of evidence in the course of the CCC's exercise of its investigative function.

- 1.11 These 2018 comments of Mr Walker have proved somewhat prophetic.
- 1.12 The Bill proceeded to Committee of the Whole House stage and was at the consideration of Clause 1 of the Bill when the second referral of the Bill to the PPC occurred.

The Second Referral

- 1.13 The reason for this current, second, referral was an unexpected development in parliamentary privilege in Western Australia. A covert CCC investigation in April 2019 into several former Members of the Legislative Council and their electorate staff, and a subsequent CCC public inquiry in August 2019 into possible misuse of the parliamentary allowance scheme for Members of the Western Australian Parliament, took an unexpected turn with both the CCC and the Attorney General adopting a sharply conflicting interpretation to that of the Legislative Council on the impact of parliamentary privilege on the CCC's broad investigative powers.

- 1.14 In short, the CCC and the Attorney General formed a common view that the CCC has the power under the CCM Act to:

- order the production of;
- seize; and
- examine at length,

any material that may be subject to parliamentary privilege, with the only limitation imposed by s 3 (2) of the CCM Act being as to the use it may make as evidence of any privileged material. In the present CCC investigation, the evidence in issue include emails and other documents contained on several years' worth of former Members and their electorate staffs' email accounts equating to between 400 and 600 terabytes of data.⁶

- 1.15 This interpretation of the effect of s 3(2) of the CCM Act is destructive of the concept of parliamentary privilege as it is understood to apply to the Legislative Council of Western Australia and to most other Houses of Parliament whose practices and privileges are based on the privileges of the United Kingdom House of Commons. It is contrary to the weight of legal authority and the practical trend towards memoranda of understanding and protocols between Australian parliaments and various law enforcement agencies regarding the confidential handling of evidence that may be subject to parliamentary privilege.⁷

⁵ PPC Report 48, p6.

⁶ Letter, Mr John McKechnie QC, Commissioner, CCC of Western Australia, to Hon Kate Doust MLC, President of the Legislative Council and Chair of the PPC, dated 25 July 2019, p2; Mr Angelo Giaros, Chief Information Officer, Department of the Premier and Cabinet, *Transcript of Evidence*, 23 September 2019, p2.

⁷ For instance: *Crane v Gething* [2000] FCA 45 (18 February 2000); *O'Chee v Rowley* [1997] QCA 401 (4 November 1997); and the United States' case of *United States v. Rayburn House, Rm 2113, Washington, DC*, 497 F.3d 654 (D.C.

Accordingly, the President of the Legislative Counsel engaged legal counsel and commenced legal proceedings to clarify the impractical conflict in the interpretation of s 3(2) of the CCM Act.

- 1.16 Reports 55 to 58 of the PPC set out the background facts to the legal proceedings currently before the Supreme Court. No trial date has been set as yet.
- 1.17 The outcome of the current legal proceedings will have a significant impact on any investigation involving compulsory production powers undertaken by any State or Federal law enforcement agency into Members of Parliament, those who work for them, and senior public servants.

A Different Approach — Western Australia Police Force Investigations

- 1.18 In stark contrast to its impasse with the CCC, over the course of the past year the PPC has worked closely with the Western Australia Police Force (**WAPOL**) on a number of related investigations. On each such occasion, the PPC and WAPOL have been able to expeditiously negotiate an agreed procedure that allowed WAPOL to obtain all of the evidence that it was seeking in a timely manner and without WAPOL investigators accessing any material that was subject to parliamentary privilege.
- 1.19 The PPC is currently in the advanced stages of negotiating a memorandum of understanding with WAPOL, to present to the Legislative Council for its approval, that will aim to facilitate high level cooperation between the Legislative Council and WAPOL going forward.

2 Counsel's Opinion

- 2.1 Upon receipt of the second referral of the Bill, the PPC sought the opinion of the legal counsel who are representing the President of the Legislative Council in the present Supreme Court proceedings. Their opinion is attached at Appendix 1.
- 2.2 Counsel concluded that the proposed amendment contained in the Bill was too ambiguous to pass in its current form:⁸
 - 81. The stated object of the proposed amendment of s 3(2) is, in essence, to loosen the restriction on the functions of the CCC, under the second limb, and allow the CCC to investigate possible serious misconduct by a member of Parliament which could amount to an offence under the Criminal Code, but not to loosen the restriction which prevents the CCC's powers and rights from being exercised with respect to privileged records.
 - 82. But if the word "*exclusively*" is inserted after "*determinable*" in s 3(2), there will be a question whether the restriction, in the second limb, upon the exercise of powers and rights conferred under the CCM Act has been loosened so as to allow those powers and rights to be exercised in relation to records and things which are subject to parliamentary privilege.
 - 83. This possible meaning arises from the fact that it will be open to contend that the question whether a record is subject to parliamentary privilege is not a matter determinable exclusively by Parliament because, as has been pointed out above, there are circumstances in which courts may be called upon to determine whether

Cir. 2007). Memoranda of understanding and operational protocols preserving parliamentary privilege during searches relating to Members of Parliament are currently in place between Houses of Parliament and law enforcement agencies in the following Australian jurisdictions: Commonwealth, Australian Capital Territory, Queensland and New South Wales.

⁸ Counsel's opinion, paras 81 to 86.

a particular record is the subject of parliamentary privilege. There will be a question whether the clarity of the first limb of s 3(2) precludes this meaning or whether the amendment broadens the CCC's powers and rights, as well as its functions, with respect to members of Parliament and their records. It cannot be assumed that the second reading speech will avoid such a meaning being attributed to the amended subsection. Such speeches have a very limited role in the interpretation of Acts by the courts.

84. While the proposed amendment has the apparent virtue of brevity, that is not a true virtue here, because it would raise a real ambiguity.
85. It is unnecessary to express a concluded view on just how s 3(2) would be construed by a court, if it was amended in the proposed manner. The point is that with a matter as important as parliamentary privilege, an amendment should not be supported if it exposes a real risk of an interpretation which would diminish parliamentary privilege when that is not the real object of the amendment.
86. The proposed amendment would certainly achieve the object of expanding the classes of conduct which the CCC is entitled to investigate, as the then Solicitor General explained in a 2017 briefing note (appx 1 to PPC Report 48). Although that briefing note includes a view that the proposed amendment would not otherwise affect parliamentary privilege, it did not specifically address the point raised in para 83 above. The two sets of current proceedings involving the Legislative Council, the Attorney-General and the CCC, which relate to the effect of s 3(2), reflect some controversy about the meaning of the subsection and the scope of parliamentary privilege and demonstrate the importance of avoiding, rather than introducing, doubt about the protection of parliamentary privilege.

3 Recommendation

- 3.1 The PPC recommends that, in view of the opinion of counsel, the Bill not be passed in its current form.

RECOMMENDATION 1

That the Bill not be passed in its current form.



Hon Kate Doust MLC
Chair

APPENDIX 1

COUNSEL'S OPINION

LEGISLATIVE COUNCIL STANDING COMMITTEE ON PROCEDURE AND
PRIVILEGES; RE: PROPOSED AMENDMENT TO CORRUPTION, CRIME AND
MISCONDUCT ACT (WA), s 3(2)

MEMORANDUM OF ADVICE

1. On behalf of the Legislative Council Standing Committee on Procedure and Privileges (PPC), we have been asked to provide advice on a proposed amendment to s 3(2) of the *Corruption, Crime and Misconduct Act 2003* (WA) (CCM Act). Our advice is sought in respect of the possible impacts of the proposed amendment on parliamentary privilege, and on certain legal proceedings currently on foot in the Supreme Court of Western Australia.

The proposed amendment to s 3(2) of the CCM Act

2. The CCM Act establishes and provides for the operation of the Corruption and Crime Commission (CCC), an anti-corruption body with functions with respect to (among other things) serious misconduct by public officers (ss 7B and 18, CCM Act), which includes members of either House of Parliament.
3. The CCM Act confers powers on the CCC to enable it to carry out its functions, including investigative powers. It may investigate whether serious misconduct has or may have occurred (or even whether it is likely to occur), even if no allegation of serious misconduct has been made: s 18(2)(e), CCM Act. Evidence obtained by the CCC in the course of exercising its serious misconduct function may be furnished to an independent agency or another authority for use in the prosecution of a person for a criminal offence (s 18(2)(h)(i)).
4. The CCC is empowered to compel the production of records and things (s 95), summon and examine witnesses (ss 96 and 97), search premises and seize relevant material (ss 100 and 101, in the case of the latter, with a warrant issued by a Supreme Court judge).
5. Section 3(2) of the CCM Act presently provides:

Nothing in this Act affects, or is intended to affect, the operation of the *Parliamentary Privileges Act 1891* or the *Parliamentary Papers Act 1891* and a power, right or function conferred under this Act is not to be exercised if, or to the extent, that the exercise would relate to a matter determinable by a House of Parliament.

3456-1139-9185v1

1

The liability of C Zelestis QC and R O'Brien is limited by a Scheme approved under Professional Standards Legislation.

6. The proposed amendment the subject of this advice is contained in s 4 of the *Corruption, Crime and Misconduct Amendment Bill 2017* (WA) (CCM Amendment Bill). The CCM Amendment Bill seeks to add a single word to s 3(2) of the CCM Act — the word ‘exclusively’. With the amendment proposed, s 3(2) would read as follows:

Nothing in this Act affects, or is intended to affect, the operation of the *Parliamentary Privileges Act 1891* or the *Parliamentary Papers Act 1891* and a power, right or function conferred under this Act is not to be exercised if, or to the extent, that the exercise would relate to a matter determinable exclusively by a House of Parliament. (our emphasis)

7. Section 3(2) of the CCM Act has the effect of expressly preserving the paramouncy of parliamentary privilege, even in circumstances where the CCC appears to have overlapping or concurrent powers with the Parliament in respect of the same conduct, being misconduct by members of Parliament.
8. It is appropriate to identify the precise object which the proposed amendment is intended to achieve and then to assess whether it does so with clarity, avoiding unnecessary ambiguity. parliamentary privilege, which is so fundamentally important to Western Australia’s system of parliamentary democracy, should not be exposed to potential impairment by an ambiguous amendment.
9. The Attorney-General’s second reading speech on the proposed amendment included statements that:
- (a) the amendment was proposed to restore the power and jurisdiction of the CCC over misconduct by members of Parliament that could constitute a breach of the Criminal Code;
 - (b) the proposed amendment “would leave the powers and privileges of Parliament unaffected”;
 - (c) “the broader purpose of section 3(2) of the CCM act (sic) is to ensure that the privileges of Parliament are not affected by the CCM act (sic)”;
 - (d) “parliamentary privilege would still have a role to play in the investigation and prosecution of [certain] Criminal Code offences, whether by the CCC as part of a misconduct investigation, or an investigation by the police as part of a criminal investigation”;

3456-1139-9185v1

2

The liability of C Zelestis QC and R O’Brien is limited by a Scheme approved under Professional Standards Legislation.

- (e) parliamentary privilege could still “preclude the obtaining and adducing of various types of evidence” in those investigations; and
 - (f) issues of parliamentary privilege were “separate from the one dealt with by the amendment, which is whether the CCC, as with the police, can investigate certain conduct at all”.
10. These statements make clear that the object of the proposed amendment is not to interfere with parliamentary privilege in any way, nor to diminish the existing protection of that privilege by s 3(2) of the CCM Act, but only to enable the CCC to deal with any misconduct by members of Parliament over which the Parliament itself does not have exclusive jurisdiction and to do so in a manner which does not detract from parliamentary privilege.
 11. The last point is of vital significance. The object described by the Attorney-General expressly includes preserving parliamentary privilege in full, even when the CCC exercises powers with respect to an issue whether there has been misconduct by a member of Parliament.
 12. These statements by the Attorney-General also reflect a clear recognition that parliamentary privilege encompasses a privilege from production of privileged documents in response to an exercise of investigative powers of the CCC under the CCM Act. The statements make clear that the intention of the amendment is not to affect that position at all.

Principles protected by the reference in s 3(2) to the operation of the *Parliamentary Privileges Act 1891* and the *Parliamentary Papers Act 1891*

13. Section 3(2) of the CCM Act expressly refers to, and expressly preserves the operation of, two other Acts: the *Parliamentary Privileges Act 1891* (PP Act) and the *Parliamentary Papers Act 1891* (Parliamentary Papers Act).

The PP Act

14. The PP Act defines the privileges, immunities and powers of the Legislative Council and the Legislative Assembly of Western Australia.
15. The term “parliamentary privilege” encompasses two distinct concepts: firstly, the immunities of the Houses and their members, and secondly, the powers of the Houses (including, particularly, the power to punish contempts).
16. By s 1 of the PP Act, the Houses of Parliament and their members and committees have and may exercise the privileges, immunities and powers set out in the PP Act and, to the extent they are not inconsistent with that Act, the privileges, immunities and powers by custom,

3456-1139-9185v1

The liability of C Zelestis QC and R O'Brien is limited by a Scheme approved under Professional Standards Legislation.

statute or otherwise of the Commons House of Parliament of the United Kingdom and its members and committees as at 1 January 1989.

17. The central parliamentary privilege of the freedom of speech and debate in parliamentary forums is expressed in Article 9 of the *Bill of Rights 1689* (UK) which is made applicable in Western Australia by s 1 of the PP Act. Article 9 provides as follows:

Freedom of Speech — that the Freedom of Speech, and Debates or Proceedings in Parlyament, ought not to be impeached or questioned in any Court or Place out of Parlyament.

18. This key immunity involves not only the “freedom of speech” component, which prevents a member or witness from being prosecuted or sued for anything they say in the House or in committee proceedings, but also a prohibition against the courts inquiring into or questioning proceedings in Parliament. As noted in *Halden v Marks* (1995) 17 WAR 447 (at 461), it is settled that Article 9 is to be given a wide interpretation.
19. Unlike the Commonwealth, and some other States, in Western Australia, the meaning of the phrase “Proceedings in Parliament” in Article 9 has not been clarified by statute. Article 9 is primarily directed to freedom of speech and debate in the Houses of Parliament and in parliamentary committees where the core or essential business of Parliament takes place.
20. However, actions outside the Houses and committees can fall within “Parliamentary Proceedings” if there is a sufficient connection with the business of Parliament, because if such actions do not enjoy privilege, there is likely to be an adverse impact on the core or essential business of Parliament: *R v Chaytor* [2011] 1 AC 684 (at 706).
21. Steps taken for the purpose of transacting business of a House — bringing documents into existence, collecting or assembling them, or coming into possession of them — are also capable of amounting to proceedings in Parliament: *O’Chee v Rowley* (1997) 150 ALR 199 (at 208–209, 215). The preparation of a draft speech to be delivered on the floor of a House, for example, is capable of amounting to a proceeding in Parliament. However, the submission of claims for parliamentary allowances and expenses has been held not to constitute a proceeding in Parliament: *R v Chaytor* (at 711–712).
22. In this context, the word “impeached” in Article 9 includes impeded, hindered, prevented, detrimentally or prejudicially affected, or impaired: *O’Chee v Rowley* (at 210). The purpose of protecting the freedom of speech in Parliament, for which the privilege and associated immunity are conferred, supports a construction of Article 9 by which it protects a member

3456-1139-9185v1

4

The liability of C Zelestis QC and R O’Brien is limited by a Scheme approved under Professional Standards Legislation.

from having privileged material impeached in the sense described above, at any time *after* the material has come into existence: *O'Chee v Rowley* (at 211).

23. Article 9 provides that proceedings in Parliament may not be impeached or questioned “in any Court or place out of Parliament”. There is no applicable definition of a “place out of Parliament”, but it is wide enough to include a tribunal and any body with the power to impose sanctions (such as a disciplinary body) or to reach, and report to Parliament, conclusions about the conduct of a member of Parliament. This would encompass impeachment or questioning in the course of an investigation by a body such as the CCC, which has statutory functions with respect to serious misconduct which, subject to s 3(2), include making assessments about the conduct of members of Parliament, referring matters to other authorities for possible action and reporting its assessments to Parliament: ss 32–41, 84–87, 89, CCM Act.
24. Proceedings in Parliament will be hindered, impeded or impaired if documents produced for the purposes of parliamentary proceedings are subsequently vulnerable to compulsory court processes, such as interrogatories or discovery: *O'Chee v Rowley* (at 215). The same will be the case if privileged material is amenable to seizure or compulsory disclosure for use by statutory bodies such as the CCC. The prospect of external investigation and scrutiny of privileged material will act as a powerful disincentive to the freedom of speech the privilege is designed to protect.
25. In addition to defining the privileges, immunities and powers exercisable by Parliament and its members and committees, the PP Act also confers a number of related powers, including the power to order the attendance of any person before the House or a committee, or the production of documents (s 4, PP Act); the power to punish contempts (s 8, PP Act); and the power to issue a warrant for the apprehension and imprisonment of a person adjudged guilty of contempt (s 9, PP Act).
26. Section 8 of the PP Act sets out particular offences which Parliament is empowered to punish by fine or imprisonment — for example, refusing to be examined or answer questions put by Parliament or a parliamentary committee, and attempting to bribe a member of Parliament.
27. However, s 8 of the PP Act does not prescribe the limits of conduct which Parliament may determine amounts to contempt. The power to adjudge and punish contempts is a key component of the powers and privileges of Parliament.
28. Parliament does not frequently punish contempts, but its authority to do so is paramount.

3456-1139-9185v1

5

The liability of C Zelestis QC and R O'Brien is limited by a Scheme approved under Professional Standards Legislation.

29. The President or Speaker has the power to issue a warrant for the apprehension or imprisonment of a person adjudged by the relevant House to be guilty of contempt (s 9, PP Act), or, in the case of a person disturbing proceedings whilst Parliament is sitting, to issue a verbal order for the person to be apprehended and kept in custody (s 10, PP Act). The Sheriff (and his officers, constables and other persons) are required to assist in the execution of that warrant or verbal order (s 12, PP Act) and may break open doors if a person the subject of such a warrant is concealed inside (s 13, PP Act).
30. Either House of Parliament may direct the Attorney-General to prosecute a person guilty of contempt before the Supreme Court: ss 14 and 15, PP Act.

Parliamentary Papers Act

31. Parliamentary privilege attaches to the preparation and contents of documents prepared by the Houses of Parliament and their committees for the purposes of proceedings in Parliament.
32. The Parliamentary Papers Act commenced on the same day as the PP Act. It protects those employed in the printing and publication of papers authorised by Parliament or parliamentary committees and facilitates the proof of those papers in proceedings.
33. By s 1 of the Parliamentary Papers Act, any civil proceeding in respect of the publication of any report, paper, votes or proceeding of the Legislative Council or Legislative Assembly by a person, or by his or her servant, by or under the authority of either House, shall be stayed and put to an end by a court upon application made in compliance with that provision.
34. The application requires the defendant to bring before the Court a certificate under the hand of the President, Speaker or Clerk confirming the publication of the relevant report, paper, votes or proceedings (and an affidavit verifying the certificate): s 1, Parliamentary Papers Act.

Offences against Parliament

35. As explained above, Parliament has the unquestionable power to adjudge and punish contempts of Parliament. However, provisions relating to various offences which will also amount to contempt of Parliament have been included in the Criminal Code.
36. Part II, Chapter VIII of the Criminal Code sets out a number of offences against Parliament, including interfering with the legislature (s 55), disturbing Parliament (s 56), giving false evidence before Parliament (s 57), threatening a witness (s 58), refusing to attend or give evidence before Parliament (s 59), receiving a bribe as a member of Parliament (s 60) and offering or attempting to bribe a member of Parliament (s 61).

3456-1139-9185v1

6

The liability of C Zelestis QC and R O'Brien is limited by a Scheme approved under Professional Standards Legislation.

37. There is considerable alignment between these criminal offences and the offences described in s 8 of the PP Act.
38. By enacting legislation permitting the prosecution of these offences by the courts, Parliament has not in any way renounced its inherent power to adjudge and punish contempts itself.
39. There may be several logistical reasons behind the inclusion in Criminal Codes of provisions relating to the punishment of certain contempts of Parliament, including the inability of Parliament to impose penalties (including imprisonment) beyond the existing parliamentary session and Parliament's desire to avoid cluttering the proceedings of the House with allegations of contempt. (Odgers' Australian Senate Practice, 14th ed, p 84, which examines the position under American law.)
40. In any event, where conduct amounts to both a contempt of Parliament and a criminal offence, a person may be both prosecuted in criminal proceedings and the subject of contempt proceedings in Parliament.

Extent of exclusivity

41. The proposed amendment to s 3(2) of the CCM Act raises the question of the exclusivity of Parliament's power to determine privilege with respect to records and things (including devices containing electronic records) relating to proceedings in Parliament.
42. While courts have jurisdiction to determine the scope of parliamentary privileges and immunities, the power to determine whether Parliament's privileges have been breached or would be breached if certain action was taken rests squarely with Parliament, and courts will generally refrain from determining such questions: *Egan v Willis* (1998) 195 CLR 424 (at [21]–[29], [65]–[79]); *Halden v Marks* (at 461–464). The privilege is a privilege of the Parliament, such that a member cannot waive it: *Halden v Marks* (at 463) and *O'Chee v Rowley* (at 212).
43. It is correct to say that Parliament's power to determine privilege is extensive. It is almost exclusive, but not entirely so. There are some exceptions to it, although they are quite confined.

3456-1139-9185v1

7

The liability of C Zelestis QC and R O'Brien is limited by a Scheme approved under Professional Standards Legislation.

44. There are some situations in which Courts or tribunals are called upon or permitted to determine privilege or undertake an exercise very similar to it. Some examples are described below.

- (a) A trial judge has the power to intervene (even of his or her own motion) to prevent a breach of parliamentary privilege from occurring, such as by refusing to allow evidence to be introduced at trial which is clearly in breach of parliamentary privilege: *R v Murphy* (1986) 5 NSWLR 18 (at 40) and *Halden v Marks* (at 462).
- (b) Likewise, a court may be called upon to decide whether or not to order a party to produce for inspection documents by way of discovery in a civil proceeding. As in *O'Chee v Rowley*, a party may object to producing the documents for inspection on the basis that they are protected from disclosure by parliamentary privilege. For example, a court may be required to determine whether a document described as a draft speech to be delivered in Parliament is in fact such a document, or has been simply dressed up to look like it. That determination will necessarily overlap with what is Parliament's unquestioned right to determine privilege.
- (c) It is also open for the Legislature to expressly confer jurisdiction on a tribunal or other statutory body which may involve questions of privilege. For example, Schedule 1, cl 12 of the *Freedom of Information Act 1992* (WA) provides that matter will be exempt if its disclosure would infringe the privileges of Parliament. In fulfilling his or her obligation to ensure non-disclosure of exempt matter (s 74, FOI Act), the Information Commissioner will need to consider the application of parliamentary privilege.

Construction of s 3(2) of the CCM Act

45. Section 3(2) of the CCM Act has two distinct limbs. It is convenient to address the two limbs separately, without diminishing the importance of reading the provision as a whole.

Construction of the first limb of s 3(2)

- 46. The first limb provides that nothing in the CCM Act affects, or is intended to affect, the operation of the PP Act or the Parliamentary Papers Act.
- 47. The principles protected by the reference to these two Acts are addressed in paragraphs 13–34 above. In summary, the first limb cements the paramountcy of the privileges, immunities and powers of Parliament.

3456-1139-9185v1

8

The liability of C Zelestis QC and R O'Brien is limited by a Scheme approved under Professional Standards Legislation.

48. The Legislature's use of the phrase "affects, or is intended to affect" is obviously intended to achieve the broadest possible protection of the operation of the two Acts mentioned. None of the parameters of the privileges, powers and immunities to which the PP Act and the Parliamentary Papers Act relate are intended to be affected at all by the CCM Act; rather they are comprehensively preserved.
49. One Act will "affect" the operation of another if it produces an effect or change in the way the second Act works, such as by limiting its application in a particular way or in particular circumstances. Not only does the first limb declare that no such effect occurs upon the operation of the two Acts referred to, it goes further and provides that nothing in the CCM Act "is intended to affect the operation of" those two Acts.
50. This part of the first limb makes clear that insofar as any provision of the CCM Act might otherwise be read as intruding upon the operation of the two Acts, no such meaning is intended. It resolves any such issue of construction of the CCM Act in favour of the paramountcy of the other two Acts. It does so with respect to s 3(2) itself.

Construction of the second limb of s 3(2)

51. The second limb of s 3(2) provides that a power, right or function conferred under the CCM Act is not to be exercised if, or to the extent, that the exercise would relate to a matter determinable by a House of Parliament.
52. On a proper construction of s 3(2), the two limbs are not simply duplicative. That is, the second limb, which describes a limitation on the powers, rights or functions that would otherwise be exercisable by the CCC, adds something to the first limb.
53. The second limb of s 3(2) lists the matters potentially restricted by reason of being related to a matter determinable by a House of Parliament as being a "power, right or function".
54. A "power" in this context includes a legal ability, capacity or authority. A "right" includes a just claim or title as well as a legal power. Apart from s 3(2), the word "right" is used sparingly in the CCM Act: ss 7, 73, 180, 211 (as well as some presently irrelevant uses in Schedules 2 and 3). None of those uses explains its use in s 3(2). The two words "power" and "right" are obviously used there in overlapping senses.
55. The reference to a "function" is to an activity that a natural person or other body, including the CCC, is authorised to undertake under the CCM Act. In addition to the CCC, the CCM Act confers functions and powers upon the Public Sector Commissioner (Part 4A) and the

3456-1139-9185v1

9

The liability of C Zelestis QC and R O'Brien is limited by a Scheme approved under Professional Standards Legislation.

Parliamentary Inspector of the CCC (Part 13), and also confers powers upon the police (Part 4).

56. Read as a whole, the phrase “power, right or function” encompasses (amongst other things) all that the CCC (and the other entities referred to above) may do under the CCM Act.
57. The CCM Act confers a number of powers and rights on the CCC — for example, the right to make and report an assessment on the basis of its investigations (ss 22, 84), the power to compel the production of records and other things (s 95), and the power to enter and search premises pursuant to a validly obtained search warrant (s 101).
58. The CCM Act expressly confers a number of functions on the CCC.
59. Section 16 of the CCM Act describes the CCC’s “General Functions” as being the functions conferred or imposed by or under the CCM Act or any other written law. The functions of the CCC therefore include all of those things which the CCC does or may do that are incidental to or arise naturally or in an ancillary manner from its rights and powers.
60. Section 18 of the CCM Act provides that it is an express function of the CCC to ensure that an allegation about, or information or matter involving, serious misconduct is dealt with in an appropriate way.
61. Section 18(2) provides that without limiting how the CCC may perform its serious misconduct function, it may do so by (among other things) receiving allegations, investigating, making recommendations and furnishing reports on the outcome of its investigations, and assembling evidence which may be admissible in the prosecution of a person for a criminal offence.
62. The powers, rights and functions of the CCC therefore include those of an investigative kind, such as are necessary to apply for search warrants, enter premises and inspect documents.
63. The phrase “if, or to the extent that” in the second limb of s 3(2) suggests that a power, right or function otherwise fully exercisable by the CCC may be partially restricted or limited. That is, the power, right or function may be able to be exercised, but not to its full extent.
64. The second limb of s 3(2) limits the CCC’s powers, rights or functions where their exercise “would relate to a matter determinable by a House of Parliament”.
65. This phrase, and particularly “relate to” and “matter”, must be given a broad interpretation because of the context provided by the first limb of s 3(2) and the wide application conveyed by the phrase “power, right or function”. The concept of “relating to” means associated or

3456-1139-9185v1

10

The liability of C Zelestis QC and R O’Brien is limited by a Scheme approved under Professional Standards Legislation.

connected with. There are no words imposing any limit on the nature or extent of the connection intended by the phrase “would relate to”. The use of the word “would” (that is “would relate to”) encompasses a potential or future relationship or connection.

66. The future conditional expression (“would relate to”) is used because the point of the second limb is to prohibit and preclude a particular exercise of a power, right or function. It does not condone an exercise of a power, right or function relating to a matter determinable by a House of Parliament on the basis that the exercise will be lawful and effective unless or until it has been found to be invalid. It proscribes the very exercise itself. This reflects the paramountcy accorded to the two Acts mentioned in the first limb.
67. The meaning of the word “matter” has been described as “elusive”: *Abebe v Commonwealth* (1999) 162 ALR 1 (at [215]). However, it is apparent from a review of constitutional law cases concerning the word that a “matter” is not merely an abstract question of law.
68. The concept of a “matter” includes a justiciable controversy (*Fencott v Muller* (1983) 152 CLR 570 at 603) — a claim based upon an alleged violation of an applicable law, which involves either the protection of a right or privilege, or the prevention, redress or punishment of some act inhibited by law.
69. In *Hooper v Kirella Pty Ltd* (1999) 96 FCR 1, applications for preliminary discovery were found by the Court to amount to justiciable controversies or “matters” even though there were no proceedings on foot claiming substantive relief and (depending upon the outcome of the preliminary discovery application) such proceedings may never be commenced.
70. The word “matter” is one of wide import. Read in context, a “matter determinable by a House of Parliament” is not limited to ultimate action involving an assessment or decision about conduct, such as assessing or determining whether a person has committed a contempt of Parliament and taking steps toward imposing a punishment for that conduct. Rather, it includes anything capable of being the subject of a power, right or function of the CCC (or anyone else) under the CCM Act, which may be determined by Parliament, such as whether a document sought to be used in an investigation is the subject of parliamentary privilege.
71. Any exercise of a power or right conferred under the CCM Act will necessarily have, and will relate to, an immediate or direct subject matter and will also be related to a wider subject matter. For example, an exercise of power by the CCC, under s 95, to issue a notice requiring a person to produce records and/or things relates to two matters, namely those records and things, and also the underlying subject matter of the investigation for which they are required (ie, the subject of the relevant exercise of a function by the CCC). It is not open to read the

3456-1139-9185v1

The liability of C Zelestis QC and R O'Brien is limited by a Scheme approved under Professional Standards Legislation.

second limb as referring only to the function's subject matter to which an exercise of a power or right would relate. To do so would be inconsistent with the express, unqualified declaration in the first limb.

72. Consistently with the breadth of the declaration in the first limb of s 3(2), the second limb restricts every exercise of a power, right or function under the CCM Act so as to protect and preserve the full operation of both of the two Acts which are mentioned in the first limb.
73. Thus, on a proper construction, the second limb of s 3(2) applies not only to restrict the CCC from exercising its power to make an assessment or form an opinion that serious misconduct has occurred under s 22, but also limits the steps that might otherwise be taken by the CCC in carrying out its investigation. Any investigative power held by the CCC may not be exercised if its exercise would relate to a matter which is determinable by Parliament.

Effect of the introduction of the word 'exclusively' on the construction of s 3(2)

74. In the Supreme Court proceedings commenced by the Attorney-General against the President of the Legislative Council, the Attorney-General disputes the President's case (i) that privileged documents are protected from production in response to an exercise of investigative powers by the CCC under the CCM Act, and (ii) that the question whether a record is the subject of a privilege from production in a CCC investigation is a matter determinable by the Legislative Council, under s 3(2) of the CCM Act: reply para 22 in response to defence paras 35, 36.
75. The stance taken by the Attorney-General in those proceedings adds emphasis to the importance of ensuring that any amendment that is made to s 3(2) is not open to be interpreted by a court (whether at the urging of the Attorney-General, the CCC or otherwise) as interfering in any way with the parliamentary privilege which protects records relating to the business of Parliament from being obtained and used in an investigation other than by Parliament, such as in an investigation by the CCC through the exercise of its statutory powers, in any circumstances.
76. As has been explained above, s 3(2) begins with the clearest possible declaration that the CCM Act does not affect the operation of the PP Act or the Parliamentary Papers Act. This first limb of the subsection preserves the operation of parliamentary privilege over records relating to parliamentary business, because that privilege takes effect under the PP Act.
77. Section 3(2) goes on to restrict the exercise, not just of the CCC's functions, but also its powers and rights under the Act, where that exercise would relate to a "matter"

3456-1139-9185v1

determinable by a House of Parliament. This restriction applies to all of the CCC's rights and powers under the CCM Act. These include the power to compel the production of records or things, under s 95, and the power to obtain records and things by search warrant, under s 101.

78. If the CCC begins to investigate an instance of possible serious misconduct by a member of Parliament which could amount to an offence under the Criminal Code, the exercise of its *function* will relate to that matter. If, in the course of that investigation, the CCC issues a notice to compel the production of records or things, under s 95, or seeks to obtain and then execute a search warrant for records and things, under s 101, the exercise of these *powers* and *rights* will relate, not only to that possible misconduct, but also to the records and things sought under those powers.
79. Thus, the reference to “a matter” in s 3(2) encompasses *both* the subject matter of a function and the immediate or specific subject matter of a particular exercise of power or right, related to that function.
80. It is sufficient to note three reasons for this meaning:
 - (a) it follows from the first limb of s 3(2), which expressly protects the two 1891 Acts (and, thereby, parliamentary privilege) in comprehensive, unqualified terms, meaning that nothing in the rest of the subsection has a different effect;
 - (b) the second limb refers specifically to powers and rights, not just functions, conferred under the CCM Act; all three things — functions, powers and rights — are subject to the restriction that their exercise may not relate, ie, in any way at all, to a matter determinable by a House of Parliament; and
 - (c) the reference to “a matter determinable by a House of Parliament” means any matter that is so determinable, which plainly includes a question whether a record is subject to parliamentary privilege, thus making clear that the exercise of powers and rights cannot reach to such records.
81. The stated object of the proposed amendment of s 3(2) is, in essence, to loosen the restriction on the *functions* of the CCC, under the second limb, and allow the CCC to investigate possible serious misconduct by a member of Parliament which could amount to an offence under the Criminal Code, but not to loosen the restriction which prevents the CCC's powers and rights from being exercised with respect to privileged records.

3456-1139-9185v1

13

The liability of C Zelestis QC and R O'Brien is limited by a Scheme approved under Professional Standards Legislation.

82. But if the word “exclusively” is inserted after “determinable” in s 3(2), there will be a question whether the restriction, in the second limb, upon the exercise of *powers* and *rights* conferred under the CCM Act has been loosened so as to allow those powers and rights to be exercised in relation to records and things which are subject to parliamentary privilege.
83. This possible meaning arises from the fact that it will be open to contend that the question whether a record is subject to parliamentary privilege is not a matter determinable exclusively by Parliament because, as has been pointed out above, there are circumstances in which courts may be called upon to determine whether a particular record is the subject of parliamentary privilege. There will be a question whether the clarity of the first limb of s 3(2) precludes this meaning or whether the amendment broadens the CCC’s powers and rights, as well as its functions, with respect to members of Parliament and their records. It cannot be assumed that the second reading speech will avoid such a meaning being attributed to the amended subsection. Such speeches have a very limited role in the interpretation of Acts by the courts.
84. While the proposed amendment has the apparent virtue of brevity, that is not a true virtue here, because it would raise a real ambiguity.
85. It is unnecessary to express a concluded view on just how s 3(2) would be construed by a court, if it was amended in the proposed manner. The point is that with a matter as important as parliamentary privilege, an amendment should not be supported if it exposes a real risk of an interpretation which would diminish parliamentary privilege when that is not the real object of the amendment.
86. The proposed amendment would certainly achieve the object of expanding the classes of conduct which the CCC is entitled to investigate, as the then Solicitor General explained in a 2017 briefing note (appx 1 to PPC Report 48). Although that briefing note includes a view that the proposed amendment would not otherwise affect parliamentary privilege, it did not specifically address the point raised in para 83 above. The two sets of current proceedings involving the Legislative Council, the Attorney-General and the CCC, which relate to the effect of s 3(2), reflect some controversy about the meaning of the subsection and the scope of parliamentary privilege and demonstrate the importance of avoiding, rather than introducing, doubt about the protection of parliamentary privilege.

Suggested modified amendment

87. In order to achieve the objects described by the Attorney-General in the second reading speech, which specifically include not detracting at all from parliamentary privilege over records relating to parliamentary business, the proposed amendment should be redrafted to ensure that there is no scope for it to be construed in a manner which does detract from that parliamentary privilege. This can be achieved by expressly providing that the amendment does not affect parliamentary privilege and by specifically directing the amendment to the function of dealing with misconduct over which the Parliament does not have exclusive jurisdiction.

88. Appropriate amendments would be to insert “subject to subsection (3)” after “and” in s 3(2) and to add a new subsection (3) as follow:

“ The Commission may perform the serious misconduct function in respect of an allegation about, or information or matter involving, any serious misconduct by a member of Parliament or other person other than that which is determinable exclusively by a House of Parliament, save that a power or right under this Act is not to be exercised in that regard if, or to the extent, that the exercise would affect the operation of the *Parliamentary Privileges Act 1891* or the *Parliamentary Papers Act 1891*.”

89. These amendments would expressly preserve the operation of parliamentary privilege in relation to a CCC investigation of serious misconduct by a member of Parliament. In such an investigation, the CCC would not have power to compel production of, or to use, records which are protected by parliamentary privilege.

Effect of the proposed amendment on the legal proceedings

90. We have also been asked to advise on the possible impacts of the proposed amendment on two legal proceedings commenced last year in the Supreme Court of Western Australia. Both of these proceedings (which remain on foot) relate to notices to produce which were purportedly issued by the CCC to the Director General of the Department of Premier and Cabinet (Mr Foster) and materials which were purportedly produced by Mr Foster in response to those notices.

91. The proposed amendment, if made, would not have retrospective effect. The amendment, therefore, would not directly affect either the events which brought about the proceedings

3456-1139-9185v1

15

The liability of C Zelestis QC and R O'Brien is limited by a Scheme approved under Professional Standards Legislation.

between the Legislative Council and the CCC and those between the Attorney-General and the President, or those proceedings themselves.

92. However, if enacted, the proposed amendment could result in the CCC issuing fresh notices under s 95 of the CCM Act, seeking production of the records and things which the CCC previously sought to obtain, and then defending any challenge to the validity of those notices on the ground that the amended s 3(2) has changed the position as regards the CCC's powers and parliamentary privilege. Thus, the impact of the amendment upon parliamentary privilege could quickly become an issue for the courts.
93. It would be unsatisfactory for the Legislative Council to ignore the ambiguity described above, when the true intended effect of the proposed amendment can be achieved, without any adverse impact upon parliamentary privilege, by a modified form of amendment to s 3(2).

30 September 2020

pp. 

C. L. Zelestis QC



P. E. Cahill SC



Rebecca O'Brien

3456-1139-9185v1

16

The liability of C Zelestis QC and R O'Brien is limited by a Scheme approved under Professional Standards Legislation.

Standing Committee on Procedure and Privileges


Date first appointed:

24 May 2001

Terms of Reference:

The following is an extract from Schedule 1 of the Legislative Council Standing Orders:

'1. Procedure and Privileges Committee

- 1.1 *A Procedure and Privileges Committee* is established.
 - 1.2 The Committee consists of 5 Members, including the President and the Chair of Committees, and any Members co-opted by the Committee whether generally or in relation to a particular matter. The President is the Chair, and the Chair of Committees is the Deputy Chair, of the Committee.
 - 1.3 With any necessary modifications, Standing Order 163 applies to a co-opted Member.
 - 1.4 The Committee is to keep under review the law and custom of Parliament, the rules of procedure of the Council and its Committees, and recommend to the Council such alterations in that law, custom, or rules that, in its opinion, will assist or improve the proper and orderly transaction of the business of the Council or its Committees.'
- 



Parliament House,
4 Harvest Terrace, West Perth WA 6005
Telephone: +61 8 9222 7300
Email: lcco@parliament.wa.gov.au
Website: <http://www.parliament.wa.gov.au>