

About Parliament 25

Parliamentary Privilege

The term 'parliamentary privilege' refers to the immunities and powers possessed by each House and their members to allow them to carry out their parliamentary functions effectively. Without these immunities and powers, members of parliament could not function properly when inquiring, debating and legislating.

While the immunities and powers have been inherited from the UK Parliament, the Western Australian Parliament has also passed its own legislation which enshrines parliamentary privilege in Western Australia. Section 36 of the *Constitution Act 1889* provides that it shall be lawful for the Parliament by an Act to "... define the privileges, immunities and powers to be held, enjoyed and exercised by the Legislative Council and Legislative Assembly." This was done in 1891 when the Parliament enacted the *Parliamentary Privileges Act*, which linked the privileges held by the UK House of Commons to the Western Australian Parliament on an ongoing basis.

In 2004, the *Parliamentary Privileges Act 1891* was amended to 'peg' this linkage as of 1 January 1989, so that any subsequent changes made by the Commons House of the UK Parliament would not automatically apply to the Western Australian Parliament.

Immunities

The most important parliamentary immunity inherited from the United Kingdom is freedom of speech in Parliament, which was enshrined in the 1689 UK *Bill of Rights*. Article 9 of the Bill declares 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.

This means that members of Parliament cannot be taken to court and prosecuted for anything they say or do in the course of parliamentary proceedings. This is important so that they are able to do their job and raise any issue without fear of being sued for defamation or fear of harassment, intimidation or improper influence by anyone.

Parliamentary privilege also extends to non-members who participate in parliamentary proceedings, such as witnesses who give evidence at a parliamentary committee hearing and those making documentary submissions to a committee inquiry.

Under the *Parliamentary Papers Act 1891*, persons involved in publishing the *Parliamentary Debates (Hansard)*, are protected by parliamentary privilege; that is, they are immune from civil liability for any defamation contained within the debates.

Article 9 also prevents courts and other places from questioning the proceedings of Parliament. However, the debates may be referred to by a court to assist in interpreting the meaning of an Act of Parliament.

Other legal immunities for members include freedom from arrest in civil actions and exemption from attendance in court as a witness on sitting days, and exemption from jury duty. These immunities are justified on the grounds that a member's first duty is to Parliament. However, there is no immunity from arrest in relation to criminal matters.

Powers

The principal powers of the Houses include the power to conduct inquiries, which is usually delegated to parliamentary committees, and the power to require the attendance of persons to give evidence or produce documents. These powers are essential as they enable the Houses to inquire into matters in order to have informed debate, to scrutinise the activities of the government and to legislate.

A further related power is the power to punish acts which are regarded by the Houses to be a contempt or a breach of parliamentary privilege, which is similar to the courts' power to punish for contempt of court. This is important to enable the Houses to protect themselves from actions which directly interfere or impede the work of the Houses, their members or committees.

For example, contempt may include disobeying an order by a committee to produce papers, books, records or other documents; refusing to answer questions put by a committee; or obstructing a member from going to or entering Parliament on a sitting day.

Penalties

There are a range of penalties available to punish a person or member of Parliament declared guilty of contempt, including a reprimand by the Speaker or President; the requirement of an apology; the imposition of a fine in certain circumstances; suspension (of a member); and imprisonment.



Procedure and Privileges Committees

At the commencement of each Parliament, both Houses appoint a Procedure and Privileges Committee, chaired by the President and Speaker respectively, which focus on the procedures and privilege issues in each House. If a contempt or breach of privilege matter is raised in the House, the House may decide to act or refer it to the Procedure and Privileges Committee for investigation. The Committee will then report back to their House as to whether a breach of privilege or contempt has occurred, and what action, if any, the House should take (as committees themselves do not have the power to punish).

In certain circumstances, the Corruption and Crime Commission can act on behalf of the Procedure and Privileges Committee of either House to investigate allegations of misconduct by a member of Parliament.

Responses from Persons Adversely Referred to in the House

While parliamentary privilege enables members of Parliament the freedom to speak their minds without fear of legal action for what they say, from time to time people may feel aggrieved by adverse statements or comments made in a House, or committee reports presented to, the Legislative Assembly or the Legislative Council.

The Legislative Assembly allows people who believe that they have been adversely referred to, to have an opportunity to make a response providing certain rules are complied with.

A person or corporation may write to the Speaker requesting that their response be published. If the request appears to be appropriate, the Speaker will refer the matter to the Procedure and Privileges Committee. The Committee will then consider the request in detail and report to the House whether or not a response should be published in Hansard.

In the Legislative Council, a person or corporation may also seek redress through a similar process, known as making a “Prayer for Relief”. If the complaint is considered legitimate, the Council has a range of actions it may take to address the issue.

For further information, a pamphlet on ‘Responses from Persons Adversely Referred to in the Legislative Assembly’ is available by telephoning (08) 9222 7390 or visiting the Parliament of Western Australia website www.parliament.wa.gov.au.