

**CONSTITUTION (PARLIAMENTARY PRIVILEGES)
AMENDMENT BILL 2004 (E328)**

EXPLANATORY MEMORANDUM

Overview of Bill

Parliamentary Privilege in Western Australia is directly linked to the law of privilege as it applies in the Commons House of the UK Parliament. As any change occurs in the laws that apply in the UK, so that change immediately applies in Western Australia. The Procedure and Privileges Committee of the Legislative Assembly in its Report No. 5 of 2004 has recommended that the law be altered and that the privileges in the Western Australian Parliament be as they applied to the Commons House of Parliament as at 1 January 1989. This Bill implements the recommendations of that committee.

Clause 1—Short title

This is a formal clause providing that the proposed Act is to be cited as the *Constitution (Parliamentary Privileges) Amendment Act 2004*.

Clause 2—Commencement

This clause provides that the legislation will come into effect on the day it receives royal assent.

Clause 3—The Act amended

This clause provides that the following amendment amends the *Constitution Act 1889*.

Clause 4—Section 36 amended

In order to bring legislative control of parliamentary privilege in Western Australia to the Western Australian Parliament alone, it is necessary to amend both the *Constitution Act 1889* and the *Parliamentary Privileges Act 1891*. This clause removes from the Constitution a proviso that the privileges, immunities and powers which comprise the law of parliamentary privilege in Western Australia cannot exceed those of the Commons House of the UK Parliament. This change is necessary to enable the *Parliamentary Privileges Act 1891* to be amended in the manner proposed.

Clause 5—The Act amended

This clause provides that the subsequent clauses amend the *Parliamentary Privileges Act 1891*.

Clause 6—Preamble amended

The existing preamble to the *Parliamentary Privileges Act 1891* refers to the *Constitution Act 1889* which provides in section 36 that the privileges, immunities and powers of the Western Australian Houses of Parliament cannot exceed those for the time being held, enjoyed and exercised in the Commons House of the UK Parliament. The preamble to the *Parliamentary Privileges Act 1891* therefore needs to be amended to reflect the amendment which clause 4 of this Bill makes to Section 36 of the

Constitution Act 1889. This amendment is a necessary precursor to removal by clause 7 of the limitation on the changes which the Western Australian Parliament can make to parliamentary privilege.

Clause 7—Section 1 replaced

This section provides that the law of privilege in the Western Australia Parliament will be that which applied at 1 January 1989 in the Commons House of the UK Parliament. It adopts the recommendation of the Procedure and Privileges Committee of the Legislative Assembly which proposed that the Commons privileges law as at 1 January 1989 be chosen because it predated undesirable changes to the law in the United Kingdom and because the reference to the law of privilege at that time is well recorded in *Erskine May's Treatise on The Law, Privileges, Proceedings and Usage of Parliament* 21st Edition. Specifying the date in this way precludes further changes applying to the law of privilege in Western Australia except on the initiative of the Western Australian Parliament.