

## 19. PRIVILEGE

The term parliamentary privilege refers in general to the special legal rights and immunities (exemptions from the ordinary law) which apply to each House of the Parliament, its committees and Members, and other participants in its proceedings, and to the power that each House has to deal with offences—contempts—which interfere with its functioning. These powers derive from section 49 of the Constitution and the *Parliamentary Privileges Act 1987*.

The following is a limited introduction to parliamentary privilege, provided so that procedures in the House relating to privilege matters can be better understood.

### The privilege of freedom of speech

The most important privilege is that of freedom of speech. It is important because it enables the Parliament to debate and investigate any matter without legal restriction.

Members taking part in proceedings in Parliament enjoy absolute privilege. They are protected from what might otherwise be successful court action if when taking part in debates in the House they make defamatory statements, or if in a debate they make a statement that might otherwise be a criminal offence. The privilege of freedom of speech is not confined to Members. It also applies to others taking part in 'proceedings in Parliament'—for example, to witnesses giving evidence to parliamentary committees. The Hansard record of proceedings and the official broadcast are absolutely privileged. However, only qualified privilege applies to reports other than the official Hansard record and to the broadcast of excerpts of proceedings.

Documents forming part of parliamentary proceedings—those presented to the House and documents received and accepted as evidence by a committee—are also absolutely privileged. Their wider publication is also privileged if authorised for publication by the House or a committee. Nowadays, all documents presented to the House are authorised for publication (S.O. 203), but publication of committee evidence must be authorised by a motion of the committee (S.O. 242).

#### *Citizens' right of reply*

The privilege of freedom of speech is a very significant one, and it is recognised that it carries with it a corresponding obligation that it should

always be used responsibly. Nevertheless, sometimes individuals are offended by remarks Members of the House have made about them during parliamentary debate. The right of reply procedure, established by resolution of the House in 1997, gives people an opportunity to respond to such remarks and to have their responses published in the parliamentary record. The resolution is reproduced in full as an appendix to the standing orders.

The process commences by the aggrieved person making a written submission to the Speaker, who, if satisfied that the matter is not frivolous, refers the matter to the Committee of Privileges and Members' Interests. The committee may discuss the matter with the person who made the submission, or with the Member who made the statement in the House. After considering the matter, the committee reports to the House recommending either that no further action be taken by the House, or that a response by the person, in terms specified in the report and agreed by the person and the committee, be published by the House or incorporated in Hansard. The committee's role is merely to recommend whether the response should be published. It does not make any judgment on the merits of the original statement or of the proposed response.

## Other privileges

Members may not be summonsed to attend before courts or tribunals as witnesses or arrested or detained in civil matters on sitting days and for five days before and after sitting days. This protection also applies to witnesses to parliamentary committees on days they are required to give evidence to the committee. Members (and some House employees) are also exempt from jury service in any Federal, State or Territory court (*Jury Exemption Act 1965*). These immunities are justified on the ground that the first duty of Members, and others involved, is to Parliament and that this overrides other obligations.

## Contempt

Contempts are actions which obstruct or impede the House in the performance of its functions, or Members or House employees in the discharge of their duties, including misleading committees or interfering with witnesses.

While contempts are often loosely referred to as 'breaches of privilege', they are not confined to breaches of privilege. An action which obstructs the House may be a contempt even though it does not breach any established privilege.

## Raising a matter of privilege in the House

Complaints of breach of privilege or contempt may only be raised by Members. Other people who believe that there has been an offence must ask a Member to raise it in the House.

At any time during a sitting, a Member may raise a matter of privilege. In doing so he or she must be prepared to move (without notice) immediately or subsequently, a motion declaring that a contempt or breach of privilege has been committed, or referring the matter to the Committee of Privileges and Members' Interests (S.O. 51). A matter of privilege takes precedence over and suspends other business being considered by the House, but only if in the Speaker's opinion a *prima facie* case has been made out and the matter has been raised at the earliest opportunity (S.O. 51).

The normal practice is for a Member to seek the call 'on a matter of privilege' and to outline the complaint briefly. The Speaker may give the matter precedence or consider the matter and report back to the House. Later, possibly on the same day, the Speaker makes a statement to the House on the matter. If satisfied that the matter has been raised at the first available opportunity, and that there is sufficient substance to it (a *prima facie* case), the Speaker states that he or she will allow priority to a motion on the matter (S.O. 51). Usually the Member concerned then moves that the matter be referred to the Committee of Privileges and Members' Interests, although other motions are possible. Alternatively the Member might advise the House that he or she does not wish to take the matter further. Debate on any motion moved may take place immediately, or may be adjourned.

If the complaint of a breach of privilege relates to a statement in a newspaper, book or other published document, the Member must present to the House an extract of the publication containing the statement and be able to identify the author, printer or publisher (S.O. 53).

### ***Matter raised when House not sitting***

If a matter of privilege arises while the House is not sitting and is not expected to meet for at least two weeks, a Member may raise with the Speaker a matter of privilege which has arisen since the House last met and which the Member proposes be referred to the Committee of Privileges and Members' Interests. If satisfied that a *prima facie* case of breach of privilege has been made out and the matter is one upon which urgent action should be taken, the Speaker then refers the matter directly to the Committee of Privileges and Members' Interests and reports the referral to the House at its next sitting. The Member who raised the matter must then move

immediately, without notice, that the referral be endorsed by the House. If the motion is negatived, the Committee of Privileges and Members' Interests can take no further action on the matter (S.O. 52).

## Report by the Committee of Privileges and Members' Interests

The Committee of Privileges and Members' Interests is established at the start of each Parliament (see p. 116), with one of its functions being to inquire into and report on complaints of breach of privilege or contempt referred to it by the House under standing order 51 or by the Speaker under standing order 52. The committee itself cannot impose penalties—its role is investigatory and advisory. In its report to the House the committee usually makes a finding as to whether or not a breach of privilege or contempt has been committed, and it usually recommends to the House what action, if any, should be taken.

Normally when a report from the Committee of Privileges and Members' Interests is presented, and especially if there is the possibility of further action, the practice is to consider the report at a future time so that Members may study the report and the issues involved before making decisions on it. The House is not bound to follow the committee's recommendations, and any motion moved in relation to the matter is subject to amendment.

The House for various reasons may decide not to proceed against the offenders or it may take punitive action. Punishment may be by way of imprisonment or fine (as per section 7 of the *Parliamentary Privileges Act 1987*), public reprimand, requirement of an apology or exclusion from the parliamentary precincts.