



Parliamentary Privileges Act 1987

No. 21, 1987

Compilation No. 4

Compilation date:	21 October 2016
Includes amendments up to:	Act No. 61, 2016
Registered:	21 October 2016

Prepared by the Office of Parliamentary Counsel, Canberra

Contents

1	Short title
2	Commencement
3	Interpretation
3A	Application of the <i>Criminal Code</i>
4	Essential element of offences
5	Powers, privileges and immunities
6	Contempts by defamation abolished
7	Penalties imposed by Houses
8	Houses not to expel members
9	Resolutions and warrants for committal
10	Reports of proceedings
11	Publication of tabled papers
12	Protection of witnesses
13	Unauthorised disclosure of evidence
14	Immunities from arrest and attendance before courts
15	Application of laws to Parliament House
16	Parliamentary privilege in court proceedings
17	Certificates relating to proceedings

An Act to declare the powers, privileges and immunities of each House of the Parliament and of the members and committees of each House, and for related purposes

1 Short title

This Act may be cited as the *Parliamentary Privileges Act 1987*.

2 Commencement

This Act shall come into operation on the day on which it receives the Royal Assent.

3 Interpretation

- (1) In this Act, unless the contrary intention appears:

committee means:

- (a) a committee of a House or of both Houses, including a committee of a whole House and a committee established by an Act; or
- (b) a sub-committee of a committee referred to in paragraph (a).

court means a federal court or a court of a State or Territory.

document includes a part of a document.

House means a House of the Parliament.

member means a member of a House.

tribunal means any person or body (other than a House, a committee or a court) having power to examine witnesses on oath, including a Royal Commission or other commission of inquiry of the Commonwealth or of a State or Territory having that power.

- (2) For the purposes of this Act, the submission of a written statement by a person to a House or a committee shall, if so ordered by the House or the committee, be deemed to be the giving of evidence in

accordance with that statement by that person before that House or committee.

- (3) In this Act, a reference to an offence against a House is a reference to a breach of the privileges or immunities, or a contempt, of a House or of the members or committees.

3A Application of the *Criminal Code*

- (1) Chapter 2 of the *Criminal Code* applies to all offences against this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

- (2) To avoid doubt, subsection (1) does not apply the *Criminal Code* to an offence against a House.

4 Essential element of offences

Conduct (including the use of words) does not constitute an offence against a House unless it amounts, or is intended or likely to amount, to an improper interference with the free exercise by a House or committee of its authority or functions, or with the free performance by a member of the member's duties as a member.

5 Powers, privileges and immunities

Except to the extent that this Act expressly provides otherwise, the powers, privileges and immunities of each House, and of the members and the committees of each House, as in force under section 49 of the Constitution immediately before the commencement of this Act, continue in force.

6 Contempts by defamation abolished

- (1) Words or acts shall not be taken to be an offence against a House by reason only that those words or acts are defamatory or critical of the Parliament, a House, a committee or a member.
- (2) Subsection (1) does not apply to words spoken or acts done in the presence of a House or a committee.

7 Penalties imposed by Houses

- (1) A House may impose on a person a penalty of imprisonment for a period not exceeding 6 months for an offence against that House determined by that House to have been committed by that person.
- (2) A penalty of imprisonment imposed in accordance with this section is not affected by a prorogation of the Parliament or the dissolution or expiration of a House.
- (3) A House does not have power to order the imprisonment of a person for an offence against the House otherwise than in accordance with this section.
- (4) A resolution of a House ordering the imprisonment of a person in accordance with this section may provide that the President of the Senate or the Speaker of the House of Representatives, as the case requires, is to have power, either generally or in specified circumstances, to order the discharge of the person from imprisonment and, where a resolution so provides, the President or the Speaker has, by force of this Act, power to discharge the person accordingly.
- (5) A House may impose on a person a fine:
 - (a) not exceeding \$5,000, in the case of a natural person; or
 - (b) not exceeding \$25,000, in the case of a corporation;for an offence against that House determined by that House to have been committed by that person.
- (6) A fine imposed under subsection (5) is a debt due to the Commonwealth and may be recovered on behalf of the Commonwealth in a court of competent jurisdiction by any person appointed by a House for that purpose.
- (7) A fine shall not be imposed on a person under subsection (5) for an offence for which a penalty of imprisonment is imposed on that person.
- (8) A House may give such directions and authorise the issue of such warrants as are necessary or convenient for carrying this section into effect.

8 Houses not to expel members

A House does not have power to expel a member from membership of a House.

9 Resolutions and warrants for committal

Where a House imposes on a person a penalty of imprisonment for an offence against that House, the resolution of the House imposing the penalty and the warrant committing the person to custody shall set out particulars of the matters determined by the House to constitute that offence.

10 Reports of proceedings

- (1) It is a defence to an action for defamation that the defamatory matter was published by the defendant without any adoption by the defendant of the substance of the matter, and the defamatory matter was contained in a fair and accurate report of proceedings at a meeting of a House or a committee.
- (2) Subsection (1) does not apply in respect of matter published in contravention of section 13.
- (3) This section does not deprive a person of any defence that would have been available to that person if this section had not been enacted.

11 Publication of tabled papers

- (1) No action, civil or criminal, lies against an officer of a House in respect of a publication to a member of a document that has been laid before a House.
- (2) This section does not deprive a person of any defence that would have been available to that person if this section had not been enacted.

12 Protection of witnesses

- (1) A person shall not, by fraud, intimidation, force or threat, by the offer or promise of any inducement or benefit, or by other

improper means, influence another person in respect of any evidence given or to be given before a House or a committee, or induce another person to refrain from giving any such evidence.

Penalty:

- (a) in the case of a natural person, imprisonment for 6 months or 50 penalty units; or
 - (b) in the case of a corporation, 250 penalty units.
- (2) A person shall not inflict any penalty or injury upon, or deprive of any benefit, another person on account of:
- (a) the giving or proposed giving of any evidence; or
 - (b) any evidence given or to be given;
- before a House or a committee.

Penalty:

- (a) in the case of a natural person, imprisonment for 6 months or 50 penalty units; or
 - (b) in the case of a corporation, 250 penalty units.
- (3) This section does not prevent the imposition of a penalty by a House in respect of an offence against a House or by a court in respect of an offence against an Act establishing a committee.

13 Unauthorised disclosure of evidence

A person shall not, without the authority of a House or a committee, publish or disclose:

- (a) a document that has been prepared for the purpose of submission, and submitted, to a House or a committee and has been directed by a House or a committee to be treated as evidence taken in camera; or
- (b) any oral evidence taken by a House or a committee in camera, or a report of any such oral evidence;

unless a House or a committee has published, or authorised the publication of, that document or that oral evidence.

Penalty:

- (a) in the case of a natural person, imprisonment for 6 months or 50 penalty units; or

(b) in the case of a corporation, 250 penalty units.

14 Immunities from arrest and attendance before courts

- (1) A member:
 - (a) shall not be required to attend before a court or a tribunal;
and
 - (b) shall not be arrested or detained in a civil cause;
on any day:
 - (c) on which the House of which that member is a member meets;
 - (d) on which a committee of which that member is a member meets; or
 - (e) which is within 5 days before or 5 days after a day referred to in paragraph (c) or (d).
- (2) An officer of a House:
 - (a) shall not be required to attend before a court or a tribunal;
and
 - (b) shall not be arrested or detained in a civil cause;
on any day:
 - (c) on which a House or a committee upon which that officer is required to attend meets; or
 - (d) which is within 5 days before or 5 days after a day referred to in paragraph (c).
- (3) A person who is required to attend before a House or a committee on a day:
 - (a) shall not be required to attend before a court or a tribunal;
and
 - (b) shall not be arrested or detained in a civil cause;
on that day.
- (4) Except as provided by this section, a member, an officer of a House and a person required to attend before a House or a committee has no immunity from compulsory attendance before a court or a tribunal or from arrest or detention in a civil cause by reason of being a member or such an officer or person.

15 Application of laws to Parliament House

It is hereby declared, for the avoidance of doubt, that, subject to section 49 of the Constitution and this Act, a law in force in the Australian Capital Territory applies according to its tenor (except as otherwise provided by that or any other law) in relation to:

- (a) any building in the Territory in which a House meets; and
- (b) any part of the precincts as defined by subsection 3(1) of the *Parliamentary Precincts Act 1988*.

16 Parliamentary privilege in court proceedings

- (1) For the avoidance of doubt, it is hereby declared and enacted that the provisions of article 9 of the Bill of Rights, 1688 apply in relation to the Parliament of the Commonwealth and, as so applying, are to be taken to have, in addition to any other operation, the effect of the subsequent provisions of this section.
- (2) For the purposes of the provisions of article 9 of the Bill of Rights, 1688 as applying in relation to the Parliament, and for the purposes of this section, *proceedings in Parliament* means all words spoken and acts done in the course of, or for purposes of or incidental to, the transacting of the business of a House or of a committee, and, without limiting the generality of the foregoing, includes:
 - (a) the giving of evidence before a House or a committee, and evidence so given;
 - (b) the presentation or submission of a document to a House or a committee;
 - (c) the preparation of a document for purposes of or incidental to the transacting of any such business; and
 - (d) the formulation, making or publication of a document, including a report, by or pursuant to an order of a House or a committee and the document so formulated, made or published.
- (3) In proceedings in any court or tribunal, it is not lawful for evidence to be tendered or received, questions asked or statements, submissions or comments made, concerning proceedings in Parliament, by way of, or for the purpose of:

- (a) questioning or relying on the truth, motive, intention or good faith of anything forming part of those proceedings in Parliament;
 - (b) otherwise questioning or establishing the credibility, motive, intention or good faith of any person; or
 - (c) drawing, or inviting the drawing of, inferences or conclusions wholly or partly from anything forming part of those proceedings in Parliament.
- (4) A court or tribunal shall not:
- (a) require to be produced, or admit into evidence, a document that has been prepared for the purpose of submission, and submitted, to a House or a committee and has been directed by a House or a committee to be treated as evidence taken in camera, or admit evidence relating to such a document; or
 - (b) admit evidence concerning any oral evidence taken by a House or a committee in camera or require to be produced or admit into evidence a document recording or reporting any such oral evidence;
- unless a House or a committee has published, or authorised the publication of, that document or a report of that oral evidence.
- (5) In relation to proceedings in a court or tribunal so far as they relate to:
- (a) a question arising under section 57 of the Constitution; or
 - (b) the interpretation of an Act;
- neither this section nor the Bill of Rights, 1688 shall be taken to prevent or restrict the admission in evidence of a record of proceedings in Parliament published by or with the authority of a House or a committee or the making of statements, submissions or comments based on that record.
- (6) In relation to a prosecution for an offence against this Act or an Act establishing a committee, neither this section nor the Bill of Rights, 1688 shall be taken to prevent or restrict the admission of evidence, the asking of questions, or the making of statements, submissions or comments, in relation to proceedings in Parliament to which the offence relates.

- (7) Without prejudice to the effect that article 9 of the Bill of Rights, 1688 had, on its true construction, before the commencement of this Act, this section does not affect proceedings in a court or a tribunal that commenced before the commencement of this Act.

17 Certificates relating to proceedings

For the purposes of this Act, a certificate signed by or on behalf of the President of the Senate, the Speaker of the House of Representatives or a chairman of a committee stating that:

- (a) a particular document was prepared for the purpose of submission, and submitted, to a House or a committee;
- (b) a particular document was directed by a House or a committee to be treated as evidence taken in camera;
- (c) certain oral evidence was taken by a committee in camera;
- (d) a document was not published or authorised to be published by a House or a committee;
- (e) a person is or was an officer of a House;
- (f) an officer is or was required to attend upon a House or a committee;
- (g) a person is or was required to attend before a House or a committee on a day;
- (h) a day is a day on which a House or a committee met or will meet; or
- (i) a specified fine was imposed on a specified person by a House;

is evidence of the matters contained in the certificate.

Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Parliamentary Privileges Act 1987	21, 1987	20 May 1987	20 May 1987 (s 2)	
Parliamentary Precincts Act 1988	9, 1988	5 Apr 1988	s 12 and Sch 2: 1 Aug 1988 (s 2(2) and gaz 1988, No S229)	s 12
Law and Justice Legislation Amendment Act (No. 3) 1992	165, 1992	11 Dec 1992	Note about section heading: 11 Dec 1992 (s 2(1))	—
Law and Justice Legislation Amendment (Application of Criminal Code) Act 2001	24, 2001	6 Apr 2001	s 4(1), (2) and Sch 38: 24 May 2001 (s 2(1)(a))	s 4(1) and (2)
Statute Update Act 2016	61, 2016	23 Sept 2016	Sch 1 (items 355–360): 21 Oct 2016 (s 2(1) item 1)	—

Amendment history

Provision affected	How affected
s 3A	ad No 24, 2001
s 12	am No 61, 2016
s 13	am No 61, 2016
s 14	am No 165, 1992
s 15	am No 9, 1988