PARLIAMENTARY PRIVILEGES BILL 1986

Date introduced: 7 October 1986
House: Senate
Presented by: Senator the Hon. Douglas McClellan, President of the Senate

DIGEST OF BILL

Purpose

To ensure a broad interpretation of Article 9 of the Bill of Rights 1688 and give effect to some of the recommendations of the Joint Select Committee on Parliamentary Privilege.

Background

Article 9 of the Bill of Rights 1688, which is a statutory provision applying to the Houses of the Australian Parliament by virtue of section 49 of the Constitution, provides:

"That the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament".

This article guarantees freedom of speech so that Members are absolutely privileged from prosecution in respect of anything they may say in the course of proceedings in Parliament. The traditionally broad interpretation given to the article has meant that the privilege covers evidence given to Parliamentary Committees and prevents Parliamentary proceeding from being called into question by any Court or Tribunal.

On 5 June 1985 Mr Justice Cantor and Mr Justice Hunt of the Supreme Court of New South Wales delivered judgements in R v Murphy which limited the operation of Article 9. According to the judgement of Mr Justice Hunt, Article 9 will not be breached where parliamentary proceedings are used as evidence of an offence, civil
liability, to establish a motive or intention of a person for the purpose of proving an offence or a civil liability or to attack the credibility of a person.

Therefore, while maintaining that a Member may not be sued or prosecuted for something the Member had said or done in the actual course of parliamentary proceedings, if the narrow view of Article 9 is adopted, the Member's participation in those parliamentary proceedings could be used against the Member to establish the Member's motive or intention in relation to words said or acts done outside Parliament and to support an action, civil or criminal, in relation to such words or acts. This Bill will prevent such uses of parliamentary proceedings and ensure that the former, broader protection offered by Article 9 is maintained.

The area of parliamentary privilege was examined by a Joint Committee which delivered an exposure report in June 1984. The Committee's final report was delivered in October 1984 and made a number of recommendations concerning freedom of speech, contempt and other areas of privilege. In 1985 two private Bills were introduced dealing with privilege. Neither Bill has proceeded.

As mentioned in the Second Reading Speech for this Bill, it is very rare for a Presiding Officer to become involved in the passage of legislation. This is the first Bill to be introduced by either Presiding Officer.

Main Provisions

A broad interpretation of Article 9 will be guaranteed by clause 16. Clause 16 clarifies that "proceedings before 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. Express protection is given by clause 16 to the giving of evidence or the presentation of a document to a House or a Committee (sub-clause 16(2)). It will be unlawful to tender evidence in any court which concerns proceedings in Parliament for the purpose of questioning the truth, motive, intention or good faith of those proceedings or questioning the credibility, motive, intention or good faith of any person (sub-clause 16(3)). A court itself will not be able to call for the production of a document which had been prepared for submission to a House and where a House has directed that such a document is to be treated as containing evidence taken in camera (sub-clause 16(4)).
Recommendations of the Joint Select Committee on Parliamentary Privilege adopted by the Bill include:

. words or acts will not be regarded as an offence against the House solely because they are defamatory or critical of a House (clause 6);

. a House will be able to have a person imprisoned for up to six months and will also be able to impose fines of up to $5000 for people and $25 000 for companies for offences against a House (clause 7);

. a House will not have the power to take away a Member's membership of a House (clause 8);

. tabled documents, which an officer of a House conveys to a Member, will attract absolute privilege (clause 11);

. it will be a criminal offence to interfere with parliamentary witnesses (clause 12);

. a law in force in the Australian Capital Territory will apply to Parliament House (clause 15).

It will be a defence in an action for defamation that the defendant published the defamatory matter without adopting it and the defamatory matter was contained in a fair and accurate report of parliamentary proceedings (clause 10).

For further information, if required, contact the Law and Government Group.
Reference


This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.