



Parliamentary privilege and judicial scrutiny: The role of the Speaker as *amicus curiae* in tendered document disputes

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Overview

In the first part of 2025, Mark Parton MLA, Speaker of the Legislative Assembly, sought and was granted leave to appear as *amicus curiae*, or ‘friend of the court’, in two separate cases (one in the ACT Supreme Court and one in the Federal Court) seeking judicial review of the findings contained in reports of the ACT Integrity Commission.

The Speaker’s interest in both matters was enlivened as the Commission’s reports had been provided to the Speaker, tabled in the Assembly pursuant to the *Integrity Commission Act 2018* (IC Act), and authorised for publication by the Assembly. Accordingly, a question arose as to whether the reports fell within the meaning of ‘proceedings in Parliament’ for the purposes of article 9 of the *Bill of Rights 1688* (UK) and s 16 of the *Parliamentary Privileges Act 1987* (Cth).

This paper outlines the chronology and background of the two cases, along with some brief observations.

Legislative background

Self-Government Act

The *Australian Capital Territory (Self-Government) Act 1988* (Cth) provides for the establishment of Australian Capital Territory (ACT) as a body politic under the Crown and for a Legislative Assembly with the power to make laws for the peace, order and good government of the Territory.¹

By reason of s 24 of the Self-Government Act, the Assembly, its committees and its members have the same powers, privileges and immunities as the Australian House of Representatives and its committees and members.² Accordingly, the Assembly, its committees and its members enjoy the privileges as declared under the Commonwealth Parliamentary Privileges Act (Privileges Act).

Bills of Rights

The [Bill of Rights](#) is a law of the Territory.³ Article 9 of the Bill of Rights 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’.

¹ ACT Self-Government Act, ss 7-8.

² However, the power to fine or imprison a person is not conferred. The privileges of the House of Representatives are derived from the Australian Constitution. Section 49 of the Constitution provides that:

The powers, privileges and immunities of the Senate and House of Representatives and of the members and the committees of each House shall be as are declared by the Parliament of the Commonwealth and, until declared, shall be the same as those of the Commons House of Parliament of the United Kingdom, and of its members and committees, at the establishment of the Commonwealth.

³ [Bill of Rights 1688 1 Will and Mary sess 2 c 2](#), see under the title ‘Legislation history’.

Privileges Act

The Parliamentary Privileges Bill 1987 was passed by the Federal Parliament to overcome the narrow interpretation of article 9 in two judgements of the Supreme Court of New South Wales in the mid-1980s.⁴

In particular, the bill sought to expressly reject the reasoning contained in the judgements that ‘the test of a violation of article 9 is whether there is any adverse effect on parliamentary proceedings, and that the protection of parliamentary proceedings must be ‘balanced’ against the requirements of court proceedings’.⁵

Among other matters, the Privileges Act clearly prohibits the tendering or receipt of any material before a court that falls within the meaning of ‘proceedings in Parliament’. Section 16 of the Privileges Act amplifies and clarifies the operation of article 9. It defines ‘proceedings in Parliament’ as ‘all words spoken and acts done in the course of, or for the purposes of or incidental to, the transacting of the business of a House or of a committee’. This 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.

In terms of the prohibitions that apply to the use of ‘proceeding in Parliament’, s 16(3) of the Privileges Act provides that:

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.

Integrity Commission Act

The Integrity Commission Bill 2018 passed the Assembly on 29 November 2018.⁶

The IC Act makes provision for an independent integrity commission with broad powers and functions to investigate and report on corrupt conduct in the ACT public sector. The functions of the Commission include:

⁴ See Evans, Harry ‘[Parliamentary privilege: Reasons of Mr Justice Hunt—an analysis](#)’, *Legislative Studies*, Autumn 1987 and Evans, Harry ‘[Parliamentary Privilege: The Reasons of Mr Justice Cantor—An Analysis](#)’, *Legislative Studies*, Autumn 1986.

⁵ Parliamentary Privileges Bill 1987, [Explanatory Memorandum](#), p 10.

⁶ It followed two Assembly select committee inquiries. [Select Committee on Independent Integrity Commission](#) and [Select Committee on Independent Integrity Commission 2018](#).

- investigating conduct that is alleged to be corrupt conduct;
- preventing corruption by researching and mitigating the risks of corruption;
- publishing information about its investigations; and
- providing education programs.⁷

The Commission consists of a Commissioner who is appointed by the Speaker upon a resolution approving the appointment passed by a two-thirds majority of the Assembly.⁸ The Speaker is responsible suspending or ending the appointment of the Commissioner.⁹ Pursuant to s 21 of the IC Act, the Commissioner is an independent Officer of the Legislative Assembly.¹⁰

In support of its investigations, the Commission has much the same sorts of powers as corruption bodies in other jurisdictions including powers of entry, search and seizure, and the power to conduct examinations.

Under s 182 of the IC Act, the Commission must prepare a report (an ‘investigation report’) after completing an investigation and the report may include findings, opinions and recommendations and associated reasons.

Under s 189, if the Assembly is sitting when the Commission completes an investigation, the Commission must give the investigation report to the Speaker who must present the report to the Assembly on the next sitting day. If the Assembly is not sitting, the Commission must give the report, and a copy for each Member of the Legislative Assembly (MLA), to the Speaker. The report is taken for all purposes to have been presented to the Legislative Assembly on the day that the Commission gives the report to the Speaker (the ‘report day’). The Speaker must give a copy of the report to each MLA on the report day and must present the report to the Assembly on the next sitting day. Publication of the report is taken to have been ordered by the Assembly on the report day.

After giving the report to the Speaker, the Commission is required to publish the investigation report on the Commission’s website as soon as practicable.¹¹

The Commission may also, at any time, prepare a ‘special report for the Legislative Assembly’ on any matter relating to the exercise of the Commission’s functions, including administrative and general policy matters.¹² Much the same provisions applying to the tabling and publication of an investigation report also apply to a ‘special report’.¹³

Provision is made for the Commission to take certain steps directed towards ensuring procedural fairness prior to the finalisation of its reports.¹⁴

⁷ IC Act, s 23.

⁸ IC Act, s 25.

⁹ IC Act, ss 35-38.

¹⁰ However, there are ‘no implied functions, powers, rights, immunities or obligations arising from the commissioner being an independent officer of the Legislative Assembly’.

¹¹ IC Act, 190.

¹² IC Act, s 206.

¹³ IC Act, s 213.

¹⁴ See, for example, ss 188-188A, 212-212A of the IC Act.

Finally, it is notable that s 7 of the IC Act provides that the IC Act does not affect the law relating to the privileges of the Assembly or any other Australian parliament.¹⁵

Operation Luna report

On 27 June 2024, the Commission provided the Speaker with a copy of a special report (*Special Report – Operation Luna (Part One)*),¹⁶ prepared pursuant to s 206 of the IC Act (i.e. it was a ‘special report’) which covered matters relating to the awarding of \$8.5 million in consultancy contracts by the Canberra Institute of Technology (CIT) to a particular consultant. The report focused on the CIT’s approach to governance and procurement and concluded that the Chief Executive Officer of CIT, Ms Leanne Cover, ‘was guilty of serious corrupt conduct’.¹⁷

The report was subsequently published on the Commission’s website as required under s 215 of the IC Act. The report was also tabled in the Assembly by the Speaker¹⁸ and authorised for publication pursuant to standing order 212A, which provides that:

Unless otherwise ordered, the following papers are authorised for publication when presented to the Assembly:

- (a) papers presented by the Speaker;
- (b) reports, minutes of proceedings, extracts of minutes of proceedings and discussion papers of standing or select committees of the Assembly or government responses to committee reports presented in the Assembly or, if the Assembly is not sitting, provided to the Speaker in electronic and paper format;
- (c) papers presented pursuant to standing orders or resolutions of the Assembly;
- (d) papers presented pursuant to statute; and
- (e) papers presented by Ministers.

Cover v ACT Integrity Commission

Subsequently, Ms Cover (the plaintiff) through an amended originating application to the ACT Supreme Court sought prerogative relief in relation to the Commission’s report. Among other things, the plaintiff sought declarations that:

- the report of the Commission was materially affected by errors of law;
- the report was attended by jurisdictional error through a failure to consider a relevant consideration; and
- the Commission’s determination that the plaintiff had engaged in ‘serious corrupt conduct’ was made without or in excess of jurisdiction and was, thus, a nullity.

¹⁵ Noting that s 177 provides that the Assembly must deal with claims of parliamentary privilege that are made in the exercise of the Commission’s functions; for example, where the Commission seeks to exercise a power to gain access to information held by a Member of the Legislative Assembly that falls within meaning of ‘proceedings in Parliament’. Assembly continuing resolution 4A sets out a detailed procedure for dealing with such claims.

¹⁶ Legislative Assembly for the ACT, *Minutes of Proceedings*, No 127—27 June 2024, p 1968.

¹⁷ ACT Integrity Commission, *Special Report Operation Luna (Part One)*, June 2024, p 273.

¹⁸ Legislative Assembly for the ACT, *Minutes of Proceedings*, No 128—27 August 2024, p 2003.

On being advised of the litigation by the Integrity Commission, the Speaker considered that as the report was prepared for the Assembly and was authorised for publication by the Assembly, it may fall within the meaning of ‘proceedings in Parliament’. Accordingly, there was a question as to the admissibility of the report in court proceedings on the grounds that it was the subject of parliamentary privilege. Before the Standing Committee on the Integrity Commission and Statutory Office Holders, the Integrity Commissioner, The Hon Michael Adams KC observed that:

I brought it to the attention of the Speaker and the Solicitor-General and said, “It’s a matter for you.” But if we had not, it is just on the cards that the court, the judge, would. We turn up at court and they say, “What do you do about privilege?” and we look at each other in wonderment. The court would not be impressed. It is a privilege of such high constitutional importance that it just has to be determined, despite what any of the parties wanted. Even if every party in this case wanted the matter to proceed, parliamentary privilege may be an obstacle, and it has to be decided whether or not they want it to, because of its independent constitutional importance. That is now going to be decided by a judge one way or the other.¹⁹

The Speaker applied to the Court to appear as *amicus curiae* to assist the court in deciding issues of parliamentary privilege. In support of the application, the Speaker submitted that:

- The plaintiff sought to question or impeach the report of the defendant (the ACT Integrity Commission).
- The report was a ‘proceeding in Parliament’.
- The issue arises as to whether parliamentary privilege attaches to the report such that it must not be questioned or impeached in court proceedings.
- Parliamentary privilege belongs to the Legislative Assembly of the Australian Capital Territory.
- The Speaker of the Legislative Assembly of the Australian Capital Territory is its representative and the protector of its rights and privileges.
- The Speaker is in a position to assist the Court by ensuring attention is drawn to all relevant law and arguments on the issue of parliamentary privilege.
- It is in the interests of justice that the Speaker be appointed *amicus curiae*.

The plaintiff objected to the application arguing that it was more appropriate for the Speaker to be joined as a party. Of significant concern was that costs would likely be avoided by the Speaker if authorised to appear as *amicus*, yet the parties would incur substantial additional costs in preparing to argue the privilege points in proceedings.

The Integrity Commission (the Defendant) did not object to the Speaker’s application to be heard as *amicus* but did argue that it would be more appropriate for the Speaker to be joined as a party to the proceedings. However, ultimately, the Court granted the Speaker leave to make written and oral submissions on the issue of parliamentary privilege (see below). Mossop J, noted his decision that:

¹⁹ Standing Committee on the Integrity Commission and Statutory Office Holders, Inquiry into Annual and Financial Reports 2023-2024, *Transcript of evidence*, 20 February 2025, p 50.

It is clearly appropriate for the Speaker to be heard one way or another as to the proper scope of parliamentary privilege. The question of the admissibility of the Report will clearly be significant to the outcome of the proceedings. I consider that it is likely that the Speaker will be in a position to assist the court, potentially going beyond the submissions that parties might otherwise make.²⁰

The Speaker later advised the Assembly that:

It is on the public record that the plaintiff in this matter seeks judicial review in relation to a special report prepared by the Integrity Commission. Whether or not such a report or other material prepared by the commission in connection with such a report is to be regarded as a proceeding in parliament is ultimately a matter for the courts to decide.

The Integrity Commission Act of 2018 provides that a special report is prepared for the Legislative Assembly and that such reports must be provided to the Speaker, who must table them in the Assembly. As a result, there is a question as to whether the report and related documents may be regarded as proceedings in parliament, as defined in article 9 of the Bill of Rights, and section 16 of the Commonwealth Parliamentary Privileges Act 1987, to which we are linked through section 24 of the Self-Government Act.

It is important to note that neither I nor any member of this place may waive parliamentary privilege. That can only be done through express words in statute. My interest as Speaker is to ensure, on behalf of this place, that the court receives necessary information about the constitutional importance of parliamentary privilege and to draw the court's attention to the relevant legal authorities and principles.²¹

Operation Juno

A similar sequence of events applies to the Operation Juno report²² which was given to the Speaker by the Integrity Commission on 18 March 2025. It was prepared under s 182 of the IC Act (i.e. it was an 'investigation report') and was tabled by the Speaker on 19 March 2025 (i.e. the next sitting day) pursuant to s 189 of the IC Act.²³ The report concerned the conduct of the Hon Mr Walter Sofronoff KC in his role as Board of Inquiry under the *Inquiries Act 1991* and in it the Commission concluded that 'certain aspects of Mr Sofronoff's conduct as Board of Inquiry instituted under the *Inquiries Act 1991* amounted to serious corrupt conduct...'.²⁴

Sofronoff v ACT Integrity Commission

An application for judicial review was subsequently lodged in the Federal Court by Mr Sofronoff (the Applicant) seeking, among other matters, a declaration that the Commission's report was affected by jurisdictional error and a declaration that the 'impugned conduct' of the Applicant as defined in paragraph 4 of the Juno Report did not amount to corrupt conduct within the meaning of s 9(1) of the IC Act. A range of grounds were set out in support of the application.

²⁰ [Cover v ACT Integrity Commission \[2025\] ACTSC 71](#), para 11.

²¹ Debates of the Legislative Assembly for the Australian Capital Territory, 4 March 2025, p 275.

²² The Operation Juno investigation was initiated following the receipt, by the Commission, of a mandatory corruption notification under s 62 of the IC Act.

²³ Legislative Assembly for the ACT, *Minutes of Proceedings*, No 12—19 March 2025, p 151.

²⁴ ACT Integrity Commission, *Investigation Report – Operation Juno*, March 2025, p iv.

The Speaker considered that almost precisely the same issues as those enlivened by the Cover matter were similarly enlivened here; namely, that the Commission's report was a report for the Assembly that had been tabled in the Assembly and authorised by the Assembly for publication and, therefore, that there was the prospect that the report was protected by parliamentary privilege.

On 8 April 2025, the Speaker made the following statement in the Assembly:

...members will be aware that proceedings have been brought in the Federal Court by the Hon. Walter Sofronoff KC seeking judicial review of an ACT Integrity Commission investigation report on Operation Juno, which was tabled in this place during the last sitting.

Much the same issues of parliamentary privilege are potentially enlivened and, accordingly, I have made an application to appear as amicus, which will be heard by the court next month, in my understanding.

I have noticed some public reporting on the case over the last week which was not entirely on the money. It is important to remind members and others that I take no position in relation to the underlying merits of the substantive matters that the parties to proceedings are seeking to litigate.

If I am granted status as amicus, my only role is to ensure that the Assembly's powers, privileges and immunities are given due consideration by the courts, and nothing more. As with the Cover matter, I am to be represented by the ACT Government Solicitor's Office. I will keep members updated as both matters progress.

The Court granted the Speaker's application to appear as amicus and oral and written submissions on parliamentary privilege were made on behalf of the Speaker and the parties (see below).

Brief observations

The Speaker's amicus submissions in both cases argued that the Commission's reports, prepared by the Integrity Commission and authorised for publication by the Assembly, fell squarely within the ambit of 'proceedings in Parliament' under both s 16(2)(c) and s 16(2)(d) of the Privileges Act. That is, the reports were documents that were prepared for the purposes of or incidental to the transacting of the Assembly's business and were also documents published by or pursuant to an order of the Assembly.

The Speaker contended that, because of this, the privilege inhered in the reports themselves and, therefore, applied to each and every copy. Accordingly, the Speaker argued, the use of any copy for any of the purposes set out in s 16(3) of the Privileges Act would be prohibited.

A number of well-known privilege cases were relied upon by the Plaintiff and Applicant to argue that privilege was not enlivened as the reports that were adduced as evidence were those that had been published by the Commission, rather than the reports that had been authorised for publication by the Assembly.

Among other cases, the attention of the courts was drawn to:

- *Crime and Corruption Commission v Carne*
- *Szwarcbord v Gallop*
- *British American Tobacco Australia Ltd v Secretary, Department of Health and Ageing*

Crime and Corruption Commission v Carne

In *Crime and Corruption Commission v Carne* [2023] HCA 28, a report that had been prepared by the Queensland Crime and Corruption Commission (CCC) was found not to have been prepared for the purposes of transacting the business of the QLD Parliament (or, more specifically, the relevant committee of the QLD Legislative Assembly to which the report had been provided with the intention of seeing it given over to the Speaker and authorised for publication).

The Court held that whether a document falls within the meaning ‘proceedings in Parliament’ for the purposes of article 9 of the Bill of Rights or s 16 of the Privileges Act is a question of fact that must consider the particular acts taken in relation to the document that establish a functional connection with the work of the Parliament. At [35], Kiefel CJ, Gageler and Jagot JJ, accepted the submission of the Speaker of the Legislative Assembly of Queensland that ‘... it is the functional connection, objectively considered, of the document with the Assembly or committee which must be considered’.

On those facts, however, Kiefel CJ, Gageler and Jagot JJ considered [at 39] that:

The Report was prepared and presented to the Committee for the purpose of it being made public (by having it tabled in the Legislative Assembly). That purpose was that of the Commission. It was not that of the Committee. True it is that the Committee was asked to consider giving a direction under s 69(1)(b) of the CC Act, and would no doubt have done so had the proceedings not been commenced. The Committee agreed not to take that action until the conclusion of the proceedings. Had the Committee commenced consideration of such a direction, the Report may have been the subject of its business, but that point was not reached. The requisite connection is not established on the facts of this case...

In a similar vein, Gordon and Edelmann JJ stated at [115] that the:

The PCCC (the relevant Assembly committee) needed, at a minimum, to elect to exercise its powers or statutory functions to create a connection between the October Draft and the transacting of its business. The PCCC could not be a post box which insulated all documents received from the Commission with parliamentary privilege. It needed to at least elect to exercise a power or a statutory function in relation to the October Draft.

The Speaker had argued that the facts surrounding the Luna and Juno reports depicted a strong functional connection with the work of the Assembly. Both reports were prepared in compliance with the relevant provisions of the IC Act (i.e. they were reports of a kind permitted by the Act), they were provided to the Speaker by the Commissioner, they were presented to the Assembly by the Speaker, and they were published in accordance with Assembly standing order 212A (see above).

Additionally, it was submitted that the terms of the IC Act contemplate a strong functional connection between the Assembly and the Integrity Commission more generally. The IC Act makes provision for:

- the status of the Commissioner as an Independent Officer of the Legislative Assembly;
- the appointment of the Commissioner by the Speaker following consultation with certain MLAs and the relevant Assembly committee, and a resolution passed by a two-thirds majority of the Assembly;

- the requirement for the Commissioner to undertake an oath or affirmation before the Speaker;
- the requirement for the Commissioner to declare any conflicts of interest to the Speaker; and
- the power of the Speaker to suspend the Commissioner following consultation with certain MLAs and the relevant Assembly committee;
- a range of supervisory functions on the part of the relevant Assembly committee.

Szwarcbord v Gallop

The facts surrounding the Cover and Sofronoff matters were said by the Speaker to be distinguishable from those present in *Szwarcbord v Gallop* [2002] ACTSC 28 in which a report of an ACT board of inquiry was found not to be covered by parliamentary privilege. In that case, no steps were taken by the Assembly or any MLA in relation to the Board's report.

The *Inquiries Act 1991* requires that the Board's report be provided to the Chief Minister who then has the discretion to present the report in the Assembly. In the *Szwarcbord* matter, the Chief Minister did not, in fact, table the report (and there was no evidence that the Chief Minister had intended to table the report) and, as a consequence, the Assembly took no other steps in relation to it.

This is in contrast to the Luna and Juno reports both of which were provided to the Speaker, tabled in the Assembly, and authorised for publication by the Assembly.

British American Tobacco

In *British American Tobacco Australia Ltd v Secretary, Department of Health and Ageing* [2011] FCAFC 107 (Kean CJ, Downes and Besanko JJ), the Court addressed whether parliamentary privilege applied to a government response to a Senate committee report that had been published on a government website after it had been tabled in the Senate. The republication of the government response was done under the department's own authority and without any reference to the Parliament.

The court found that privilege did not attach to the copy of the government response published on the government website because it was unclear that the relevant Senate Standing Order authorised publication by anyone other than the officers of the Parliament or Hansard.²⁵ At [55]:

It would, we think, give an unduly expansive operation to the provisions of Senate Standing Order 167 to regard it as clothing with parliamentary privilege any re-publication by any stranger of any document tabled in the Senate. And for present purposes, the officers of the executive government who published the Government Response on its website were strangers to the Senate.

In contrast, publication by the Assembly of both the Luna and Juno reports was authorised pursuant to the Assembly's standing order 212A (see above). The additional publication by the

²⁵ At [54-55]

Commission pursuant to ss 214 and 190 of the IC Act²⁶ may be regarded as somewhat of a different character to the publication that occurred in respect of *British American Tobacco*. For example, it is arguable that the ACT Integrity Commissioner,²⁷ as an Officer of the Legislative Assembly, is no stranger to the Assembly and is not the executive government.

Outcomes

Sofronoff v ACT Integrity Commission

On 2 July 2025, Abraham J of the Federal Court concluded that she was ‘not satisfied that the conduct of the proceedings in the material on which the applicant seeks to rely involves an infringement of Section 16 of the Parliamentary Privileges Act’.

Reasons for the Court having arrived at that conclusion will be provided in the final judgement.

Cover v ACT Integrity Commission

At the time of writing, Mossop J of the ACT Supreme Court had not decided the privilege points that were ventilated in proceedings.

While there are similarities between the Sofronoff and Cover matters, there is one key difference that may lead to a different outcome. While the Juno report at the centre of the Sofronoff matter was an ‘investigation report’ prepared under s 182 of the IC Act, the Luna report was a ‘special report’ prepared under s 206 of the IC Act. Under s 206, a special report is prepared ‘for the Legislative Assembly’ (no such language appears at s 182).

It may be that this explicit statutory connection is regarded as providing the necessary functional linkage between the report and the work of the Assembly such that it is considered to be a proceeding in Parliament and protected by parliamentary privilege.

²⁶ It is the copies of the reports published pursuant to these provisions on which both the Plaintiff and the Applicant seek to rely.

²⁷ Under s 20 of the IC Act, the Commission consists of the Commissioner.