

2.1 This chapter examines the powers of the Legislative Assembly necessary for the conduct of its business. These powers are distinct from its legislative powers—that is, the range of subjects in relation to which the Assembly may make laws. The first category of these additional powers includes those necessary to undertake the core functions of examining legislative proposals and scrutinising the administration of the executive. Examples of these powers include the power to call witnesses and, if necessary, compel the attendance of witnesses and to order the production of documents. A second category includes those powers necessary to ensure that the institution can conduct its business free from interference, including the power to examine and punish contempts or offences against the legislature. This is analogous to powers relating to contempt of court.

2.2 The powers and immunities of legislatures are frequently referred to collectively as 'privileges'. It is more useful to consider privilege in the narrower (and more accurate) sense of the immunities from the ordinary law which attach to legislatures and their Members and which underpin Members' right of freedom of speech in the Assembly. The use of the term 'immunities' also avoids the confusion between 'privilege' in its parliamentary sense and the common meaning of 'privilege' as an exceptional advantage or benefit, a confusion which does nothing for the standing of parliamentarians in the eyes of a sometimes sceptical electorate.¹

2.3 *Odgers'* summarises certain erroneous notions which have arisen in the past, particularly references to 'breaches of privilege' for what were in fact contempts, notions which tended to create the impression that there existed a large number of confusing parliamentary privileges, immunities and powers.² To an extent, legislatures contribute to this confusion. In the Legislative Assembly the standing orders relating to issues of privilege also apply to possible contempts and matters of contempt of the Assembly are considered by 'privileges' committees.

SOURCES OF THE LEGISLATIVE ASSEMBLY'S POWERS

2.4 Section 24 of the Self-Government Act empowers the Assembly to make laws. It declares its powers, other than legislative powers, and those of its Members and committees. The Assembly cannot give itself powers that exceed those of the House of Representatives, its Members and committees.

¹ Historically, privilege did attach to a very broad range of activities of Members of Parliament and their households, particularly when parliament was meeting. For example, interference with the property interests of a Member of the House of Lords could constitute a breach of privilege of that House:

Complaint being made to the House, and Oath made at the Bar, 'That Richard Wilkinson, [and others], Fishermen, have fished in that Part of the River of Burnham, ... belonging to the Right Honourable Charles Lord Fitzwalter, ... during the Time of Privilege of Parliament, in Breach of the Privilege of this House.' *House of Lords Journal*, Vol 20. 1 June 1715.

² *Odgers'*, pp. 30-1. See also Memorandum by Mr L A Abraham CB CBE in the *Report from the Select Committee on Parliamentary Privilege of the House of Commons*, HC 34 (1967-68) p. 89ff. The background to certain of the inaccuracies is outlined in the memorandum. Mr Abraham, in particular, outlines how the inaccurate and indiscriminate use of the term 'privilege' gave rise to the natural, though erroneous, supposition that to every type of act declared a breach of privilege there must be a corresponding privilege—as the categories of breach of privilege increased in number, so did the supposed privileges.

2.5 The Assembly may also make laws providing for the manner in which powers may be exercised or upheld. In the absence of such legislation, the Assembly, its Members and its committees have the same powers as the House of Representatives with the significant exception that subsection 24(4) states that 'Nothing in this section empowers the Assembly to imprison or fine a person'. The House and the Senate retain the power to impose such penalties.³

2.6 The House of Representatives derives its powers and privileges from those of the United Kingdom House of Commons and its Members and committees. At the establishment of the Commonwealth of Australia in 1901, section 49 of the Constitution of the Commonwealth provided 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.⁴

2.7 In 1987 the Commonwealth Parliament enacted the *Parliamentary Privileges Act 1987*—'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'. The bill for the Act was introduced with a twofold purpose: to undertake changes to the law as recommended by the 1984 Joint Select Committee on Parliamentary Privilege; and to avoid the consequences of the interpretation of freedom of speech in parliament by certain judgements in the Supreme Court of New South Wales.⁵

2.8 A key feature of the Parliamentary Privileges Act is that it affirms, 'for the avoidance of doubt', the application of the provisions of Article 9 of the Bill of Rights 1688⁶ to the Parliament of the Commonwealth, clarifies the term 'proceedings in Parliament' and imposes restrictions on the use of the records of these proceedings by courts and tribunals. Other important provisions of the Act:

- limit the penal jurisdiction of the Houses (and remove impediments to judicial review) by defining the essential elements of offences that are punishable by the Houses (section 4);
- abolish the contempt of defamation of a House or a committee or a Member, except when words were spoken or acts done in the presence of a House or a committee (section 6);
- prescribe the penalties that can be imposed by a House (section 7);
- abolish the power of the Houses to expel a Member (section 8);⁷
- provide for the defence of qualified privilege for the publication of reports of parliamentary proceedings (section 10); and

3 As indicated in the Explanatory Memorandum to the Australian Capital Territory (Self-Government) Bill, the Assembly could, under section 24, pass a law providing for the imposition of custodial or financial penalties in cases of contempt of the Assembly. However the actual administration of that law would be a matter for the ordinary legal processes.

4 *Quick and Garran*, pp. 501-2, lists what are among the principal powers, privileges and immunities of each house of the Commonwealth Parliament and of the Members of each house, drawn from the law and custom of the House of Commons as at 1901. The list is reproduced in *House of Representatives Practice*, First edn, p. 645, though it should be read having regard to Australian developments such as the enactment of the *Parliamentary Privileges Act 1987*.

5 For a discussion of these cases, see *Odgers*, pp. 34-8; and see footnote 14.

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

7 The justification for this change was that the disqualification of Members was dealt with in the Constitution and electoral legislation and that, beyond this the fitness of a Member, otherwise qualified for election, was a matter for the electorate. The change was opposed in the Senate. See *Odgers*, pp. 56-7.

- create criminal offences and provide penalties in respect of interference with parliamentary witnesses (section 12) and unauthorised disclosure of in camera evidence taken by a House or a committee (section 13).

2.9 Section 5 of the Act provides that, except to the extent that the Act expressly provides otherwise, the powers, privileges and immunities of the Senate and the House of Representatives and the Members and committees of each House as in force under section 49 of the Commonwealth Constitution immediately before the commencement of the Act continue in force.

2.10 Section 24 of the Self-Government Act makes the *Parliamentary Privileges Act 1987* definitive of the powers, privileges and immunities of the Assembly, though, as noted in paragraph 2.5, the power to impose penalties by way of fine or imprisonment is withheld.⁸

2.11 The application of the immunities and powers of the House of Representatives to the Assembly, in particular the application of the provisions of the *Parliamentary Privileges Act 1987* of the Commonwealth, was considered in advice to the Clerk by the Government Solicitor in June 2001.⁹ In that advice the Government Solicitor confirmed the extent of the Assembly's powers as outlined above, subject to two qualifications:

- where the Parliamentary Privileges Act is inconsistent with the Self-Government Act the former will not apply; and
- only those provisions which may properly be described as 'powers, privileges and immunities of the House of Representatives and its committees and Members' will apply to the Assembly and its committees. Those parts that empower the House of Representatives to imprison or fine a person or relate to those powers (sections 7 and 9) do not apply.

2.12 The ACT Government Solicitor's advice also argues that those parts of the Act which 'relate to enforcement or administrative detail' would not apply. Thus, for example, sections 12 and 13 of the Act, which create offences in relation to interference with witnesses and unauthorised publication of documents, would not, on this view, apply to the Assembly. However, it is open to the Assembly to legislate to extend these provisions to the ACT.¹⁰ Nor would section 15, which relates to the application of laws to Parliament House, have any relevance to the Assembly.

8 Professor Enid Campbell, *Parliamentary Privileges*, Research Paper 1, 2000-01, Parliamentary Library, Parliament of Australia, p. 4.

9 Advice of the ACT Government Solicitor to the Clerk of the Assembly, dated 28 June 2001.

10 Advice of the ACT Government Solicitor to the Clerk of the Assembly, dated 28 June 2001.

IMMUNITIES

Immunity of proceedings from impeachment or question

2.13 The most significant parliamentary immunity is that neither individual Members nor the legislature itself can be the subject of legal action for anything said or done in the course of proceedings in parliament. Article 9 of the Bill of Rights 1688¹¹ declares:

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.¹²

This has been described as 'the only privilege of substance enjoyed by Members of Parliament'.¹³

2.14 This provision became part of the law of the Territory by virtue of section 24 of the Self-Government Act. Section 16 of the *Parliamentary Privileges Act 1987* confirms that Article 9 of the Bill of Rights applies in relation to the Parliament of the Commonwealth. The purpose of the section is to avoid the consequences of the interpretation of Article 9 by the judgements of Mr Justice Cantor and Mr Justice Hunt in the Supreme Court of New South Wales.¹⁴

2.15 *House of Representatives Practice* states:

Absolute privilege exists where no action may lie for a statement, even, for example, if made with malice; it is not limited to action for defamation but extends also to matters such as infringement of copyright or other matters which could otherwise be punished as crimes (for example, contempt of court or breach of a secrecy provision).¹⁵

2.16 As outlined in *Odgers'*, there are two aspects of the immunity:

- Members and other participants in proceedings in Parliament such as witnesses giving evidence before committees are immune from all impeachment or questioning in the courts for their contributions to proceedings, usually known as the right of freedom of speech; and
- parliamentary proceedings as such are immune from impeachment or question in the courts.¹⁶

11 The Bill of Rights 1688, 1 Will. & Mary (UK) was in force in NSW at the time of the establishment of the ACT and by virtue of the Seat of Government Act had effect in the ACT. It was converted into an ACT enactment by virtue of section 34 of the Self-Government Act.

12 See *House of Representatives Practice*, p. 711ff, and *Odgers'*, p. 34ff.

13 Memorandum by Mr L A Abraham CB CBE in the *Report from the Select Committee on Parliamentary Privilege of the House of Commons*, HC 34 (1967-68) p. 91.

14 *Parliamentary Privileges Bill 1987* (as passed by the Senate), Explanatory Memorandum, p. 9. As outlined in the explanatory memorandum, in June 1985 Mr Justice Cantor had given a judgement to the effect that Article 9 of the Bill of Rights (see below) did not prevent the cross-examination of persons in court proceedings on the evidence they had given to a parliamentary committee, that the test of a violation of Article 9 was whether there was any adverse effect on parliamentary proceedings, and that the protection of parliamentary proceedings must be 'balanced' against the requirements of court proceedings. In April 1986 Mr Justice Hunt had given a judgement which held that Article 9 prevented only parliamentary proceedings being the actual subject of criminal and civil action but allowed the use of parliamentary proceedings as evidence of an offence to impeach the evidence of witnesses or the accused or to support a cause of action. (Explanatory Memorandum pp. 10-11). A summary of the background to the bill is given at *Odgers'*, pp. 34-8.

15 *House of Representatives Practice*, p. 712. See also *The Law of Defamation in Australia and New Zealand*, Michael Gillooly, The Federation Press, 1998, pp. 169-73. See also Qualified privilege at paragraph 2.27.

16 *Odgers'*, pp. 34-8. This immunity in Australia is modified by constitutional law: where the Constitution provides that certain parliamentary procedures must take place for legislation to be validly enacted, as in section 57 of the Constitution, the High Court will inquire and determine whether those procedures have been properly carried out to determine the validity of the resulting legislation.

2.17 The meaning of 'impeachment' is best conveyed by a practical example. In considering the decisions of the Supreme Court of NSW (above), *Odgers'* commented that:

Evidence as to what the witnesses or the accused said before the Senate committees could be admitted [as evidence in a court] for the purpose of establishing some material fact, such as the fact that a person gave evidence before a committee at a particular time, if that fact were relevant ... The evidence put before the committees could not be used ... for the purpose of supporting the prosecution or the defence, nor particularly for attacking the evidence of witnesses or the accused whether given before the [parliamentary] committees or before the court.¹⁷

2.18 Members and witnesses before the Legislative Assembly and its committees cannot be held liable in a court for words spoken in the Assembly or in committee proceedings. They are absolutely privileged from suit or prosecution in respect of anything they may say in the course of proceedings. In addition, parliamentary proceedings cannot be used as the basis for a prosecution (or a defence) in court proceedings.

2.19 It should be noted that the scope of 'proceedings in Parliament' includes the proceedings of a parliamentary committee which is validly constituted and is acting within power. In 2001 McPherson JA stated that a committee that purports to inquire into a matter contrary to express legislative provision may not attract privilege to its inquiry because such action may not be a valid proceeding of Parliament.¹⁸

2.20 The extent of the protection provided to publication of documents authorised by the Legislative Assembly was addressed in August 2001 by the Standing Committee on Administration and Procedure in a report to the Assembly on the Legislative Assembly Privileges Bill 1998. The catalyst for the introduction of the bill had been concerns regarding the protection that was available to the authorised publication of a report of an Assembly committee beyond the Territory but within Australia.¹⁹

2.21 The Committee considered a number of advices, including that of the Clerk of the Senate, who argued that the publication of a document by order of the Legislative Assembly was protected by absolute parliamentary privilege throughout Australia. The basis of his argument was that the Self-Government Act conferred upon the Assembly the same powers and immunities as the Commonwealth Houses, subject to the exception contained in subsection 24(4)—no other exception or limitation being specified. The Senate and the House of Representatives have the power to publish documents with absolute privilege throughout Australia and, by virtue of section 24, this power also adheres undiminished to the Assembly. If the Commonwealth Parliament had intended to limit that power in any way, including by limiting it to the Territory, it would have explicitly specified the limitation, as it had specified a limitation in subsection 24(4).²⁰

17 *Odgers'*, p. 35.

18 'Some cases and commentary relevant to the operation of the *Parliamentary Privileges Act 1987* (the privileges Act)', House of Representatives Committee of Privileges. Notes published by the committee at <<http://www.aph.gov.au/house/committee/priv/feb2005PrivilegesActCases.pdf>>.

19 Assembly Debates (20.5.1988) 368-9. There had been concern for some time as to the extent of the immunity available to the publication of Assembly documents beyond their publication to Members (and particularly their publication beyond the Territory), advice having concluded that the authorised publication of Assembly documents beyond the Assembly was protected by only qualified privilege (see paragraphs 2.27 to 2.29), no matter who publishes them or authorises their publication. A primary purpose of the bill, therefore, was to restate a number of the existing powers, privileges and immunities that operate by virtue of section 24 of the Self-Government Act, to preserve those powers, privileges and immunities and to resolve a possible uncertainty in the law by extending absolute privilege to the authorised publication of Assembly proceedings and related documents. See Legislative Assembly Privileges Bill 1988, Explanatory Memorandum, p. 3.

20 Advice to the Clerk of the Assembly by the Clerk of the Senate, 17 December 1999.

2.22 The advice also argued that this interpretation of the legislation was supported by two other considerations. Under modern conditions, if a document is published, it is effectively published throughout Australia and cannot be restricted to the boundaries of a particular state or territory. In addition, the public interest in legislative proceedings is not restricted to the particular state or territory of the legislature but extends throughout Australia.²¹ For example, the debate on the matter of legalised heroin trials in the ACT attracted nation-wide interest.

2.23 The Clerk of the Senate stressed that his advice applied only to the publication of the whole of a document ordered to be published by the Assembly, and not to partial republications.

2.24 The committee concluded, however, that it was preferable that the Assembly not proceed to declare its powers, privileges and immunities as proposed in the bill or further clarify the law relating to the privilege applying to the authorised publication of documents of the Assembly and its committees.²² The Assembly has not legislated to state its powers and privileges other than with reference to the parliamentary precincts (see Chapter 18: Chamber and Assembly precincts).

2.25 This does not mean that Members of the Assembly and participants in Assembly and committee proceedings have an unlimited right of freedom of speech. The Assembly itself has imposed upon its Members a number of rules that govern the content of speeches and has also, by resolution, set general guidelines for Members in the exercise of their right of freedom of speech. It has also charged the Speaker to draw the spirit and the letter of the resolution to the attention of the Assembly when he or she considers it desirable to do so.²³

2.26 In summary, this resolution reminds Members of the need to exercise their right of freedom of speech in a responsible manner, of the damage that may be done by careless or malicious exercise of that right, and of the limited opportunities available to private citizens to respond to allegations made in the Assembly. (Abuse of the right of freedom of speech and remedies available to members of the public are discussed in paragraphs 2.107 to 2.129.)

Qualified privilege

2.27 Qualified privilege, as distinct from parliamentary privilege, may attach to a range of documents and statements unrelated to parliament. In outlining the difference between absolute and qualified privilege, Odgers' states:

Qualified privilege is not a diluted extension of the absolute parliamentary immunity. The law relating to qualified privilege is a completely separate branch of the law, related to parliamentary immunities only because it has application in respect of reports of proceedings in Parliament. It also applies to other transactions totally unrelated to parliamentary matters, for example, relations between private societies and their members. The law relating to qualified privilege is determined by the ordinary law of defamation of states or territories.²⁴

21 There are new uniform defamation laws that affect parliamentary proceedings; see 'New defamation legislation and its ramifications for committees', discussion paper presented by Russell Grove, Helen Minnican and Hannah Jaireth to the January 2007 ANZACATT Professional Development Seminar.

22 Standing Committee on Administration and Procedure, *Legislative Assembly (Privileges) Bill 1988*, Report No. 9, 21 August 2001, pp. 27-8.

23 'Freedom of Speech', Resolution agreed by the Assembly, 4 May 1995.

24 *Odgers*, p. 54.

2.28 Qualified privilege is so called because, in contrast to absolute privilege, it may be lost if it can be demonstrated that the person or organisation making a statement or publishing a document was motivated by malice or some other improper consideration. Equally, it should be noted that subsection 10(1) of the Parliamentary Privileges Act gives a defence against any action for defamation where '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'.²⁵ The Government Solicitor's advice referred to in paragraphs 2.11 to 2.12 questioned whether this section would provide a defence to third parties in relation to publication outside the Assembly.

2.29 In its decision in *Lange v Australian Broadcasting Commission* 1997 145 CLR 96, the High Court of Australia found in the Constitution an implied freedom of political communication which might be used to justify claims of qualified privilege attaching to reports of parliamentary proceedings.²⁶

Proceedings in parliament

2.30 Two key issues with regard to the extent of this immunity are what comprises 'proceedings in Parliament' for the purposes of Article 9 and what use can be made of proceedings, particularly by the courts.

2.31 Subsection 16(2) of the Parliamentary Privileges Act defines the phrase 'proceedings in Parliament':

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.

2.32 What is encompassed by this provision is a matter for interpretation and this is discussed in *House of Representatives Practice*²⁷ and *Odgers*.²⁸ As outlined in *House of Representatives Practice*, the ambit of the term is limited. Repetition by a Member outside the Assembly of a statement made in the Assembly would not be covered by absolute privilege. Nor would conversations or comments among Members or between Members and others which were not part of 'proceedings in parliament'. Nor would general correspondence between a citizen and a Member of Parliament constitute 'proceedings in parliament'.²⁹ Circulation of a

²⁵ *Parliamentary Privileges Act 1987* (Cwth), section 10.

²⁶ *Odgers*, p. 54.

²⁷ *House of Representatives Practice*, pp. 712-4.

²⁸ *Odgers*, pp. 44-55.

²⁹ *House of Representatives Practice*, p. 713.

petition for the purpose of collecting signatures prior to its presentation to the Assembly would not attract the protection of privilege.³⁰

Committee records and correspondence

2.33 The issue of whether certain committee records and correspondence were 'proceedings in parliament' was addressed via an intervention in June 2001 in a matter before the ACT Magistrates Court relating to defamation proceedings being conducted against an ACT Government Minister by a former Member of the Assembly. The matter was later heard in the Supreme Court of the Australian Capital Territory in 2004.³¹

2.34 The documents in question were produced in the ACT Magistrates Court under a summons for production addressed to the Chief Executive Officer of the ACT Department of Justice and Community Safety. They consisted of certain letters that had passed between the Attorney-General and the chair of the Legislative Assembly Standing Committee on Justice and Community Safety relating to a proposal to appoint the plaintiff as a lay member of the Professional Conduct Board of the Law Society of the Australian Capital Territory. The Attorney-General, as the appointing Minister, had sought the views of the committee pursuant to section 4 of the *Statutory Appointments Act 1994*.³²

2.35 Counsel having intervened on behalf of the Acting Speaker (there being concern that the documents may come within 'proceedings in Parliament' for the purposes of section 16 of the *Parliamentary Privileges Act 1987* as it applied to the Assembly), parties in the proceedings agreed to give the Assembly time to have access to the documents, to consider the possible operation of privilege and, if necessary, to prepare submissions to the court about their future use in proceedings.

2.36 Following the examination of documents, the course advised (and followed) was that letters be sent to both parties in the proceedings pointing out the potential issue regarding parliamentary privilege and the potential proscription on their use by the court, given that at that stage it was not known what use may be made of the documents. It was further proposed that:

- the documents identified be separated from other documents tendered in the summons for production on the occasion when the matter next comes before the court; and
- the documents identified be marked with an appropriate warning as to the limitations on their use, with reference to subsection 16(3) of the *Parliamentary Privileges Act* (a suggested wording for the notation was attached).³³

This was the course followed by the parties.

2.37 The question of the plaintiff's appointment to the Professional Conduct Board was peripheral to the issues considered in the judgement and the status of the committee documents was not the subject of comment. It may be surmised that the prompt intervention by the Assembly ensured that the parties to the matter chose to avoid a complex area of the law.

30 See paragraph 2.48, and Chapter 14: Petitions. And see McGee, pp. 620-5, especially pp. 622-3.

31 *Szuty v Smyth*. See <<http://www.austlii.edu.au/au/cases/act/ACTSC/2004/77.html>>.

32 Section 4 of the Act obliged a Minister having the power to appoint a person to a statutory office to consult with a nominated committee of the Assembly and not to make the appointment until receipt of a recommendation by the committee or a set period of time had elapsed. This provision has been replaced by section 228 of the *Legislation Act 2001*.

33 Advice to the Clerk of the Assembly from Clayton Utz, lawyers, dated 7 June 2001.

Use of a tabled document by a court

2.38 In April 2002 counsel representing the Speaker sought and was granted leave to appear as *amicus curiae* in the Supreme Court of the Australian Capital Territory to assist the court in relation to the potential issue of parliamentary privilege attaching to evidence that might be led before the court. The matter before the court concerned the conduct of the Board of Inquiry into Disability Services. Four public servants had commenced actions asserting that, during the conduct of the Board of Inquiry's inquiry, they had been denied procedural fairness.

2.39 The report of the Board of Inquiry had been presented in the Assembly by the Chief Minister, the relevant section of the Inquiries Act providing that the Chief Minister may lay a copy of the report (or part thereof) before the Assembly and may make the report (or part thereof) public whether or not the Assembly was sitting or the report had been laid before the Assembly.³⁴ The Speaker's concern related to the potential use of a document that had been presented to the Assembly, whether the document was a 'proceeding in Parliament' and, if so, what use could be made of the report in the proceedings that the four public servants had commenced.³⁵

2.40 The judge in the matter ruled that, whilst it was possible that the copy of the report of the Board of Inquiry proposed to be tendered by counsel representing one of the four public servants was produced for the purposes of or incidental to the transaction of business of the Assembly, there was simply no evidence to that effect. Therefore, privilege had not been established and a copy of the report could be admitted into evidence.³⁶ It is of note that the Speaker had earlier advised Members of his intention to intervene in the matter.³⁷

2.41 The House of Representatives Standing Committee of Privileges addressed the question of whether the records and correspondence of Members fell within the scope of 'proceedings in parliament' in its November 2000 *Report on the Inquiry into the status of the records and correspondence of members*. The committee, referring to the view of the majority of the Supreme Court of Queensland in *O'Chee v Rowley*, held that:

In determining whether documents have the status of 'proceedings in parliament', the question to be answered has been outlined as: has an act been done [by a member or his or her agent] in relation to the records or correspondence 'in the course of, or for purposes of or incidental to' the transacting of the business of a House [or a committee]?³⁸

³⁴ *Inquiries Act 1991*, section 16.

³⁵ For a background to the concerns of the Speaker see: *Privilege and the Supreme Court*, Paper presented by Mr Wayne Berry MLA Speaker, Legislative Assembly for the Australian Capital Territory, 33rd Conference of Australian and Pacific Presiding Officers and Clerks, Brisbane, July 2002.

³⁶ *Privilege and the Supreme Court*, Paper presented by Mr Wayne Berry MLA Speaker, Legislative Assembly for the Australian Capital Territory, 33rd Conference of Australian and Pacific Presiding Officers and Clerks, Brisbane, July 2002.

³⁷ *Assembly Debates* (19.02.2002) 310. On 24 December 2001, the Supreme Court had issued an order prohibiting the Chief Minister from laying the Report into Disability Services, a copy of that report or any part thereof before the Assembly or otherwise transmitting a copy of the report or any part of the report to the public. Advice was sought on the ramifications of the order and the advice received considered that the matter did not fit easily within the provisions of the Parliamentary Privileges Act, but that, rather, it was to be examined according to what was the common law and parliamentary practice relating to parliamentary privilege. The situation was seen not as one in which there was a possibility that 'proceedings in Parliament' might be impugned in a court or tribunal; rather it was a situation in which a court had ordered that information not be presented to the Assembly until a full hearing took place or other order of the court was made. As such it was seen as potentially a more fundamental interference with the work of the Assembly. In the event no action was required as the original order and a later order on the matter were vacated by consent. There was in fact a variation in the order on 10 January 2001 (the Speaker had not been notified of the further proceedings). Advice to the Clerk of the Assembly from Clayton Utz, Lawyers, dated 18 January 2002, *inter alia*, considered that the injunction was not enforceable against the Chief Minister insofar as it prevented him from tabling the report.

³⁸ House of Representatives Standing Committee of Privileges, *Report of the inquiry into the status of the records and correspondence of members*, November 2000, p. 11.

2.42 The Court of Appeal in Queensland held that if documents came into the possession of a Member of Parliament who retained them with a view to using them, or the information contained in them, for questions or debate in a House of Parliament, then the procuring, obtaining or retaining of possession were acts done for the purpose of, or incidental to, the transacting of the business of that House pursuant to subsection 16(2) of the Privileges Act.

2.43 Whilst it was clear to the committee that some of the records and correspondence of Members would attract parliamentary privilege, much of the material, including most electorate correspondence, would fall outside the definition of 'proceedings in parliament'. The boundary between those records that fell within the definition and those that did not was not always clear and further consideration by the courts was seen as offering greater clarification.

2.44 In the whole area of defining what constitutes a 'proceeding in parliament' and therefore attracts privilege, it is worth bearing in mind the view of the committee that, at the boundary, 'there will always be uncertainty'. The committee report recommended that there should be no additional protection, beyond that provided by the current law, given to the records and correspondence of Members.³⁹

2.45 It is also of note that:

- On two earlier occasions (in 1992 and 1994) the House of Representatives Standing Committee of Privileges had considered complaints arising from action, or threatened action, against Members following letters that Members had written to Ministers. On each occasion the committee had accepted that the correspondence did not form part of 'proceedings in Parliament'.⁴⁰
- Members have no explicit immunity as such against subpoenas or orders for discovery of documents issued by courts or tribunals or by search warrants. The use that a court or tribunal may make of material so obtained is restricted by the law of parliamentary privilege. However, there may be effective immunity from such processes for compulsory production of documents where the documents are so closely connected with proceedings in Parliament that their compulsory disclosure would involve impermissible inquiry into those proceedings.⁴¹
- In the London Electricity Board case in 1957 (more generally known as the Strauss case), the House of Commons rejected a report of the House of Commons Committee of Privileges that had found that a Member, in writing a letter to a Minister criticising certain alleged practices of the Board, was engaged in a 'proceeding in parliament' and that, in threatening a libel action against the Member, both the Board and its solicitors had acted in breach of the privilege of parliament.⁴²
- In 1939 the House of Commons agreed that a notice in writing of a question to be asked in the House was 'protected by privilege'.⁴³

2.46 *Odgers'* states that the fact that the 1987 Act did not explicitly extend the immunity of freedom of speech to activities of Members not related to their participation in proceedings of the Houses and committees reflected a considered view that the extension of

39 At pp. 22-3 the report of the committee addressed the defence of qualified privilege in defamation actions, noting that there have been no reported cases in Australia in which a Member's records and correspondence were considered to be protected by qualified privilege; the committee stated that Members should not seek to rely on any such protection in respect of their records.

40 *House of Representatives Practice*, p. 713.

41 *Odgers'*, p. 46.

42 *House of Representatives Practice*, p. 714.

43 *House of Representatives Practice*, p. 714.

the immunity to such matters is not warranted and, in relation to correspondence of Members, also conformed with the decision of the United Kingdom House of Commons in the Strauss case.⁴⁴

2.47 The answer to the question as to whether the provision of information to Members is covered by parliamentary privilege would depend on the circumstances of the particular case and whether the provision of the information is 'for the purposes of or incidental to' proceedings in a house or a committee. It may attract a qualified privilege under the common law interest and duty doctrine (the provider and recipient of the information each have an interest or a duty in giving or receiving the information) and it may also be held that there is a public interest immunity attaching to the provision of information to Members of parliament.⁴⁵

2.48 In considering the general question of whether the circulation of a petition containing defamatory material is or ought to be privileged, the Senate Standing Committee of Privileges concluded that the circulation was not so covered and that it should not be. The committee made the point that persons with specific grievances could themselves petition the Senate. Their petitions, if in order, could be presented and thus would be covered by privilege. The committee considered it inappropriate that privilege, whether absolute or qualified, should extend to the malicious circulation of defamatory material purportedly to collect signatures for a petition.⁴⁶

2.49 An issue that arises occasionally, most commonly before committees, is the status of a document prepared for another purpose, which is subsequently tabled—for example, as part of a submission to a committee. The actual copy provided to the committee would attract privilege as part of a 'proceeding in parliament'. However, privilege would not attach to publication of other copies of the document. It is a misunderstanding of parliamentary privilege to assume that privilege attaches to all copies of a document once one copy of that document has been tabled in the Assembly or received by a committee.

Use of parliamentary proceedings in legal proceedings

2.50 As outlined above, Article 9 of the Bill of Rights 1688 provides immunity to Members and other participants in proceedings in Parliament, such as witnesses giving evidence before committees, from all impeachment or questioning in the courts in respect of their contributions to parliamentary proceedings (usually known as the right of freedom of speech). Assembly standing orders give expression to these protections, providing:

- 261. All witnesses examined before the Assembly, or any of its committees, are entitled to the protection of the Assembly in respect of anything that may be said by them in their evidence.
- 264. An officer of the Assembly, or person employed by the Assembly, may not give evidence elsewhere in respect of any proceedings or examination of any witness without the special leave of the Assembly.⁴⁷

44 *Odgers*, p. 44.

45 *Odgers*, p. 45.

46 Senate Committee of Privileges, 125th Report, *Precedents, procedures and practice in the Australian Senate 1966-2005*, December 2005, pp. 27-8.

47 These standing orders reflect the equivalent standing orders in the House of Representatives (now 256 and 253) which in turn reflect resolutions of the House of Commons of 26 May 1818.

2.51 Subsection 16(3) of the Privileges Act prevents the use of parliamentary proceedings in any court or tribunal for the purposes 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.

2.52 In the Act, 'court' means a federal court or a court of a state or territory and '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 commissions of inquiry of the Commonwealth, a state or a territory. The explanatory memorandum to the bill for the 1987 Act⁴⁸ sets out matters affected by the provision. They include the following:

- A statement in debate by a Member or the evidence of a parliamentary witness being directly questioned for the purpose of court proceedings, or the motives of the Member or the witness in speaking in Parliament or giving evidence being questioned. For example, it could not be submitted that a Member's statement in parliament was untrue or reckless to support a submission to a court that the Member is an untruthful or reckless person.
- A Member's speech in debate or a parliamentary witness's evidence being used to establish their motives or intentions for the purpose of supporting a criminal or civil action against them or against another person. Thus a Member's statements outside parliament cannot be shown to be motivated by malice by reference to alleged malice in the Member's statement in parliament.
- A jury being asked to infer matters from speeches in debate by Members or from evidence of parliamentary witnesses in the course of an action against the Member, the witnesses or another person. This would not prevent the proving of a material fact by reference to a record of proceedings in parliament which establishes that fact (the example given was the tendering of the Journals of the Senate to prove that a Senator was present in the Senate on a particular day).

2.53 The prohibitions in the Act are seen to express the limitations on the use of parliamentary proceedings which were held to flow from Article 9 in the court judgements in *R. v Foord and R. v Murphy*:

Basically, what they prevent is proceedings in Parliament being '*used against*' a person in the broad sense, that is, not only being made the subject of a criminal or civil action, such as where a Member sued for words spoken in debate, but also being used to *support* a civil or criminal action against a person.⁴⁹

2.54 Subsection 16(4) of the 1987 Act prevents evidence which has been taken in camera by a House or a committee and not published (or which a House or a committee has directed to be treated as evidence taken in camera) from being used in court. It covers documents specifically prepared for submission to a House or a committee and accepted as in camera evidence, and oral evidence taken in camera.

⁴⁸ Explanatory Memorandum, pp. 12-3.

⁴⁹ *Parliamentary Privileges Act, 1987*, Explanatory Memorandum, p. 14.

2.55 Subsection 16(5) of the 1987 Act provides that neither section 16 nor the Bill of Rights shall be taken to prevent the admission in evidence in court of parliamentary records for the purposes of:

- determining a question arising under section 57 of the Constitution after a simultaneous dissolution; or
- interpreting an Act of the Parliament as provided for in the Acts Interpretation Act.

2.56 It would be expected that the provisions of section 16 in their application to the Assembly would not prevent the admission into evidence in a court of Assembly records, including debates, committee proceedings and tabled documents, for the purposes of interpreting an Act of the Assembly pursuant to section 142 of the *Legislation Act 2001*⁵⁰ and the Speaker referring relevant documents to the Court of Disputed Elections pursuant to paragraph 276(b) of the *Electoral Act 1992*. Nor would it be expected that the immunities enjoyed by the Assembly would prevent the admission into evidence of a record of proceedings where a court was determining the validity of legislation enacted pursuant to section 26 of the Self-Government Act, which provides for a special procedure for making certain enactments. It certainly would not do so if the evidence was for the purpose of establishing a material fact.

2.57 Subsection 16(6) of the 1987 Act, which allows parliamentary proceedings to be used in court proceedings in relation to an offence against the Parliamentary Privileges Act (the offences set out in sections 12 and 13) or against an Act establishing a statutory committee in the Commonwealth Parliament, do not apply in relation to the Legislative Assembly.⁵¹

2.58 Significant precedents in Australia and elsewhere with regard to the use of parliamentary proceedings by the courts are outlined in *House of Representatives Practice*⁵² and *Odgers*,⁵³ including particular difficulties that have arisen in defamation cases.

2.59 In February 1993 an officer of the Assembly was requested by a Member to give evidence in the Supreme Court of the Australian Capital Territory (in a civil action initiated by the Member for defamation arising out of a broadcast report of proceedings of an Assembly committee). The Member's counsel had sought to introduce into evidence an uncorrected proof transcript of the committee's public hearings.⁵⁴ The request was refused and counsel was briefed to attend the proceedings to represent the Speaker on behalf of the Assembly. Counsel representing the Speaker sought and was granted leave to intervene in the case.

2.60 The Chief Justice, after hearing legal argument and reviewing authorities, ruled that he was satisfied that there was no breach of subsection 16(3) of the Parliamentary Privileges Act and that evidence as to what occurred in the committee hearing, which was in the form of an uncorrected proof transcript, could be admitted.⁵⁵

50 Section 142 of the *Legislation Act 2001* (ACT) lists (but does not limit) material 'not forming part of the Act' that may be considered by a court in interpreting a piece of legislation passed by the Assembly.

51 Subsection 24(4) of the Self-Government Act precludes the Assembly from imposing a fine or imprisoning a person.

52 *House of Representatives Practice*, pp. 715-7.

53 *Odgers*, pp. 33-43.

54 It transpired that counsel for the Member wished to establish that nothing had been presented to the committee hearings that indicated that the plaintiff (a former Minister) had spent \$17 000 on travel (other Ministers had been questioned at the hearing) and thus the defendant (a news organisation) could not claim that the broadcast in question was an accurate account of the proceedings of the committee.

55 *Use of Assembly records in court proceedings*, statement presented in the Assembly by the Speaker, 13 May 1993, MoP 1992-94/344; *The use of Assembly documents in court*, paper presented to the Presiding Officers and Clerks Conference, Vanuatu, July 1993 by the Clerk of the Legislative Assembly for the Australian Capital Territory. The plaintiff and his solicitor had also requested that a letter be prepared confirming the status of the documents which they wished to use in the court.

2.61 There have been other precedents:

- bodies such as the Industrial Relations Commission and the Ombudsman have been alerted to the provisions of section 16 of the Parliamentary Privileges Act when it was understood that Assembly and Assembly committee proceedings may be questioned in the course of hearings and investigations;
- a Member having raised, as a matter of privilege, the fact that a submission to a board of inquiry invited the inquiry to have regard to debates in the Assembly, the Speaker concluded that the matter did merit precedence and advised the Assembly that she would be alerting the board of inquiry to her concerns;⁵⁶ and
- the Speaker wrote to the Chief Minister on 25 August 1997 expressing concern regarding Instrument 29 of July 1997 appointing Major General Smethurst as a board of inquiry into, inter alia, 'the circumstances, including all considerations by the Assembly, the executive, Ministers, officials and agencies relating to the demolition of the Royal Canberra Hospital, since the Acton-Kingston Land Swap'.⁵⁷

Arrangements for the production of Assembly records

2.62 The Houses of the Australian Parliament, like the House of Commons, have in the past followed the practice of requiring leave to be granted both for the attendance of employees and for the production of parliamentary records, the House of Commons having resolved in 1818:

That no Clerk, or officer of this House, or short-hand writer employed to take minutes of evidence before this House or any committee thereof do give evidence elsewhere in respect of any proceedings or examination had at the bar, or before any committee of this House, without the special leave of the House ...⁵⁸

2.63 In 1980 the House of Commons discontinued the practice of requiring persons to petition for leave to refer to parliamentary papers and gave leave for reference to be made in future court proceedings to the official report of debate and to the published reports and evidence of committees.

2.64 In 1984 the Joint Select Committee on Parliamentary Privilege recommended the adoption of similar provisions for the Commonwealth Parliament. The Senate abolished the practice in 1988 (though as a residual safeguard Senators and Senate officers are required to seek the approval of the Senate before giving evidence in respect of proceedings of the Senate or a Senate committee).⁵⁹ The House of Representatives has not implemented the provisions as recommended. *House of Representatives Practice* states that some authorities have held the granting of permission is not required as a matter of law.⁶⁰

2.65 Assembly standing order 264 provides:

An officer of the Assembly, or person employed by the Assembly, may not give evidence elsewhere in respect of any proceedings or examination of any witness without the special leave of the Assembly.

2.66 The Assembly has never formally granted leave for the production of Assembly records or for the attendance of Assembly employees elsewhere. An oral request for an officer

⁵⁶ Assembly Debates (17.5.1994) 1549-52. And see Assembly Debates (19.5.94) 1769-70.

⁵⁷ The inquiry was suspended pending the conclusion of a coronial inquest into the matter and was not reconstituted. See paragraph 10.112.

⁵⁸ Quoted in *House of Representatives Practice*, p. 717.

⁵⁹ *Odgers*, p. 34.

⁶⁰ *House of Representatives Practice*, pp. 710-8.

of the Assembly to appear in court has been refused (see paragraph 2.59) and in July 1998, during a period in which the Assembly was not meeting, the Speaker authorised a copy of certain pages of a paper presented to the Assembly to be tendered as evidence to the Supreme Court subject to the provisions of section 16 of the Parliamentary Privileges Act. The papers had been sought as evidence of the effect of certain provisions of the Territory Plan, and had been sought as an authenticated copy so that there could be no doubt as to authenticity.⁶¹

Freedom of Information Act 1989

2.67 The Freedom of Information Act applies to certain of the Legislative Assembly's records but is restricted to administrative and similar records. Section 46(c) of that Act exempts any document whose disclosure would:

... infringe the privileges of the Legislative Assembly, of the Commonwealth Parliament, of the Parliament of a State or of a House of such Parliament or of the Legislative Assembly of the Northern Territory or of Norfolk Island.

2.68 Clerks of the Assembly, who are responsible for freedom of information (FOI) matters, have, in consultation with Speakers, taken the view that the Assembly should be as constructive as possible when responding to FOI requests. Thus, in addition to the ordinary administrative records of the Assembly that broadly equate to those of a public sector agency records—those relating to Members' activities, including the use of entitlements to staff, travel, expenses of office and vehicle use—are open to FOI requests.

Other immunities

2.69 Other immunities (sometimes referred to as 'minor immunities') are:

- freedom from arrest or detention in civil causes;
- exemption from jury service; and
- exemption from compulsory attendance as a witness.

2.70 These immunities are of declining relevance. Arrest arising from a civil case is now extremely unusual while exemption from jury service for Members and some Assembly officers is a statutory right (see paragraph 2.72). In a small legislature such as the Assembly a Member might wish to invoke the exemption for compulsory attendance as a witness but in larger legislatures any competing demand could easily be accommodated by normal pairing arrangements. However, the rationale for the immunities—the need for Parliament and its committees to have first claim on the services of its Members, even to the detriment of civil rights of third parties⁶²—remains valid and should be upheld.

2.71 In earlier times the first two exemptions applied for 40 days before and after a session, reflecting the relatively infrequent sittings of parliaments and the travelling time involved in attending a sitting, particularly for Members from the more remote areas of the United Kingdom. The Parliamentary Privileges Act has reduced these periods to a more realistic five days before and after a meeting of a house or committee. The immunity is extended to officers of the Houses. Persons who are required to attend before a House or a committee on a day shall not be required to attend before a court or a tribunal and may not be arrested or detained in a civil case on that day.⁶³

61 MoP 1998-2001/113. The extract was certified by the Acting Clerk and, the Assembly not meeting at the time, Members were informed in writing.

62 Joint Select Committee on Parliamentary Privilege, *Report*, PP 219 (1984) 70. And see summary of Uren case and p. 724 of *House of Representatives Practice*; and see *Abraham*, pp. 90 and 92.

63 *Parliamentary Privileges Act 1987*, section 14.

2.72 Exemption from jury service is now a statutory right pursuant to the provisions of subsection 11(1) and Schedule 2, Part 2.1 of the *Juries Act 1967*. Members of the Assembly or an adviser or private secretary of a Member are exempt from serving as jurors, as are the Clerk, Deputy Clerk, Clerk Assistant, Serjeant-at-Arms, Editor of Debates and secretary to a committee of the Assembly.⁶⁴

2.73 Section 14 of the *Parliamentary Privileges Act 1987* provides that a Member shall not be required to attend before a court or tribunal on a day on which the House or a committee of which he or she is a member meets or on any day within five days before or after that day. The immunity extends to employees of the House, and applies to any day on which the House or committee that employee is required to attend upon meets or which is within five days before or five days after that day. When a Member has received a subpoena requiring his or her attendance before a court or a tribunal on a day on which a Member could not be compelled to attend, it is not uncommon for the Clerk to write to the relevant officers outlining the provisions and the exemptions that apply.⁶⁵

2.74 These provisions in the Parliamentary Privileges Act are in accordance with the recommendations of the Joint Select Committee on Parliamentary Privilege.⁶⁶

POWERS

2.75 *Odgers'* lists three distinct powers adhering to the two Houses of the Commonwealth Parliament by virtue of section 49 of the Constitution:

- the power of the Houses to determine their own constitution;
- the power to conduct inquiries; and
- the power to punish contempts.

Power to determine own constitution

2.76 Section 47 of the Constitution gives to each house of the Commonwealth Parliament the power to determine 'any question respecting the qualifications of a senator or of a member of the House ... or respecting a vacancy in either House ... and any question of a disputed election'. These extensive powers have largely been replaced by statutory provisions. The power of the Assembly to determine its own constitution⁶⁷ or composition is of reduced significance; the Self-Government Act and statutory law determine most, if not all, matters.

2.77 The qualification of Members and regulation of the filling of casual vacancies is determined by the provisions of the Self-Government Act and the Electoral Act, as is the power to hear and determine applications disputing the validity of elections. The Assembly may refer to the Court of Disputed Elections questions relating to the eligibility of persons declared to be elected or vacancies in the membership of the Assembly (see Chapter 3: Elections and the electoral system).

2.78 The Assembly does not have the power to expel one of its Members. The House of Representatives and Senate lost that power on the commencement of the *Parliamentary*

64 Members of the House of Commons and the House of Lords had a similar exemption. However this exemption as a right was removed by the *Criminal Justice Act 2003* (UK), see *May*, p. 125.

65 Subsection 15(2) of the *Evidence Act 1995* (Cwlth) also provides that a Member of a House of an Australian Parliament is not compelled to give evidence if the Member would, if compelled to give evidence, be prevented from attending, inter alia, a sitting of that House or a meeting of a committee of that House being a committee of which he or she is a Member.

66 Joint Select Committee on Parliamentary Privilege, *Report*, PP 219 (1984) pp. 73-5.

67 For a background to the power see *Abraham*, p. 94 and *May*, pp. 90-1.

Privileges Act 1987 prior to the passage of the Self-Government Act,⁶⁸ it being held that if a Member is not disqualified from membership by the provisions of the relevant statutes, that Member's fitness for membership is a matter for the electorate.

Power to conduct inquiries

2.79 The conduct of committee inquiries has become a principal function of legislatures in most democratic societies in recent decades. Legislation, including appropriation bills, is commonly referred to committees for examination, as are reports by Auditors-General on the public finances and matters of general public concern.

2.80 The power to 'send for persons, papers and records' is an established power of the UK House of Commons and, via section 49 of the Constitution and the provisions of the Self-Government Act, is a power of the Legislative Assembly. It underpins the capacity of the Assembly, usually through delegation of the power to its committees,⁶⁹ to conduct inquiries.⁷⁰

2.81 The High Court of Australia considered both the power to demand the production of papers and the power to punish a Minister for failing to comply with such a demand in *Egan v Willis*, on appeal from the Supreme Court of New South Wales. Justice McHugh stated that:

When the nature of parliamentary government is properly understood, it is apparent that the power ... is one that inheres in the very notion of a parliamentary chamber.⁷¹

The High Court vindicated the rights of the NSW Legislative Council on both matters.

2.82 The resolution appointing standing committees in the Sixth Assembly empowers committees to inquire into and report on 'matters referred to [a committee] by the Assembly or *matters that are considered by the committee to be of concern to the community*'. [Emphasis added.] The ambit of this phrase would clearly be limited by the specific subjects which each committee was charged with monitoring and care would be needed to ground a subject within the jurisdiction of the ACT.

2.83 There is an important limitation on the inquiry power of committees. Committees can only exercise the power delegated to them by the Assembly. Standing order 216 effectively delegates all the inquiry powers of the Assembly to committees 'within the terms of reference agreed to by the Assembly'. Thus the actual powers of a committee may be restricted both as to the subjects it can inquire into and the inquiry powers it possesses by its resolution of appointment. For example, the resolution with regard to the Citizen's Right of Reply (4 May 1995)⁷² states that the Standing Committee on Administration and Procedure, when considering a submission requesting a right of reply, 'shall meet in private session' and 'shall not publish a submission referred to it under this resolution'.

2.84 Behind this power stands the Assembly's power to punish contempts which could be used to compel the attendance of witnesses and the provision of documents.

68 The provision was inserted in the 1987 Act following the 1984 recommendation of the Joint Select Committee on Parliamentary Privilege (see Joint Select Committee on Parliamentary Privilege, *Report*, PP 219 (1984), pp. 121-7 and the Dissent by Senators Jessop and Rae at p. 167). The recommendation and the insertion of the provision met opposition in the Senate (see *Odgers*', pp. 56-7).

69 Standing order 216.

70 There is debate over the limits to the investigatory powers and reach of committees. Discussion of the matter in *House of Representatives Practice*, pp. 621-27 suggests that while limitations may exist their practical significance is not great.

71 *Egan v Willis* (1998) 73 ALJR 75.

72 MoP 1995-97/32-4.

2.85 In practice, while the Assembly has made extensive use of committees (see Chapter 16: Committees), the limits of committees' powers to insist on the attendance of particular persons or the production of documents have rarely been tested. In part this is because of reasonable cooperation with the ACT executive, which has accepted that the established practices of the Commonwealth Parliament, such as detailed scrutiny of appropriations bills by estimates committees, would be followed by the Assembly. At the same time committees have avoided conflict by not pressing requests for the production of documents and being cautious in contesting claims of executive and other privileges with regard to contentious material.

2.86 It is the Assembly itself that has tested the extent of its power vis-à-vis the executive by demanding the production of information both on its own behalf⁷³ and on behalf of a committee.⁷⁴

2.87 *Odgers'* discusses limitations on the power to conduct inquiries in terms of their application to the Houses of the Commonwealth Parliament (therefore, this is of relevance to the Assembly), including the possible limitation of the power relating to subjects in respect of which the Commonwealth Parliament has the power to legislate.⁷⁵ There is also probably an implicit limitation on the power to summon witnesses who are Members of the other House, of a House of a state or territory legislature, or who are state office holders⁷⁶ and to compel them to give evidence.⁷⁷

Public interest immunity

2.88 The doctrine of public interest immunity (sometimes referred to as executive privilege) has been defined concisely as the right of:

... the Executive Government ... to claim immunity from requests or orders, by a court or by Parliament, for the production of documents on the grounds that public disclosure of the documents in question would be contrary to the public interest.⁷⁸

Such claims are typically advanced to prevent the disclosure of cabinet documents or advice tendered to Ministers by their departmental officials.

2.89 Judicial consideration of the scope of this immunity had, for many years, accepted the view that a Minister's certificate that the release of documents was not in the public interest was conclusive and that certain classes of document, most particularly cabinet papers, were also beneficiaries of this immunity and a court would not order their publication. However, more recent decisions have undermined this view. The current position in Australia is that the courts do not accept that any class of documents is automatically immune from disclosure and that cases must be resolved individually having regard to competing public interests.⁷⁹

73 See, for example, MoP 1998-2001/412-4. In the context of a highly charged dispute about the redevelopment of a territory-owned football stadium the Assembly adopted a motion requiring '... the Chief Minister to present to the Assembly, prior to the end of the present financial year [30 June 1999]: (1) certified copies of all the papers in the possession of the Government and its agencies relating to ...' and then listed 14 categories of documents and other details which were to be presented to the Assembly. The motion was, largely, complied with.

74 See MoP 1998-2001/639-40, 686-7 and Select Committee on Government Contracting and Procurement Processes, *Report on government contracting and procurement processes in the Australian Capital Territory*, 26 July 2000, p. 9, where, to assist the committee in its inquiry, the committee obtained, through the Assembly, copies of certain hirers' agreements between Bruce Operations Pty Ltd and other parties and an agreement between the ACT Government and the Sydney Olympic Organising Committee.

75 *Odgers'*, p. 58-60.

76 *Odgers'*, pp. 58-9.

77 *Odgers'*, pp. 58-9. But see a Canadian precedent: the supreme court of a Canadian province held that officers in a federal government agency had no immunity from a summons issued by a committee of the Legislative Assembly of the province in the course of an inquiry into a matter within the legislative powers of the province; see *Attorney General (Canada) v MacPhee* 2003, 661 APR 164.

78 *House of Representatives Practice*, p. 609.

79 *House of Representatives Practice*, p. 608; *Odgers'*, pp. 465-8.

2.90 The position taken by the Houses of the Commonwealth Parliament is similar to that of the courts. The Senate has explicitly stated that 'upon a claim of privilege ... being made to any question or to the production of any documents, the Senate shall consider and determine each such claim'.⁸⁰ The House of Representatives asserts a similar 'unquestioned power', but notes that 'Because of the majority of government Members ... disputes over such matters ... are less likely to arise and when they do, it is likely that a compromise may be reached'.⁸¹

2.91 The Legislative Assembly takes a similar view⁸² to the Senate and has on occasion demanded the production of documents from the executive⁸³ in the face of strenuous opposition, most notably in the matter of the redevelopment of Bruce Stadium.⁸⁴ On that occasion the Assembly sought 'all the papers in the possession of the Government and its agencies relating to' funding, borrowing, subscriptions, tenders, corporate structures and brokers in relation to the project, contracts and arrangements with regard to the future operation of the stadium and details of the timing, amount, purpose and recipient(s) of all payments made by the Territory or on behalf of the Territory', and the legislative authority for payments and guarantees.

2.92 A large volume of material was provided to the Assembly, though by the very nature of the demand it is difficult to say whether it was fully complied with. The handling of this whole issue reinforces the comment from the House of Representatives (see paragraph 2.90). These matters are not determined simply as questions of principle; they are matters of current politics. The capacity of a legislature to press its demands will depend on the political culture of the jurisdiction, the discipline of political parties and the prevailing political reality.

2.93 As *Odgers'* notes, the Senate has generally not used its punitive powers to enforce its demands but has exacted a 'political penalty' or a procedural penalty. For example, where a government does not have a majority, it may be possible to back up a demand by delaying other government business until the demand is complied with. If a government has a majority, as in the House of Representatives, requests are unlikely to be pursued to the point of outright conflict between the legislature and the executive.

2.94 Committees also have the power to call for papers and require answers to questions. Assembly committees generally work by negotiation with the executive to gain access to material. Documents may be received in confidence and evidence taken in camera where claims to confidentiality are accepted by a committee. Where a committee requires the presentation of evidence and that request is denied on grounds that the committee did not consider sufficient, the committee could report the matter to the Assembly and ask that its request be reinforced by an order of the Assembly.⁸⁵ This has not happened yet; however, on one occasion a committee reported a Minister's refusal to answer questions in a committee hearing to the Assembly as a possible contempt.⁸⁶

80 Resolution of the Senate, 16 July 1975, paragraph (4), quoted *Odgers'*, p. 464.

81 *House of Representatives Practice*, p. 609.

82 See Standing Committee on Administration and Procedure, *The Use of Commercial-in-Confidence material and In-Camera Evidence* (August 2001). The committee notes 'The debate over public disclosure is not, it would seem, one of principle but of the appropriate limits of disclosure'.

83 The ACT executive acknowledges its obligations with regard to public accountability. See *Principles and Guidelines for the Treatment of Commercial Information Held by ACT Government Agencies* (1999).

84 See paragraph 2.87 and footnote 71.

85 But see footnote 73 above.

86 Select Committee on Estimates, *Appropriation Bill 2003-2004, Report No 1* (June 2003). The Minister declined to provide information to the committee though he acknowledged that the information was available: '... the government will make decisions when it announces and releases things ...'. The Estimates Committee asked the Assembly to consider whether the Minister's refusal should be referred to a Privileges Committee. A subsequent privilege inquiry made a finding of contempt against the Minister. See Select Committee on Privileges, November 2003, *Minister's Refusal to answer Questions in a Committee Hearing*. The Assembly noted the report and agreed to a resolution expressing 'grave concern in the Minister' for having been found to be in contempt by the committee. MoP 2001-04/995-6. The Minister apologised to the Assembly and the committee. See Assembly Debates (18.11.2003) 4166, 4172-3.

2.95 Any claim of public interest immunity with regard to material held by the executive must be made explicitly and should be made by a Minister. A public servant may take a question on notice or decline to provide a document on the basis that he or she is unsure of the status of the information sought. The status of the material should be clarified; if a claim of immunity is to be made, it should be communicated to the Assembly or the committee in question and should state the grounds for the claim.

2.96 There is a range of other immunities commonly asserted in contesting a request for evidence or documents by either the Assembly or its committees. The most common of these are that the material requested is 'commercial in confidence' or that it is subject to legal professional privilege.

2.97 A claim of commercial in confidence may be made on the basis of an explicit confidentiality clause in a document or on a general principle—for example, that details of tenders submitted in pursuit of a contract or the final contract should remain confidential, at least until the tendering process is finalised.⁸⁷

2.98 Legal professional privilege seeks to protect the communication between a legal practitioner and a client and is in a sense analogous to claims of privilege for advice tendered to Ministers by their public servants. In both cases it is argued that the ability to give 'frank and fearless' advice will be inhibited if there is an apprehension that such advice will be subject to public scrutiny.

2.99 In practice, a legislature should treat these claims in exactly the same way that it treats claims of public interest immunity. The legislature should not concede that any class of documents or any general category of communication attracts automatic immunity. With regard to contracts between public agencies or between the public sector and private organisations, the obligations of public disclosure are quite different from those applying to private transactions.

2.100 The obligations of public accountability cannot be overridden by confidentiality clauses in a contract. Given the proliferation of public-private partnership arrangements for the construction and operation of infrastructure and the delivery of services, it is absolutely vital that public interest in disclosure be upheld against claims of commercial confidentiality.

2.101 Similarly, the use of structures such as statutory authorities and government business enterprises to move public activities outside the constraints of the departmental structure while retaining full or part public ownership should not lead to any diminution of public accountability. The general principle that should be applied is that where expenditure of public funds is involved, irrespective of the mechanism used, the executive is responsible to the legislature to provide information on that expenditure.

2.102 A further ground for resisting requests from parliaments that has been advanced in recent years is to argue that the exemption provisions contained in freedom of information legislation should form the basis of a claim of immunity from parliamentary scrutiny. This view has not been accepted by legislatures.⁸⁸

⁸⁷ The Senate has a long history of conflict with the executive over the provision of information. See *Odgers*, pp. 468-85. With regard to claims of commercial confidentiality for government contracts, in 2001 the Senate adopted a continuing order requiring all government contracts to the value of \$100 000 or more to be published on the Internet with statements of reasons for any confidentiality clauses or claims.

⁸⁸ See, for example, *Odgers*, pp. 473-5.

Right to administer oaths to witnesses

2.103 The Houses of the Commonwealth Parliament, as a result of section 49 of the Constitution, have the right to take evidence on oath from witnesses appearing before either the Houses themselves or committees. However, neither House has a requirement in its standing orders that witnesses be heard on oath. The practice of administering oaths to witnesses, common in the 1970s and early 1980s, is a matter for individual committees and has largely fallen into disuse in the Commonwealth Parliament.⁸⁹ As *Odgers*' states, 'The swearing in of a witness has no effect on the witness's obligation to provide truthful answers'.⁹⁰

2.104 The practice of swearing witnesses was in decline at the time of the granting of self-government to the ACT and was never adopted by the Legislative Assembly. Assembly committees have used various formal opening statements, read at the commencement of hearings, explaining witnesses' rights and responsibilities, including a reminder of their obligation to tell the truth.⁹¹

POWER TO PUNISH CONTEMPTS

2.105 The Assembly has the power to punish breaches of privilege or contempts. The process of doing this is dealt with elsewhere (see paragraphs 17.41 to 17.72 on the conduct of privilege inquiries). Many matters that are breaches of privilege of the Assembly are also crimes under statute law. For example, an attempt to bribe or intimidate a Member of the Assembly is a contempt but it is also an offence against the *Criminal Code 2002*. Chapter 3 of the Code includes Members, Ministers and Assembly staff within its definition of 'public official' and includes offences relating to abuse of public office and intention to dishonestly influence a public official.

2.106 In view of the limited remedies available to the Assembly, in serious cases of contempt which are also criminal offences the Speaker may choose to advise the Attorney-General of the details of the matter with a view to initiating a prosecution.⁹²

ABUSE OF PRIVILEGE

Freedom of speech and right of reply resolution

2.107 The right of freedom of speech possessed by Members of the Legislative Assembly, witnesses before Assembly committees and the protection given to documents and other 'proceedings in parliament' carries with it the risk that that privilege may be abused. The Speaker and Members are generally vigilant in seeking to prevent abuse and the 'Freedom of Speech' resolution (a resolution of continuing effect) adopted by the Assembly in May 1995 counsels Members to:

- (a) ... exercise their valuable right of freedom of speech in a responsible manner; ...
- (c) ... [note] the limited opportunities for persons other than Members of the Assembly to respond to allegations made in the Assembly;
- (d) ... have regard to the rights of others; and
- (e) ... [ensure] that statements reflecting adversely on persons are soundly based.⁹³

89 The Parliamentary Privilege Resolution of the Senate (25 February 1988) at paragraph 2(6) states that 'witnesses shall be heard by the committee on oath or affirmation', reflecting a view that the committee has a quasi-judicial function. See *Odgers*', p. 430.

90 *Odgers*', p. 430.

91 Failure to tell the truth is treated as a serious matter by the Assembly.

92 *House of Representatives Practice*, p. 738 says '... it is a recognised right of a House to request government law officers to prosecute an alleged offender ...'. See also *May*, pp. 162-3; 'In cases of breach of privilege which are also offences at law, where ... the House has thought a proceeding at law necessary, either as a substitute for, or in addition to, its own proceedings, the Attorney-General has been directed to prosecute the offender'.

93 'Freedom of Speech', Resolution agreed to by the Assembly, 4 May 1995.

2.108 In the First Assembly a Member made allegations describing criminal activity against a businessman not resident in the ACT. The allegations received wide publicity and provoked a strong denial from the person in question. The denial was made in writing to all Members. Statements disputing the substance of the accusations and questioning the use of the protections afforded by the Assembly in this way were made by other Members of the Assembly. More than a year after the allegations were made, the Member advised the Assembly that the allegations were false and offered an unreserved apology to the businessman.

2.109 This matter was of considerable concern to the Speaker and other Members, particularly as it had happened in the early days of self-government and was damaging to the reputation of an institution seeking to overcome a large measure of public scepticism. Partly as a result of this incident, a motion to establish a 'Standing Committee on Ethics for Members of the Legislative Assembly' was moved. However, the matter was referred to the Standing Committee on Administration and Procedures, which conducted a broad ranging inquiry into the use of ethics committees in other legislatures and the creation of a code of conduct for Members of the Assembly.

2.110 The committee made a number of recommendations in its report, tabled on 6 June 1991, opposing the idea of an ethics committee but supporting a code of conduct and proposing the establishment of a citizen's right of reply procedure.⁹⁴ The committee had examined the procedure adopted by the Australian Senate and favoured the adoption of a similar procedure in the Assembly. For reasons unrelated to the content of the report, no action was taken on the committee's recommendations.

2.111 In the Second Assembly the Standing Committee on Administration and Procedures returned to the issue, initiating an inquiry specifically into the citizen's right of reply. This inquiry flowed directly from the incident referred to above, involving false accusations of criminal activity made under privilege. The committee's report was tabled in the Assembly on 26 August 1993.⁹⁵ The report emphasised the importance of the privilege of freedom of speech without which legislatures would be 'reduced to "... polite but ineffectual debating societies"'.⁹⁶ However it did acknowledge:

... that mistakes can and do occur. Without a means by which aggrieved individuals can seek to correct the record ... that mistake may never be corrected.⁹⁷

2.112 The Citizen's Right of Reply procedure was adopted by the Assembly for the duration of the Second Assembly and, following a further review by the Standing Committee on Administration and Procedure at the commencement of the Third Assembly,⁹⁸ as a resolution of continuing effect on 4 May 1995,⁹⁹ coupled with the free speech resolution quoted in paragraph 2.107. In adopting the procedure, the Assembly attempted to balance the need to protect the privilege of freedom of speech while providing an effective method of redress. In 2008 the Assembly amended the procedure to make it clear that there was a three-month time limit, unless there were exceptional circumstances.

94 Standing Committee on Administration and Procedures, *Inquiry into the Proposed Ethics Committee/Code of Conduct* (May 1991).

95 Standing Committee on Administration and Procedures, *Citizen's Right of Reply*, (August 1993).

96 Standing Committee on Administration and Procedures, *Citizen's Right of Reply*, (August 1993), p. 8, quoting *House of Representatives Practice*, Second edn, (1989), p. 688.

97 Standing Committee on Administration and Procedures, *Citizen's Right of Reply*, (August 1993), p. 8.

98 Standing Committee on Administration and Procedure, *Standing Orders and Citizen's Right of Reply*, (May 1995).

99 'Citizen's Right of Reply', Resolution agreed to by the Assembly, 4 May 1995.

2.113 It was not envisaged that the procedure would result in a flood of requests; rather, the Administration and Procedure Committee said that it was:

... not concerned with its lack of use but rather believes that the mere existence of the resolutions act firstly to focus Members on the responsibility they have to exercise their freedom of speech with care and secondly to give those in the community a security by knowing that they do have access to the right of reply.¹⁰⁰

2.114 A citizen or corporation¹⁰¹ wishing to utilise the procedure must first make a written submission to the Speaker outlining the nature of the issue and the Speaker must be satisfied that the matter submitted is not 'obviously trivial or ... so frivolous, vexatious or offensive in character as to make it inappropriate that it be considered'.¹⁰²

2.115 If the Speaker is satisfied that the matter has some substance, it is referred to the Standing Committee on Administration and Procedure for consideration. The committee may also apply the test of triviality or vexatiousness and may dismiss the request at that stage. If it decides to consider the matter, the committee may consult both the complainant and the Member whose comments in the Assembly precipitated the complaint.

2.116 The intention of the procedure is to provide a right of reply where a member of the public has good grounds for believing that they have been adversely affected by comments made about them in the Assembly and that the matter is not trivial. The procedure does not seek to establish the truth or otherwise of either the original statement or the response. Nor is the committee to become a vehicle for continuing the argument between the Member and the complainant. Thus the committee is specifically precluded from considering or judging 'the truth of any statements made in the Assembly or of the submission', and its proceedings and deliberations are private.¹⁰³

2.117 The Senate resolution carries the same restrictions. In advice from the then Deputy Clerk of the Senate and secretary of the Senate's Privileges Committee, it was stated that, in deciding whether a request for a citizen's right of reply should be accepted, 'the Senate tended to apply the same standards and precedents as those applied to personal explanations in the Chamber'.¹⁰⁴ *Odgers*' notes that:

The [personal explanation] procedure is usually employed to respond to some misrepresentation of a senator ... It is not necessary for a senator to claim to be misrepresented ... but the explanation must relate to matters personally affecting the senator.¹⁰⁵

¹⁰⁰ Standing Committee on Administration and Procedure, *Standing Orders and Citizen's Right of Reply* (May 1995), p. 13.

¹⁰¹ Extending the procedure to include corporations as well as natural persons was the one significant departure from the Senate model. The Administration and Procedure Committee noted in its first report on a request to use the procedure that requests from unincorporated organisations would not be covered by the terms of the resolution. Note that the Senate has accepted responses from natural persons being officers or board members of a corporation claiming to have been adversely affected by references to the corporation. See *Odgers*', p. 74. The House of Representatives guidelines for the application of its right of reply resolution specifically exclude requests on behalf of 'corporations, businesses, firms, organisations or institutions.'

¹⁰² 'Citizen's Right of Reply', Resolution agreed to by the Assembly, 4 May 1995, paragraph (1)(c).

¹⁰³ 'Citizen's Right of Reply', Resolution agreed to by the Assembly, 4 May 1995, paragraph (6).

¹⁰⁴ Standing Committee on Administration and Procedure, *Person Referred to in Assembly—WJ Curnow* (1997), paragraph 5, p. 4.

¹⁰⁵ *Odgers*', pp. 196-7.

2.118 Thus the range of matters to be considered by the committee in determining whether a right of reply should be offered is restricted to the criteria set out in the resolution. It can consider submissions:

... claiming that the person or corporation has been adversely affected in reputation or in respect of dealings or associations with others, or injured in occupation, trade, office or financial credit, or that the person's privacy has been unreasonably invaded ...¹⁰⁶

Note that the person need only claim to have been adversely affected, though presumably there would be an expectation that some evidence supporting that claim would be presented. A mere assertion would be unlikely to clear the first hurdle. The committee must also decide that the subject of the complainant's submission is sufficiently serious to merit consideration and that the submission is not frivolous, vexatious or offensive.

2.119 The Administration and Procedure Committee is not allowed to give details of its proceedings when considering right of reply requests; so it is difficult to ascertain how it reaches its decisions. The first matter it considered (and the only one in which a right of reply was granted) related to an officeholder of an organisation who had lobbied Members on behalf of that organisation. A Member later said in the Assembly that the organisation's representative, who he did not name but identified by mention of his organisation, had an obligation to produce persuasive evidence that the legal regime he was challenging was not functioning successfully and that the person had 'failed to produce that evidence'.¹⁰⁷

2.120 The aggrieved party interpreted the Member's words to mean that he had failed in his duty to his organisation to present relevant evidence whereas the Member believed that his statement meant no more than that he, the Member, found the evidence presented on behalf of the organisation to be unpersuasive about the point at issue.

2.121 The speeches made at the tabling of the report and the dissenting report by a committee member suggest that the issues debated were:

- whether or not it was sufficient that the complainant had a genuine belief that he had suffered an adverse effect; and
- whether the adverse effect was no more than the normal outcome for a party that loses an argument and thus failed the test of seriousness.

2.122 The member of the committee who moved that the report be adopted argued that the important issue that the committee had to consider was whether the 'individual feels that they were adversely affected' and that all that was required was that the person 'has put a good case that his reputation has been affected, not about the issue itself'.¹⁰⁸

2.123 The dissenting report noted that the resolution required a claim that a person 'has been adversely affected', whereas the submission in the case under consideration used the phrase 'could well impugn my credibility with other people'. The dissenting Member argued that the claimant had not demonstrated that his reputation had been adversely affected and that his claim should fail.¹⁰⁹ The second ground for dissent was that for a politician to find the arguments presented by a person acting as a lobbyist to be unpersuasive is not unusual and for a Member of the Assembly to state that that is the case cannot be characterised as an abuse of privilege.

¹⁰⁶ Standing Committee on Administration and Procedure, *Person Referred to in Assembly—W J Currow* (1997), paragraph (1)(a).

¹⁰⁷ Assembly Debates (8.5.1997) 1123.

¹⁰⁸ Assembly Debates (4.12.1997) 4557, 4559.

¹⁰⁹ The dissenting report is appended to the committee's report. See *Person Referred to in Assembly—W J Currow* (1997), paragraph (7).

2.124 The dissenting Member's first argument requires that the complainant establishes a matter of fact in his submission to the Speaker, that is, that he or she has been adversely affected. In fact, the resolution only requires a claim to have been adversely affected in a matter that is not trivial and that the claim is not being pursued in a vexatious or offensive manner. The dissenting Member's approach also requires the committee to judge whether the complainant has established that matter of fact, which it is precluded from doing by the explicit wording of the resolution.

2.125 The second point may not require the committee to judge a matter of fact but it does require the committee to make a judgement as to whether stating that a lobbyist's arguments were not sustained by the evidence he presented is an abuse of the privilege of free speech or merely a perfectly ordinary response to an argument that one does not accept and part of the normal risk faced by a lobbyist. This argument encapsulates the difficulty of drawing a clear line between robust public debate and abuse of privilege.

2.126 The House of Representatives has a procedure similar to that adopted by the Senate. The Privileges Committee of that House has adopted some further guidelines 'not inconsistent with the resolution establishing the procedure'. These guidelines limit the time available to make a submission, clarify that only 'natural persons' may make a submission, state that applications will not be accepted with regard to the proceedings of select or standing committees and direct the Privileges Committee to 'have regard to the existence of other remedies that may be available to a person referred to in the House and whether they have been exercised'.¹¹⁰

2.127 A paragraph of the guidelines also requires that 'an application must demonstrate that a person ... has been subject to clear, direct and personal attack or criticism, and has been damaged as a result'.¹¹¹ By using the words 'personal attack or criticism' and 'damaged' rather than the more neutral 'referred to' and 'adversely affected' found in the Assembly's resolution, the House of Representatives committee is imposing a more onerous standard for considering submissions but, at the same time, requiring the committee to make judgements of both the character of the Member's statement and the seriousness of its impact on the person referred to.

2.128 In practice, the procedure is little used in the ACT Legislative Assembly¹¹² and perhaps bears out the hopes expressed for it in the first place, that its primary purpose would be 'to focus Members on the responsibility they have to exercise their freedom of speech with care'.

2.129 Persistent abuse of privilege by a Member of the Assembly—for example, by revealing confidential information or making false accusations—would be viewed as misbehaviour. Such a breach of the Members' code of conduct could be dealt with as contempt.

¹¹⁰ *House of Representatives Practice*, p. 752.

¹¹¹ *House of Representatives Practice*, p. 752.

¹¹² The case described here in some detail is the only example of a request for a citizen's right of reply in the Legislative Assembly being successful. Two other issues have been referred to the committee. On a matter reported on in 2004 the committee considered that the person's submission that he had been adversely affected had not been substantiated and recommended that no further action be taken by the Assembly in relation to the submission (Standing Committee on Administration and Procedure, *Person referred to in Assembly, Mr L Burke* (August 2004), p. 1). In 2007 the committee, being deadlocked on whether to grant a citizen's right of reply, recommended that no further action be taken by the Assembly in relation to the decision (Standing Committee on Administration and Procedure, *Application for Citizen's Right of Reply—President of the ACT Volunteer Brigades Association* (August 2007), p. 1).