



Research Service,
Parliamentary Library,
Department of Parliamentary Services

Research Paper

An Introduction to Parliamentary Privilege

Rachel Macreadie
and Greg Gardiner

No. 2, August 2010

This introductory paper examines the law and practice of parliamentary privilege in Australia and in other jurisdictions. This paper also contains a discussion of the historical background to parliamentary privilege and examines the issues and tensions associated with parliamentary privilege.

This research paper is part of a series of papers produced by the Library's Research Service. Research Papers are intended to provide in-depth coverage and detailed analysis of topics of interest to Members of Parliament. The views expressed in this paper are those of the author.

Parliament of Victoria

ISSN 1836-7941 (Print) 1836-795X (Online)

© 2010 Library, Department of Parliamentary Services, Parliament of Victoria

Except to the extent of the uses permitted under the Copyright Act 1968, no part of this document may be reproduced or transmitted in any form or by any means including information storage and retrieval systems, without the prior written consent of the Department of Parliamentary Services, other than by Members of the Victorian Parliament in the course of their official duties.

Contents

Introduction	7
1. Parliamentary Privilege	9
1.1 Definition and Purpose	9
1.2 Historical Background	12
1.3 Exclusive Cognisance	15
<i>The sub judice rule</i>	16
1.4 Freedom of Speech and Debate	17
<i>Qualified privilege</i>	19
1.5 Freedom from Arrest	20
2. Issues and Tensions	22
2.1 Executive Privilege	22
2.2 Search Warrants and Subpoenas	24
2.3 Breach of Privileges and Powers to Punish Contempts	26
<i>Right of Reply</i>	29
<i>Parliamentary Privilege Immunity and Non-Members</i>	29
2.4 The Courts and Parliament	31
2.5 Party Discipline and Contempt of Parliament	34
3. Parliamentary Privilege in Australia	36
3.1 Commonwealth	36
3.2 Victoria	38
3.3 Western Australia	39
3.4 Queensland	39
3.5 South Australia	39
3.6 The Territories	40
3.7 Tasmania	40
3.8 New South Wales	40
4. Parliamentary Privilege in other Jurisdictions	42
4.1 New Zealand	42
4.2 Canada	43
4.3 India	45
4.4 United States	45
Conclusion	50
Further Reading on Parliamentary Privilege	51
Further Reading on Executive Privilege	52
Bibliography	54

Acknowledgements

This paper is the product of a collaborative project conducted by the DPS Library Research Service and the Chair of Victorian Parliamentary Democracy, Professor Brian Costar, Swinburne University, under the auspices of the Swinburne University Chair in Victorian State Parliamentary Democracy Reference group. The authors thank Prof. Costar for his support, comments and guidance throughout this project.

The authors would also like to thank the following, each of whom read earlier drafts of this paper and provided many useful comments and insights: Dr. Gareth Griffith, Senior Research Officer, NSW Parliamentary Library Research Service; Andrew Young, Assistant Clerk – House and Usher of the Black Rod; and, Anthony Walsh, Research Officer, Council Committees.

The authors would also like to thank their colleagues in the Research Service, for their proof-reading and comments: Bella Lesman, Adam Delacorn, Bronwen Merner and Catriona Ross.

Notes

In this paper the term ‘parliament’ is used to describe parliament(s) generally, while ‘Parliament’ refers either to a specific jurisdiction, or is used with the phrase ‘House(s) of Parliament’.

The authors declare that they are solely responsible for the material that appears in this paper.

An Introduction to Parliamentary Privilege

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.

Article 9 of the *Bill of Rights 1689*

The Council and the Assembly respectively and the committees and members thereof respectively shall hold enjoy and exercise such and the like privileges immunities and powers as at the 21st day of July, 1855 were held enjoyed and exercised by the House of Commons of Great Britain and Ireland and by the committees and members thereof, so far as the same are not inconsistent with any Act of the Parliament of Victoria, whether such privileges immunities or powers were so held possessed or enjoyed by custom statute or otherwise.

Section 19(1) of the *Victorian Constitution Act 1975*

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

Section 49 of the *Commonwealth of Australia Constitution Act 1900*

An Introduction to Parliamentary Privilege

Introduction

This research paper provides an introduction to the complex subject of parliamentary privilege. Through key texts it examines the meaning and origins of parliamentary privilege, some of the conflicts and tensions that have surrounded parliamentary privilege, and how privilege is understood and articulated in Australian and selected jurisdictions. The paper is designed to provide an overview of the subject, and functions primarily as a review of the literature, referring readers to more detailed accounts where they are available. It is not intended to be a comprehensive appraisal of, or guide to, the law and history pertaining to parliamentary privilege. Members should refer to the bibliography for suggested further reading.

This paper will make use of fundamental texts that address the subject of parliamentary privilege, such as *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament* (hereafter cited as *Erskine May*), *Odgers' Australian Senate Practice* (hereafter *Odgers' Practice*), Enid Campbell's *Parliamentary Privilege in Australia*, Griffith and Ryle's *Parliament, Functions, Practice and Procedures* (hereafter *Griffith and Ryle*) and Gerard Carney's *Members of Parliament: Law and Ethics*.¹ It will also draw on court cases in various jurisdictions which have shed further light on the meaning and purpose of privilege and recent reports on the subject by parliamentary committees and parliamentary libraries.²

The paper is structured as follows: the first section discusses the definition and purpose of parliamentary privilege, outlining what protections, immunities and powers are typically offered by parliamentary privilege, and then proceeds to give a brief historical background to the privileges possessed by the House of Commons. Section one also provides a brief overview of the central components that are typically regarded as comprising parliamentary privilege; exclusive cognisance, freedom of speech and debate, and freedom from civil arrest.

In section two, some of the issues and tensions surrounding the concept and implementation of parliamentary privilege are discussed, including the relationship of executive privilege and parliamentary privilege, and the role of the courts. Section three provides an examination of the practice and implementation of parliamentary

¹ *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament* (2004) (23rd Ed.) Edited by Sir William McKay, London, LexisNexis; J. Odgers (edited by Harry Evans) (2008) *Odgers' Australian Senate Practice* (12th Ed.), Canberra, Department of the Senate; E. Campbell (2003) *Parliamentary Privilege*, Sydney, The Federation Press; R. Blackburn & A. Kennon with Sir M. Wheeler-Booth (2003) *Parliament: Functions, Practice and Procedures* (2nd Ed.) London, Sweet and Maxwell ('Griffith and Ryle'); G. Carney (2000) *Members of Parliament: Law and Ethics*, St Leonards NSW, Prospect Media.

² In particular, the work of Gareth Griffith from the NSW Parliamentary Library who has compiled several recent reports spanning over a decade on the subject of parliamentary privilege, including G. Griffith (2007) *Parliamentary Privilege: Major Developments and Current Issues*, Briefing Paper No. 1/07, NSW Parliamentary Library Research Service, p. 3. See also G. Griffith (1997) *Parliamentary Privilege: Use, Misuse and Proposals for Reform*, Briefing Paper No. 4/97, NSW Parliamentary Library Research Service and G. Griffith (2009) *Parliamentary Privilege: First Principles and Recent Applications*, Briefing Paper No. 1/09, NSW Parliamentary Library Research Service.

privilege in the Commonwealth of Australia and the Australian states and territories, while section four provides a brief comparison with selected other jurisdictions, such as Canada, New Zealand and the United States.

1. Parliamentary Privilege

Parliaments perform important functions as democratic institutions, which broadly fit into three main areas; legislation, representation and the oversight of executive government. To achieve these objectives and keep the executive accountable and transparent, parliaments possess certain privileges, powers and immunities. The term 'parliamentary privilege' refers to the powers, privileges and immunities enjoyed by Houses of Parliament and their Members in the performance of their duties. These privileges are an exception to ordinary law and are intended to allow parliamentarians to perform their duties without fear of intimidation or punishment, and without impediment. Notwithstanding this, parliamentary privilege is the privilege of the Houses of Parliament as a whole and not simply of the individual Member.³

The privileges enjoyed in Westminster systems such as Australia, New Zealand, Canada, the United Kingdom and elsewhere are, in their origins, the products of an actual political struggle between the House of Commons and the Crown (and the House of Lords) in the United Kingdom. British precedent has significantly influenced the adoption of parliamentary privilege statutes and the application of privilege in Australia, as well as other jurisdictions that have embraced the Westminster model. For example, the Commonwealth of Australia and most Australian state jurisdictions, Canada and New Zealand have incorporated versions of Article 9 of the English *Bill of Rights 1689* in some form or another.⁴ Article 9 states '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'.

For this reason it is important to examine House of Commons practice, for, while most Australian jurisdictions have passed their own legislation and developed their own practice in regards to parliamentary privilege, 'the practice and precedents of the House of Commons are of continuing interest' and have established the precedent followed in many parliaments influenced by the Westminster model.⁵

1.1 Definition and Purpose

The most commonly used and accepted definition of parliamentary privilege is found in *Erskine May*, which defines parliamentary privilege as:

...the sum of the peculiar rights enjoyed by each House collectively as a constituent part of the High Court of Parliament, and by Members of each House individually, without which they cannot discharge their functions, and which exceed those possessed by other bodies or individuals. Thus privilege, though part of the law of the land, is to a certain extent an exemption from the general law. Certain rights and immunities such as freedom from arrest or freedom of speech belong primarily to individual Members of each House and exist because the House cannot perform its functions without unimpeded use

³ United Kingdom, House of Lords (2007) *Companion to the Standing Orders and Guide to the Proceedings of the House of Lords*, laid before the House by the Clerk of the Parliaments, p. 199.

⁴ At the time in which the Bill of Rights was made, the Julian calendar was in use. In referring to the Bill of Rights in this paper, the Bill of Rights 1688 is used interchangeably with the Bill of Rights 1689 as some sources quoted in this paper use the Julian calendar and some use the Gregorian calendar. While the Gregorian calendar, which replaced the Julian calendar, was adopted in some European countries as early as 1582, the Gregorian calendar was not adopted in England until 1752.

⁵ Australia, Department of the House of Representatives (2005) *House of Representatives Practice* (5th Ed.), Canberra, Commonwealth of Australia, p. 708.

of the services of its Members. Other such rights and immunities such as the power to punish for contempt and the power to regulate its own constitution belong primarily to each House as a collective body, for the protection of its own authority and dignity. Fundamentally, however, it is only as a means to the effective discharge of the collective functions of the House that the individual privileges are enjoyed by Members.⁶

Another definition was offered in 1966 by Enid Campbell who defined parliamentary privilege as ‘...those rights, powers and immunities which in law belong to the individual Members and officers of a parliament and the Houses of Parliament acting in a collective capacity’.⁷ Griffith and Ryle state:

Parliamentary privilege, even though seldom mentioned in debates, underpins the status and authority of all Members of Parliament. Without this protection, individual Members would be severely handicapped in performing their parliamentary functions, and the authority of the House itself, in confronting the Executive and as a forum for expressing the anxieties of the citizen, would be correspondingly diminished.⁸

Griffith and Ryle also observe that these privileges are essentially those of the House as a whole, meaning that individual Members can only make claims of privilege in so far as any denial of their rights or threats made to them, would impede the functioning of the House.⁹

In a recent case in Canada concerning the management of parliamentary employees – *Canada (House of Commons) v Vaid* [2005] 1 SCR 667 – the Supreme Court of Canada considered the meaning of parliamentary privilege. There it was said that such privileges were considered necessary ‘to protect legislators in the discharge of their legislative and deliberative functions, and the legislative assembly’s work in holding the government to account for the conduct of the country’s business’.¹⁰

While a distinction needs to be drawn between the rights and immunities enjoyed by Members *individually* and those powers enjoyed by the Houses of Parliament in their *collective* capacity, Gareth Griffith from the New South Wales’ Parliamentary Library Research Service notes that there is an obvious correlation between the two. For example, the right to freedom of speech is the basis of the power of the House to regulate its own proceedings and to control the publication of its debates and proceedings.¹¹

Griffith cites the main immunities enjoyed individually as including freedom of speech in parliament and the qualified immunity of Members and officers from legal process.¹² There is also the immunity extended to individuals who appear as parliamentary witnesses giving evidence before a parliamentary committee. The

⁶ *Erskine May* (2004) op. cit., p. 75.

⁷ E. Campbell (1966) *Parliamentary Privilege in Australia*, Melbourne, Melbourne University Press, p. 1.

⁸ Blackburn & Kennon (2003) op. cit., p. 123. The United Kingdom Joint Committee Report on Parliamentary Privilege also use Griffith and Ryle’s definition. See United Kingdom, Joint Committee on Parliamentary Privilege (1999) *Parliamentary Privilege – First Report*, Joint Committee Reports, Session 1998-99, 9 April 1999, HC 214-I, para. 3.

⁹ Blackburn & Kennon (2003) op. cit., p. 85.

¹⁰ See *Canada (House of Commons) v Vaid* [2005] 1 SCR 667 at para 41.

¹¹ Griffith (2007) op. cit., p. 4. See also Campbell (2003) op. cit., n 5, pp. 74-75.

¹² Such as the exemption from compulsory attendance before a court or tribunal when Parliament is sitting and exemption from jury service, see Griffith (2007) op. cit., pp. 3-4.

rights and powers enjoyed by the Houses of Parliament in a collective capacity include the power to control the publication of debates and proceedings, the power to regulate internal affairs and procedures and the power to conduct inquiries and order the production of documents.

In the United Kingdom, the House of Commons Library Parliament and Constitution Centre has summarised parliamentary privilege as having two essential components:

- a) Freedom of speech, as guaranteed by Article 9 of the *Bill of Rights 1689*, and,
- b) The exercise by Parliament of control over its own affairs, known technically as 'exclusive cognisance'.¹³

The definitions outlined above distinguish some important features of parliamentary privilege: privilege is seen to be essential to both enabling parliament to perform its duties and functions, and to maintaining parliament's authority and independence from the executive.

Notwithstanding this, however, parliamentary privilege and particularly the potential for its abuse and misuse has been a contentious issue in academic commentaries on the subject, and subject matter for parliamentary committees themselves. Recent reviews by such committees, conducted in various jurisdictions, have investigated such issues as: whether citizens should be allowed a right of reply; whether the privilege of freedom of speech in parliamentary proceedings needs to be qualified rather than absolute; and, whether privilege allows persons to be unjustly defamed.¹⁴

In line with many parliamentary jurisdictions, in Victoria both the Legislative Assembly and Legislative Council have privileges committees that inquire into and report on complaints of breach of parliamentary privilege that are referred to the committee by resolution of the House. These committees meet as required and are appointed at the start of each Parliament. The procedure in the Assembly and the Council is that a Member makes a complaint of a breach of privilege in writing to the relevant Presiding Officer who then considers the matter and decides if the case should have precedence.¹⁵ The Member may then proceed in the House with an appropriate

¹³ O. Gay & A. Horne (2009) *Parliamentary Privilege and Qualified Privilege*, Parliament and Constitution Centre, London, House of Commons Library, p. 2.

¹⁴ Two significant reviews include the previously mentioned, United Kingdom, Joint Committee on Parliamentary Privilege (1999) *Parliamentary Privilege – First Report*, op. cit., (henceforth, UK Joint Committee Report (1999)), and Australia, Commonwealth of Australia (1984) *Joint Select Committee on Parliamentary Privilege*, October, Canberra, Commonwealth of Australia. There are numerous examples of committee reports that address specific cases that have questioned such issues. These reports are readily available on most committee websites, such as the relevant committees in Victoria, the Commonwealth of Australia and the United Kingdom. Examples of the many reports published by committees that deal with specific cases include the following: Australia, Senate, Committee of Privileges (1997) *Person referred to in the Senate – Dr Neil Cherry*, no. 65, PP No. 48/1997 and Commonwealth of Australia, Senate, Committee of Privileges (2007) *Person referred to in the Senate – Indonesian Forum for Environment*, no. 132, PP No. 173/2007 (which determined that foreigners have right of reply); Commonwealth of Australia, Senate, Committee of Privileges (2002) *Execution of search warrants in Senators' offices – Senator Harris*, no. 105, PP No. 310/2002 (concerning immunity of seized material). See also Griffith (1997) op. cit.

¹⁵ The Legislative Council's procedure is prescribed by Standing Orders. The Legislative Assembly's procedure is guided by practice.

motion and, if the motion is agreed to, the matter may be referred to the relevant Privileges Committee.¹⁶

The term 'parliamentary privilege' has itself attracted some criticism in the reports published by several committees established with the purpose of reviewing the law and practice of parliamentary privilege.¹⁷ One such report, published in 1999 by the United Kingdom Joint Committee on Parliamentary Privilege (hereafter, the 'UK Joint Committee Report') noted that the term 'labours under the disadvantage that the word privilege still carries a connotation of benefit or advantage unrelated to public need or duty... the very title is misleading and unfortunate'.¹⁸

1.2 Historical Background

In order to understand contemporary practice, it is important to examine the origins of parliamentary privilege. As *Erskine May* notes, 'the importance of privilege today cannot be entirely divorced from its past'.¹⁹ Many of the customs and practices today relate to traditions formed and developed over centuries. Similarly, many of the features of parliamentary privilege hint at the unique historical circumstances in which the immunities and rights provided for arose. Even today, at the beginning of each session in the United Kingdom Parliament, the Speaker petitions, on behalf of the Commons, for freedom of speech in debate, freedom from arrest, freedom of access to Her Majesty whenever occasion shall require, and that the most favourable constructions should be placed upon all their proceedings.²⁰

On this historical theme, the UK Joint Committee Report notes:

Tradition still plays a significant part in the way Parliament does its job, in the powers it exercises and in its constitutional relationship with the Crown and the courts. Much of the strength of parliamentary privilege, not least the extent to which it is widely recognised and accepted, lies in its antiquity; the same is true of its weaknesses, in particular the obscurity and obsolescence of certain areas of privilege.²¹

The powers, privileges and immunities of the UK Parliament developed in the context of the Parliament's need to assert its integrity, independence and authority against outside influence. In providing a brief history of parliamentary privilege in both the

¹⁶ Whereas the Assembly's Privileges Committee has met occasionally, the Council's Privileges Committee has never met as the House or President has dealt directly with matters, including right of reply.

¹⁷ UK Joint Committee Report (1999) op. cit., para. 337. United Kingdom, House of Commons, Select Committee on Parliamentary Privileges (1967) *Report*, HC 34.

¹⁸ UK Joint Committee Report (1999) op. cit., para. 337. In their review, the Committee did not decide to recommend replacing the word privilege with 'rights and immunities' as suggested by the 1967 Committee. See also Blackburn & Kennon (2003) op. cit., p. 124. Indeed, the Queensland Parliament decided to use the phrase 'powers, rights and immunities' over 'powers, *privileges* and immunities' as privilege 'suggests that a personal advantage or benefit accrues to members either collectively or individually'. See Queensland Parliament (2001) Explanatory Memorandum, Parliament of Queensland Bill 2001, p. 7.

¹⁹ *Erskine May* (2004) op. cit., p. 79.

²⁰ As *Erskine May* notes, the third of the Speaker's petitions is medieval in origin and is a corporate privilege, meaning it does not apply to individual members but to the House as a whole. The Commons still restricts the sovereign from attending its debates, unlike the Lords. The fourth petition is nowadays a courtesy since the proceedings of the House are protected from interference from the Crown. See *ibid.*, pp. 78, 89-90.

²¹ UK Joint Committee Report (1999) op. cit., para. 9.

House of Commons and the House of Lords, *Erskine May* notes that the House of Lords have 'ever enjoyed' their privileges simply because 'they have place and voice in Parliament' and 'because of their immemorial role in Parliament as advisers of the Sovereign'.²² By contrast, the House of Commons had to repeatedly assert and claim its privileges and the acquisition of privilege was 'both complex and prolonged'.²³

Erskine May notes that in the latter part of the fifteenth century the House of Commons enjoyed an 'undefined right to freedom of speech, as a matter of tradition rather than by virtue of a privilege sought and obtained'.²⁴ Charles McIlwain wrote that there was the perception of Parliament being of 'such dignity' that its privileges in the early times were not questioned.²⁵ McIlwain wrote of Parliament functioning more as a court than a legislature in its beginnings, stating that parliamentary privilege 'furnishes... one of the most convincing of all the instances of the eminently judicial character of Parliament'.²⁶

The privileges of the House of Commons crystallised in the seventeenth century as a result of conflicts with the Stuart monarchs. The struggle for freedom of speech reached a climax in 1629 when Charles I, attended by an armed escort, entered the Commons and arrested several Members 'found guilty in King's Bench of seditious words spoken in debate'. The Crown's argument was that parliamentary privilege did not protect seditious comments.

The subject of the English Civil War is beyond the scope of this paper. However, it is important to note that when the Stuarts returned from exile in 1660, and reinstated the monarchy, the Commons were determined to ensure freedom of speech was preserved. Within months of the restoration of the monarchy a Bill was read to maintain and confirm the House's privileges, stating that 'the Parliaments of England and the Members thereof shall forever hereafter fully and freely enjoy all their ancient and just rights and privileges in as ample a manner as... formerly'.²⁷ *Erskine May* notes that 'Despite several reminders from the Commons, the Lords failed to return the bill before the end of the session'.²⁸

The revolutionary circumstances of 1688-1689 gave the Commons another opportunity to ground freedom of speech in statute. As a report by the UK Parliament's Parliament and Constitution Centre notes, the Bill of Rights that emerged from the 'Glorious Revolution' was intended, in part, to curb future arbitrary behaviour of the monarch, and to guarantee the Parliament's powers *vis a vis* the

²² *Erskine May* (2004) op. cit., p. 77.

²³ *ibid.*, p. 78. In spite of the privileges afforded Westminster Parliament the exercise of these privileges during this time was still subject to the extent to which the monarch would allow. Morgan states that the reality was that absolutist abuses were rife and the courts were often subject to royal domination. See D. Morgan (2008) *Parliamentary Privilege in Queensland*, AIAL Forum No. 59, p. 9.

²⁴ *Erskine May* charts the historical development of privilege discussing each privilege and power separately, demonstrating how they are related and yet distinct in their development and chronology, having evolved with fluctuating importance in different struggles and contexts. See *Erskine May* (2004) op. cit., p. 79.

²⁵ See C. McIlwain (1910) *The High Court of Parliament and its Supremacy*, New Haven, Yale University Press, pp. 236, 230, 109-256.

²⁶ He also noted, 'If the whole length of parliamentary history be had in view, it will appear how late in that history parliamentary privilege became an important question'. See *ibid.*, pp. 229-230.

²⁷ Commons Journals (1660-67) pp. 42, 49, 80. See also S. Gardiner (1886) *History of the Great Civil War, 1642-1649*, London, Longmans.

²⁸ See *Erskine May* (2004) op. cit., p. 82. The Commons also established a Committee in 1667 to review the issue of freedom of speech and the arrests nearly forty years earlier.

Crown.²⁹ *Erskine May* notes that Article 9 of the Bill of Rights was 'intended to stifle both the courts and the Crown'.³⁰

While freedom of speech was established by the Parliament itself and only after a long struggle to assert its independence, freedom of arrest was more deeply engrained. Nonetheless, *Erskine May* notes that the implementation of freedom from arrest may have been 'patchy and often beyond the power of the Commons alone to enforce'.³¹

The provision of freedom from arrest has its foundations in the early days of establishing parliamentary supremacy in the House of Commons. It derives from a time in which Members could be arrested and detained for civil matters, particularly related to debt, and highlights the importance for the House to establish specific priority on the attendance of Members at Parliament. The immunity from arrest in civil proceedings was first vindicated in the House of Commons in 1543 when the Commons secured the release from arrest of a Member.³² However, it is thought that the earliest known assertions of freedom from arrest date back to the fourteenth century.³³

Importantly, *Erskine May* explains that 'the privilege of freedom from arrest has never been allowed to interfere with the administration of criminal justice or emergency legislation' and that the privilege could not be pleaded in cases of treason, felony and breach of the peace.³⁴ This was accepted in the fifteenth century by both the House and the courts and in 1697 the Commons resolved that 'no Member of this House has any privilege in case of breach of the peace, or forcible entries or forcible detainers'.³⁵

The *Privilege of Parliament Act 1603* was intended to statutorily recognise the privilege of freedom from arrest as well as the right of either House to set a privileged person at liberty and the right to punish those who make or procure arrests. However, the Act also maintained the rights of creditors to be able to sue the privileged party once the privilege claimed had expired with the session or the Parliament.³⁶

The further regulation of freedom from arrest in additional statutes in the early eighteenth century changed the means of securing a Member's release, with Members normally being discharged immediately upon motion in the court from

²⁹ L. Maer & O. Gay (2009) *The Bill of Rights 1689*, Parliament and Constitution Centre, London, House of Commons Library, p. 2.

³⁰ *Erskine May* (2004) op. cit., p. 82. Carney notes that another concern of the Commons, expressed behind the principle of Article 9, was that the House of Lords would be reviewing its internal affairs and become the 'overlord' of the Commons. Carney cites *R v Richards; Ex parte Fitzpatrick and Browne* (1955) 92 CLR 157 at 162. Carney (2000) op. cit., p. 171.

³¹ *Erskine May* (2004) op. cit., p. 83.

³² Australia, Joint Select Committee on Parliamentary Privilege (1984) op. cit., p. 25.

³³ *Erskine May* (2004) op. cit., p. 83.

³⁴ *ibid.*, pp. 84, 85.

³⁵ *ibid.*, p. 84. See Commons Journals (1667-1687), p. 342; Commons Journals (1693-1697), p. 784. *Erskine May* cites examples in the sixteenth and seventeenth centuries where pleas of privileges failed and Members were arrested and detained. It is also worth noting that the Houses do not always insist on their privileges. *Erskine May* cites several examples of such instances, including the House of Commons giving leave, in 1607, for a Member to be sued, when the Member would have otherwise been protected by privilege, *Erskine May* (2004) op. cit., pp. 83-84, 76.

³⁶ *ibid.*, p. 87.

which the process issued.³⁷ Nonetheless, the UK Joint Committee Report, cited above, noted that this immunity lost most of its importance in 1870 when imprisonment for debt was abolished by the *Debtors Act 1869*.³⁸

1.3 Exclusive Cognisance

The principle of control by parliament of its own affairs, free from interference by the courts, is referred to as 'exclusive cognisance', a key component of parliamentary privilege.³⁹ Not only is parliament independent from the government and judiciary, but in bicameral parliaments exclusive cognisance extends to each House's independence from the other House. Each House has the right to judge the lawfulness of its own proceedings and has the power to require the attendance of witnesses and the production of documents. As Sir William Blackstone said in his *Commentaries on the Laws of England*, 'the whole of the law and custom of Parliament has its origins from this one maxim, that whatever matter arises concerning either House of Parliament, ought to be examined, discussed and adjudged in that House and not elsewhere'.⁴⁰

Even earlier, in the sixteenth century, the concept that the Parliament should remain autonomous and have its own laws and customs is well developed in the words of Sir Edward Coke who said in the Commons:

...as every Court of Justice hath Laws and Customs for its direction, some by the Common Law, some by the Civil and Cannon Law, some by peculiar Laws and Customs... all weighty matters in any Parliament moved concerning the Peers of the Realm, or Commons in Parliament assembled, ought to be determined, adjudged and discussed by the course of the Parliament, and not by the Civil Law, nor yet by the Common Laws of this Realm used in more inferiour Courts... the King cannot take notice of any thing said or done in the House of Commons, but by the report of the House of Commons: and every Member of Parliament hath a judicial place, and can be no witness. And this is the reason that Judges ought not to give any opinion of a matter of Parliament, because it is not to be decided by the Common Laws...⁴¹

The ability of parliament to independently manage its internal affairs is captured in section 50 of the *Commonwealth of Australia Constitution Act*, which states that:

Each House of the Parliament may make rules and orders with respect to –

- (i) The mode in which its powers, privileges, and immunities may be exercised and upheld:
- (ii) The order and conduct of its business and proceedings either separately or jointly with the other House.

³⁷ *ibid.*, p. 88.

³⁸ UK Joint Committee Report (1999) *op. cit.*, para. 327.

³⁹ See UK House of Lords (2007) *Companion to the Standing Orders*, *op. cit.*, pp. 201-202.

⁴⁰ W. Blackstone (1830) *Commentaries on the Laws of England* (17th Ed.), London, Sweet and Maxwell, vol. 1, p. 163.

⁴¹ 4 *Inst.*, 15, cited in McIlwain (1910) *op. cit.*, pp. 233-234.

In Victoria it is section 43 of the *Constitution Act 1975* that encapsulates the authority of the Houses to order their own affairs (see in particular section 43(1)(e) and 43(1)(f)).

While the Houses of Parliament possess autonomy in managing their internal affairs without interference (from both the judiciary and the executive arms of government), the protections afforded by privilege and the freedom of speech provisions oblige parliament to exercise self-regulation. This is particularly the case in matters of *sub judice*.

The sub judice rule

With regards to *sub judice*, the House of Lords *Companion to the Standing Orders* states that the privilege of freedom of speech 'places a corresponding duty on Members to use the freedom responsibly... under the [*sub judice*] rule both Houses abstain from discussing the merits of disputes about to be tried and decided in the courts of law'.⁴²

The *sub judice* rule was recently reiterated by the Speaker of the House of Commons in the UK, in relation to the charging of three Members under the *Theft Acts*, following the parliamentary expenses scandal. (The Members concerned had reportedly argued that parliamentary privilege was relevant to their case, and that the Standards and Privileges Committee could have investigated the allegations against them).

The Speaker told the House on 8 February 2010 that:

Once criminal proceedings are active by a charge having been made, cases before the courts shall not be referred to in any motion, debate or question. The House will be aware that charges have been made against three Members of the House and that therefore the sub judice rule applies to their cases. The matter is therefore before the courts, and the House and Members would not wish to interfere with the judicial process, risk affecting the fairness of a criminal trial or, furthermore, prevent such a trial taking place.⁴³

Recently in the Victorian Legislative Assembly, the *sub judice* rule was raised in debate. On the 25 May 2010 the Speaker made a ruling regarding the application of the *sub judice* rule to matters before the Coroners Court. Prior to her ruling as the Chair, the Speaker said:

Stated simply, the sub judice convention is a voluntary restriction the house imposes on itself to refrain from making reference to matters awaiting or under adjudication in a court of law in order to avoid prejudice to court proceedings or harm to specific individuals. There is no standing order dealing with sub judice, and the house has always been guided by the practice of the House of Commons in respect of the sub judice convention.⁴⁴

The Speaker ruled as follows:

⁴² *Sub judice* means under the consideration of a judge or court of record. UK House of Lords (2007) *Companion to the Standing Orders*, op. cit., p. 58.

⁴³ O. Gay (2010) *Parliamentary Privilege and Individual Members*, Parliament and Constitution Centre, London, House of Commons Library, p. 7.

⁴⁴ Victoria, Legislative Assembly (2010) *Debates*, 25 May, Book 7, p. 1753.

1. As there is a risk that the processes and outcomes of inquests could be prejudiced by parliamentary comment and the need to preserve the principle of comity, matters before the Coroners Court should be subject to the sub judice rule.
2. A matter before the Coroners Court will be considered to be active from the opening of the inquest.
3. There may be instances where there is a pressing need for debate on policy matters connected to an ongoing inquest. The chair will retain the right to exercise discretion and waive the sub judice rule where a need for public debate can be demonstrated. In such instances a clear distinction must be maintained between policy matters and the details of a case.⁴⁵

The Speaker went on to list five factors that would guide her decision to waive the *sub judice* rule in allowing a debate or question. The Speaker also noted that the issue of whether the *sub judice* rule should continue to apply to matters before royal commissions is currently under consideration by the Standing Orders Committee and will be the subject of a report in the House.⁴⁶

1.4 Freedom of Speech and Debate

Article 9 of the English *Bill of Rights 1689* states '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'. Freedom of speech and debate is considered the single most important parliamentary privilege.⁴⁷ Without this freedom and protection Members would be unable to perform their duties without fear of any consequences arising from what is said in debates. This freedom, Griffith and Ryle note, includes the freedom to make mistakes, since '[t]here would be no freedom of speech if everything had to be proved to be true before it was uttered'.⁴⁸

Issues and tensions surrounding the use, abuse and misuse of freedom of speech have been tested within parliaments, in law courts and in the public domain.⁴⁹ While freedom of speech is seen as a fundamental component of parliamentary privilege, what is included in this protection and who is afforded this privilege is often uncertain.⁵⁰ The Commonwealth of Australia has clarified what is meant by 'proceedings in parliament' in section 16(2) of the *Parliamentary Privileges Act 1987* (Cth):

⁴⁵ *ibid.*

⁴⁶ The Speaker's ruling illustrates the independence of the Houses. For a somewhat different interpretation of the sub judice convention see the ruling of the President of the Legislative Council in 2006, Victoria, Legislative Council (2006) *Debates*, 30 May, Book 6, pp. 1779-1780.

⁴⁷ UK Joint Committee Report (1999) *op. cit.*, para. 36. See also Blackburn & Kennon (2003) *op. cit.*, p. 139.

⁴⁸ Blackburn & Kennon (2003) *op. cit.*, p. 139. Not only is there an absolute privilege immunity for mistakes, but this also applies regardless of a Member's motivations. This is an important distinction from the ordinary law of defamation where truth may be a defence for the ordinary person.

⁴⁹ For example, in 2006 in the South Australian Legislative Council Democrats MLC Sandra Kanck made a speech on euthanasia in which she detailed a numbers of methods available to those wishing to end their lives, which was later censored and removed from the Hansard transcript. See A. Marinac (2006) *Shaking the foundations of parliamentary privilege, On Line Opinion*, 18 September.

⁵⁰ UK Joint Committee Report (1999) *op. cit.*, para. 37.

...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.

Freedom of speech in parliament has been incorporated into Australian law as a matter of common law and also by statutes.⁵¹ The above definition is comprehensive and other jurisdictions frequently refer to the definition expressed in the Australian legislation.

In many jurisdictions, such as in Britain and Australia, the definition of parliamentary privilege refers to 'proceedings in parliament' allowing for greater flexibility in extending the privilege to witnesses appearing before a parliamentary committee.⁵² In France however, the immunity is expressed as applying to Members of Parliament. Article 26 of the *French Constitution 1958* provides that:

No Member of Parliament may be prosecuted, searched for, detained or be subject to judgement on the basis of opinions or opinions expressed or votes cast by him in the exercise of his duties.

Despite the explicit protection of Members, court decisions in France have nonetheless recognised the protection of witnesses. Likewise, the *Constitution of the United States of America* applies immunity to Members, not to proceedings. Article I Section 6 of the United States Constitution provides that:

Senators and Representatives... shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

⁵¹ See Campbell (2003) op. cit., p. 10.

⁵² B. Wright (2008) 'Patterns of Change: Parliamentary Privilege', Parliamentary Studies Paper 2, Crawford School of Economics and Government, The Australian National University. See also Paul Grant's article discussing the issues related to witnesses giving evidence to parliamentary committees, such as to what extent witnesses own their submission to a committee. P. Grant (2008) 'The Subsequent Use by an Author of Their Written Submission to a Parliamentary Committee: Issues of Ownership, Law, Privilege, Contempt and Practicality', *Australasian Parliamentary Review*, Spring, vol. 23, iss. 2, pp. 15-40.

However, court decisions in the United States have interpreted this provision as conferring a wider immunity on Members with respect to participating in legislative activities.⁵³

While freedom of speech for Members is clearly protected within the chamber or committee rooms, Members are not immune from the ordinary laws of defamation with regard to words spoken outside of the chamber or committee rooms. Indeed, in an important development, recent court decisions have potentially enabled defamation actions to proceed on the basis that words uttered outside parliament may be actionable because they incorporated, *by reference*, the statements made in parliament under privilege.⁵⁴

In his work on the Victorian Constitution, Greg Taylor states that the principal effect of Article 9 is that proceedings in parliament enjoy an absolute privilege, which cannot be waived.⁵⁵ This privilege extends not just to actual debates in the Houses and the proceedings of committees, but to documents and oral statements used, or to be used, in connection with proceedings in parliament. Privilege extends to the matters covered in petitions, publication of matter to parliament while it is sitting, and the evidence of non-Members to parliamentary committees.⁵⁶ In relation to drafts and notes prepared for and by Members for use in debate and for questions in the House, the UK Joint Committee Report stated that such material is protected under the same privilege and immunity that applies to speech and debate conducted in the House or parliamentary committee.⁵⁷

Importantly, absolute privilege is extended to the 'Hansard' record of parliamentary proceedings, including the proceedings of committees. The protection of parliamentary publications was firmly established in the United Kingdom with the *Parliamentary Papers Act 1840*, which was introduced in response to the case of *Stockdale v Hansard*. In that case it was found that papers published under House authority were not privileged.⁵⁸

Qualified privilege

While Members can be said to enjoy absolute privilege of freedom of speech and debate in relation to 'proceedings in parliament', not all communications engaged in or by Members have been defined as falling within proceedings in parliament. There has been considerable discussion concerning the types and occasions of communications engaged in by Members which may fall within qualified privilege, particularly in relation to Members correspondence with Ministers, and correspondence and communications between constituents and Members. The United Kingdom Parliament's Parliament and Constitution Centre has described qualified privilege as 'a legal concept extending well beyond the scope of

⁵³ See *US v Johnson* (1966) 383 US 169, *US v Brewster* (1972) 408 US 501, *Gravel v US* (1972) 408 US 606.

⁵⁴ This has come to be known as 'effective repetition', since it has been held that the Member had effectively repeated those statements, thereby opening himself or herself up to defamation actions. See *Buchanan v Jennings* [2002] 3 NSLR 145; *Buchanan v Jennings* [2005] 1 AC 115. See also Parliament of the Commonwealth of Australia, The Senate (2008) *Effective Repetition*, Committee of Privileges, 134th Report.

⁵⁵ G. Taylor (2006) *The Constitution of Victoria*, Sydney, The Federation Press, p. 263.

⁵⁶ *ibid.*, pp. 263-264.

⁵⁷ Provided such material is not widely circulated, see UK Joint Committee Report (1999) *op. cit.*, para. 113; and, Gay (2010) *op. cit.*, p. 3. The privilege also extends to drafts of evidence given by witnesses before parliamentary committees.

⁵⁸ See *Stockdale v Hansard* [1839] 9 Ad & E 1 (112 ER 1112); Gay & Horne (2009) *op. cit.*, p. 2.

parliamentary privilege', the law of which is based primarily in case law.⁵⁹ Qualified privilege exists where a person is not liable for an action of defamation if certain conditions are fulfilled.⁶⁰

1.5 Freedom from Arrest

While no immunity is afforded to Members in relation to arrest on criminal charges, parliamentary privilege does include freedom from arrest and attendance before courts in civil matters. In the Australian context, section 14(1) of the *Parliamentary Privileges Act 1987* (Cth) provides that a Member:

- (a) shall not be required to attend before a court or a tribunal; and
- (b) shall not be arrested or detained in a civil cause; on any day:
- (c) on which the House of that member is a member meets;
- (d) on which a committee of which that member is a member meets; or
- (e) which is within 5 days before or 5 days after a day referred to in paragraph (c) or (d).

Section 14(2) extends the above privileges to an officer of a House and section 14(3) extends the privilege of immunity from arrest or being detained in a civil case and not being required to attend before a court or tribunal to a person who is required on those days to attend before a House or a committee. Section 14(4) provides that, except as provided for in the above circumstances, a Member, an officer of a House and a person required to attend before a House or a committee has no immunity from compulsory attendance before a court or a tribunal or from arrest or detention in a civil cause by reason of being a Member or such an officer or person.

As noted in a report of the Commonwealth Joint Committee on Parliamentary Privilege in 1984, the privileges of parliament are 'a mirror of the times when they were gained'.⁶¹ Australia is one of the few jurisdictions that have statutorily retained the provision of immunity from arrest in civil proceedings. The Commonwealth report stated:

When first established [immunity from arrest in civil proceedings] was of very great importance – especially in cases of imprisonment for civil debt – and “in early days it was the most frequent cause of the exercise of the House’s penal jurisdiction”.⁶² The immunity existed so the House could have the first claim on the services of its Members. Arrest in civil proceedings has mainly been abolished, and many would say that its continuing existence is an artifact of times long gone and that it now should be decently interred. But it still remains part of the law of Australia.⁶³

⁵⁹ *ibid.*, p. 3.

⁶⁰ Including, that a person making a defamatory statement about someone else does so in good faith, and that the person making the defamatory statement and the person receiving the defamatory statement share a common duty or interest. See Gay & Horne (2009) *op. cit.* for further discussion.

⁶¹ Australia, Joint Select Committee on Parliamentary Privilege (1984) *op. cit.*, p. 25.

⁶² See United Kingdom, House of Commons, Select Committee on Parliamentary Privileges (1967) *op. cit.*, para 30.

⁶³ Australia, Joint Select Committee on Parliamentary Privilege (1984) *op. cit.*, p. 25.

In the House of Lords freedom from arrest is set out in the Standing Orders and provides that 'no Lord of Parliament is to be imprisoned or restrained without sentence or order of the House unless upon a criminal charge or for refusing to give security for the peace'.⁶⁴ This privilege extends from forty days before until forty days after the session of Parliament.

⁶⁴ House of Lords (2007) *The Standing Orders of the House of Lords*, op. cit. The UK Joint Committee Report notes that this standing order dates from 1626, see UK Joint Committee Report (1999) op. cit., para. 326.

2. Issues and Tensions

Given the history of the emergence of parliamentary privilege through a protracted political struggle, and the central role it plays in affording protection to Members, and in underpinning the independence of parliament, it is perhaps unsurprising that the actual exercise and practice of parliamentary privilege has been often fraught with conflict and uncertainty. Questions have been raised over the level and extent of the protection and immunities afforded to Members and to witnesses appearing before parliamentary committees. The rights, powers and immunities afforded to the parliament and to Members by parliamentary privilege have the potential to clash with the rights of members of the public on the one hand, and with the rights, privileges and operations of other branches of government on the other.

Thus, there have been concerns about the scope and extent of parliamentary privileges, whether these privileges should be qualified or absolute, and whether Members should be immune from suit or prosecution under the laws of defamation. In Australia and the United States, and more recently in the United Kingdom, issues have been raised with regard to the abilities of the judiciary and law enforcement officials to carry out their duties with respect to parliamentary privilege, such as in the execution of search warrants, the issuing of subpoenas and orders for discovery.⁶⁵ Furthermore, there also exists a tension between the conflicting notions of executive privilege and parliamentary privilege. Some of these themes will be discussed below.

2.1 Executive Privilege

Executive privilege refers to the powers exercised by members of the executive branch of government to withhold information when such disclosure of confidential communications would adversely affect the operations or procedures of the executive branch. There are several alternative names used to describe executive privilege depending on historical influence and the jurisdiction referred to in debates and in the relevant literature. For example, executive privilege is sometimes referred to as 'Crown privilege' in Australia and Britain. In the United States, when determining whether information should be admitted in legal proceedings, law courts will sometimes refer to executive privilege as 'public interest immunity'.⁶⁶

In Australia, the Senate has the power to require the giving of evidence and the production of documents. On 16 July 1975 the Senate resolved:

(1) That the Senate affirms that it possesses the powers and privileges of the House of Commons as conferred by Section 49 of the Constitution and has the power to summon persons to answer questions and produce documents, files and papers.

(2) That, subject to the determination of all just and proper claims of privilege which may be made by persons summoned, it is the obligation of all such persons to answer questions and produce documents.

⁶⁵ For more information on parliamentary privilege and search warrants, subpoenas and orders for discovery see Griffith (2007) *op. cit.*, pp. 41-42, 36-42.

⁶⁶ See Australia, Department of the Senate (2008) *The Senate and Accountability*, Papers on Parliament, No. 48, January, Canberra, Parliament of Australia, pp. 75-76.

(3) That the fact that a person summoned is an officer of the Public Service, or that a question related to his departmental duties, or that a file is a departmental one does not, of itself, excuse or preclude an officer from answering the question or from producing the file or part of a file.

(4) That, upon a claim of privilege based on an established ground being made to any question or to the production of any documents, the Senate shall consider and determine each such claim.⁶⁷

Despite this, *Odgers' Practice* notes that:

While the Senate undoubtedly possesses this power, it is acknowledged that there is some information held by government which ought not to be disclosed... While the Senate has not conceded that claims of public interest immunity by the executive are anything more than claims, and not established prerogatives, it has usually not sought to enforce demands for evidence or documents against a ministerial refusal to provide them but has adopted other remedies.⁶⁸

Odgers' Practice states that this 'has not been adjudicated by the courts and is not likely to be'.⁶⁹ Indeed, several committees have likewise been unable to develop agreed procedures for determining the validity of claims for public interest immunity with most concluding that the question is a political, not a legal or procedural, one. *Odgers' Practice* states, 'There appears to be a consensus that the struggle between the two principles involved, the executive's claim for confidentiality and the Parliament's right to know, must be resolved politically'.⁷⁰

Evidently, this is a controversial matter, leading some to argue that executive privilege is unconstitutional, undemocratic and contrary to ideals of open government, freedom of information and the public's right to know in order to make informed decisions about their representatives. On the other hand, others have argued that executive privilege is a necessary component of effective government for reasons of national security and the need for political leaders to receive candid advice. In addition, it has been argued that the disclosure of certain information may also not always be in the public's interest.⁷¹

The notion that the executive may have reason to exercise privilege in refusing to disclose certain documents (in protecting the operations of government) can certainly impede the ability of parliaments to scrutinise the operations of the executive. Nonetheless, *Erskine May* cites an observation made by a Commons committee in the seventeenth century that the privilege granted to parliament in regard of public service 'must not be used for the danger of the commonwealth'.⁷²

⁶⁷ Australia, Senate (1975) *Debates*, 16 July, p. 831.

⁶⁸ *Odgers' Practice* (2008) op. cit., p. 468.

⁶⁹ *ibid.*, p. 469.

⁷⁰ *ibid.*

⁷¹ For works discussing executive privilege and these controversies, Members may want to consult the Further Reading section on executive privilege at the rear of this paper.

⁷² House of Commons Journal (1640-42), p. 261, cited in *Erskine May* (2004) op. cit., pp. 92-93. It was also agreed in 1704 that neither House of Parliament had any power to create for themselves any new privileges not warranted by the known laws and customs of Parliament. See House of Commons Journals (1702-04), pp. 555, 560 cited in *Erskine May* (2004) op. cit., p. 93.

A recent event in the Victorian Parliament demonstrated this tension between executive government and parliament. In 2007 the Victorian Government came into conflict with the Legislative Council when it refused to hand over a series of documents related to gambling, the allocation of public lotteries licences and the Victorian Commission for Gambling Regulation. The Attorney-General Rob Hulls wrote a letter on behalf of the Government advising the Council that the 'executive government on behalf of the Crown makes a claim of executive privilege'.⁷³ There have been numerous occasions in Victoria and in other jurisdictions in which conflicts between executive governments and parliaments have transpired over accountability and transparency and the competing rights both to obtain information and to withhold it. For further reading and discussion of issues concerning executive privilege Members may consult the list of references at the rear of this paper.

2.2 Search Warrants and Subpoenas

As has been noted above, individual Members do not have immunity from arrest or imprisonment on criminal charges. However, the ability of law enforcement officials to execute search warrants, issue subpoenas and orders for discovery have been issues of contention with regard to the rights and immunities afforded to individual Members under parliamentary privilege. A number of court cases have addressed this issue, both in Australia and in jurisdictions overseas. One important question that has emerged has been the extent to which documents held in the possession of Members are privileged.⁷⁴

In the United States, there has been recent conflict between the Congress and the executive with regard to privilege. In 2006, FBI officers searched the offices of Congressman William Jefferson, who was not present at the time to assert claims of privilege. The search warrant contained procedures for material seized to be assessed by officials to identify any material subject to privilege. Jefferson challenged the action in the District Court and sought an order to have the seized materials returned, which failed. On appeal, the Court of Appeal found that the compulsory disclosure of privileged legislative material to the executive had violated the speech or debate clause and that the Congressman was entitled to the return of documents found to be privileged (however, this did not apply to non-privileged documents).⁷⁵

Commenting on this event, Bernard Wright noted 'this decision reflected the Appeal Court's recognition of the privilege applying in respect of the Congress, but also of the validity of the executive interest in the administration of justice'.⁷⁶

⁷³ Victoria, Legislative Council (2007) *Debates*, 9 October, p. 2951; Victoria, Legislative Council (2007) *Debates*, 30 October, p. 3168; Victoria, Legislative Council (2007) *Debates*, 20 November, p. 3435. See also G. Taylor (2008) 'Parliament's Power to Require the Production of Documents – A Recent Victorian Case', *Deakin Law Review*, vol. 13, iss. 2. The Legislative Council has adopted a procedure for the production of documents, including documents claimed to be covered by executive privilege, within Sessional Orders, see Legislative Council (2009) *Sessional Orders*, 24 June, 56th Parliament, pp. 10-11.

⁷⁴ See Griffith (2007) *op. cit.*, pp. 41-42. See also *Odgers' Practice* (2008) *op. cit.*, pp. 46-48 for a discussion of relevant cases.

⁷⁵ Jefferson was convicted on 11 of the 16 corruption charges against him on 5 August 2009 and was sentenced to 13 years for bribery on 13 November 2009.

⁷⁶ Wright (2008) *op. cit.*, p. 6. A poll conducted by the American ABC News found that the American public overwhelmingly supported the law enforcement's searching of a Congress Member's office. The poll found 86 per cent were in support of the FBI search. The methodology used by the ABC News poll was a random national sample of 1,044 adults contacted by telephone. See ABC News (2006) 'Poll:

There have been a few similar cases in Australia. Harry Evans, former Clerk of the Senate, cites a 1999 example where the Australian Federal Police raided a Senator's office investigating alleged misuse of entitlements. The Senator challenged the legality of this on the basis that documents should be privileged which are closely connected with a Senator's participation in parliamentary proceedings.⁷⁷ As mentioned above, parliamentary proceedings are defined in section 16 of the *Parliamentary Privileges Act 1987* as being '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'.

In this instance the Federal Court dismissed the application to defeat the warrants, suggesting that questions regarding parliamentary privilege and search warrants had to be determined between the House concerned and the executive.⁷⁸ The ruling also stated that the issuing of search warrants was an administrative not a judicial act, and as such, was an executive act in aid of an executive investigation which did not, in itself, commence any judicial proceedings.⁷⁹ Subsequently, the Senate appointed a person to receive the documents and divide the documents into those documents protected by privilege and those that were not. The privileged documents were returned to the Senator, while those assessed as not covered by privilege were handed to the police.⁸⁰

As *Odgers' Practice* notes, Members do not have explicit immunity against subpoenas, search warrants or orders for discovery of documents, however the use before a court or tribunal of material obtained in this way is restricted by the law of parliamentary privilege.⁸¹

A case with a somewhat different slant occurred recently in the British House of Commons. In November 2008, Conservative Member of Parliament Damian Green's office and home were searched *without a warrant* and Mr Green was subsequently arrested on suspicion of 'conspiring to commit misconduct in a public office' and 'aiding and abetting, counselling or procuring misconduct in a public office'. He was held for nine hours as part of an investigation into alleged leaks from the Home Office. Following this, the Speaker of the House of Commons announced that he would be developing a protocol which would require a warrant for any future search of a Member's office or access to a Member's parliamentary papers. This protocol was released by the Speaker on 8 December 2008.⁸²

The eight point protocol reiterated the convention that the Parliament was not a haven from arrest on criminal charges. At point three, the Speaker declared that, 'In cases where the police wish to search within Parliament, a warrant must be obtained and any decision relating to the execution of that warrant must be referred to me'.⁸³ In the circumstance where materials are seized under warrant, the Speaker reserved

Americans Support Searches: Public Sides with FBI in Congress Search Issue', *ABC News*, 1 June, viewed 27 October 2009 at <<http://abcnews.go.com/Politics/PollVault/story?id=2025343&page=1>>.

⁷⁷ See H. Evans (2008) 'Parliamentary Privilege and Search Warrants: Will the US Supreme Court Legislate for Australia' in K. Walsh (Ed.) *The Senate and Accountability*, Papers on Parliament, No. 48, Canberra, Department of the Senate.

⁷⁸ See *Crane v Gething* and others [2000] FCA 45, 18 February.

⁷⁹ See also Griffith (2007) op. cit., p. 42. Griffith states, 'In effect, the execution of search warrants, the issuing of subpoenas and orders for discovery process remain areas of uncertainty in the law of parliamentary privilege'.

⁸⁰ See also Gay (2010) op. cit., p. 16.

⁸¹ *Odgers' Practice* (2008) op. cit., p. 46.

⁸² See Gay (2010) op. cit., pp. 7-13.

⁸³ *ibid.*, p. 9.

the right to 'attach conditions to the police handling of any parliamentary material discovered in a search until such time as any issue of privilege has been resolved'. Furthermore, the execution of a warrant would not 'constitute a waiver of privilege with respect to any parliamentary material which may be removed by the police'.⁸⁴

In April 2009 the charges against Mr Green were dropped. In announcing his decision the Director of Public Prosecutions stated that his decision made it unnecessary for him to resolve the question of the legality of the searches of Mr Green's offices. The question of whether the material taken from Mr Green's office was protected by parliamentary privilege was thus not tested in court.⁸⁵

2.3 Breach of Privileges and Powers to Punish Contempts

As Waugh points out, the special privileges possessed by parliament to ensure its smooth functioning include the power to punish interference or obstruction: 'Such interference constitutes contempt of Parliament'.⁸⁶

Most Houses of Parliament have the power to punish contempts and breaches of privileges. In the British context it is argued that this power is important in giving credence to parliament's authority and, as we've seen in the foregoing discussion, several authors on privilege have referred to parliament as constituting, and being invested with, the powers and immunities of a court. This sentiment has early expression in the House of Commons, with one Member in the late sixteenth century asserting the 'court' of parliament was above all other courts of the realm.⁸⁷ Of course, the House of Commons has not operated as a judicial court as such (in the manner of the Privy Council of the House of Lords) for hundreds of years. Yet parliaments across the world assert their rights to independently adjudicate matters of contempt and breaches of privilege, and to apply sanctions.

In Australia, section 7 of the *Parliamentary Privileges Act 1987* (Cth) details the powers available to Houses in protecting their proceedings, which include imposing a penalty of imprisonment for a period not exceeding six months for an offence against that House (s. 7(1)), imposing the penalty of a fine not exceeding \$5,000 for a person or \$25,000 for a corporation (s. 7(5)) and authorising the issue of such warrants as are necessary for implementing the above (s. 7(8)).

The Victorian Parliament's contempt powers are based on those of the House of Commons, and thus include the power to reprimand Members or non-Members, to suspend or expel a Member, and to imprison. However, the power to impose a financial penalty, as can occur in the Commonwealth Parliament (and in Queensland and Western Australia, also by statute) is less certain, given that the House of Commons has not imposed fines since 1666.⁸⁸

⁸⁴ *ibid.*, p. 10.

⁸⁵ *ibid.*, p. 12.

⁸⁶ See J. Waugh (2005) 'Contempt of Parliament in Victoria', *Adelaide Law Review*, vol. 26, p. 29.

Waugh provides an analysis of the range of contempt powers possessed by the Victorian Parliament.

⁸⁷ In a speech recorded in the Commons in 1593 it was said, 'This Court for all its Dignity and highness hath priviledge, as all other Courts have; And as it is above all other Courts, so it hath priviledge above all other Courts; and as it hath priviledge and Jurisdiction too, so hath it also Coercion and Compulsion; otherwise the Jurisdiction is nothing in a Court, if it hath no Coercion.' See S. d'Ewes (1682) *Journal of the House of Commons*, pp. 513-521. The Journals of Parliament can be accessed through the British History Online site, viewed 19 November 2009, <<http://www.british-history.ac.uk/report.aspx?compid=43725&strquery=priviledge>>. See also McIlwain (1910) *op. cit.*, p. 232.

⁸⁸ See Waugh (2005) *op. cit.*

Many commentators have noted that while the terms 'breach of privilege' and 'contempts' are often used interchangeably there is an important distinction.⁸⁹ A breach of privilege is a contempt involving an infringement of the powers or immunities of parliament, such as where a parliamentary debate is brought into question during a court trial. More broadly, a contempt of parliament can occur without an infringement of any specific power or immunity of parliament. For example, leaking Committee documents prior to their official tabling in parliament may constitute a contempt, however this might not be categorised as a breach of privilege since it may not infringe on any specific power or immunity of parliament. The range of activities that can constitute a contempt of parliament is significant.⁹⁰

Erskine May describes a contempt as 'any act or omission which obstructs or impedes either House of Parliament in the performance of its functions, or which obstructs or impedes any Member or officer of such House in the discharge of his duty, or which has a tendency, directly or indirectly, to produce such results'.⁹¹ The Commonwealth *Parliamentary Privileges Act 1987* describes contempt in section 4:

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

This power to punish contempts is discretionary and is equivalent to the power that courts possess in relation to punishing contempts of court.⁹² Furthermore, each House has the right to punish contempts. In *Erskine May* this means that each House may punish actions which:

...while not breaches of any specific privilege, obstruct or impede it in the performance of its functions, or are offences against its authority and dignity, such as disobedience to its legitimate commands or libels upon itself, its Members or its officers.⁹³

According to *Odgers' Practice* the rationale behind the power of Houses of Parliament and courts to punish contempts 'is that the courts and the two Houses should be able to protect themselves from acts which directly or indirectly impede them in the performance of their functions'.⁹⁴ *Odgers' Practice* states that despite some contempts being discussed as if they have been regarded as offences simply because they are affronts to the dignity of the Houses, acts judged to be contempts in modern case law, from both the Senate and the British House of Commons, have been so judged because of their tendency to impede the performance of the functions of the Houses.⁹⁵

There have been a number of occasions in which parliaments, which possess the power to punish contempts, have exercised that power, although the penalty of

⁸⁹ For a fuller discussion on the distinction between breaches of privilege and contempts of parliament see Griffith (1997) *op. cit.*, pp. 9-11; see also *Odgers' Practice* (2008) *op. cit.*, p. 707; A. O'Brien & M. Bosc (Eds) (2009) *House of Commons Procedure and Practice* (2nd Ed.), Quebec, House of Commons.

⁹⁰ See Waugh (2005) *op. cit.*, pp. 30-32.

⁹¹ *Erskine May* (2004) *op. cit.*, p. 128.

⁹² See *Odgers' Practice* (2008) *op. cit.*, p. 29.

⁹³ *Erskine May* (2004) *op. cit.*, p. 75.

⁹⁴ *Odgers' Practice* (2008) *op. cit.*, p. 62.

⁹⁵ *ibid.*, p. 63.

imprisonment has been rarely exercised since the nineteenth century. *Odgers' Practice* cites the example of the Australian House of Representatives imprisoning two persons, the owner and the editor of a Sydney newspaper, for three months in 1955 for attempting to intimidate a Member; and, a case in June 1999 where the Legislative Council of Western Australia imposed a fine of \$1,500 on a public servant who failed to appear before a committee when summoned.⁹⁶

In April 2006 the New Zealand House of Representatives imposed a fine on a television company for the contempt of penalising a witness.⁹⁷ Waugh states that the most recent case of imprisonment in Australia for contempt of parliament was that of the Legislative Council of Western Australia in 1995, where the individual concerned failed to comply with an order.⁹⁸ No one has been imprisoned for contempt of Parliament in Victoria since the nineteenth century. More recently, in 1969 the Legislative Council summoned two journalists to the bar of the Council to be censured for attacking witnesses to a committee inquiry.⁹⁹ The most recent case of contempt in Victoria was a matter involving a law firm – the Mills Oakley case – which is discussed below.

Houses of Parliament also possess the power to discipline their own Members. In a paper written for the Australian Parliamentary Library, Campbell discussed some of the methods available for Houses of Parliament to deal with abuses of the privilege of free speech. Recognising that defamatory statements can generate extensive media publicity and cause considerable damage to individual reputations, Campbell noted that the Houses may suspend Members, may impose penalties on witnesses who have given false testimonies and may appoint a parliamentary committee to inquire into the truth of the accusations made under parliamentary privilege.¹⁰⁰

Another option available to redress particularly serious abuses of privilege *may* be for the House concerned to support a royal commission of inquiry. However, this option is fraught with difficulty. As Campbell notes, Article 9 has been interpreted as imposing restrictions on courts and royal commissions on the reception and use of evidence of parliamentary proceedings.¹⁰¹ Moreover, inquiries by royal commissions into the truth of statements made under federal parliamentary privilege is expressly prohibited in section 16(3) of the *Parliamentary Privileges Act 1987*.¹⁰²

⁹⁶ *ibid.*, p. 72. See also *R. v Richards; ex parte Fitzpatrick and Browne* (1955) 92 CLR 157.

⁹⁷ *Odgers' Practice* (2008) *op. cit.*, p. 72. See also New Zealand, House of Representatives Privileges Committee (2006) *Question of Privilege on the Action Taken by TVNZ in Relation to its Chief Executive, Following Evidence he gave to the Finance and Expenditure Committee*, Interim report of the Privileges Committee, April.

⁹⁸ Waugh (2005) *op. cit.*

⁹⁹ *ibid.*

¹⁰⁰ E. Campbell (2000) *Parliamentary Privileges*, Department of the Parliamentary Library, Canberra, Commonwealth of Australia, p. 15.

¹⁰¹ See *ibid.* The other issue of course is that royal commissions of inquiry are appointed by the executive.

¹⁰² To create a royal commission in such an instance would require the Federal Government to enact specific legislation to authorise a royal commission of inquiry, as occurred in the New South Wales Legislative Council in *Arena v Nader*. See Campbell's discussion of the New South Wales Court of Appeal decision in *Arena v Nader* on the waiver of privilege, Campbell (2000) *op. cit.* See also G. Griffith & D. Clune (2006) 'Arena v Nader and the waiver of parliamentary privilege' in G. Winterton (Ed.) *State Constitutional Landmarks*, Sydney, Federation Press, pp. 331-369; Griffith (2007) *op. cit.*, p. 23; and Waugh (2005) *op. cit.*

Right of Reply

Since 1988 the Senate has, by resolution, accorded a citizen's right to reply, with the House of Representatives adopting a similar resolution in August 1997. After inquiry by the Committee of Privileges the reply may be incorporated in the parliamentary record.¹⁰³ A similar framework is employed in the Victorian Parliament. Standing Order 227 of the Legislative Assembly and Standing Order 22.02 of the Legislative Council refer to citizen's right of reply procedures.

The Legislative Council's Standing Order 22.02 states that a person who has been referred to in the Council by name, or in such a way as to be readily identified, may make a submission in writing to the President requesting that he or she be permitted to incorporate an appropriate response in the parliamentary record. The applicant must claim that he or she has been adversely affected by reason of that reference. If the President is satisfied 'that the subject of the submission is not so obviously trivial or the submission so frivolous, vexatious or offensive in character' he or she may allow a response by that person to be published by the Council and incorporated in Hansard.

In the Legislative Assembly, the Speaker, if satisfied that the submission is not trivial, will refer the submission to the Legislative Assembly Privileges Committee who will decide whether or not to consider the submission and will report any such decision to the House. In considering a submission, the Committee will not consider or judge the truth of any statements made in the House or the truth of the submission (SO 227(9)). The Committee may recommend that no further action be taken in relation to the submission or that a response by the applicant be published by the House or incorporated in Hansard.

In the 56th Parliament, at the time of writing, the Legislative Assembly's Privileges Committee has considered the submissions of seven persons that have been made to the Speaker regarding Standing Order 227. The Privileges Committee met in private on each occasion. The Committee recommended that no further action be taken in respect of four of these submissions, but recommended in three cases that the response by a person referred to in the Assembly be published with the Committee's report.¹⁰⁴

Parliamentary Privilege Immunity and Non-Members

An interesting case challenging the application of contempt of parliament occurred in Victoria during the 55th Parliament. The 'Mills Oakley' case, as it became known, required the Legislative Assembly's Privileges Committee to consider whether the immunity afforded by parliamentary privilege extends to the communication of

¹⁰³ Campbell (2000) op. cit.

¹⁰⁴ Victoria, Legislative Assembly Privileges Committee (2010) *Person Referred to in the Legislative Assembly: Ms Arnie Azaris*, August, Melbourne, Parliament of Victoria; Victoria, Legislative Assembly Privileges Committee (2010) *Person Referred to in the Legislative Assembly: Ms Julianne Bell*, August, Melbourne, Parliament of Victoria; Victoria, Legislative Assembly Privileges Committee (2010) *Person Referred to in the Legislative Assembly: Mr Rob Small*, May, Melbourne, Parliament of Victoria; Victoria, Legislative Assembly Privileges Committee (2010) *Person Referred to in the Legislative Assembly: Mr Brian Rule*, May, Melbourne, Parliament of Victoria; Victoria, Legislative Assembly Privileges Committee (2008) *Person Referred to in the Legislative Assembly: Mr Robert Larocca*, April, Melbourne, Parliament of Victoria; Victoria, Legislative Assembly Privileges Committee (2007) *Person Referred to in the Legislative Assembly: Mrs Belinda Clarkson*, November, Melbourne, Parliament of Victoria; and, Victoria, Legislative Assembly Privileges Committee (2009) *Person Referred to in the Legislative Assembly: Mr Dennis MacKinlay*, June, Melbourne, Parliament of Victoria.

information to Members by other persons.¹⁰⁵ The issue related to a constituent, who had provided information to the then Member for Preston, Mr Michael Leighton, concerning an issue he had previously raised in the House. The constituent later received a solicitor's letter threatening legal action against the constituent if the Member repeated certain allegations in the House.¹⁰⁶

In referring the matter to the Privileges Committee, Mr Leighton said:

I am moving this motion because there has been a clear and premeditated attempt to stop me from speaking in this House ... [in] the Westminster system – indeed, in any parliamentary system – the right of elected members of Parliament to go into their chambers and to speak without fear or favour is one of the pillars of democracy.¹⁰⁷

The Speaker noted that while this particular question had not been fully determined by the courts or parliamentary practice the restriction of the provision of such information to a Member of Parliament for the use in the House 'would significantly hamper Members in the performance of their duty'.¹⁰⁸ The report of the Privileges Committee referred to *Erskine May*, which states:

[P]rotection is not afforded to informants, including constituents of Members of the House of Commons who voluntarily and in their personal capacity provide to Members information that has no connection with proceedings in Parliament. The special position of a person providing information to a Member for the exercise of his or her parliamentary duties has however been regarded by the courts as enjoying qualified privilege at law.¹⁰⁹

The Committee report stated that there was a reasonable expectation that such information would be used by Mr Leighton 'as part of his parliamentary duties and role as a Member' since Mr Leighton's constituents 'had a strong belief that Mr Leighton would represent their views'.¹¹⁰ The Committee found that the provision of information by the constituent 'to Mr Leighton for use in the House, as part of his role in representing his constituents, was a proceeding in parliament and therefore protected by parliamentary privilege'.¹¹¹

The Committee found that there was a clear attempt by Mills Oakley Lawyers to interfere with the provision of information relevant to Mr Leighton's parliamentary duties, and this was thus a breach of privilege. It also concluded that the intimidation was intended to prevent the constituent from communicating freely with his elected representative. The threat of adverse action against the constituent was viewed by the Committee as a contempt, 'in cases where the threat is intended, or could be

¹⁰⁵ Victoria, Legislative Assembly Privileges Committee (2006) *Report on the Complaint by the Member for Preston*, July, Melbourne, Parliament of Victoria. See also ABC Radio National (2006) 'The Law Report: Contempt of Parliament', 29 August, <<http://www.abc.net.au/rn/lawreport/stories/2006/1724392.htm>> transcript viewed 23 February 2010.

¹⁰⁶ See Victoria, Legislative Assembly Privileges Committee (2006) op. cit., pp. 2, Appendix 1. Also see Victoria, Legislative Assembly (2006) *Debates*, 28 February, p. 292.

¹⁰⁷ Victoria, Legislative Assembly (2006) *Debates*, 28 February, p. 292.

¹⁰⁸ *ibid.*, p. 291. For a discussion of precedents to this case, and the Mills Oakley case itself, see A. Walsh (2009) *Interference With Members Carrying Out Their Duties: Case Studies*, ANZACATT Professional Development Courses and Seminars, 9 January, Norfolk Island, ANZACATT.

¹⁰⁹ *Erskine May* (2004) op. cit., pp. 152-153.

¹¹⁰ Victoria, Legislative Assembly Privileges Committee (2006) op. cit., p. 4.

¹¹¹ *ibid.*, p. 6.

reasonably expected to have the effect, to prevent a member carrying out his or her duties as a member of the House.¹¹²

The House resolved that the Speaker would place a prominent notice in the Law Institute Journal asserting the importance of parliamentary privilege and advising that the House will take whatever action it considers necessary to protect that privilege.¹¹³

2.4 The Courts and Parliament

While the nature of privilege can be described and generally agreed, matters of jurisdiction are more problematic. Judicial review of parliamentary privilege, and defining the role of the courts in respect of parliamentary privilege, have been described as the 'most difficult' aspects of parliamentary privilege.¹¹⁴ Carney states:

There is a lack of coherent principles to define precisely the jurisdiction of the courts, no doubt partly as a result of the paucity of cases where this issue has been raised. But even in those few cases where the issue has been decided, there has been a tendency not to articulate clearly the reasons for denying or accepting jurisdiction. When jurisdiction is denied, at times it seems that judges have been too willing to shy away from the spectre of a conflict between parliament and the courts.¹¹⁵

Correspondingly, *Erskine May* notes:

After some three and a half centuries, the boundary between the competence of the law courts and the jurisdiction of either House in matters of privilege is still not entirely determined. There is a wide field of agreement on the nature and principles of privilege, but the questions of jurisdiction which occasioned furious conflict in the past – usually between the Commons and the courts, but at times between the two Houses – are not wholly resolved.¹¹⁶

As noted, the courts have generally favoured the principle of non-intervention in the context of parliamentary privilege, such as in *Prebble v Television New Zealand Ltd*.¹¹⁷ David McGee, former Clerk of the New Zealand House of Representatives notes:

In principle, therefore, parliamentary privilege may present issues on which the courts must rule in carrying out their duties. That is to say, an aspect of

¹¹² *ibid.*, p. 6.

¹¹³ See Victoria, Legislative Assembly (2006) *Debates*, 23 August, pp. 2961-2964, 2970-2986, 2986. A significant alleged breach of privilege also previously occurred in the Victorian Parliament concerning the actions by the then Leader of the State Opposition, the Hon. Jeff Kennett. The then Treasurer, the Hon. Tom Roper, wrote to the Speaker, referring the matter to be investigated, claiming that Mr Kennett had attempted to intimidate Members in the conduct of their duties and that this represented a breach of privilege. The Legislative Assembly Privileges Committee produced a report, tabled in June 1992, but did not make a finding on the matter due to differences of opinion amongst Committee members. See Victoria, Legislative Assembly Privileges Committee (1992) *Report on Complaint made by the Treasurer*, June, Melbourne, Parliament of Victoria. See also R. Mathews (2001) Mr Kennett's Contempt: The Parliamentary Superannuation Ultimatum Affair of May, 1991, *Australian Quarterly*, May-June, pp. 7-12.

¹¹⁴ Carney (2000) *op. cit.*, p. 170.

¹¹⁵ G. Carney (2006) *The Constitutional Systems of the Australian States and Territories*, Melbourne, Cambridge University Press, pp. 99-100.

¹¹⁶ *Erskine May* (2004) *op. cit.*, p. 176.

¹¹⁷ *Prebble v Television New Zealand Ltd* [1995] 1 AC 321.

parliamentary privilege may become a justiciable issue before a court. However, it is of the nature of much parliamentary privilege that its object is to free the functioning of Parliament from judicial control. The resolution of justiciable issues of parliamentary privilege therefore requires that the courts do so in a way that is consistent with this ethos of non-intervention in parliamentary matters, for this ethos itself expresses the law.¹¹⁸

The broad rule, derived from case law and cited by Griffith, is 'that the courts will inquire into the existence and extent of privilege but not its exercise'.¹¹⁹ Indeed, Article 9 of the *Bill of Rights 1689* is fairly proscriptive in regard to proceedings and explicitly states that proceedings should not be 'impeached or questioned in any court or place out of parliament'. The UK Joint Committee Report notes that this legal immunity is 'comprehensive and absolute'.¹²⁰ Furthermore, *Erskine May* states that this 'prohibition is statute law and, unless there has been amending legislation, the protection it confers cannot be waived or not insisted upon by either House'.¹²¹

Campbell states that Article 9 was important in establishing the independence of the Houses and the supremacy of parliament. However, it has raised questions over what can be regarded as proceedings in parliament.¹²² It also means that courts may have to exclude evidence which is 'both relevant and vital to the issues before them'. This conflict between parliament and the courts is, as Campbell notes, largely unresolved through judicial channels. In fact, the 1984 Australian Joint Select Committee report on parliamentary privilege noted that the clashes between the Commons and the courts over the nature and extent of parliamentary privilege 'has resulted in a jurisdictional no-man's land in which both the courts and Parliament claim sovereignty'.¹²³

Over the centuries there have been many notable court decisions with regard to parliamentary privilege, addressing issues such as the interpretation and scope of privilege, absolute and qualified privilege, defamation, contempt, what constitutes 'proceedings' in parliament and breaches of privilege.

Relevant court cases have been extensively discussed in detail in *Erskine May*, *Griffith and Ryle*, Enid Campbell's *Parliamentary Privilege* and in Gareth Griffith's research papers, therefore interested readers should refer to these sources, especially the comprehensive Table of Cases included in *Erskine May*.¹²⁴

Some of the most cited cases are listed on the following page:

¹¹⁸ D. McGee (2005) *Parliamentary Practice in New Zealand* (3rd Ed.) Wellington, Dunmore Publishing, p. 613.

¹¹⁹ Griffith (2007) op. cit., p. 6. See also Carney (2006) op. cit., p. 100.

¹²⁰ UK Joint Committee Report (1999) op. cit., executive summary.

¹²¹ *Erskine May* (2004) op. cit., p. 77.

¹²² Also see above discussion outlining the Commonwealth's description of what constitutes proceedings in section 16(2) of the *Parliamentary Privileges Act 1987* (Cth) (see section 'Freedom of Speech in Debates') and, Campbell (2000) op. cit., p. 13.

¹²³ Australia, Joint Select Committee on Parliamentary Privilege (1984) op. cit., p. 25.

¹²⁴ See also *Erskine May*'s Table of Cases in *Erskine May* (2004) op. cit., liii-lx. See also Griffith (2007) op. cit., pp. 103-105. C. Mantziaris (1999) *Egan v Willis and Egan v Chadwick: Responsible Government and Parliamentary Privilege*, Research Paper 12 1999-2000, Parliamentary Library, Canberra, Parliament of Australia. Campbell (2000) op. cit.

United Kingdom:

- *Bradlaugh v Gosset* (1884) 12 QBD 271
- *Burdett v Abott* (1811) 14 East 1
- *Case of the Sheriff of Middlesex* (1840) 11 Ad & E 273 (113 ER 1112)
- *Church of Scientology of California v Johnson-Smith* [1972] 1 QB 522
- *Dingle v Associated Newspapers Ltd.* [1960] 2 QB 405
- *Fayed v United Kingdom* (1994) 18 EHRR 393
- *Goffin v Donnelly* (1881) 6 QBD 307
- *Golder v United Kingdom* (1979-80) 1 EHRR 524
- *Hamilton v Al Fayed* [1999] 3 All ER 317
- *Howard v Gosset* (1845) 10 QB 359
- *R v Secretary of State for Trade and others, ex parte Anderson Strathclyde plc* (1983) 2 All ER 233
- *Stockdale v Hansard* (1839) 9 Ad & E 1 (112 ER 1112)

Australia:

- *Arena v Nader* (1997) 42 NSWLR 427
- *Arena v Nader* (1997) 71 ALJR 1604
- *Australian Broadcasting Corporation and another v Chatterton* (1986) 46 SASR 1
- *Comalco Ltd. v Australian Broadcasting Corporation* (1983) 50 ACTR 1
- *Crane v Gething* (2000) 169 ALR 727
- *Della Bosca v Arena* [1999] NSWSC 1057
- *Egan v Chadwick* (1999) 46 NSWLR 563
- *Egan v Willis* (1996) 40 NSWLR 650
- *Egan v Willis* (1998) 195 CLR 424
- *R v Jackson and others* (1987) 8 NSWLR 116
- *R v Murphy* (1986) 64 ALR 498
- *R v Richards; Ex parte Fitzpatrick and Browne* (1955) 92 CLR 157
- *R v Waincoat* (1899) 1 WALR 77
- *Sankey v Whitlam* (1978) 142 CLR 1 at 35

Canada:

- *Canada (House of Commons) v Vaid* [2005] 1 SCR 667
- *Kielley v Carson* (1842) 4 Moo PC 63; 13 ER 225
- *New Brunswick Broadcasting Co. v Nova Scotia (Speaker of the House of Assembly)* [1993] 1 SCR 319

New Zealand:

- *Buchanan v Jennings* [2002] 3 NSLR 145
- *Buchanan v Jennings* [2005] 1 AC 115
- *Prebble v Television New Zealand Ltd* [1995] 1 AC 321

United States:

- *Anderson v Dunn* 19 U.S. (6 Wheat.) 204 (1821)
- *Barenblatt v United States* 360 U.S. 109, 111 (1959)
- *Eastland v United States Servicemen's Fund* 421 U.S. 491 (1975)
- *Gravel v US* (1972) 408 US 606
- *McGrain v Daugherty* 273 U.S. 135 (1927)
- *US v Johnson* (1966) 383 US 169
- *US v Brewster* (1972) 408 US 501
- *Watkins v United States* 354 U.S. 178, 187 (1957)

2.5 Party Discipline and Contempt of Parliament

Another issue to emerge concerning privilege is the potential for conflict between party cohesion and discipline and the principle of independence of Members of Parliament. Speaking about this potential conflict between parliamentary principles and political practice, Evans wrote about two particularly notable cases in the Senate.¹²⁵

The Australian Senate passed a series of resolutions in February 1988 concerning the right of Houses to punish contempts. These were intended to provide 'general guidance' and not derogate from the Senate's power to determine that particular acts constitute contempts. These resolutions included the provisions that a person 'shall not improperly interfere with the free exercise by the Senate or a committee of its authority, or with the free performance by a Senator of the Senator's duties as a Senator'.¹²⁶ A person shall also not interfere with witnesses giving evidence before the Senate or a committee or disturb the Senate or a committee while it is meeting.¹²⁷

Regarding the above resolutions, on 25 February 1988, Senator Haines, then Leader of the Australian Democrats, questioned whether requiring Members to sign a pledge, that makes them bound to vote according to the decisions of the caucus, constituted a contempt of parliament. Senator Haines stated:

If these matters relating to privilege which constitute contempt are passed, does that mean that we either release all Labor Party Senators and Members from any contract they entered with the Labor Party, or do we move contempt proceedings against those people who have influenced them... into making those contracts? If so, whom do we charge with this contempt?... we are saying that no outside person – that is, no non-political party person – can act improperly in this way, can attempt to influence a Senator's conduct as a Senator, can attempt to influence the way that Senator votes or speaks, either in this Chamber or on a committee.¹²⁸

Senator Haines' concerns were not pursued further by the Senate. However, the broader issue of party discipline was tested in 2001 when Senator Tambling, a member of the Country Liberal Party of the Northern Territory and also a member of the government, having been appointed a Parliamentary Secretary, voted contrary to his party's position.

In his commentary of the event, Evans noted that the Country Liberal Party had made it clear that he would be deprived of his preselection if he did not vote against the Bill before the Senate. Soon afterwards at a party meeting a motion was carried that Senator Tambling's preselection be revoked. Evans noted that Senator Tambling 'had clearly been punished for his failure to accept a direction as to how he was to

¹²⁵ See Harry Evans' discussion of the Tambling case in the Australian Senate. H. Evans (2004) *Parliamentary Privilege and Party Discipline*, *The Parliamentarian*, iss. 3, pp. 246-248.

¹²⁶ See Resolution 6 in Australia, Senate (2009) *Standing Orders and Other Orders of the Senate*, June, Canberra, Senate Table Office, Parliament of Australia. See also s. 4 and s. 12(2) of the *Parliamentary Privileges Act 1987* (Cth).

¹²⁷ See Resolution 6 in Australia, Senate (2009) *Standing Orders*, op. cit.

¹²⁸ Australia, Senate (1988) *Debates*, 25 February, p. 639. See also Australia, Senate (2002) *Possible Improper Influence and Penalty on a Senator*, Committee of Privileges, 103rd report, Canberra, Parliament of Australia.

exercise his vote in the Senate'.¹²⁹ The Senator raised his de-selection as a privilege matter under the procedures of the Senate and later took action in the Supreme Court of the Northern Territory. The President of the Senate noted that the Senate had not previously dealt with a case of party discipline as a possible matter of contempt.¹³⁰ Speaking on the Privileges Committee report *Possible improper influence and penalty on a senator*, Senator McGauran stated:

At one end of the committee, we had the opinion that we could not find there was contempt of the Senate on this particular issue, given all the circumstances, because if we did we would have had every aggrieved senator who had lost their preselection queuing up at the door of the Privileges Committee, seeking a finding of contempt of the Senate and therefore seeking a reversal of that particular party's decision.¹³¹

The Committee found that the NT Country Liberal Party had purported to direct Senator Tambling as to how he should vote and that a penalty was imposed on Senator Tambling in consequence of his vote in the Senate. However, the Committee report stated that while the actions of the NT Country Liberal Party were 'ill-judged', and considering that Senator Tambling reached a settlement with the Party, that a contempt of the Senate should not be found.¹³²

¹²⁹ Evans (2004) op. cit., p. 247.

¹³⁰ Evans (2004) op. cit.

¹³¹ Australia, Senate (2002) *Possible Improper Influence and Penalty on a Senator*, op. cit., p. 2775.

¹³² *ibid.*, p. 19.

3. Parliamentary Privilege in Australia

3.1 Commonwealth

Under the Australian Constitution, the power and privileges of the UK House of Commons were adopted for both Houses of the Commonwealth Parliament at Federation in 1901. Section 49 of the *Commonwealth of Australia Constitution Act* states:

The powers, privileges, and immunities of the Senate and of the House of Representatives, and of the members and the committees of each House, shall be such as are declared by the Parliament, and until declared shall be those of the Commons House of Parliament of the United Kingdom, and of its members and committees, at the establishment of the Commonwealth.¹³³

In 1987, the Parliament of the Commonwealth of Australia codified its privileges to reverse two judgements of the Supreme Court of New South Wales which restricted parliament's privilege of freedom of speech.¹³⁴ The judgements in question regarded whether witnesses who gave evidence before a parliamentary committee could then be examined on that evidence in the course of a criminal trial. The Senate argued that such evidence could be used for the purpose of establishing some material fact, such as the fact that a person gave evidence before a committee at a particular time but that the evidence could not be used for the purpose of supporting the prosecution or the defence.¹³⁵

The *Parliamentary Privileges Act 1987* (Cth) was unique in being introduced by the President of the Senate. Section 16(1) states:

For the avoidance of doubt, it is hereby declared and enacted that the provisions of article 9 of the Bill of Rights, 1688 apply in relation to the Parliament of the Commonwealth and, as so applying, are to be taken to have, in addition to any other operation, the effect of the subsequent provisions of this section.

As *Odgers' Practice* notes, such terms were used because the Parliament 'was not legislating to provide for its freedom of speech in the future, but declaring what its freedom of speech had always been', therefore it intended to provide protection for past proceedings in Parliament. However, it was unable to affect court proceedings already commenced.¹³⁶

Another significant feature of the Commonwealth's Act was that it defined what is covered by the expression 'proceedings in Parliament'. This had 'never been

¹³³ Originally, privileges were incorporated in Section 49 of the Commonwealth Constitution. Privileges were eventually given their own comprehensive legislation eighty years later with the *Parliamentary Privileges Act 1987*, following an inquiry by a Joint Select Committee. See Campbell (2000) op. cit.

¹³⁴ *Odgers' Practice* (2008) op. cit., p. 38. See also *Erskine May* (2004) op. cit., p. 195.

¹³⁵ *ibid.*

¹³⁶ The Houses disclaimed the intention of legislating retrospectively in section 7 of the *Parliamentary Privileges Act 1987*: 'without prejudice to the effect that article 9 of the Bill of Rights, 1688 had, on its true construction, before the commencement of this Act, this section does not affect proceedings in a court or a tribunal that commenced before the commencement of this Act'. See *Odgers' Practice* (2008) op. cit., p. 41.

authoritatively expounded' and caused some Senators to be concerned, at the time, that the legislation was unduly restrictive.¹³⁷

The most important provision in the Act, according to *Odgers' Practice*, is that it defines the meaning of 'impeached or questioned', thereby preventing prosecution for proceedings in parliament. Section 16(3) also distinguishes proper and improper admission of evidence of parliamentary proceedings and states:

In proceedings in any court or tribunal, it is not lawful for evidence to be tendered or received, questions asked or statements, submissions or comments made, concerning proceedings in Parliament, by way of, or for the purpose of:

(a) questioning or relying on the truth, motive, intention or good faith of anything forming part of those proceedings in Parliament;

(b) otherwise questioning or establishing the credibility, motive, intention or good faith of any person; or

(c) drawing, or inviting the drawing of, inferences or conclusions wholly or partly from anything forming part of those proceedings in Parliament.

As Evans notes, parliaments are usually reluctant to legislate for parliamentary privilege based on the concern that such legislation may unduly restrict the powers and immunities of the Houses of Parliament by tying them to precise legislative terms.¹³⁸ Marleau and Montpetit note that it was thought better to rely on common law and the broad terms of old statutes, such as the Bill of Rights.¹³⁹ For example, the United Kingdom parliamentary committees have conducted several reviews into the scope and application of privilege and have decided not to legislate the codification of privilege.¹⁴⁰ The Clerk of the House cautioned against codification in the House of Commons Select Committee on Parliamentary Privilege as noted in its report in 1977:

It would be a mistake first and foremost because it would introduce an element of inflexibility into the manner in which the House upholds its privileges and punishes contempts. It is true that the House would be in no danger of abridging its privileges or powers by a mere resolution setting out the sort of cases upon which it normally proposed to act. But formulas which may appear precise and faultless at the time at which they are drafted, may be found to be defective at a later stage owing to some undiscovered loophole or developments which could not be envisaged at an earlier stage. It

¹³⁷ *Odgers' Practice* (2008) op. cit., pp. 38, 41.

¹³⁸ H. Evans (1988) 'Parliamentary Privilege: Legislation and Resolutions in the Australian Parliament', *The Table*, vol. 56, pp. 21-22. Sylvia Song also made this observation: 'there is a danger of... restricting the powers and immunities of parliament by laying down its exact limits'. See S. Song (1997) 'The Reform of Parliamentary Privilege: Advantages and Dangers', *Legislative Studies*, vol. 12, no. 1, Spring, pp. 30-42, p. 35.

¹³⁹ R. Marleau & C. Montpetit (2000) *House of Commons Procedure and Practice*, Ottawa, House of Commons, p. 109, n. 255.

¹⁴⁰ See United Kingdom, House of Commons, Select Committee on Parliamentary Privilege (1967) op. cit.; United Kingdom, House of Commons, Select Committee on Parliamentary Privilege (1977) *Third Report* HC 417; UK Joint Committee Report (1999) op. cit.

would certainly seem undesirable to have to ask the House to amend its resolutions on privileges with any frequency.¹⁴¹

3.2 Victoria

As the foregoing illustrates, to a significant extent parliamentary privilege in Australia is founded on Article 9 of the English *Bill of Rights 1689*.

Legislation concerning parliamentary privilege in Australian jurisdictions often locates the privileges to be afforded to Members as defined by reference to the privileges at a particular time in the House of Commons. For example, section 19(1) of the Victorian *Constitution Act 1975* makes specific reference to the privileges enjoyed at the House of Commons in 1855 as to be applied to the privileges and immunities that are to be enjoyed by Members of the Victorian Parliament. It is provided that:

The Council and the Assembly respectively and the committees and members thereof respectively shall hold enjoy and exercise such and the like privileges immunities and powers as at the 21st day of July, 1855 were held enjoyed and exercised by the House of Commons of Great Britain and Ireland and by the committees and members thereof, so far as the same are not inconsistent with any Act of the Parliament of Victoria, whether such privileges immunities or powers were so held possessed or enjoyed by custom statute or otherwise.

Section 19(2) also provides the Victorian Parliament with the power to enact any legislation it sees fit in respect to the privileges, immunities and powers held and exercised by the Houses, committees and Members thereof. As Griffith states, section 19 'adopts and incorporates the customary, inherent and statutory sources of privilege into Victorian law.'¹⁴²

As noted by Carney, 'this approach ensures local control of the privileges while avoiding the automatic adoption of changes introduced for the House of Commons which are not necessarily appropriate for the Australian parliament'.¹⁴³ Taylor has noted that 'the fact that the powers of the Victorian Houses are thus defined by reference to those of the House of Commons over a century and a half ago certainly strikes some as strange'.¹⁴⁴

While it might be odd 'to have the privileges of Parliament defined by reference to the law of another country', it does provide 'a ready source of precedent and learning from a much larger jurisdiction'.¹⁴⁵ This model of determining the scope of parliamentary privilege by fixing it by reference to the position in Britain at a particular date is also followed in many other Commonwealth jurisdictions, which, according to

¹⁴¹ See memorandum in United Kingdom, House of Commons, Select Committee on Parliamentary Privilege (1977) op. cit., p. xiv. However, courts in Australia and elsewhere have found the *Parliamentary Privileges Act 1987* (Cth) to be declaratory of the privileges enjoyed by Parliaments in jurisdictions which rely on common law and statutes providing privilege in broad terms only.

¹⁴² Griffith (2009) op. cit., p. 2.

¹⁴³ Carney (2006) op. cit., p. 169.

¹⁴⁴ Taylor (2006) op. cit., p. 259. Victoria's position adopts the entirety of privileges as at the aforementioned day in Britain, which includes the abolition of the privilege of immunity from suit, which was abolished prior. See *ibid.*

¹⁴⁵ *ibid.*, p. 260.

Taylor, has the effect of ‘making parliamentary privilege an area of law in which there is still a substantial degree not merely of similarity, but of identity’.¹⁴⁶

Section 19A of the Constitution Act provides the Houses, committees and joint committees of the Parliament with the power to administer oaths to witnesses.¹⁴⁷ In addition to the powers and immunities provided under section 19, the authority of the Houses of the Victorian Parliament to manage their own affairs, ‘severally and collectively’, is provided by section 43 of the Constitution Act. Section 72 authorises the Government Printer to publish the reports of debates in each House, while sections 73 and 74 provide protection for the publishers of parliamentary proceedings. The transmission and broadcasting of parliamentary proceedings is protected under section 74AA.

3.3 Western Australia

In 2004 the Constitution (Parliamentary Privileges) Amendment Bill 2004 defined and located the privileges of the Western Australian Parliament as those of the House of Commons as at 1989 in section 1(b) of the *Parliamentary Privileges Act 1891* (WA). This followed Western Australia’s previous position of an ambulatory provision of referring to its privileges as those privileges ‘for the time being held, enjoyed, and exercised by the Commons House of Parliament, or the members thereof’.¹⁴⁸ This meant that any changes to parliamentary privilege adopted by the Commons would modify parliamentary privilege in Western Australia and was a matter of concern for the Western Australian Parliament given recent developments in the United Kingdom.

Following recommendations made by the Western Australian Procedure and Privileges Committee, the Western Australian Parliament decided to ‘peg’ their parliamentary privileges to those enjoyed by the House of Commons at 1 January 1989, thereby avoiding certain ‘undesirable changes’, as stated by the Committee, that were introduced by the *Defamation Act 1996* (UK).¹⁴⁹

3.4 Queensland

Queensland also had an ambulatory provision aligning the privileges of the Queensland Parliament with those of the House of Commons, until the *Parliament of Queensland Act 2001* located the powers of the Queensland Legislative Assembly as those of the Commons at the establishment of the Commonwealth (1 January 1901) (section 39(1) of *Parliament of Queensland Act 2001*).

3.5 South Australia

In South Australia, section 38 of the *Constitution Act 1934* locates the privileges as at 1856:

¹⁴⁶ *ibid.*

¹⁴⁷ Evidence given before a Victorian parliamentary committee is protected under this section of the Constitution Act, and by the *Parliamentary Committees Act 2003*.

¹⁴⁸ This provision, now repealed, was in section 1 of the Western Australian *Parliamentary Privileges Act 1891*.

¹⁴⁹ Western Australia Legislative Assembly, Procedure and Privileges Committee (2004) *Parliamentary Privilege and its Linkage to the UK House of Commons*, Report No. 5, Western Australian Parliament, p. 6. It should be noted that under the *Parliamentary Privileges Act 1891* the WA Parliament has the power to deal with contempt itself, or to refer the contempt to the Attorney-General for action (see sections 14 and 15).

The privileges, immunities, and powers of the Legislative Council and House of Assembly respectively, and of the committees and members thereof respectively, shall be the same as but no greater than those which on the twenty-fourth day of October, 1856, were held, enjoyed, and exercised by the House of Commons and by the committees and members thereof, whether such privileges, immunities, or powers were so held, possessed, or enjoyed by custom, statute, or otherwise.

3.6 The Territories

The Northern Territory and the Australian Capital Territory both locate their parliamentary privileges as being those of the privileges of the Commonwealth's House of Representatives. Section 4 of the Northern Territory *Legislative Assembly (Powers and Privileges) Act 1992* defines the powers, privileges and immunities of its Assembly and of its Members, committees and officers as being the same as those of the House of Representatives of the Commonwealth. Section 24(3) of the *Australian Capital Territory (Self-Government) Act 1988* (Cth) provides for the equivalent in the Australian Capital Territory. Norfolk Island does likewise in section 20 of the *Norfolk Island Act 1979* (Cth). Subsequently, any changes made to the privileges of the House of Representatives flow directly to these territory legislatures.¹⁵⁰

3.7 Tasmania

Tasmania and New South Wales differ in comparison to the other jurisdictions in that there is no comprehensive adoption of the privileges of the House of Commons. In Tasmania the *Parliamentary Privilege Act 1858* confers on both Houses powers to summon witnesses and to punish specified contempts. The President or Speaker may issue a warrant for any person adjudged by the House to be guilty of contempt (s. 5), with the Tasmanian Act specifying that the Sheriff and other law enforcement officers are required to assist in the execution of any such warrant. Section 9 of the *Parliamentary Privilege Act* also specifies that doors may be broken open in executing such a warrant.

Matters published in the course of the proceedings of a parliamentary body are also subject to absolute privilege in section 27(1) of the *Defamation Act 1957* (Tas) and the *Jury Act 2003* (Tas) exempts Members of Parliament from jury service. Interfering with Parliament and bribing or influencing Members are criminal offences in sections 70, 71 and 72 of the Tasmanian *Criminal Code Act 1924* (Tas).

3.8 New South Wales

In New South Wales there is no specific legislation defining the powers and privileges of Parliament, therefore the privileges 'depend essentially on the principle of necessity' and are founded largely on common law.¹⁵¹ Notwithstanding this, however, parliamentary privilege is protected in several Acts.¹⁵² Article 9 of the *Bill of Rights* as

¹⁵⁰ Carney (2006) op. cit., pp. 98-101.

¹⁵¹ Carney (2006) op. cit., p. 169. See Griffith (2007) op. cit., p. 9.

¹⁵² For a full list of the Acts that, in some way, protect the proceedings of Parliament see Griffith (2007) op. cit., pp. 9-16. See also Griffith (1997) op. cit. Griffith also provides a history into the debate surrounding privilege in NSW and notes that the case was made to legislate for a statutory privilege framework from as far back as the 1840s with several bills being introduced, the first of these in August 1856. See Griffith (2007) op. cit., pp. 17-22.

it was in force in England on 25 July 1828 is imported and adopted into New South Wales' legislation by section 6 of the *Imperial Acts Application Act 1969*.

Parliamentary proceedings are also protected from legal action resulting from defamation cases in section 27 of New South Wales' *Defamation Act 2005*. However, as Griffith notes, at common law the New South Wales' Parliament has no power to punish for breaches of privilege or contempts.¹⁵³

In relation to Members of Parliament, the New South Wales' Parliament has a self-defensive, or protective power, to discipline Members under the common law, but this power cannot be used punitively.¹⁵⁴

¹⁵³ See Griffith (2007) *op. cit.*, p. 3. See also Carney (2006) *op. cit.*, p. 169.

¹⁵⁴ See L. Lovelock & J. Evans (2008) *New South Wales Legislative Council Practice*, Annandale, The Federation Press, Ch. 3.

4. Parliamentary Privilege in other Jurisdictions

This section provides a brief examination and comparison of parliamentary privilege in selected other jurisdictions.¹⁵⁵

4.1 New Zealand

Representative government was established in New Zealand by the *New Zealand Constitution Act 1852*. When the Parliament of New Zealand first met in 1854 it consisted of the Governor, a Legislative Council and a House of Representatives. The Legislative Council, which was an appointive, rather than an elective body, was abolished on 1 January 1951 leaving the New Zealand Parliament as a unicameral legislature.¹⁵⁶ As with the UK House of Commons, the Speaker of the New Zealand House of Representatives lays claim to all the House's privileges to the Governor-General at the beginning of every Parliament. The wording in Standing Order 23 is similar to the UK version and states 'On being confirmed by the Governor-General as Speaker of a new Parliament, the Speaker, on behalf of the House, lays claim to all the House's privileges; especially to freedom of speech in debate, to free access to the Governor-General whenever occasion may require it, and that the most favourable construction may be put on all the House's proceedings'.¹⁵⁷

A similar legal basis for parliamentary privilege as exists in many Westminster jurisdictions is applied in New Zealand with the 'constitutional import' of Article 9 into statute.¹⁵⁸ In section 242 of the *Legislature Act 1908* the privileges held by the British House of Commons in 1865 are deemed to be applicable in New Zealand (the *Legislature Act 1908* re-enacted the *Parliamentary Privileges Act 1865*). The Bill of Rights 1689 also forms part of New Zealand law by virtue of the *Imperial Laws Application Act 1988*.¹⁵⁹

For McGee, parliamentary privileges have helped to define the type of legislature that New Zealand has, one that takes on an inquisitorial role rather than a wholly supportive or subsidiary role. Defining privileges early in the New Zealand Parliament's history has meant that there was no inevitability to the evolution of the House's functions.¹⁶⁰ McGee notes:

¹⁵⁵ A useful resource for the discussion of issues relating to the parliamentary practice of various Legislative Chambers of the Commonwealth is the Society of Clerks-at-the-Table (SCAT), see SCAT (2010) 'About the Society', 11 January, <http://www.societyofclerks.org/SCAT_Home.asp>, viewed 25 February 2010. SCAT also publishes a journal, called *The Table*, which addresses issues of privilege, comparative studies of jurisdictions, standing orders and other related parliamentary themes, see SCAT (2010) 'Publications: The Table', 20 January, <http://www.societyofclerks.org/SCAT_Publish.asp>, viewed 25 February 2010. Furthermore, Clerks in various jurisdictions offer advice regarding aspects of parliamentary practice, including privilege. For example see Australia, Senate (2009) 'Advices from the Clerk of the Senate', 28 August, <http://www.aph.gov.au/senate/committee/priv_ctte/clerks_advices/index.htm>, viewed 25 February 2010.

¹⁵⁶ McGee (2005) op. cit.

¹⁵⁷ See New Zealand, House of Representatives (2008) *Standing Orders of the House of Representatives*, Wellington, House of Representatives, Standing Order 23.

¹⁵⁸ McGee (2005) op. cit., p. 610.

¹⁵⁹ For further reading see P. Joseph (2001) *Constitutional and Administrative Law in New Zealand* (2nd Ed.) Wellington, Brookers; McGee (2005) op. cit.; New Zealand House of Representatives (2007) *Parliamentary Privilege*, Parliament Brief, Wellington, Office of the Clerk of the House of Representatives.

¹⁶⁰ McGee (2005) op. cit., p. 606.

Parliamentary privilege is an integral part of what the House of Representatives *is*. Without those privileges, powers and immunities or if they had taken a different form, there would have been a different House.¹⁶¹

McGee also notes that as the House 'is master of its own proceedings and free of judicial control, the concomitant consequence of this freedom is that it is principally for the House to assert and enforce its own privileges'.¹⁶²

McGee identifies several privileges that apply in New Zealand, such as freedom of speech and debate, exclusive control of the House's own proceedings, control of reports of the House's proceedings, control of the parliamentary precincts, power to inquire and to obtain evidence, power to administer oaths, power to delegate, power to punish for contempt and to discipline members, power to fine and to arrest, exemption from jury service, freedom from arrest, exemption from attending court as a witness and the right to have civil proceedings adjourned.¹⁶³

As in other jurisdictions, McGee notes that the role of the courts with regards to parliamentary privilege in New Zealand 'tends to be oblique'.¹⁶⁴

4.2 Canada

Parliamentary privilege in Canada is similar to its parliamentary counterparts based on the Westminster model.¹⁶⁵ The Canadian Parliament formally applied the privileges of the British House of Commons at the time of Confederation by the *Constitution Act 1867*, with the Preamble to this Act stating that 'the Provinces of Canada, Nova Scotia, and New Brunswick have expressed their Desire to be federally united into One Dominion under the Crown of the United Kingdom of Great Britain and Ireland, with a Constitution similar in Principle to that of the United Kingdom'. Prior to Confederation, privileges were enjoyed by some of the colonies, such as Nova Scotia at its establishment in 1758, by common law because 'the legislature had first call on their services and attendance'.¹⁶⁶

Parliamentary privileges were also incorporated into section 4 of the *Parliament of Canada Act 1875*, which states:

The Senate and the House of Commons, respectively, and the members thereof hold, enjoy and exercise

(a) such and the like privileges, immunities and powers as, at the time of the passing of the *Constitution Act, 1867*, were held, enjoyed and exercised by

¹⁶¹ *ibid.*

¹⁶² McGee (2005) *op. cit.*, p. 613.

¹⁶³ McGee also identifies control of access to the sittings of the House, exemption from liability for parliamentary publications, exemption from service of legal process, power to determine the qualifications to sit and vote in the House, freedom of access to the Governor-General and right to a favourable construction of the House's proceedings as privileges applying in New Zealand. McGee (2005) *op. cit.*

¹⁶⁴ *ibid.*, p. 613.

¹⁶⁵ For further reading see: Canada, House of Commons (1990) *Privilege in the Historical Context*, Table Research Branch, Ottawa, House of Commons; Canada, House of Commons (1990) *Privilege in the Modern Context*, Table Research Branch, Ottawa, House of Commons; J. Maingot (1997) *Parliamentary Privilege in Canada* (2nd Ed.) Ottawa, House of Commons and McGill-Queen's University Press; Marleau & Montpetit (2000) *op. cit.*; J. G. Bourinot (1916) *Parliamentary Procedure and Practice in the Dominion of Canada* (4th Ed.) Toronto, Canada Law Book Company.

¹⁶⁶ Maingot (1997) *op. cit.*, pp. 3, 198.

the Commons House of Parliament of the United Kingdom and by the members thereof, in so far as is consistent with that Act; and

(b) such privileges, immunities and powers as are defined by Act of the Parliament of Canada, not exceeding those, at the time of the passing of the Act, held, enjoyed and exercised by the Commons House of Parliament of the United Kingdom and by the members thereof.

Section 5, relating to the judiciary states:

The privileges, immunities and powers held, enjoyed and exercised in accordance with section 4 are part of the general and public law of Canada and it is not necessary to plead them but they shall, in all courts in Canada, and by and before all judges, be taken notice of judicially.

Section 18 of the Constitution Act grants the Canadian Parliament the right to define its privileges by statute as long as these privileges do not exceed those enjoyed by the British House of Commons at the time of Confederation. The Canadian Parliament may also adopt legislation claiming new privileges provided that those privileges are also held by the British House of Commons.

Describing the relationship between Parliament and the courts, Speaker of the Canadian House of Commons the Hon. Peter Milliken, said:

We have parliamentary privilege to ensure that the other branches of government, the executive and the judicial, respect the independence of the legislative branch of government, which is this House and the other place. This independence cannot be sustained if either of the other branches is able to define or reduce these privileges. ...The privileges of this House and its members are not unlimited, but they are nonetheless well established as a matter of parliamentary law and practice in Canada today, and must be respected by the courts. Judges must look to Parliament for precedents on privilege, not to rulings of their fellow judges since it is in Parliament where privilege is defined and claimed.¹⁶⁷

The Speaker's ruling, above, is echoed in *New Brunswick Broadcasting Corporation v Nova Scotia (Speaker of the House of Assembly)*:

...courts may determine if the privilege claimed is necessary to the capacity of the legislature to function, but have no power to review the rightness or wrongness of a particular decision made pursuant to the privilege.¹⁶⁸

Likewise, the *House of Commons Procedure and Practice* requests that courts defend the privileges of Parliament:

It is the prerogative of the House to determine how it will exercise these privileges and if it wants to insist upon them or not. Given that the privileges enjoyed by Parliament are part of the general and public law of Canada, the

¹⁶⁷ Canada, House of Commons (2003) *Debates*, 26 May, p. 6415.

¹⁶⁸ *New Brunswick Broadcasting Corporation v Nova Scotia (Speaker of the House of Assembly)* (1993) 100 DLR (4) 212 (Canada), pp. 384-385.

courts must judicially take notice of, interpret and defend these privileges as they would any branch of law.¹⁶⁹

4.3 India

India has inherited the British model of parliamentary government and its Constitution and application of parliamentary privilege mirror that of other Commonwealth countries. Article 105 and article 194 of the *Constitution of India* address parliamentary privilege. Article 105 states:

(1) Subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of Parliament, there shall be freedom of speech in Parliament.

(2) No member of Parliament shall be liable to any proceedings in any court in respect of any thing said or any vote given by him in Parliament or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings.

(3) In other respects, the powers, privileges and immunities of each House of Parliament, and of the members and the committees of each House, shall be such as may from time to time be defined by Parliament by law, and, until so defined, [shall be those of that House and of its members and committees immediately before the coming into force of section 15 of the Constitution (Forty-fourth Amendment) Act, 1978.]

In a move towards greater separation from its colonial heritage, India recently repealed former references to the privileges of the House of Commons in the *Constitution of India*. The legislation now states that the privileges are the same as they were before the reference was repealed. It is Taylor's opinion that 'all that [this change] achieves is to make the law slightly more unclear'.¹⁷⁰

4.4 United States

The privileges afforded the United States Congress have obvious similarities with the jurisdictions discussed above. However, there are some distinct differences, particularly as a result of their divergence from the British model and the unique historical milieu from which their legislatures have evolved. Nonetheless, the freedom of speech and freedom from arrest provisions, contained in the *Constitution of the United States of America* are very similar in wording to Article 9. Article 1 Section 6 of the United States Constitution provides that:

¹⁶⁹ A. O'Brien & M. Bosc (Eds) (2009) *House of Commons Procedure and Practice* (2nd Ed.) Quebec, House of Commons. An online version of this publication can be accessed from Parliament of Canada (2009) House of Commons Procedure and Practice, viewed 3 December 2009, <<http://www2.parl.gc.ca/procedure-book-livre/Document.aspx?sbdid=7C730F1D-E10B-4DFC-863A83E7E1A6940E&sbpid=1&Language=E&Mode=1>>.

Regarding the power of Houses to arrest non-Members, a case in Newfoundland in 1842 established the powers of colonial legislatures as limited to self-protection when it was decided that the Newfoundland House of Assembly did not possess the power to arrest a person for a breach of privilege committed outside the House, as opposed to immediate impediments to parliamentary proceedings, such as disruptions in the gallery, see *Kielly v Carson* [1842] 4 Moo PC 63.

¹⁷⁰ Taylor (2006) op. cit., p. 260.

Senators and Representatives... shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

As discussed earlier in this paper, court decisions in the United States have interpreted this provision as conferring a wide immunity on Members with respect to participating in legislative activities. In the case of Congressman Jefferson, discussed above, the Court Of Appeal did recognise that the speech clause had been violated by the compulsory disclosure of privileged legislative material to the executive.

Differences in the practice and approach to privilege in the United States, as compared with some other jurisdictions, are evident when looking at Congress' ability to punish contempts. While privilege in the United States is based on the Westminster practice of parliamentary democracy, the legislatures of the United States have developed their own distinctive constitutional structure. In early colonial times however, American legislatures did look to the English House of Commons and modelled themselves on its precedents and procedures.

These legislatures were particularly influenced by the political environment in which they evolved, developing a strong opposition to the Stuart monarchs and a deep-seated suspicion of executive authority. In illustrating the prevailing political sentiment in the early formation of contempt power, historian Jack Greene stated:

[C]olonial legislators had a strong predisposition to look at each governor as a potential Charles I or James II, to assume a hostile posture toward the executive, and to define with the broadest possible latitude the role of the lower house as "the main barrier of all those rights and privileges which British subjects enjoy."¹⁷¹

In discussing the circumstances that influenced the American founding fathers in developing the Constitution, Robert Spitzer cites the founders' dissatisfaction with British rule, the political environment and the theoretical influences of ideas contained in works such as Montesquieu's treatise *The Spirit of Laws* as being particularly influential.

Spitzer looked specifically at the relationship between the President and Congress, arguing that it was certain 'fears', fears which are both contrasting and opposing, which motivated the founders' to include certain detailed provisions in the Constitution regarding the purpose and powers of an effective governing system. These fears helped shape and form their development of a governance model that incorporated separation of powers, a three-branch governmental system and a bicameral legislature.¹⁷² Spitzer identified four main fears in his discussion which are: the fear of a strong executive, the fear of a strong legislature, the fear of concentrated power and the fear of governmental paralysis.

¹⁷¹ J. Greene (1994) *Negotiated Authorities: Essays in Colonial Political and Constitutional History* 197, Charlottesville, University Press of Virginia, p. 199 cited in J. Chafetz (2009) 'Executive Branch Contempt of Congress', *The University of Chicago Law Review*, vol. 76, pp. 1083-1156, pp. 1119-1121, 1126-1127.

¹⁷² R. Spitzer (1993) *President and Congress: Executive Hegemony at the Crossroads of American Government*, Philadelphia, Temple University Press.

Spitzer noted that, for the founders', anti-executive sentiment, which had been an outcome of adverse colonial experiences, ran alongside a greater concern over domineering legislatures, which might be susceptible to corruption or pressure from special-interest groups. Article I of the Constitution, which addresses congressional powers is detailed and specific in limiting those powers, while Article II, which addresses presidential powers, is brief and vague. The United States Constitution sets out in Article II Section 1 that 'The executive power shall be vested in a President of the United States', however, as aforementioned, Article II makes no formal mention of powers related to the withholding of information. The President is, however, granted powers of veto, by which he can influence Congress. Spitzer quotes judicial scholar Robert Scigliano who argues that the three-branch system of government was not designed to be equal and rather that the executive and judicial branches were fortified with defensive powers against the legislative branch.¹⁷³

Spitzer cites another reason for the curbing of the power of the legislature, noting that the founders 'represented the cream of society... America's political and social elite' and were 'frankly suspicious of any mechanism that facilitated direct popular control of the government because they considered the citizenry unqualified to make direct governing choices and feared that the citizenry might rise up and deprive the wealthy of their property...'¹⁷⁴ To this end, only one of the four national governing institutions, the House of Representatives, was directly elected (the Senate was indirectly elected until 1913).

Furthermore, the principle of separation of powers was intended to ward off the potential abuse of power by one or more branch of government; nonetheless, this had to be balanced with the objective of encouraging government efficiency and effectiveness. Spitzer notes that the weakened position of the legislature in comparison to the executive and judiciary has meant that many battles have been referred to federal courts to defend Congress from disputes with the executive.

Post-independence, in 1821 the Supreme Court recognised Congress' power to punish contempts in *Anderson v Dunn*, ruling that such power was necessary to ensure Congress was 'not exposed to every indignity and interruption that rudeness, caprice, or even conspiracy, may mediate against it'.¹⁷⁵ In 1857 Congress passed a law which made obstructing the work of Congress a federal crime carrying a punishment of up to one year imprisonment.¹⁷⁶ In 1927 in *McGrain v Daugherty* the Supreme Court described the Senate's power of inquiry as 'an essential and appropriate auxiliary to the legislative function'.¹⁷⁷ The ruling stated:

Each house of Congress has power, through its own process, to compel a private individual to appear before it or one of its committees... This has support in long practice of houses separately, and in repeated Acts of Congress, all amounting to a practical construction of the Constitution.¹⁷⁸

¹⁷³ R. Scigliano (1971) *The Supreme Court and the Presidency*, New York, Free Press cited in Spitzer (1993) op. cit., p. 9.

¹⁷⁴ Spitzer (1993) op. cit., p. 11.

¹⁷⁵ *Anderson v Dunn* 19 U.S. (6 Wheat.) 204 (1821).

¹⁷⁶ See Statute 2 U.S.C. Section 192: Refusal of witness to testify or produce papers.

¹⁷⁷ *McGrain v Daugherty* 273 U.S. 135 (1927) pp. 174-75.

¹⁷⁸ *McGrain v Daugherty* 273 U.S. 135 (1927) p. 135. The Court further explained: 'A legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change... some means of compulsion are essential to obtain that [information] which is needed. All this was true before and when the Constitution was framed and adopted. In that period of inquiry, with enforcing process, was regarded and employed as a necessary and appropriate attribute of the power to legislate – indeed, was treated as inhering in it. Thus there is

In other cases the Supreme Court has described Congress's power to conduct investigations as 'inherent in the legislative process' (*Watkins v United States*).¹⁷⁹ The Supreme Court has also explained that 'The scope of [Congress's] power of inquiry... is as penetrating and far-reaching as the potential power to enact and appropriate under the Constitution' (*Barenblatt v United States* quoted in *Eastland v United States Servicemen's Fund*).¹⁸⁰

As the above cases illustrate, while there is no express provision in the Constitution or a specific statute authorising Congress's power to investigate, the Supreme Court has firmly established that such power is essential to its legislative function and 'has been deemed implicit in the Constitution's grant to Congress of all legislative powers'.¹⁸¹

Furthermore, while there are no statutory provisions allowing the Houses to punish contempts, this power has been reinforced in case law. As such, the House may 'cite' individuals for contempt by a resolution reported from the affected congressional committee. If this resolution is adopted by the relevant chamber, the matter is referred to a United States Attorney for prosecution who may call a grand jury to decide whether or not to indict and prosecute.¹⁸² The move to making contempt a criminal matter has, in many ways, shifted the responsibility for punishing contempts of Congress away from Congress itself and onto the courts.

While Rosenberg and Tatelman, from the Congressional Research Service, note that this provision has not been intended to substitute the 'inherent contempt' power of both Houses, others have argued that it has had an 'insidious' impact on Congress' power to investigate.¹⁸³ Chafetz cites the example of the courts ruling that the then President Nixon did not have to relinquish tapes to the Senate Select Committee as demonstrating the 'deleterious consequences' for Congress of this shift.¹⁸⁴ Chafetz states:

In abdicating such matters to the courts, Congress has furthered the perception that the courts are the sole repository of the republican virtue of reasoned and impartial judgment. As the executive continues to make expansive claims for its powers and privileges, and as courts continue to position themselves as the "ultimate arbiters" of interbranch conflict, Congress has ceded ground to both. Given that Congress is the most broadly representative branch, and given that a strong Congress would help check an increasingly strong executive branch, this development is unfortunate for the body politic.¹⁸⁵

ample warrant for thinking, as we do, that the constitutional provisions which commit the legislative function to the two houses are intended to include this attribute to the end that the function may be effectively exercised.' See *McGrain v Daugherty* 273 U.S. 135 (1927) p. 175.

¹⁷⁹ *Watkins v United States* 354 U.S. 178, 187 (1957).

¹⁸⁰ *Eastland v United States Servicemen's Fund* 421 U.S. 491, 504, n. 15 (1975) and *Barenblatt v United States* 360 U.S. 109, 111 (1960).

¹⁸¹ See also M. Rosenberg & T. Tatelman (2008a) *Congress's Contempt Power: A Sketch*, CRS Report for Congress, RL34114, Congressional Research Service, p. 1. See also M. Rosenberg & T. Tatelman (2008b) *Congress's Contempt Power: Law, History, Practice, and Procedure*, CRS Report for Congress, RL34097, Congressional Research Service, p. 4.

¹⁸² See Rosenberg & Tatelman (2008b) op. cit., p. 21. See also Chafetz (2009) op. cit.

¹⁸³ See Rosenberg & Tatelman (2008b) op. cit. for a more comprehensive discussion of the 'inherent power of contempt' citing relevant case law. Chafetz (2009) op. cit., pp. 1155-1156.

¹⁸⁴ See Rosenberg & Tatelman (2008b) op. cit., pp. 18-20.

¹⁸⁵ Chafetz (2009) op. cit., pp. 1155-1156.

Likewise, Crenson and Ginsberg have argued that the Courts have actually served to reinforce presidential power and have been unwilling to fight Congress' battles.¹⁸⁶ They detect a change in American political life in which the power of Congress has waned and judges increasingly view 'the executive as the only branch of government capable of managing the nation's affairs'.¹⁸⁷

Members interested in the tension between executive privilege and parliamentary privilege in the United States and elsewhere are advised to refer to the section preceding the bibliography listing further reading on executive privilege.¹⁸⁸

¹⁸⁶ See 'How the Courts Reinforce Presidential Power' (Chapter 8) in M. Crenson & B. Ginsberg (2007) *Presidential Power: Unchecked and Unbalanced*, New York, W. W. Norton and Company.

¹⁸⁷ Crenson & Ginsberg (2007) *op. cit.*

¹⁸⁸ The research of scholars Louis Fisher, Mark Rozell and Raoul Berger, who each espouse different viewpoints, may be of particular use to interested readers.

Conclusion

While many issues prevail regarding the law of parliamentary privilege there is one area which is rarely contested, and that is the significance and centrality of parliamentary privilege to parliamentary democracies. Parliamentary privilege has long been considered essential in enabling parliaments to perform their functions as representative institutions, in creating effective legislation and in scrutinising government activity. As discussed in this paper, these privileges, which are an exception to ordinary law, are comprised of freedom of speech and debate, freedom from arrest, exclusive cognisance of the Houses, and the power of Houses to punish contempt. Immunities, belonging to individual Members acting in a collective capacity, such as freedom of speech, are seen as protections that allow parliamentarians to perform their duties without fear of intimidation or constraint. The powers belonging to a House of Parliament to punish contempts and regulate its own constitution are, as noted in *Erskine May*, ‘for the protection of its own authority and dignity’.¹⁸⁹

As this paper has demonstrated, the law and practice of parliamentary privilege is complex and many issues and tensions have arisen from its practice. Issues such as *sub judice*, search warrants and subpoenas, the power of Houses to punish contempts, citizen’s right of reply, immunity of non-Members and the scope of freedom of speech have, on occasion, brought parliaments in conflict with constituents and the executive and have resulted in numerous court cases. However, as Griffith notes, ‘Recent cases on parliamentary privilege may not point in any discernible direction or reveal any definite trend, turning as most of them do on the particular facts at issue’.¹⁹⁰

The structure and practice of privilege in other jurisdictions has elucidated the conflicts and tensions that exist in maintaining an effective separation of power between legislatures, the judiciary and the executive. Centuries of developing statutory and procedural frameworks with regard to privilege have still left many uncertainties as to the role each arm of government is intended to perform. Presumably, the only certainty is that these ambiguities will continue to exist. Indeed, the idea that parliamentary privilege is a complex topic of which there are still persistent ‘grey areas’, some of which may never be resolved is echoed in the literature and resources examined throughout this paper, such as in *Erskine May*, Campbell and *Griffith and Ryle*. Governments based on the principle of separation of powers will inevitably encounter tensions in striving to attain an ideal balance between accountability, transparency and effective governance.

¹⁸⁹ *Erskine May* (2004) op. cit., p. 75.

¹⁹⁰ Griffith (2007) op. cit., p. 102.

Further Reading on Parliamentary Privilege

The following resources are particularly pertinent to the scholarship of parliamentary privilege and essential reading for those interested:

Blackburn, R. & A. Kennon with Sir M. Wheeler-Booth (2003) *Parliament: Functions, Practice and Procedures* (2nd Ed.) London, Sweet and Maxwell.

Campbell, E. (2003) *Parliamentary Privilege*, Sydney, The Federation Press.

Carney, G. (2000) *Members of Parliament: Law and Ethics*, St Leonards NSW, Prospect Media.

Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament (2004) (23rd Ed.) Edited by Sir William McKay, London, LexisNexis.

Griffith, G. (2007) *Parliamentary Privilege: Major Developments and Current Issues*, Sydney, NSW Parliamentary Library Research Service.

Griffith, G. (1997) *Parliamentary Privilege: Use, Misuse and Proposals for Reform*, Briefing Paper No 4/97, Sydney, NSW Parliamentary Library Research Service.

Marleau, R. & C. Montpetit (2000) *House of Commons Procedure and Practice*, Ottawa, House of Commons.

McGee, D. (2005) *Parliamentary Practice in New Zealand* (3rd Ed.) Wellington, Dunmore Publishing.

O'Brien, A. & M. Bosc (Eds) (2009) *House of Commons Procedure and Practice* (2nd Ed.) Quebec, House of Commons.

Odgers, J. (edited by Harry Evans) (2008) *Odgers' Australian Senate Practice* (12th Ed.) Canberra, Department of the Senate.

United Kingdom, Joint Committee on Parliamentary Privilege (1999) *Parliamentary Privilege-First Report*, Joint Committee Reports, Session 1998-1999, 9 April 1999, HC 214-I.

Further Reading on Executive Privilege

Australia

Chalmers, J. & G. Davis (2000) *Power: Relations Between the Parliament and the Executive*, Parliamentary Library Research Paper, Canberra, Commonwealth of Australia.

Coghill, K. (2002) Privileges Claimed by the Executive: Have we Learned Anything? Conference paper, Melbourne, *Australasian Study of Parliament Group*.

Department of Prime Minister and Cabinet (2005) *Federal Executive Council: Handbook*, Canberra, Commonwealth of Australia, DPMC.

Evans, J. (2002) 'Orders for Papers and Executive Privilege; Committee Inquiries and Statutory Secrecy Provisions', *Australian Study of Parliament Group*, Conference Paper, October.

Howard, J. (1998) *A Guide on Key Elements of Ministerial Responsibility*, Canberra, Department of the Prime Minister and Cabinet.

Taylor, G. (2008) Parliament's Power to Require the Production of Documents – A Recent Victorian Case, *Deakin Law Review*, vol. 13, iss. 2.

Sharman, C. (1997) Defining Executive Power: Constitutional Reform for Grown-ups, *Australian Journal of Public Administration*, 56(2), pp. 107-114, June.

Spigelman, J. (1972) *Secrecy: Political Censorship in Australia*, Sydney, Angus and Robertson.

Spry, M. (1996) *The Executive Power of the Commonwealth: Its Scope and Limits*, Department of the Parliamentary Library, Parliament of Australia.

Britain

House of Commons (2004) *Taming the Prerogative: Strengthening Ministerial Accountability to Parliament*, Fourth Report of Session 2003-04, London, The Stationary Office Limited.

Hunt, M. (1987) 'Parliament and Official Secrecy' in R. Chapman, & M. Hunt, *Open Government: A Study of the Prospects of Open Government Within the Limitations of the British Political System*, Kent, Croom Helm Ltd, pp. 67-88.

United States

Berger, R. (1974) *Executive Privilege: A Constitutional Myth?* Cambridge, Harvard University Press.

Crenson, M. & B. Ginsberg (2007) *Presidential Power: Unchecked and Unbalanced*, New York, W. W. Norton and Company.

Karin, M. L. (2002) 'Out of Sight, but Not Out of Mind: How Executive Order 13,233 Expands Executive Privilege while Simultaneously Preventing Access to Presidential Records', *Stanford Law Review*, vol. 55, iss. 2.

- Pallitto, R. & W. Weaver (2007) *Presidential Secrecy and the Law*, Baltimore, John Hopkins University Press.
- Rosenberg, M. (2008) *Presidential Claims of Executive Privilege: History, Law, Practice and Recent Developments*, Congressional Research Service Report for Congress, August.
- Rozell, M. (1999) The Law: Executive Privilege: Definitions and Standards of Application, *Presidential Studies Quarterly*, vol. 29, no. 4.
- Rozell, M. (2002) 'Executive Privilege Revived?: Secrecy and Conflict During the Bush Presidency', *Duke Law Journal*, vol. 52, iss. 403, pp. 403-421.
- Rozell, M. (2006) 'Executive Privilege in an Era of Polarized Politics' in C. Kelley (Ed.) *Executing the Constitution: Putting the President Back in the Constitution*, New York, State University of New York Press.
- Scigliano, R. (1971) *The Supreme Court and the Presidency*, New York, Free Press.
- Spitzer, R. (1993) *President and Congress: Executive Hegemony at the Crossroads of American Government*, Philadelphia, Temple University Press.
- Wise, D. (1973) *The Politics of Lying: Government Deception, Secrecy, and Power*, New York, Random House.

Bibliography

Legislation

Archives Act 1983 (Cth)

Australian Capital Territory (Self-Government) Act 1988 (Cth)

Bill of Rights 1969 (UK)

Commonwealth of Australia Constitution Act 1900 (UK)

Constitution Act 1867 (Canada)

Constitution Act 1975 (Vic)

Constitution Act 1934 (SA)

Constitution of France 1958 (France)

The Constitution of the United States of America (US)

The Constitution of India (India)

Criminal Code Act 1924 (Tas)

Debtors Act 1869 (UK)

Defamation Act 2005 (NSW)

Defamation Act 1996 (UK)

Defamation Act 1957 (Tas)

French Constitution 1958 (France)

Imperial Acts Application Act 1969 (NSW)

Imperial Laws Application Act 1988 (NZ)

Jury Act 2003 (Tas)

Legislative Assembly (Powers and Privileges) Act 1992 (NT)

Legislature Act 1908 (NZ)

New Zealand Constitution Act 1852 (NZ)

Norfolk Island Act 1979 (Cth)

Parliament of Canada Act 1875 (Can)

Parliamentary Committees Act 2003 (Vic)

Parliament of Queensland Act 2001 (QLD)

Parliamentary Papers Act 1840 (UK)

Parliamentary Privilege Act 1858 (Tas)

Parliamentary Privileges Act 1865 (NZ)

Parliamentary Privileges Act 1891 (WA)

Parliamentary Privileges Act 1987 (Cth)

Privilege of Parliament Act 1603 (UK)

Court Cases

Anderson v Dunn 19 U.S. (6 Wheat.) 204 (1821)

Arena v Nader (1997) 42 NSWLR 427

Arena v Nader (1997) 71 ALJR 1604

Australian Broadcasting Corporation and another v Chatterton (1986) 46 SASR 1

Barenblatt v United States 360 U.S. 109, 111 (1959)

Bradlaugh v Gosset (1884) 12 QBD 271

Buchanan v Jennings [2002] 3 NSLR 145

Buchanan v Jennings [2005] 1 AC 115

Burdett v Abott (1811) 14 East 1

Canada (House of Commons) v Vaid [2005] 1 SCR 667

Case of the Sheriff of Middlesex (1840) 11 Ad & E 273 (113 ER 1112)

Church of Scientology of California v Johnson-Smith [1972] 1 QB 522

Comalco Ltd. v Australian Broadcasting Corporation (1983) 50 ACTR 1

Crane v Gething (2000) 169 ALR 727

Della Bosca v Arena [1999] NSWSC 1057

Dingle v Associated Newspapers Ltd. [1960] 2 QB 405

Eastland v United States Servicemen's Fund 421 U.S. 491 (1975)

Egan v Chadwick (1999) 46 NSWLR 563

Egan v Willis (1996) 40 NSWLR 650

Egan v Willis (1998) 195 CLR 424

Fayed v United Kingdom (1994) 18 EHRR 393

Gravel v US (1972) 408 US 606

Goffin v Donnelly (1881) 6 QBD 307

Golder v United Kingdom (1979-80) 1 EHRR 524

Hamilton v Al Fayed [1999] 3 All ER 317

Howard v Gosset (1845) 10 QB 359

Kielley v Carson (1842) 4 Moo PC 63; 13 ER 225

McGrain v Daugherty 273 U.S. 135 (1927)

New Brunswick Broadcasting Corporation v Nova Scotia (Speaker of the House of Assembly) (1993) 100 DLR (4) 212

Prebble v Television New Zealand Ltd [1995] 1 AC 321

R. v Jackson and others (1987) 8 NSWLR 116

R. v Murphy (1986) 64 ALR 498

R v Richards; Ex parte Fitzpatrick and Browne (1955) 92 CLR 157

R. v Secretary of State for Trade and others, ex parte Anderson Strathclyde plc (1983) 2 All ER 233

R. v Wainscot (1899) 1 WAR 77

Sankey v Whitlam (1978) 142 CLR 1

Stockdale v Hansard (1839) 9 Ad & E 1 (112 ER 1112)

US v Johnson (1966) 383 US 169

US v Brewster (1972) 408 US 501

Watkins v United States 354 U.S. 178, 187 (1957)

Books, Journal Articles and Reports

ABC News (2006) 'Poll: Americans Support Searches: Public Sides with FBI in Congress Search Issue', ABC News, 1 June, viewed 27 October 2009 at <<http://abcnews.go.com/Politics/PollVault/story?id=2025343&page=1>>.

ABC Radio National (2006) The Law Report: Contempt of Parliament, 29 August, <<http://www.abc.net.au/rn/lawreport/stories/2006/1724392.htm>> transcript viewed 23 February 2010.

Australia, Department of the Senate (2008) *The Senate and Accountability*, Papers on Parliament, Number 48, January, Canberra, Parliament of Australia.

Australia, Department of the House of Representatives (2005) (5th Ed.) *House of Representatives Practice*, Canberra, Parliament of Australia.

Australia, Department of Prime Minister and Cabinet (2005) *Federal Executive Council: Handbook*, Canberra, Commonwealth of Australia, DPMC.

Australia, Joint Select Committee on Parliamentary Privilege (1984) October, Canberra, Parliament of Australia.

Australia, Joint Select Committee on Parliamentary Privilege (1984) *An Exposure Report for the Consideration of Senators and Members*, Canberra, Parliament of Australia.

Australia, Parliament of Australia (2005) *Crossing the Floor in the Federal Parliament 1950 – August 2004*, Canberra, Department of Parliamentary Services, Parliament of Australia.

Australia, Senate (2009) *Standing Orders and Other Orders of the Senate*, June, Canberra, Senate Table Office, Parliament of Australia.

Australia, Senate (2009) 'Advices from the Clerk of the Senate, 28 August, <http://www.aph.gov.au/senate/committee/priv_ctte/clerks_advices/index.htm>', viewed 25 February 2010.

Australia, Senate (2008) *Effective Repetition*, Committee of Privileges, 134th Report, Canberra, Parliament of Australia.

Australia, Senate, Committee of Privileges (2007) *Person referred to in the Senate – Indonesian Forum for Environment*, no. 132, PP No. 173/2007, Canberra, Parliament of Australia.

Australia, Senate, Committee of Privileges (2002) *Execution of search warrants in Senators' offices – Senator Harris*, no. 105, PP No. 310/2002, Canberra, Parliament of Australia.

Australia, Senate (2002) *Possible Improper Influence and Penalty on a Senator*, Committee of Privileges, 103rd report, Canberra, Parliament of Australia.

Australia, Senate, Committee of Privileges (1997) *Person referred to in the Senate – Dr Neil Cherry*, no. 65, PP No. 48/1997, Canberra, Parliament of Australia.

Berger, R. (1974) *Executive Privilege: A Constitutional Myth?* Cambridge, Harvard University Press.

Blackburn, R. & A. Kennon with Sir M. Wheeler-Booth (2003) *Parliament: Functions, Practice and Procedures* (2nd Ed.) London, Sweet and Maxwell.

Blackstone, W. (1830) *Commentaries on the Laws of England* (17th ed.), London, Sweet and Maxwell.

Bourinot, J. G. (1916) *Parliamentary Procedure and Practice in the Dominion of Canada* (4th Ed.) Toronto, Canada Law Book Company.

Campbell, E. (2003) *Parliamentary Privilege*, Sydney, The Federation Press.

Campbell, E. (2000) *Parliamentary Privileges*, Department of the Parliamentary Library, Canberra, Commonwealth of Australia.

Campbell, E. (1966) *Parliamentary Privilege in Australia*, Melbourne, Melbourne University Press.

Canada, House of Commons (1990) *Privilege in the Historical Context*, Table Research Branch, Ottawa, House of Commons.

Canada, House of Commons (1990) *Privilege in the Modern Context*, Table Research Branch, Ottawa, House of Commons.

Carney, G. (2006) *The Constitutional Systems of the Australian States and Territories*, Melbourne, Cambridge University Press.

Carney, G. (2000) *Members of Parliament: Law and Ethics*, St Leonards NSW, Prospect Media.

Chafetz, J. (2009) 'Executive Branch Contempt of Congress', *The University of Chicago Law Review*, vol. 76, pp. 1083-1156.

Chalmers, J. & G. Davis (2000) *Power: Relations Between the Parliament and the Executive*, Parliamentary Library Research Paper, Canberra, Commonwealth of Australia.

Child, S. (2002) *Politico's Guide to Parliament* (2nd Ed.) London, Politico's Publishing.

Coghill, K. (2002) Privileges Claimed by the Executive: Have we Learned Anything? Conference paper, Melbourne, *Australasian Study of Parliament Group*.

Crenson & B. Ginsberg (2007) *Presidential Power: Unchecked and Unbalanced*, New York, W. W. Norton and Company.

Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament (1983) (20th Ed.) Edited by Sir Charles Gordon, London, Butterworths.

Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament (2004) (23rd Ed.) Edited by Sir William McKay, London, LexisNexis.

Evans, H. (2009) Recent Developments in Parliamentary Privilege, Paper for ANZACATT, 2009 Professional Development Seminar, 28-30 January, Norfolk Island.

Evans, H. (2008) 'Parliamentary Privilege and Search Warrants: Will the US Supreme Court Legislate for Australia' in K. Walsh (Ed.) *The Senate and Accountability*, Papers on Parliament, No. 48, Canberra, Department of the Senate, Parliament of Australia.

Evans, H. (2004) 'Parliamentary privilege and party discipline', *The Parliamentarian*, iss. 3, pp. 246-248.

Evans, H. (1988) 'Parliamentary Privilege: Legislation and Resolutions in the Australian Parliament', *The Table*, vol. 56, pp. 21-22.

Evans, J. (2002) 'Orders for Papers and Executive Privilege; Committee Inquiries and Statutory Secrecy Provisions', *Australian Study of Parliament Group*, Victorian Chapter, Conference Paper, 2002 Annual Conference – Parliamentary Privilege, 12 October.

- Gardiner, S. (1886) *History of the Great Civil War, 1642-1649*, London, Longmans.
- Gay, O. (2010) *Parliamentary Privilege and Individual Members*, Parliament and Constitution Centre, London, House of Commons Library.
- Gay, O. & A. Horne (2009) *Parliamentary Privilege and Qualified Privilege*, Parliament and Constitution Centre, London, House of Commons Library.
- Grant, P. (2008) 'The Subsequent Use by an Author of Their Written Submission to a Parliamentary Committee: Issues of Ownership, Law, Privilege, Contempt and Practicality', *Australasian Parliamentary Review*, Spring, vol. 23, iss. 2, pp. 15-40.
- Griffith, G. (2009) *Parliamentary Privilege: First Principles and Recent Applications*, Sydney, NSW Parliamentary Library Research Service.
- Griffith, G. (2007) *Parliamentary Privilege: Major Development and Current Issues*, Sydney, NSW Parliamentary Library Research Service.
- Griffith, G. (2004) *Principles, Personalities, Politics: Parliamentary Privilege Cases in NSW*, Sydney, NSW Parliamentary Library Research Service.
- Griffith, G. (2000) *Copyright, Privilege and Members of Parliament*, Sydney, NSW Parliamentary Library Research Service.
- Griffith, G. (1997) *Parliamentary Privilege: Use, Misuse and Proposals for Reform*, Briefing Paper No 4/97, Sydney, NSW Parliamentary Library Research Service.
- Griffith, G. & D. Clune (2006) *Arena v Nader and the waiver of parliamentary privilege in G. Winterton (Ed.) State Constitutional Landmarks*, Sydney, Federation Press, pp. 331-369.
- Joseph, P. (2001) *Constitutional and Administrative Law in New Zealand (2nd Ed.)*, Wellington, Brookers.
- Larkin, P. (2007) *The Governance of Britain*, Democratic Audit of Australia, Discussion Paper 14/07, July, Canberra, Australian National University.
- Lovelock, L. & J. Evans (2008) *New South Wales Legislative Council Practice*, Annandale, The Federation Press.
- Maer, L. & O. Gay (2009) *The Bill of Rights 1689*, Parliament and Constitution Centre, London, House of Commons Library.
- Maingot, J. (1997) *Parliamentary Privilege in Canada (2nd Ed.)* Ottawa, House of Commons and McGill-Queen's University Press.
- Mantziaris, C. (1999) *Egan v Willis and Egan v Chadwick: Responsible Government and Parliamentary Privilege*, Research Paper 12 1999-2000, Canberra, Australian Parliamentary Library, Parliament of Australia.
- Marleau, R. & C. Montpetit (2000) *House of Commons Procedure and Practice*, Ottawa, House of Commons.

Marinac, A. (2006) 'Shaking the foundations of parliamentary privilege', *On Line Opinion*, 18 September, viewed 7 June 2010 at <<http://www.onlineopinion.com.au/view.asp?article=4919>>.

Mathews, R. (2001) Mr Kennett's Contempt: The Parliamentary Superannuation Ultimatum Affair of May, 1991, *Australian Quarterly*, May-June, pp. 7-12.

McGee, D. (2005) *Parliamentary Practice in New Zealand* (3rd Ed.) Wellington, Dunmore Publishing.

McIlwain, C. (1910) *The High Court of Parliament and its Supremacy*, New Haven, Yale University Press.

Morgan, D. (2008) *Parliamentary Privilege in Queensland*, Australian Institute of Administrative Law, AIAL Forum No. 59.

New Zealand, House of Representatives (2008) *Standing Orders of the House of Representatives*, Wellington, House of Representatives.

New Zealand, House of Representatives (2007) *Parliamentary Privilege*, Parliament Brief, Wellington, Office of the Clerk of the House of Representatives.

New Zealand, House of Representatives Privileges Committee (2006) *Question of Privilege on the Action Taken by TVNZ in Relation to its Chief Executive, Following Evidence he gave to the Finance and Expenditure Committee*, Interim report of the Privileges Committee, April.

O'Brien, A. & M. Bosc (Eds) (2009) *House of Commons Procedure and Practice* (2nd Ed.), Quebec, House of Commons.

Odgers, J. (edited by Harry Evans) (2008) *Odgers' Australian Senate Practice* (12th Ed.), Canberra, Department of the Senate.

Pallitto, R. & W. Weaver (2007) *Presidential Secrecy and the Law*, Baltimore, John Hopkins University Press.

Rosenberg, M. & T. Tatelman (2008a) *Congress's Contempt Power: A Sketch*, Congressional Research Service Report for Congress, RL34114, Congressional Research Service, Library of Congress, United States Congress.

Rosenberg, M. & T. Tatelman (2008b) *Congress's Contempt Power: Law, History, Practice, and Procedure*, Congressional Research Service Report for Congress, RL34097, Congressional Research Service, Library of Congress, United States Congress.

Rosenberg, M. (2008) *Presidential Claims of Executive Privilege: History, Law, Practice and Recent Developments*, Congressional Research Service Report for Congress, August, Library of Congress, United States Congress.

Rozell, M. (2006) 'Executive Privilege in an Era of Polarized Politics' in C. Kelley (Ed.) *Executing the Constitution: Putting the President Back in the Constitution*, New York, State University of New York Press.

Rozell, M. (1999) 'The Law: Executive Privilege: Definitions and Standards of Application', *Presidential Studies Quarterly*, vol. 29, no. 4, December.

Sharman, C. (1997) Defining Executive Power: Constitutional Reform for Grown-ups, *Australian Journal of Public Administration*, vol. 56, no. 2, pp. 107-114, June.

Society of Clerks-at-the-Table (2010) 'Publications: The Table', 20 January, <http://www.societyofclerks.org/SCAT_Publish.asp>, viewed 25 February 2010.

Society of Clerks-at-the-Table (2010) 'About the Society', 11 January, <http://www.societyofclerks.org/SCAT_Home.asp>, viewed 25 February 2010.

Song, S. (1997) 'The Reform of Parliamentary Privilege: Advantages and Dangers', *Legislative Studies*, vol. 12, no. 1, Spring, pp. 30-42.

Spitzer, R. (1993) *President and Congress: Executive Hegemony at the Crossroads of American Government*, Philadelphia, Temple University Press.

Spry, M. (1996) *The Executive Power of the Commonwealth: Its Scope and Limits*, Department of the Parliamentary Library, Canberra, Parliament of Australia.

Taylor, G. (2008) Parliament's Power to Require the Production of Documents – A Recent Victorian Case, *Deakin Law Review*, vol. 13, iss. 2.

Taylor, G. (2006) *The Constitution of Victoria*, Sydney, The Federation Press.

Thompson, E. (1980) 'The "Washminster" Mutation' in P. Weller and D. Jaensch (eds), *Responsible Government in Australia*, Richmond, Drummond, pp. 32–40.

United Kingdom, House of Commons, Select Committee on Parliamentary Privileges (1967) *Report*, HC 34.

United Kingdom, House of Commons, Select Committee on Parliamentary Privileges (1977) *Third Report*, HC 417.

United Kingdom, House of Commons (2004) *Taming the Prerogative: Strengthening Ministerial Accountability to Parliament*, Fourth Report of Session 2003-04, London, The Stationary Office Limited.

United Kingdom, House of Lords (2007) *The Standing Orders of the House of Lords: Relating to Public Business*, House of Lords, London, Stationary Office Limited, HL Paper 147, Standing Order 83.

United Kingdom, House of Lords (2007) *Companion to the Standing Orders and Guide to the Proceedings of the House of Lords*, laid before the House by the Clerk of the Parliaments.

United Kingdom Parliament (2003) PASC Publishes Government Defence of its Sweeping Prerogative Powers – Move could help bring bigger say for Parliament, PASC 19, Session 2002-03, Press Notice No. 19, viewed 17 August 2009, at <http://www.parliament.uk/parliamentary_committees/public_administration_select_committee/pasc_19.cfm>.

United Kingdom, Joint Committee on Parliamentary Privilege (1999) *Parliamentary Privilege-First Report*, Joint Committee Reports, Session 1998-1999, 9 April 1999, HC 214-I.

Victoria, Legislative Assembly Privileges Committee (2010) *Person Referred to in the Legislative Assembly: Ms Arnie Azaris*, August, Melbourne, Parliament of Victoria.

Victoria, Legislative Assembly Privileges Committee (2010) *Person Referred to in the Legislative Assembly: Ms Julianne Bell*, August, Melbourne, Parliament of Victoria.

Victoria, Legislative Assembly Privileges Committee (2010) *Person Referred to in the Legislative Assembly: Mr Rob Small*, May, Melbourne, Parliament of Victoria.

Victoria, Legislative Assembly Privileges Committee (2010) *Person Referred to in the Legislative Assembly: Mr Brian Rule*, May, Melbourne, Parliament of Victoria.

Victoria, Legislative Assembly Privileges Committee (2009) *Person Referred to in the Legislative Assembly: Mr Dennis MacKinlay*, June, Melbourne, Parliament of Victoria.

Victoria, Legislative Assembly Privileges Committee (2008) *Person Referred to in the Legislative Assembly: Mr Robert Larocca*, April, Melbourne, Parliament of Victoria.

Victoria, Legislative Assembly Privileges Committee (2007) *Person Referred to in the Legislative Assembly: Mrs Belinda Clarkson*, November, Melbourne, Parliament of Victoria.

Victoria, Legislative Assembly Privileges Committee (2006) *Report on the Complaint by the Member for Preston*, July, Melbourne, Parliament of Victoria.

Victoria, Legislative Assembly Privileges Committee (1992) *Report on Complaint made by the Treasurer*, June, Melbourne, Parliament of Victoria.

Walsh, A. (2009) *Interference With Members Carrying Out Their Duties: Case Studies*, ANZACATT Professional Development Courses and Seminars, 9 January, Norfolk Island, ANZACATT.

Waugh, J. (2005) 'Contempt of Parliament in Victoria', *Adelaide Law Review*, Vol. 26, pp. 29-53.

Western Australia Legislative Assembly, Procedure and Privileges Committee (2004) *Parliamentary Privilege and its Linkage to the UK House of Commons*, Report No. 5, Western Australian Parliament.

Wright, B. (2008) 'Patterns of Change: Parliamentary Privilege', *Parliamentary Studies Paper 2*, Crawford School of Economics and Government, The Australian National University.

Research Service

This paper has been prepared by the Research Service for use by Members of the Victorian Parliament. The Service prepares briefings and publications for Parliament in response to Members, and in anticipation of the requirements, undertaking research in areas of contemporary concern to the Victorian legislature. While it is intended that all information provided is accurate, it does not represent professional legal opinion.

Research publications present current information as at the time of printing. They should not be considered as complete guides to the particular subject or legislation covered. The views expressed are those of the author(s).

Authors

Rachel Macreadie
Research Officer
Victorian Parliamentary Library Research Service

Dr Greg Gardiner
Senior Research Officer
Victorian Parliamentary Library Research Service

Enquiries

Enquiries should be addressed to:

Dr. Greg Gardiner
Senior Research Officer
Parliamentary Library
Parliament House
Spring Street
Melbourne

T: (03) 9651 8640

F: (03) 9654 1339

Information about Research Publications is available on the Internet at:

<http://www.parliament.vic.gov.au>