Parliament (Powers, Privileges and Immunities) Bill 1985

Date introduced: 22 August 1985
House: Senate
Presented by: Senator Macklin

Purpose

To clarify and reform the law and procedure of Parliamentary privilege.

Background

This is the second private Member's Bill dealing with Parliamentary powers, privileges and immunities introduced this year by members of the Joint Select Committee on Parliamentary Privilege. The previous Bill was introduced by the Hon. J.M. Spender, M.P., on 21 May 1985. Both Spender and Senator Macklin were members of the majority in that Committee and, as a result, both Bills aim to achieve much the same results. However, the Macklin Bill also aims to clarify the use of Parliamentary proceedings in Courts and the disclosure of evidence taken by Parliament in camera. These two issues have only come to prominence in recent times, following the rulings of Mr Justice Cantor in the trial of Lionel Murphy. A comparison of the major differences between the Spender and Macklin Bills is contained in the Remarks section.

For further background information refer to the Digest of the Spender Bill namely, the Parliament (Powers, Privileges and Immunities) Bill 1985 (Digest No. 85/141).

Outline

The Bill aims to clarify, rather than codify, the law of Parliamentary privilege. Except where expressly altered by this Bill, the current law will remain in force.
Main Provisions

Clause 4 will maintain the current law except as expressly altered by this Bill. (This is largely comparable to clause 5 of the Spender Bill).

Clause 5 will remove the Parliament's power to impose any penalty for defamatory contempt (cf. clause 8 of the Spender Bill).

The Houses' power to imprison will be restricted to 6 months and an ability to fine is to be introduced by clauses 6 and 7. A House will not be able to impose both a fine and imprisonment (sub-clause 7(3)) (cf. clause 10 of the Spender Bill).

The Houses' power to expel members will be removed by clause 8 (cf. clause 9 of the Spender Bill).

Clause 9 will require warrants committing a person to prison to detail the particulars of the offence (cf. sub-clause 10(3) of the Spender Bill).

The Full Bench of the High Court's power to review a decision to imprison is contained in clause 10. The Court will be empowered to make a declaration that the particulars do not disclose an offence against Parliament but will not be able to make any other order/s (cf. clause 12 of the Spender Bill).

Proceedings in Parliament is defined in clause 11 to include acts done for the purposes of, or incidental to, the transaction of the business of a House or committee (cf. sub-clause 6(2) of the Spender Bill).

Clause 12 will make it a defence to a defamation action that the defamatory matter was a fair and accurate report of proceedings at a meeting of a House or committee. As the phrase 'proceedings at a meeting of a House or committee' is not defined in the Bill (as distinct from 'proceedings in Parliament' which is defined in clause 11) it is unsure how this clause will affect the current position where the publication of the reports of debates is protected under the Parliamentary Papers Act 1908 (cf. clause 6 of the Spender Bill).

No action will lie against persons who have published papers that have been laid before either House by virtue of clause 13. At present, the protection afforded by
the Parliamentary Papers Act 1908 is confined to papers that have been authorised to be printed and published by a House or committee (cf. sub-clauses 6(5) and 6(6) of the Spender Bill).

The protection of witnesses called to give evidence before either House or a committee is dealt with by clauses 14 and 15. Clause 14 will make it an offence to interfere with or intimidate a witness and clause 15 will make it an offence to injure or penalise a person because they have given evidence. In both cases the penalty will be a maximum $5,000 fine or 6 months' imprisonment for a natural person and $25,000 fine for a corporation (cf. clause 16 of the Spender Bill).

Clause 17 and 18 deal with Members' immunity from arrest and compulsory appearance as a witness. A member will be exempt from compulsory appearance as a witness or arrest on a charge punishable by a fine not greater than $5,000 or imprisonment for 12 months, for a period of 5 days either side of the sitting of a House or committee in which the Member is involved (cf. clause 7 of the Spender Bill).

Clause 19 will apply the laws of the Australian Capital Territory to Parliament House (cf. clause 14 of the Spender Bill).

Protection from disclosure for certain Parliamentary proceedings is contained in clauses 16 and 20. Clause 16 will make it an offence to publish or disclose evidence given to a House or committee unless that evidence has been published by a House or committee. Clause 20 will make it clear that evidence taken in camera is not to be admitted as evidence in a Court unless that evidence has been published.

Remarks

The Bills presented by two members of the majority on the Joint Select Committee on Parliamentary Privilege, namely the Macklin and Spender Bills, are quite similar. The Spender Bill defines the terms used, and alterations to the current law in greater detail while the Macklin Bill lays down more general propositions without exhaustively defining where they will apply. For example, see the definitions of 'proceedings in Parliament' (clause 11 of the Macklin Bill and sub-clauses 6(2) to 6(4) of the Spender Bill). However, there are some more substantive differences between the Bills, the major ones being:
the penalties that may be imposed for offences against the Parliament. Under the Macklin Bill it will not be possible to both fine and imprison (clause 6) while under the Spender Bill both penalties may be used together (clause 10);

the Macklin Bill will allow the general publication of any paper laid before either House (clause 13) while the Spender Bill will only allow publication to Members or officers of a House or an employee of a Member (sub-clause 6(5)). General publication will require a motion by the House;

the offences that Members will be immune from arrest while Parliament is sitting and for 5 days each side of the sitting. Under the Macklin Bill immunity will extend to minor criminal offences (those with maximum penalty of $5,000 fine or 12 months' imprisonment) (clause 17) while under the Spender Bill immunity will only extend to arrest on civil matters (clause 7); and

the Macklin Bill deals with the Court's use of Parliamentary proceedings and evidence (clauses 16 and 20). These matters have only come to prominence in recent months.

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

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