

**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY**

**LEGISLATIVE ASSEMBLY (PRIVILEGES) BILL 1998**

**EXPLANATORY MEMORANDUM**

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Independent

## OUTLINE

This Bill sets in place a general law with respect to the powers, privileges and immunities of the ACT Legislative Assembly.

The main features of the Bill are to:

- declare certain powers, privileges and immunities of the Legislative Assembly of the ACT;
- clarify some areas of law relating to the privilege applying to authorised publications of the Legislative Assembly and its committees;
- define the precincts of the Legislative Assembly, and
- set in place certain statutory offences in relation to breach of a number of privileges

The term 'privileges' refers to the powers, privileges and immunities enjoyed collectively by the Assembly and individually by members of the Assembly so as to enable the Assembly to effectively discharge its functions to inquire, debate and legislate free from interference, including interference pursuant to other laws.

Section 24 of the *Australian Capital Territory (Self-Government) Act 1998* (the Self Government Act) defines the existing powers, privileges and immunities of the Legislative Assembly, subject to the Assembly passing its own privileges legislation. This section provides for the power to make laws declaring the powers of the Assembly, within certain limitations, and provides for the manner in which those powers may be exercised or upheld.

Until such a law is passed, the Assembly, its members and committees have the same powers and privileges as the powers and privileges for the time being of the House of Representatives and its members and committees, subject to the restriction that the Legislative Assembly does not itself have the power to imprison or fine a person. The powers and privileges of the Assembly cannot exceed those of the House of Representatives.

The House of Representatives derives its powers and privileges from section 49 of the Australian Constitution, which in turn links the House of Representatives and the Senate to the powers and privileges of the United Kingdom House of Commons, and its members and committees, at the establishment of the Commonwealth.

The Commonwealth *Parliamentary Privileges Act 1987* declares the powers, privileges and immunities of the House of Representatives and the Senate and their members and committees. The *Legislative Assembly (Privileges) Bill 1998* is therefore located within a wider legislative and common law framework that will continue to co-exist and complement the proposed law and should be read in the context of those laws.

### Financial Considerations

The Bill has no financial implications.

## CLAUSE NOTES

### PART 1 - PRELIMINARY

**Clauses 1, and 2** are formal requirements. They refer to the short title of the Bill; specify that the Bill will commence on a day fixed by the Minister by notice in the *Gazette*; or in six months whichever occurs first. The Minister must consult with the Speaker before notification of a commencement date.

**Clause 3** is an interpretation clause.

**'Assembly'** is a short form of reference to the Legislative Assembly for the Australian Capital Territory.

The area coming within the term **'Assembly precinct'** is defined in Part III of the Bill. It comprises the Legislative Assembly building, the canopies at the Public Entrance and the Members' Entrance, and the members' car park at the southern end of the building.

The **'Clerk'** of the Assembly is appointed under section 46 of the *Public Sector Management Act 1994*. [Section 53 of the *Public Sector Management Act 1994* provides that a person holding the office Deputy Clerk may be appointed to act in the office of Clerk during the temporary absence of the Clerk.]

A **'committee'** is a committee of the Assembly or a sub-committee of such a committee.

A **'court'** is defined broadly and includes any tribunal, authority or person that can require documents to be produced or questions answered.

The Bill clarifies the meaning of **'document'** to include part of a document

A **'member'** is an elected member of the Legislative Assembly.

The term **'officer'** has a narrow meaning, generally including only the Clerk, and Deputy Clerk, although the Speaker is able to declare by notice in the *Gazette*, that the relevant provisions of the Act apply to other persons.

The **'Speaker'** is the member elected by the Assembly under section 11 of the *Australian Capital Territory (Self-Government) Act 1988* to be the Presiding Officer of the Assembly.

The clause also provides that if a person provides a written statement to the Assembly or a committee, the Assembly or committee can order that the statement is to be considered as evidence to it and therefore subject to the same immunities and limitations under this Bill.

### PART II - POWERS, PRIVILEGES AND IMMUNITIES

The primary purpose of this Part is to restate a number of existing powers, privileges and immunities that operate by virtue of section 24 of the Self Government Act and to preserve those powers, privileges and immunities to operate concurrently with the Act. A possible uncertainty in the law is resolved by extending absolute privilege to the authorised publication of Assembly proceedings and related documents. Other provisions relating to the law of defamation in respect of fair and accurate reporting of Assembly proceedings are found in the *Defamation (Amendment) Act 1909 of New South Wales*. The *Legislative Assembly (Broadcasting of Proceedings) Act 1997* authorises broadcasting to government offices and certain public broadcasts of Assembly proceedings.

**Clause 4** retains the legislative and common law framework of parliamentary powers, privileges and immunities that apply to the ACT Legislative Assembly by virtue of section 24 of the Self Government Act to the extent that those issues are not dealt with by the Bill. This means that the powers of the House of Representatives, and the provisions of the *Commonwealth Parliamentary Privileges Act 1987*, are still relevant to the operation of the ACT Legislative Assembly, unless there is a specific provision to this Bill.

**Clause 5** declares that article 9 of the Bill of Rights 1688 applies in relation to the proceedings of the Assembly. Article 9 provides: 'That the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament' (quoted from Odgers' *Australian Senate Practice*, Seventh edition, p.33).

'**Proceedings in the Assembly**' is defined widely to cover anything said or done in the course of, for the purposes of, or incidental to, business of the Assembly or its committees. It covers (but is not limited to) the giving of evidence; presentation or submission of documents; preparation of a document; and the formulation, making or publication of a document by order of the Assembly or committee.

The effect of this clause is to exclude a court from considering as evidence information concerning Assembly proceedings that goes to the truth, motive, intention or good faith of anything forming part of the Assembly proceedings; or the credibility, motive, intention or good faith of a person; or the drawing of inferences or conclusions about a matter from Assembly proceedings. In addition, the court is unable to use as evidence any document directed by the Assembly or a committee to be treated as evidence taken in camera; or any unpublished oral evidence, or documents relating to the evidence, taken in camera by the Assembly or a committee. The privilege ensures that members and persons providing information to the Assembly can freely discuss matters without civil or criminal liability attaching to those discussions. The immunity is asserted in court as a defence of absolute privilege.

These exclusions do not restrict a court's use of records of Assembly or committees that have been authorised for publication, or statements or submissions based on such records, in interpreting an ACT law.

These exclusions, and anything in the Bill of Rights 1688, do not apply to proceedings in a court for an offence created under the Act. The clause also states that the provisions do not apply to any proceedings taken prior to the commencement of the section.

**Clause 6** declares the authority of the of the Assembly or a committee, and the Clerk acting under the authority of the Assembly or the Speaker, to publish documents. The Assembly or committee may authorise the publication of any document or evidence presented to it. The authority of the Clerk to publish certain documents is deemed by the clause. These documents include notice papers, daily programs, minutes of meetings; reports of debates and proceedings; and documents or evidence that the Assembly or a committee has ordered be published. The Speaker may authorise the Clerk to publish proof copies of these documents. An authorisation given by the Assembly, a committee or the Speaker may be subject to conditions.

The Clerk is required to ensure copies of minutes of proceedings and other authorised documents are available for supply to members of the public. The Speaker may determine fees or a rate for charging for such documents. That determination is subject to disallowance by the Assembly.

**Clause 7** provides that no legal action can be taken against a person for publishing an authorised document in accordance with clause 6. This means the defence of absolute privilege applies not only to Assembly proceedings, but to actions by persons authorised to publish the documents relating to those proceedings. The persons protected by the provision could include, for example, Assembly staff, certain public servants and any person authorised to print documents.

The clause requires that a court permanently stop any action relating to an authorised document on the production of a certificate issued under clause 22 (this referred to a certificate evidence); and the court may order costs to be paid by the plaintiff or prosecutor. The provisions do not affect any existing defence that would otherwise be available.

**Clause 8** protects the effective functioning of the Assembly by declaring the immunity of members from being required to attend court proceedings on a day the Assembly meets.

**Clause 9** provides for the power to order attendance of witnesses, other than members, or the production of documents or other things at the Assembly or a committee of the Assembly. This clause provides for the Clerk, acting under order of the Assembly, to summons a person to attend to give evidence or produce a document or other thing, or both. Committees authorised by the Assembly to send for persons, documents or other things may also authorise the Clerk to issue a summons. In both cases the summons must be in writing.

**Clause 10** provides for the examination under oath of witnesses called before the Assembly or a committee of the Assembly. The Clerk may administer an oath or affirmation to witnesses before the Assembly. The presiding member of a committee authorised to call for persons may administer an oath or affirmation to a person appearing before the committee.

### **PART III - ASSEMBLY PRECINCT**

Part III provides for the definition of that area occupied by the Assembly - this is referred to as the precinct. Definition of the area occupied by the parliament is an administrative matter that is not itself a power or privilege of a parliament. However, the parliament does have power to control activities within the precinct, enabling the parliament to conduct its business without improper interference or pressure

This clause describes the limits of the precinct of the Legislative Assembly. The Assembly precinct includes the Legislative Assembly building to the outer edge of the eaves, the canopies at the public and members' entrances, and the members' car park at the southern side of the building. Schedule 1 to the Bill shows a map of the precinct.

This clause also defines certain terms necessary to accurately define the precinct. **'Assembly Building'** is defined by reference to the block number in the City Plan; **'members' car-park'** means the area defined by survey descriptions in Schedule 2 to the Bill; and **'members' entrance canopy'** and **'public entrance canopy'** refer to fixed canopies at the entrances at the southern and northern sides of the building.

**Clause 12** refers to the term **'Speaker'** which includes the Deputy Speaker if the Speaker is absent or no member currently holds the office of Speaker.

**Clause 13** states that Speaker is responsible for the control and management of the precinct, although the exercise of that power by the Speaker will be subject to any direction of the Assembly. In relation to the area of the precinct occupied by the Executive, the Speaker's power of control and management must be exercised in accordance with any conditions or limitations agreed in writing with the Chief Minister. These offices are contained in what is described in the Bill as the **'Executive Area'** of the precinct.

**Clause 14** refers to a specific power of the Speaker in relation to the precinct where the Speaker is able to direct a person, other than a member, to leave the precinct or not to enter the precinct. Where a direction has been issued, the Speaker may arrange for the person's removal, with such force and assistance as is necessary and reasonable in the circumstances. No legal action lies against the Speaker or any person acting under the direction of the Speaker in respect of actions taken in good faith under this clause.

Standing Orders deal with the removal of members from the Chamber.

**Clause 15**, in support of the power of the Speaker provided in clause 14, provides for the offence of contravening without reasonable excuse a direction by the Speaker to leave or not enter the precinct. The maximum penalty is 50 penalty units (\$5,000 - see section 33AA of the *Interpretation Act 1967*) or imprisonment for 6 months or both.

## **PART IV - MISCELLANEOUS**

The Commonwealth House of Representatives has an inherent power to punish contempts by a fine or imprisonment. Contempt that is punishable by the House is defined by section 4 of the *Parliamentary Privileges Act 1987* as conduct (including words) that 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.

Although section 24 of the Self Government Act gives the Legislative Assembly a power to punish contempts that is generally equivalent to that of the House of Representatives, it limits that power by providing that the Assembly cannot imprison or fine.

Therefore, provisions of this part create certain statutory offences relating to the operation of the Assembly. These statutory offences relate to conduct that would constitute contempt of the Assembly. This means a court can impose punishment by means of fine or imprisonment.

The offences dealt with in this Bill do not represent a definitive list of breach of privilege or contempts. The Assembly retains its power to deal with contempts.

The maximum penalty provided for each offence is a fine of 50 penalty units (\$5,000 - see section 33AA of the *Interpretation Act 1967*) or imprisonment for 6 months or both for an individual, or 250 penalty units (\$25,000) for a corporation.

The facts relating to the offence will be established through production of evidence by certificate. This process limits as far as possible the extent to which a court must examine the facts in issue, thereby maintaining the general rule that a court shall not examine the proceedings of the Assembly.

**Clause 16** states the Assembly or a committee may, on occasion, wish to specifically prevent publication of proceedings or reports. This clause provides that it is an offence to contravene, without reasonable excuse, any order of the Assembly or a committee preventing publication.

**Clause 17** states the Assembly or a committee may direct that certain evidence is to be taken *in camera* or on a confidential basis (although such decisions may be subsequently overruled by the Assembly or committee). Publication or disclosure of such material, without reasonable excuse, is contempt of the Assembly unless it has been published or the Assembly or relevant committee specifically authorises its publication.

**Clause 18** declares that an inherent function of the Assembly is the conduct of inquiries. The failure, without reasonable excuse, of a witness to attend before the Assembly when summoned, or to produce required documents is a contempt of the Assembly and is punishable by the courts. This clause will not apply to members of the Assembly as clause 9 of this Bill provides that members cannot be summoned to appear by the Assembly or a committee.

**Clause 19** relates to the knowing provision of false or misleading evidence or documents to the Assembly or an Assembly committee when attending on summons. This clause will also not apply to members of the Assembly, who are not subject to summons of the Assembly or committee.

**Clause 21** provides that improperly influencing witnesses in relation to evidence given or to be given by the Assembly or a committee, or inducing a person to refrain from giving evidence, are punishable by the courts. Improper influence includes, but

is not limited to, fraud, intimidation, force or threat, or offer or promise of inducement or benefit.

This clause also provides for certificate evidence signed by the Speaker, the Clerk or a presiding member of a committee. A certificate goes to prove certain fundamental elements of the various offences. This reduces the extent to which a court would be required to examine the proceedings of the Legislative Assembly or its committees. As such it provides a balance between the freedom of speech in the Assembly, provided for in clause 5, and the need to provide for the administration of the statutory offences by the courts. The certificates provided relate to certain facts required under the various offences.