

## PARLIAMENTARY PAPERS AND THEIR PROTECTION

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### ABSTRACT

[113] The absolute privilege that attaches to proceedings in parliaments is the foundation of parliamentary freedom of speech. When *Stockdale v Hansard* (1839) established that this protection did not attach at common law to papers printed by or under the authority of a parliament, the United Kingdom Parliament enacted legislation to extend privilege to such papers of parliament. Similar legislation has been adopted in all Australian jurisdictions. Legislation governing parliamentary papers extends parliamentary freedom speech by effectively precluding legal action arising from papers published under the authority of a parliament. While the number and variety of parliamentary papers has steadily increased, the question of whether papers printed by authority of a parliament should continue to attract absolute privilege receives if any consideration. This article explains the various forms of protection granted to parliamentary papers in all Australian jurisdictions. It also examines recent unsuccessful attempts to introduce significant changes in Victoria. The final section of this article considers whether legislation governing parliamentary papers should be reformed and suggests principles relevant to any review of this legislation.

### Introduction

In Australia there are statutes which accord protection against legal liability to those who publish documents by order or authority of a House of Parliament.<sup>3</sup> Statutory protection is also given to those who republish such documents,<sup>4</sup> or publish extracts

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<sup>3</sup> *Parliamentary Papers Act 1908* (Cth) s 4; *Defamation Act 1974* (NSW) s 17(1); *Parliamentary Papers (Supplementary Provisions) Act 1975* (NSW); *Parliament of Queensland Act 2001* (Qld) s 56; *Wrongs Act 1936* (SA) s 12; *Criminal Code* (Tas) ss 202–5; *Defamation Act 1957* (Tas) ss 10(3), 29; *Constitution Act 1975* (Vic) s 73(1); *Parliamentary Papers Act 1891* (WA) s 1; *Criminal Code* (WA) ss 351, 354(2), 358, 733; *Legislative Assembly (Powers and Privileges) Act 1992* (NT) s 11(1); cf *Defamation Act 1909* (ACT) s 5A(3).

<sup>4</sup> *Defamation Act 1974* (NSW) s 17(3); *Parliament of Queensland Act 2001* (Qld) s 51; *Wrongs Act 1936* (SA) s 12(2); *Defamation Act 1957* (Tas) s 29(3); *Constitution Act 1975* (Vic) s 74(1); *Parliamentary Papers Act 1891* (WA) ss 2, 3A; cf *Defamation Act 1909* (ACT) s 5A(1)(b).

from or summaries of them.<sup>5</sup> The Australian [114] legislation has been modelled largely on the United Kingdom's *Parliamentary Papers Act 1840*, an Act recently described by the United Kingdom Parliament's Joint Committee on Parliamentary Privilege as having been 'drafted in a somewhat impenetrable Victorian style'.<sup>6</sup> The Joint Committee has recommended that the Act 'be replaced with a modern statute'.<sup>7</sup>

This article reviews the Australian laws and considers whether they may be in need of reform. But first something should be said about the United Kingdom Act of 1840 and its antecedents.

### **Parliamentary Papers Act 1840**

This Act was enacted to counteract the decision of the Court of Queen's Bench in 1839 in *Stockdale v Hansard*.<sup>8</sup> In 1836 Stockdale had brought an action for libel against Messrs Hansard who had printed and published a report of the Inspector of Prisons. The report had been presented to the House of Commons, in accordance with a statutory requirement, and was ordered by the House to be published. In the report the Inspector had described a book published by Stockdale and found in the library of Newgate Prison as a work 'of the most disgusting nature, and the plates ... obscene and disgusting in the extreme'. (It was a work on the anatomy and the physiology of the generative system.) Stockdale's action failed because the jury found that the statements in question were true.<sup>9</sup> But the Court indicated that it was not prepared to accept that the report was protected by parliamentary privilege.<sup>10</sup>

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<sup>5</sup> *Defamation Act 1974* (NSW) ss 25(b), 26; *Defamation Act 1889* (Qld) ss 13(1)(b), 17; *Wrongs Act 1936* (SA) s 12(3); *Defamation Act 1957* (Tas) ss 13(1), 29; *Constitution Act 1975* (Vic) s 74(3); *Criminal Code* (WA) ss 354(2), 358; *Parliamentary Papers Act 1891* (WA) ss 3, 3A; *Defamation Act 1909* (ACT) s 5A2; *Legislative Assembly (Powers and Privileges) Act 1992* (NT) s 11. Generally the protection accorded is qualified but there are some exceptions. See M Gillooly, *The Law of Defamation in Australia and New Zealand* (1998) 239–40.

<sup>6</sup> United Kingdom, Parliament, Joint Committee on Parliamentary Privilege, *First Report* (HL 43-I, HC 214-I, Session 1998/99) [341].

<sup>7</sup> *Ibid* [374].

<sup>8</sup> (1840) 11 Ad & E 253; 113 ER 411.

<sup>9</sup> *Stockdale v Hansard* (1839) 9 Ad & E 1; 112 ER 1112.

<sup>10</sup> Under art 9 of the *Bill of Rights 1689*. See p 115 below.

When the statements were repeated in a further report by the Inspector of Prisons, Stockdale brought another action against Messrs Hansard. But before this action came to trial, the House of Commons passed a series of resolutions to the effect that the House was the sole judge of the existence and extent of its privileges. The House also instructed Messrs Hansard not to rely on the truth of the statements about which Stockdale complained, but to rely solely on the defence that the statements had been published by authority of the House.

In its judgment of 1839, the Court rejected the contention that the House was the sole judge of its privileges.<sup>11</sup> The Court held that the existence and extent of parliamentary privileges were matters of law on which a court was entitled to rule. The Court conceded that parliamentary privilege protected the publication of papers for the sole use of members of Parliament, but held that privilege did not extend to publications to the world at large, even if by order or authority of a House, as had occurred for the report for which Stockdale sued Hansard.<sup>12</sup>

The Parliament then enacted the *Parliamentary Papers Act 1840*. The Act provided (in s 1) that any civil or criminal proceedings in respect of a 'report, paper, vote or proceedings' published by order of either House should be stopped (that is, stayed) on production to the court of a certificate by the presiding officer of a House, verified by affidavit, to the effect that the document had been printed and published by order or authority of the House. Section 2 of the Act gave similar protection to those who published copies of such documents. Section 3 gave qualified protection to those who published extracts from, or abstracts of, such documents. Privilege extends to any publication that is bona fide and without malice.<sup>13</sup> The Act of 1840 [115] proved effective to bar two further actions for libel which Stockdale brought against Messrs Hansard.<sup>14</sup>

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<sup>11</sup> *Stockdale v Hansard* (1839) 9 Ad & E 1; 112 ER 1112.

<sup>12</sup> Accordingly, Hansard had to rely upon defences available at common law. He successfully defended the first action with a plea of justification, but the House of Commons was clearly concerned of the wider implications of the possibility that such issues could proceed to trial.

<sup>13</sup> There is authority that the defence of qualified privilege created by s 3 extends to a fair comment on an extract or abstract: *Mangena v Wright* [1909] 2 KB 977.

<sup>14</sup> *Stockdale v Hansard* (1840) 11 Ad & E 297; 113 ER 428.

### **Australian Laws and Practice Governing Parliamentary Papers**

As has been mentioned above,<sup>15</sup> the Australian statutes on parliamentary papers have been modelled largely on the United Kingdom Act of 1840. Some of the statutes accord protection to authorised printers and publishers of parliamentary papers against all forms of liability, both civil and criminal,<sup>16</sup> or all forms of civil liability only.<sup>17</sup> But there are other statutes which seem to limit the protection they confer to immunity from liability for defamation.<sup>18</sup>

Statutes that provide protection from liability for defamation are not necessarily exhaustive of the legal protections afforded to authorised printers and publishers of parliamentary papers. In some cases, potential defendants may claim protection under art 9 of the English *Bill of Rights 1689*, a provision which applies in all Australian jurisdictions.<sup>19</sup> 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'. In *Stockdale v Hansard*<sup>20</sup> the Court of Queen's Bench accepted that the privilege embodied in art 9 extends to those who publish papers, by

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<sup>15</sup> See above n 4.

<sup>16</sup> *Parliamentary Papers Act 1908* (Cth) s 4(1); *Wrongs Act 1936* (SA) s 12(1)–(3); *Constitution Act 1975* (Vic) s 73(1); *Legislative Assembly (Powers and Privileges) Act 1992* (NT) s 11(1); *Parliament of Queensland Act 2001* (Qld) s 56(1); and *Parliamentary Papers (Supplementary Provisions) Act 1975* (NSW) s 6 (extending protection to 'any action or proceeding, civil or criminal...'). Section 7 of the NSW Act specifies that the Act provides no defence to proceedings for defamation, but a separate defence of absolute privilege to proceedings concerning the publication of a document by order of one of both houses of parliament is contained in *Defamation Act 1974* (NSW) s 17. The Australian Capital Territory is subject to the same laws as those governing the Commonwealth. See n 35 below.

<sup>17</sup> *Parliamentary Papers Act 1891* (WA) s 1 (extending protection to 'any civil proceeding commenced in any manner...').

<sup>18</sup> See n 4 and 5 above.

<sup>19</sup> *Australian Constitution* s 49; *Parliamentary Privileges Act 1987* (Cth) s 16(1); *Imperial Acts Application Act 1969* (NSW) s 6 and Schedule 1; *Parliament of Queensland Act 2001* (Qld), s 8; *Imperial Acts Application Act 1984* (Qld) s 5; *Constitution Act 1934* (SA) s 38; *Constitution Act 1975* (Vic) s 19; *Imperial Acts Application Act 1980* (Vic) pt II, div 3; *Parliamentary Privileges Act 1891* (WA) s 1; *Legislative Assembly (Powers and Privileges) Act 1992* (NT) s 6(1); *Australian Capital Territory (Self Government) Act 1988* (Cth) s 24. See also *R v Turnbull* [1958] Tas SR 80, 83–4.

<sup>20</sup> (1840) 11 Ad & E 253; 113 ER 411.

authority of a House, for use of members only.<sup>21</sup> On this view, art 9 would clearly cover the printing and circulation among members of a parliamentary committee of minutes of the committee's proceedings and transcripts of evidence and submissions received by the committee, but it would not extend to the publication of documents for use by the general public. All Australian jurisdictions have enacted legislation that addresses this lacuna in parliamentary privilege, but the nature and scope of that legislation differs markedly.

### ***The Commonwealth***

Section 16(1) of the *Parliamentary Privileges Act 1987* (Cth) has affirmed the application of art 9 of the *Bill of Rights 1689* to the Parliament of the Commonwealth.<sup>22</sup> Section 16(2) has amplified the meaning of the expression 'proceedings in Parliament',<sup>23</sup> and s 16(3) has placed limits on the admissibility of evidence of parliamentary proceedings. Section 16(2) defines the concept of 'proceedings in Parliament' to include, *inter alia*: [116]

- (b) the presentation or submission of a document to a House or a committee;
- (c) the preparation of a document for the purposes of or incidental to the transacting of [the business of a House or of a committee]; and
- (d) the formulation, making or publication of a document, including a report, by or pursuant to an order of an House or a [parliamentary] committee and the document so formulated, made or published.<sup>24</sup>

It should be noted that paragraph (d) is expressed in such wide terms that it can encompass publications, by order of a House, or a parliamentary committee, of documents which are to be made available to members of the public at large. Documents published by order of a House or committee may include not only documents submitted to or tabled before them, but also documents not immediately related to any parliamentary business.

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<sup>21</sup> See also *Lake v King* (1667) 1 Wm Saunders 131; 85 ER 137.

<sup>22</sup> See also *Legislative Assembly (Powers and Privileges) Act 1992* (NT) s 6(2).

<sup>23</sup> See also *Constitution of Queensland Act 2001* (Qld) s 90.

<sup>24</sup> Under s 3(1) of the Act the term 'document' includes a part of a document.

Section 16(2)(d), read in conjunction with s 16(3), seems to have extended the protections afforded to those who have published documents by order or authority of a House or committee. Section 16(3) provides, *inter alia*, that:

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

...

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

Literally construed, these provisions appear to give those who have published documents by order of a House or committee absolute protection against any form of legal liability, whether it be for defamation, sedition, breach of copyright or breach of a duty of confidence.

The relationship between these provisions and the *Parliamentary Papers Act 1908* (Cth) seems not to have been carefully considered. To the extent that there is any inconsistency between them, the provisions of the 1987 Act must prevail.<sup>25</sup> There is, however, a constitutional question which, some day, the High Court of Australia may have to resolve. It is the extent to which the federal Parliament can legislate to give protections against liability to those who publish by order or authority of a House or a parliamentary committee.

Section 49 of the federal *Constitution*, in combination with s 51(xxxvi), gives the federal Parliament power to enact legislation to declare what are the powers, privileges and immunities of the Houses of the federal Parliament, their committees and members.<sup>26</sup> In *R v Richards; Ex parte Fitzpatrick and Browne*<sup>27</sup> the High Court

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<sup>25</sup> Contra H Evans, *Ogders' Senate Practice* (10th ed, 2001) 51–2, who suggests that s 16 of the *Parliamentary Privileges Act 1987* (Cth) has 'superseded' the *Parliamentary Papers Act 1908* (Cth).

<sup>26</sup> Section 49 provides that:

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

expressed the view that the Parliamentary Papers Act 1908 (Cth) is supported not by these provisions, but rather by s 51(xxxix), the provision which empowers the federal Parliament to make laws with respect to, *inter alia*, '[m]atters incidental to the execution of any power vested by this Constitution in the Parliament or in either House thereof ...'.<sup>28</sup> The case, it should be said, was not one in which the [117] validity of the Act of 1908 was questioned. The central issue to be decided was whether s 49 of the *Constitution* was effective to grant to the Houses of the federal Parliament the penal jurisdiction possessed by the House of Commons as of 1 January 1901. The High Court held that it was. Nevertheless the remarks the Court made about the source of the power to enact the 1908 Act suggest that it thought that there are limits on the kind of legislation that the federal Parliament can enact pursuant to s 49, read in conjunction with s 51(xxxvi). The Court did not have to consider the extent to which the express incidental power conferred by s 51(xxxix) will support federal legislation which is aimed to give protections against legal liabilities to those who publish by order or authority of a House, or else are deemed to have so published. Confronted with a federal statute which provided that all documents laid before Houses of the federal Parliament were to be deemed to have been published by authority of the Houses, thus attracting all the protections accorded by the *Parliamentary Papers Act 1908* (Cth), the Court might well take the view that the express incidental power does not support a statute with such far-reaching consequences for those whose legitimate interests may be adversely affected by material contained in a tabled document. In such a case the High Court might consider it appropriate to take account of the fact that parliamentary practices may not impose controls on the ability of members of the federal Parliament to table documents before the Houses.

There are heads of federal legislative power, other than the express incidental power, which could be relied upon in support of federal legislation which seeks to protect authorised publishers of what are broadly describable as parliamentary papers against legal liabilities. For example, the copyright power conferred by s 51(xviii) of the

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Section 51(xxxvi) gives the Parliament power to make laws with respect to 'matters in respect of which this Constitution makes provision until the Parliament otherwise provides'.

<sup>27</sup> (1955) 92 CLR 157.

*Constitution* may be exercised to confer immunity from liability for breach of copyright.<sup>29</sup>

These days the range and volume of documents which potentially may attract the protection of the legislation on parliamentary papers are considerable. There are many statutes which require reports to be laid or cause to be laid before Houses of Parliament. But documents may be tabled by Ministers and private members without any statutory obligation to do so. Any such documents may be ordered by a House to be printed and published. Some statutes provide continuing authority to a government printer to print and publish records of debates and votes and proceedings.<sup>30</sup>

Not all documents laid before a House will be ordered to be printed and published, though in many cases such orders will be made as a matter of course and without consideration by members of the contents of the documents. In its report of 1984 the Joint Select Committee of the federal Parliament on Parliamentary Privilege considered whether it was necessary or practicable to establish some system whereby documents laid before the Houses would be screened before an order for their printing and publication was made. The Joint Committee discussed two possibilities: inspection of tabled documents by a parliamentary committee, or else a requirement that notice be given of a motion that a document be printed and published. The Committee concluded that neither of these alternatives was practicable.<sup>31</sup>

### ***The Northern Territory and the Australian Capital Territory***

When the Australian Capital and Northern Territories were granted powers of self-government they were each essentially subject to the same laws governing parliamentary privilege as apply to the Commonwealth Parliament. The legislation establishing the Assembly of each Territory provides that the Assembly shall have the same privileges as those enjoyed by the House of Representatives of the

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<sup>28</sup> Ibid 167–8.

<sup>29</sup> The *Copyright Act 1968* (Cth) is a more or less complete code on Australian copyright law.

<sup>30</sup> *Parliamentary Papers Act 1908* (Cth) s 3(2); *Parliament of Queensland Act 2001* (Qld) ss 50, 51; *Wrongs Act 1936* (SA) s 12(4); *Constitution Act 1975* (Vic) s 72; *Legislative Assembly (Powers and Privileges) Act 1992* (NT) s 10(2).

<sup>31</sup> *Final Report* (Parl Pap 219/1984) [5.47], [5.48].

Commonwealth Parliament, until the Assembly makes provision to the contrary.<sup>32</sup> The ACT Assembly [118] has not moved to adopt its own laws governing parliamentary privilege or parliamentary papers and, therefore, remains subject to the federal regime.

The Northern Territory has enacted legislation similar to the federal legislation explained above, which extends parliamentary privilege to parliamentary papers. The *Legislative Assembly (Powers and Privileges) Act 1992* (NT) includes provisions that both confirm the application of art 9 of the *Bill of Rights 1689*, while also amplifying the scope of the expression 'proceedings in Parliament'.<sup>33</sup> Section 11(1) of the Northern Territory Act provide that no proceedings, either civil or criminal, can lie against a person who publishes any document or evidence that is published under the authority of the Assembly or a committee of the Assembly.<sup>34</sup>

### ***Queensland***

In Queensland the law relating to parliamentary papers was re-shaped by the *Parliamentary Papers Act 1992* and further re-shaped by Pt 3 of Ch 3 of the *Parliament of Queensland Act 2001*. The latter Act commenced to operate on 3 June 2002. The provision in Pt 3 is s 56(1) of which provides that: 'A person does not incur any civil or criminal liability for publishing evidence or a document by order or under authority of the [Legislative] Assembly or a committee.' Under s 51 the Assembly is taken to have authorised certain persons to publish, in any form, what are termed 'parliamentary documents'. The term 'parliamentary document' is defined to mean:

- (a) the Votes and Proceedings; or
- (b) the Notices of Motion and Orders of the Day; or
- (c) the Questions on Notice and answers to questions on notice; or
- (d) Hansard reports of proceedings in the Assembly, a committee or an inquiry; or
- (e) another document that is published with the authority of an authorising person.

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<sup>32</sup> *Australian Capital Territory (Self-Government) 1992* (Cth) s 24; *Legislative Assembly (Powers and Privileges) Act 1992* (NT) s 6.

<sup>33</sup> *Legislative Assembly (Powers and Privileges) Act 1992* (NT) s 6(1)–(4).

<sup>34</sup> *Legislative Assembly (Powers and Privileges) Act 1992* (NT) s 11(1). Sections 9 and 10 provide the authority to order the publication of papers and evidence.

(Under s 48 an 'authorising person' is the Speaker, the chairperson of a committee of the Assembly, the Clerk of the Assembly, or the chief reporter.) The persons who, under s 51, are taken to have authority to publish parliamentary documents are members of the Assembly or person acting on their behalf; the Clerk; officers or employees of the parliamentary service acting in the course of their duties; the government printer and officers and employees of the government printer acting in the course of their duties.

The protection afforded by s 56 of the Act is not limited to 'parliamentary documents' as defined in s 51, for s 49 makes it clear that the Legislative Assembly may authorise publication of documents which are not 'parliamentary documents', for example, reports which are tabled by Ministers. Section 49 provides that the Legislative Assembly 'may authorise the publication of a document relating to proceedings in the Assembly', but without limitation 'by implication' of 'any other power the Assembly may have to authorise the publication of a document'. Additionally s 49 provides that a committee of the Assembly:

may authorise publication of:

- (a) evidence given before the committee; or
- (b) a document presented or submitted to the committee; or
- (c) a document (including a report) prepared or made by the committee.

For the purposes of s 49, documents 'relating to proceedings in the Assembly' presumably are documents relating to any of the matters listed in s 9 as being 'proceedings in the Assembly'.

[119] If a person relies on the protection accorded by s 56 of the Act, and the document published by the person is not a 'parliamentary document' within the meaning of s 51, the person must show that he, she or it received the requisite authority to publish. If in ordering or authorising the publication of a document the Assembly or a committee does not specify who is to have authority to publish, 'the Assembly or the committee is taken to have authorised the government printer to publish the evidence or document' (s 50).

One aspect of Pt 3 of Ch 3 of the *Parliament of Queensland Act 2001* that may be thought unsatisfactory is its treatment of the publication of copies of, parts of, extracts from, and abstracts of parliamentary papers. The definitions in s 51 indicate that 'parliamentary documents' include copies of, parts of, extracts from and abstracts of such documents, but only if they have been 'published with the authority of an authorising person', that is to say any one of the persons listed in s 48. But the absolute protection against legal liability accorded by s 56, read in conjunction with s 51, does not extend to just anyone who chooses to publish a copy, a part, an extract from or summary of a 'parliamentary document', such as Hansard. It extends only to the classes of persons identified in s 51 as persons to whom the section applies. Those persons do not include proprietors of newspapers.

One consequence of these provisions is that if a member of the Legislative Assembly chooses to republish, to the world at large, statements recorded in Hansard (a 'parliamentary document'), and the member does so by authority of an 'authorising person', the member can claim the absolute protection against legal liability accorded by s 56 of the Act. But if the same statements, recorded in Hansard, are republished in a newspaper, the proprietor of the newspaper cannot claim protection under s 56 of the Act. The defences, if any, available to the newspaper proprietor in such a case will have to be based on other laws, for example common law regarding liability for defamation as modified by statute, and by the implied constitutional freedom of political communication.

The *Parliament of Queensland Act 2001* contains some provisions to do with documents tabled in the Legislative Assembly which may or may not have attracted the protection accorded by s 56 of the Act. These provisions are examined in the next part of this article, in the broad context of laws and parliamentary practices regarding the tabling of documents in a House of a parliamentary legislature.

### ***New South Wales***

New South Wales is the only Australian State in which parliamentary privilege continues to be based largely on common law. That State has, however, introduced legislation to protect those who publish parliamentary papers. The *Parliamentary Papers (Supplementary Provisions) Act 1975* (NSW) provides that it is a defence 'to

any action or proceeding, civil or criminal, brought in respect of the publication of any document or copy thereof' if it is proved that the document was ordered to be published by either House of Parliament, a joint sitting of both Houses or a committee of Parliament.<sup>35</sup> The Act grants no protection to the publication or copying of either extracts from or abstracts of such documents, though protection against proceedings for the publication of copies, extracts and abstracts of parliamentary papers is granted by other legislation.<sup>36</sup>

### **Victoria**

The *Constitution Act 1975* (Vic) also provides that any 'civil criminal or mixed proceeding' that is based upon the reports, papers or proceedings of either House of Parliament may be stayed upon proof that the document in question was published by authority of either House.<sup>37</sup> The same defence applies to actions arising from the publication of extracts, but not abstracts, of parliamentary documents.<sup>38</sup> The [120] defence applies to documents that are published in either written or electronic form.<sup>39</sup>

### **South Australia**

South Australia has enacted legislation that grants protection in almost identical terms as the 1840 United Kingdom Act. Protection against civil and criminal proceedings liability is granted to those who publish votes, papers or reports of the proceedings of parliament, which either House has authorised to be published.<sup>40</sup> Qualified protection extends to the publication of extracts from or abstracts of the same documents.<sup>41</sup>

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<sup>35</sup> *Parliamentary Papers (Supplementary Provisions) Act 1975* (NSW) s 6.

<sup>36</sup> *Defamation Act 1974* (NSW) ss 25(b), 26.

<sup>37</sup> *Constitution Act 1975* (Vic) s 73(1). Note also s 19(1), which provides that the Houses of the Victorian Parliament have the same powers held by the United Kingdom House of Commons as of 21st July 1855. The powers conferred on the Victorian Parliament include those granted to the House of Commons by the *Parliamentary Papers Act 1840* (UK).

<sup>38</sup> *Constitution Act 1975* (Vic) s 73(3).

<sup>39</sup> *Constitution Act 1975* (Vic) ss 73(1)(3).

<sup>40</sup> *Wrongs Act 1936* (SA) s 12(1)(2).

### ***Western Australia***

Western Australia has also enacted legislation granting virtually the same protection to parliamentary papers as is granted by the United Kingdom Act of 1840.<sup>42</sup> The *Parliamentary Papers Act 1891* (WA) also grants qualified privilege to those who publish a speech made in parliament, or an extract of a speech, at the request of any member of parliament. This privilege is also extended to material that is not referred to by the member but is included in the parliamentary debates.<sup>43</sup> The *Criminal Code* (WA) extends protection against the offence of criminal defamation to those who publish papers containing defamatory material, if the publication was made by order or under authority of either House.<sup>44</sup> Similar protection applies to the publication of copies of reports and papers, or extracts from or abstracts of reports and papers.<sup>45</sup>

### ***Tasmania***

The Tasmanian Parliament has not enacted legislation that directly governs the status of parliamentary papers or adopts the UK Act of 1840. The only form of protection that is expressly granted to papers published by order or under authority of either House is against proceedings in defamation.<sup>46</sup> The *Criminal Code* (Tas) grants protection against the offence of criminal defamation that in virtually identical terms to that granted in Western Australia.<sup>47</sup>

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<sup>41</sup> *Wrongs Act 1936* (SA) s 12(3).

<sup>42</sup> Sections 1–3 of the *Parliamentary Papers Act 1891* (WA) essentially mirror the corresponding sections of the UK Act.

<sup>43</sup> *Parliamentary Papers Act 1891* (WA) s 3A.

<sup>44</sup> *Criminal Code* (WA) ss 351(3), 733. Protection against the offence of defamation is also extended to members of parliament, for the publication of any defamatory matter in the course of a speech made in Parliament, and people who present to either House petitions that contain defamatory material: s 351(1)(2).

<sup>45</sup> *Criminal Code* (WA) s 354(2). Publication must be in good faith.

<sup>46</sup> See above nn 3–5.

<sup>47</sup> *Criminal Code* (Tas) s 202(3) grants protection against criminal defamation to any person who publishes a paper by order or authority of either House. Protection is also granted to the publication of copies of papers, or extracts from and abstracts of papers, that are published in good faith: s 205(1)(b). Protection against criminal defamation is also granted to members of parliament, for the publication of

### ***Tabled Papers***

Houses of Parliament do not order or authorise publication of all the papers which have been laid before them. Some of the papers laid before them will have been tabled by Ministers in accordance with a statutory requirement. Others may have been laid by private members. Even if there is no order that a tabled paper be published, the acts of tabling and the subsequent use of the paper in the Parliament are [121] treated as proceedings in Parliament for the purposes of Art 9 of the *Bill of Rights 1689*.<sup>48</sup> This means that if the paper contains defamatory material, no legal liability will be incurred simply because of the act of tabling or because the paper has subsequently been inspected by members of the House. Any doubts about the liability of officers of the federal Parliament for allowing members access to tabled documents have been put to rest by s 11(1) of the *Parliamentary Privileges Act 1987* (Cth). This provides that: 'No action, civil or criminal lies against an officer of a House in respect of publication to a member of a document that has been laid before a House.'<sup>49</sup>

Parliamentary officers may occasionally be asked by non-members to allow them access to documents which have been tabled but not ordered to be printed and published. Those requesting access may have been alerted to the existence of the documents by the official records of parliamentary proceedings. Such persons may be journalists, researchers or even persons to whom the documents relate. For the purposes of the laws of defamation, the provision of access to tabled documents would certainly amount to publication. If the documents contain defamatory material, officers of Parliament may therefore need to consider whether release of a document to a non-member would attract a defence of qualified privilege. Section 11(2) of the *Parliamentary Privileges Act 1987* (Cth) contemplates that this defence may be available. It provides that the section 'does not deprive a person of any defence that would have been available to that person if this section had not been enacted'.

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any defamatory matter in the course of a speech made in Parliament, and people who present to either House petitions that contain defamatory material: s 202(1)(2).

<sup>48</sup> On the status of tabled documents see G Griffiths, *Parliamentary Privilege: Use, Misuse and Proposals for Reform* (NSW Parliamentary Library Research Service, Briefing Paper No. 4/97) 29.

<sup>49</sup> Although s 11(1) does not refer to staff of members, it would probably be construed as applying to them when acting as agents of members.

The *Freedom of Information Act 1982* (Cth), it should be added, gives no protection to officers of the federal Parliament who provide access to tabled documents, for the Act does not apply to documents in the possession of the Houses of Parliament or parliamentary departments. The same is true of other Australian freedom of information legislation. But if copies of tabled documents are held by government departments or prescribed authorities to which such legislation applies, members of the public may be able to gain access to those documents by making a request for access under that legislation. Should officers authorised to deal with such requests allow access, they will be afforded some legal protection against legal liability.

The internal rules and practices of Houses of Parliament regarding the tabling of documents vary. Some may impose more stringent controls than others. One matter which should be of particular concern is the extent to which members should be permitted to table documents which they have received from members of the public. In 1998 the Senate's Committee of Privileges expressed concern in this regard. The Committee spoke of 'the gravity of senators' actions in placing on public record, under parliamentary privilege, documents on behalf of or authored by other persons'. In the Committee's opinion: 'It is the duty of all senators to read all aspects of material they are tabling and to take responsibility for it'.<sup>50</sup> In the particular case under investigation by the Committee, the Senator who had tabled documents supplied to him by a non-member confessed that he had not read the documents before he tabled them. He apologised for his failure to do so. In the same case the Committee concluded that an extra-parliamentary body would be acting in breach of the Senate's privileges if it made inquiry into the circumstances attending the supply of the documents to the Senator and subsequently tabled by him.<sup>51</sup>

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<sup>50</sup> *72nd Report* (June 1998) [2.33].

<sup>51</sup> The extra-parliamentary body in the case was a university body appointed to inquire into the conduct of a staff member.

[122] **Should Legislation Governing Parliamentary Papers be Reformed?**

*The view of the Joint Committee of the United Kingdom Parliament on Parliamentary Privilege*

When the Joint Committee of the United Kingdom Parliament on Parliamentary Privilege conducted an extensive review of parliamentary privileges, it considered whether the various privileges enjoyed by the Parliament ought to continue. The Committee decided that parliament should retain only those privileges that were necessary for the functioning of parliament. The Committee explained:

Parliament should be vigilant to retain rights and immunities which pass this test, so that it keeps the protection it needs. Parliament should be equally vigorous in discarding rights and immunities not strictly necessary for its effective functioning in today's conditions.<sup>52</sup>

That principle provides a useful test to determine the appropriate scope for legislation governing parliamentary papers. Article 9 of the *Bill of Rights 1689*, and later statutory provisions in similar terms, afford what is effectively absolute freedom of speech in parliaments. That freedom is extended not only to members of parliament but also to parliamentary witnesses and those who have presented petitions to a House. Legislation governing parliamentary papers enhances the freedom of speech in parliament by essentially precluding legal proceedings arising from the reproduction of matters contained in parliamentary papers. The Joint Committee of the United Kingdom Parliament on Parliamentary Privilege explained the continued importance of the 1840 Act in the following terms:

Parliamentary freedom of speech would be of little value if what is said in Parliament by members, ministers and witnesses could not be freely communicated outside of Parliament. There is an important public interest in the public knowing what is being debated and done in Parliament.<sup>53</sup>

The Committee was clearly mindful that documents which receive protection by operation of the 1840 Act often provide important information for public discussion

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<sup>52</sup> Above n 4, [4].

<sup>53</sup> Ibid [341].

of government affairs. These documents include the annual reports of government departments and statutory bodies and reports tabled by officers of the Parliament such as Ombudsmen and Auditors-General.

But the Joint Committee formed the view that the protections accorded by the *Parliamentary Papers Act 1840* (UK) extend too far.<sup>54</sup> The Committee expressed concern about the amount of material which is now published by order or authority of the Houses of the United Kingdom Parliament (especially by order of the House of Commons),<sup>55</sup> and which as a result receives the protections of the 1840 Act.<sup>56</sup> The Committee noted that many of the papers which are presented to the Houses, and then ordered by them to be published, are not ones which are required by statute to be presented.

The 1840 Act, and other Acts modelled upon it, enable Houses of Parliament to confer on those who publish documents by their order or authority, absolute protection against legal liability. That protection [123] may be granted not only in respect of reports of debates, records of House resolutions and reports of parliamentary committees. It may also be granted to reports prepared by extra-parliamentary bodies, and irrespective of whether the authors of the reports are required, by statute, to cause their reports to be laid before the Houses. Literally construed, the Act of 1840 allows Houses to confer absolute protection in respect of any document simply by resolving that the document be printed and published by their order or authority.

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<sup>54</sup> This finding was part of the Committee's wider recommendation to modernise the Act; see p 114 above.

<sup>55</sup> The House of Lords only orders publication of documents generated by the House itself or one of its committees. The House of Commons orders the publication of documents from a much wider range of sources and, therefore, publishes much more material than the House of Lords.

<sup>56</sup> Joint Committee on Parliamentary Privilege, above n 6, [343]. The Committee did not undertake a detailed assessment of the number of documents now published by order or authority of the House of Commons and, therefore, receive the protection of the 1840 Act. A cursory assessment of the material emanating from the House indicates that there are several thousand such documents published each year.

The Committee also remarked on the extent to which the House of Commons currently orders the publication of papers laid before it under statute, as a matter of course. In the opinion of the Committee this practice contradicts the principle that 'the absolute legal immunity afforded by parliamentary privilege' should be confined 'to those areas which need this immunity if Parliament is to be effective'.<sup>57</sup> The Committee considered that 'the presumption should be that, unless there are strong reasons in the public interest, no paper other than one emanating from the House or its committees should be absolutely privileged'.<sup>58</sup>

There are good reasons why the absolute protection granted by legislation on parliamentary papers should be applied sparingly. Documents so protected cannot be quashed or set aside, and may be freely reported by the media. A person who is the subject of adverse comment or finding in a document has no effective remedy once it attracts absolute privilege, even if the adverse comments or findings were unjustified or untrue.<sup>59</sup> There is also the question of the extent to which it is necessary, rather than simply convenient, to grant privilege to documents received by parliament. In many cases the information included in parliamentary papers is not controversial and does not seem to require or deserve the absolute privilege that it usually receives. One example is the annual reports of most government departments and statutory bodies. These reports are increasingly occupied by bland and self-serving policy statements, routine annual financial statistics and information about compliance with regulatory requirements such as freedom of information and occupational health and safety legislation. It may be argued that reports of this nature do not require or deserve absolute privilege.

***The Constitution (Parliamentary Privilege) Bill 2001 (Vic)***

Sometimes a report which must, or eventually will, be tabled is completed at a time when neither House is sitting. These reports are normally withheld until the next sitting day of a House, when the report can be tabled and attract parliamentary privilege. The legislation establishing some royal commissions in Victoria have

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<sup>57</sup> Ibid [348].

<sup>58</sup> Ibid [352].

included a provision enabling the report of the commission to attract parliamentary privilege even if the report was completed when the Parliament was not sitting. Such provisions were used to facilitate the release of reports of recent royal commissions into an explosion at the plant of the State's main gas supplier and the operation of the metropolitan ambulance service.<sup>60</sup> In the absence of such a provision, reports will not normally attract parliamentary privilege until laid or tabled before parliament. The time between the completion and release of a report may be a matter of weeks, even months, depending on the sitting times of the Houses in question. Such delays can prevent any informed public discussion of the contents of important reports.

The Victorian government attempted to introduce a more comprehensive solution to this problem with the Constitution (Parliamentary Privilege) Bill 2001. The Bill extended the protections afforded by the existing provisions on parliamentary papers. It provided that when a House is not sitting, certain persons have authority to give the presiding officers of the two Houses copies of reports.<sup>61</sup> Those [124] supplying reports to the presiding officers were obliged to cause the reports to be published. The reports sent to the presiding officers had to be laid or cause to be laid before each House on the next sitting day of the Parliament. There was no need for the Houses to authorise the printing and publication of the reports, for they would have been published already, and with the full protection already afforded to papers printed or published by order or authority of a House. This is because the Bill provided that the reports were deemed to have been ordered by each House to be printed.

The new scheme proposed by the Bill would have applied to a limited range of documents: reports of royal commissions and boards of inquiry, reports of committees established under the *Parliamentary Committees Act 1968*,<sup>62</sup> reports of the

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<sup>59</sup> In some circumstances a person who is aggrieved by an abuse of parliamentary privilege may have a right of reply. See E Campbell, *Parliamentary Privilege* (2003) 69–87.

<sup>60</sup> See the *Longford Royal Commission (Report) Act 1999* (Vic) and the *Constitution (Parliamentary Privilege) Act 2001* (Vic).

<sup>61</sup> If a document has been given to the presiding officers under the new scheme, they are obliged to notify members of the House over which they preside.

<sup>62</sup> That Act was recently repealed by the *Parliamentary Committees Act 2003* (Vic), but the new Act retains the same parliamentary committees as its predecessor.

Ombudsman, those reports the Auditor-General is required to make under the *Audit Act 1994*, reports of persons who are required by statute to lay a report before the Parliament, and reports of persons who have a statutory discretion to lay a report before Parliament. But the Bill granted a discretion to the presiding officers of the Houses, to extend the scheme to other documents if they had been supplied to them by a Minister. Such documents could include, for example, reports of ad hoc committees appointed by Ministers.

Several points may be made about the Victorian Bill. First, it extended the circumstances in which persons and bodies would be required to cause documents to be laid before the Houses. Secondly, the Bill gave to a number of extra-parliamentary bodies authority to decide that their reports should be published, with absolute protection against legal liability. Thirdly, the Bill subtracted from the Houses' power to decide what papers they are prepared to receive, and also to decide what papers are to be printed and published by their order. This aspect of the Victorian Bill was clearly at odds with the concern of the United Kingdom Parliament's Joint Committee about the extent to which the Houses may, by their resolutions, extend the absolute protections against legal liability afforded by parliamentary papers legislation, and its suggestion that the ability of the Houses to confer those protections should be curtailed.<sup>63</sup> Finally, the Bill would undoubtedly have ensured that the media and the public can be provided with access to many reports of governmental agencies, in advance of their tabling in Parliament. Comments by members of the public on these reports could help to inform parliamentary consideration of the reports when they are eventually tabled.

The reforms proposed in the Victorian Bill were eventually abandoned after sustained criticism by the opposition parties, who suggested that the proposals could have enabled the Executive to control the operation of parliamentary privilege over parliamentary papers.<sup>64</sup> In particular, the Bill would have enabled Ministers to

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<sup>63</sup> Joint Committee on Parliamentary Privilege, above n 6, [348]–[351].

<sup>64</sup> Bipartisan support was required for the Bill because the government of the day held a minority in both Houses. Virtually all aspects of the proposed reforms had been removed by the time the Bill was finally passed. The final enactment did, however, make provision for the report of a royal commission into the State's ambulance service to gain the protection of parliamentary privilege even though the

determine whether, and when, papers would be delivered by their departments to the Parliament. It should be noted that, at the time the Bill was proposed, the opposition parties held a significant majority in the Legislative Council and the President of the Council was a member of the opposition. Although the Bill would in theory have provided the President with power to determine whether a paper should be accepted, the government and its Ministers controlled the departments and associated bureaucracies and, therefore, the delivery of all papers to Parliament.

### **Concluding Observations on Possible Reform**

The United Kingdom Parliament's Joint Committee on Parliamentary Privilege recommended that the 1840 Act be reviewed, and replaced by another statute. But they did not indicate precisely what form the [125] new statute should take. A body charged with review of this Act, or other legislation patterned after it, would, we think, need to consider the following questions:

What is the relationship between art 9 of the *Bill of Rights 1689* and legislation designed to protect publishers who cannot rely on the protection of art 9? The protection afforded by art 9 has been described as 'the single most important parliamentary privilege'.<sup>65</sup> It enshrines freedom of parliamentary debate by preventing legal proceedings against members of parliament for statements made in Parliament. Legislation that extends similar protection to those who publish parliamentary papers furthers both the scope and purpose of art 9. It furthers the scope of art 9 by extending absolute privilege to documents that, according to the ruling in *Stockdale v Hansard*,<sup>66</sup> would not otherwise be protected. It furthers the purpose of art 9 because the protection granted to those who publish documents by order or authority of Parliament essentially enables the publication and dissemination of information received by parliaments.

Should the power of Houses to order or authorise printing and publication of documents be constrained in relation to classes of materials which they may order or

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report was completed and delivered when neither House was sitting. That provision expired upon receipt of the report of the royal commission.

<sup>65</sup> Joint Committee on Parliamentary Privilege, above n 6, [36].

authorise to be published, and made available to members of the public? For example, should the power of Houses to authorise the printing and publication of documents be restricted to documents which pertain to proceedings in Parliament? If so, what are to be regarded as proceedings in Parliament? How is that concept to be defined?<sup>67</sup> There is good reason why the authority of Houses to authorise or order the publication of documents which, on publication, will be absolutely privileged should be limited. The simplest way of limiting their authority in this regard would probably be a provision that the documents relate to proceedings in the parliament. A definition of what can be regarded as 'proceedings in Parliament' would be desirable. The definition could be as wide as that in s 16 of the *Parliamentary Privileges Act 1987* (Cth). That definition covers tabled documents and documents received by parliamentary committees, even though the documents have not been read by members of Parliament or parliamentary officers.

In consideration of the possible reforms of legislation on parliamentary papers one needs to think about the justifications for statutes like the UK Act of 1840. One may sympathise with the firm of Hansard in the cases discussed earlier in this article. One may also argue that, in parliamentary democracies, there is a public interest in publication of documents relating to proceedings in Parliament, whatever their content. But a power invested in Houses of Parliaments to authorise or order the publication of any documents, and thereby accord protection to the publisher against legal liability, is capable of abuse.

Is there any justification for legislation which deems certain classes of documents to have been published by order or authority of a House, notwithstanding that documents

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<sup>66</sup> (1840) 11 Ad & E 253; 113 ER 411.

<sup>67</sup> There is a question about whether a statutory definition of 'proceedings in Parliament' should apply equally to art 9 of the *Bill of Rights 1689* and legislation the object of which is to give protection to publishers of reports of such proceedings. Section 9 of Queensland's *Parliament of Queensland Act 2001* substantially replicates the federal provision. The *Legislative Assembly (Powers and Privileges) Act 1992* (NT) s 6(2) adopts a similar but less extensive version. The United Kingdom Parliament's Joint Committee on Parliamentary Privilege considered various definitions of proceedings in Parliament, and proposed the adoption of a statutory definition for the purposes of art 9 of the *Bill of*

of that description have not been laid before a House? The recently proposed Victorian reforms would have enabled the presiding officers of either House to receive and publish copies of a limited range of reports, such as reports of the Ombudsman or Auditor-General or the reports of parliamentary committees, when neither House is sitting.<sup>68</sup> This procedure would enable reports to be published under cloak of absolute privilege and freely disseminated and discussed, even though neither House was sitting at the time when the report was completed and delivered.

[126] Several comments may be made about the desirability of reforms along the lines of the recent Victorian proposals. One is that, if the reforms had been enacted, Parliament would have determined the class of reports to which the procedure applied. The authority of Parliament cannot be said to be diminished simply by the fact that papers were published under parliamentary authority out of session, because the authority to do so would clearly have emanated from the Parliament itself. Another relevant issue is that the Victorian Bill would have ensured that the public availability of important papers was not restricted by the sitting times of Parliament. It is arguably artificial to delay the publication of reports until the Parliament actually sits, particularly if the report will inevitably be laid before one or both Houses. The procedure would also have removed the cost and inconvenience involved in recalling Parliament to table an important paper outside of scheduled parliamentary sittings.

But it must be noted that reports published outside of parliamentary sittings will not be the subject of parliamentary debate at the time of their publication. In many cases the controversy surrounding a public report will decline rapidly. A report that is published when neither House is sitting may not receive the benefit of full parliamentary debate when the Parliament resumes. It could, therefore, be argued that the receipt of parliamentary papers outside of sitting times is undesirable because it has the potential to diminish the pre-eminent role of the Houses in political debates.

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*Rights 1689* (above n 6, [129]). But the Committee did not signify whether it thought that the same definition should be adopted in legislation on parliamentary papers.

<sup>68</sup> In the Constitution (Parliamentary Privileges) Bill 2001 (Vic), discussed at p 123–4 above.

Should the protections afforded by legislation on parliamentary papers afford protections against all possible forms of legal liability, or should the legislation afford protection against specific forms of liability, such as defamation? In any debate on the scope of protection from legal liability it is important to note that even a relatively narrow degree of protection will deny a person a remedy that might otherwise be available. Protection against liability for proceedings in defamation, or civil liability more generally, can leave an injured person without any effective form of redress. A provision that grants a more general protection against legal proceedings can preclude other effective remedies, such as proceedings for judicial review.

Should the legislation specifically cover publication by electronic means? Legislation governing parliamentary papers was first enacted in a time when the only form of publication was by printed hardcopy, but virtually all parliamentary papers are now also published electronically. Parliamentary papers may be obtained online quickly, and usually free of charge, from the official website of the Parliament in question. Those who regularly use public or university law libraries, or other places such as law firms that have traditionally held a selection of parliamentary papers, would know that parliamentary papers are increasingly accessed in electronic rather than hardcopy form. The growth of electronic publication has also greatly increased the ability of the general public to access parliamentary papers.

If parliamentary papers are now accessed frequently, perhaps even principally, by electronic means, legislation governing parliamentary papers ought to reflect this change. 'Publication' for the purposes of such legislation could be defined to include publication by either electronic or hardcopy format. It might also be appropriate that any such amendment specify that where a parliamentary paper was, or could be, published in both electronic and hardcopy format, protection should attach from the time of the first publication. Such a clause would remove any perception that one form of publication held priority over the other.

Should the legislation draw any distinction between government printers and printers and publishers within the private sector? Parliamentary papers were traditionally published by an official government printer, but much publishing work is now

assigned to bodies which have submitted tenders, on a competitive basis.<sup>69</sup> Some statutes extend protection only to government printing [127] bodies,<sup>70</sup> but most are silent on this matter. The protection granted to parliamentary papers derives from the public interest in the open discussion of parliamentary business. On this view, there is no clear reason why the extent of any statutory protection should vary depending on whether the publisher is an official or non-official publisher, so long as the publication is a true and correct copy of papers which a House has ordered or authorised to be printed and published.

What should be the extent of the protections accorded to those who publish extracts from, or summaries of, documents which a House has ordered or authorised to be printed and published? The UK Act of 1840 granted protection from *all* criminal and civil liability to papers published by either of either House. The same absolute protection was extended to those who published copies of such documents (s 2), but only qualified protection was extended to those who publish extracts from or extracts of parliamentary papers (s 3). Privilege attaches to extracts or abstracts that are published 'bona fide and without malice'. It has been suggested that these differing forms of protection reflect the differing level of control that a Parliament may exercise over the content of published material.<sup>71</sup> Parliament exerts total control over the content of any paper it receives. Copies of parliamentary papers mirror the original that was approved and received by Parliament. The absolute privilege granted by s 2 extends parliamentary privilege to the document, as received and approved by Parliament, when reproduced or used in another forum. Parliament cannot exercise the same level of control over abstracts and extracts of papers. The qualified privilege granted by s 3 to such materials reflects the lesser control that Parliament may exert over such material.

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<sup>69</sup> On changes in government printing arrangements see J Gilchrist, 'The Office of King's Printer and the Commercial Dissemination of Government Information – Past and Prospect' (2003) 7 *Canberra Law Review* 145.

<sup>70</sup> See, eg, *Parliamentary Papers Act 1891* (WA) s 3A(3) and *Wrongs Act 1936* (SA) s 12(4).

<sup>71</sup> P Leopold, 'The Parliamentary Papers Act 1840 and its Application Today' [1990] *Public Law* 183, 185.

It was noted above that the United Kingdom Parliament's Joint Committee on Parliamentary Privilege recommended that absolute privilege should only be granted to documents received by Parliament where there were strong reasons in the public interest to do so.<sup>72</sup> An even stronger element of public interest would be required if absolute privilege were to be accorded to those who publish abstracts of, or extracts from, parliamentary papers. In our view, no such public interest element exists. The grant of qualified rather than absolute privilege provides an appropriate balance because it extends a fair measure of protection to those who publish abstracts of or extracts from parliamentary paper, but enables people aggrieved by such publications to pursue legal action in limited circumstances.

There is a question about what sort of body should be entrusted with the task of reviewing the law relating to parliamentary papers. Should it be a parliamentary committee or an extra-parliamentary body such as a law reform commission? Despite their very broad terms of reference, the United Kingdom Parliament's Joint Committee on Parliamentary Privilege did not, apparently, think it appropriate for them to make detailed recommendations regarding the form of the statute which they recommended should be enacted to replace the *Parliamentary Papers Act 1840* (UK). They suggested merely that 'the House of Commons procedure committee should act on this matter'.<sup>73</sup> Queensland's *Parliamentary Papers Act 1992* was, essentially, the outcome of a report presented by a select committee of the State's Legislative Assembly.<sup>74</sup>

Aspects of the law relating to publication of parliamentary papers have, however, been considered by law reform commissions charged with review of the laws of defamation.<sup>75</sup> Such reviews have been commissioned not by parliaments but by an officer of the executive branch of government. Although members and officers of a parliament may have opportunity to make submissions to a law reform [128] commission, whose terms of reference require consideration of the laws of

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<sup>72</sup> See Campbell, above n 63.

<sup>73</sup> Joint Committee on Parliamentary Privilege, above n 6, [352].

<sup>74</sup> Legislative Assembly of Queensland, Select Committee on Privileges, *Report on Privilege Attaching to Parliamentary Papers* (Dec 1991).

<sup>75</sup> See, eg, NSW, Law Reform Commission, *Report No 75 — Defamation* (1995).

defamation, the concerns members and officers of parliament may wish to express may not necessarily relate only to that corpus of laws. They may relate also to other bodies of law such as copyright law, laws for the protection of trade secrets and information communicated in confidence.<sup>76</sup>

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<sup>76</sup> On the effect of parliamentary privilege upon copyright, see G Griffith, 'Copyright, Privilege and Members of Parliament' (2001) 19 *Copyright Reporter* 4; E Campbell and A Monotti, 'Immunities of Agents of Government From Liability for Infringement of Copyright' (2002) 30 *Federal Law Review* 459, 462–8.