

BOOK REVIEW

PARLIAMENTARY PRIVILEGE

*By Enid Campbell
The Federation Press*

*Reviewed by Stephen Argument**

This book is expressly not a second or revised edition of Emeritus Professor Enid Campbell's excellent work *Parliamentary Privilege in Australia*, published in 1966. Rather, it is a new work that draws, among other things, on a series of insightful articles that Professor Campbell has published in recent years (including an article in (2001) 29 *AIAL Forum* 29, entitled 'Parliamentary privilege and judicial review of administrative action'), addressing various vexing issues thrown up by that the peculiar beast that is parliamentary privilege. A development since the earlier book that is of particular importance that is dealt with extensively in this book is the enactment by the Federal Parliament of the *Parliamentary Privileges Act 1987*.

As Professor Campbell states in her introduction, the special rights, powers and immunities that make up parliamentary privilege serve one essential purpose: to enable the Houses of the Parliament (and their members) to carry out their functions effectively. If this fundamental point is borne in mind, much of the apparent mystery of parliamentary privilege dissipates.

It is not so much a 'privilege' as an immunity or protection. There are 2 arms to the privilege:

- the protection of the Parliament and parliamentarians; and
- the protection of the flow of information to the Parliament and parliamentarians.

The first arm is clearly of more relevance to the Parliament and to parliamentarians. It has been in the news in recent years, in the context of the allegations of computer-hacking in the NSW Parliament. Real issues have arisen about the extent to which parliamentary privilege operates to limit the access that the police investigating allegations can have to material connected with the Parliament and the individual parliamentarians involved. In the Federal Parliament, the protection to be afforded the Parliament and its members has recently arisen in the context of the execution of search warrants on the offices of parliamentarians. It has also been more controversially an issue in relation to allegations made by various parliamentarians about various individuals, with the privilege operating to protect the parliamentarians from any legal consequences that would otherwise flow from the making of such allegations (other than consequences initiated by the Parliament).

The second arm of the privilege is more problematic. It essentially operates to ensure that no-one should ever not provide information because he or she was afraid of the

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consequences (legal or otherwise) of doing so. The fundamental proposition is that a person cannot be subject to legal or other sanctions for supplying information to the Parliament or one of its committees.

One of the practical manifestations of this proposition that increasingly impinges on the work of lawyers is the operation of section 16 of the Parliamentary Privileges Act to limit the use that can be made of 'proceedings in Parliament' in courts and tribunals. This issue was evident in the 'constitutional crisis' that struck the ACT in 2002, involving the ACT Supreme Court's injunction against the Chief Minister tabling in the Legislative Assembly the Report of the Board of Inquiry into Disability Services and the Speaker of the Legislative Assembly's subsequent intervention in the proceedings, on the basis that the Report might be 'proceedings in Parliament' and that, as a result, section 16 of the Parliamentary Privileges Act might operate to limit the use that might be made of the Report in the proceedings. The decision of the ACT Supreme Court is footnoted in the book at page 105.

Section 16 of the Parliamentary Privileges Act expressly affirms the operation of Article 9 of the *Bill of Rights, 1688* (also correctly referred to by Professor Campbell as the *Bill of Rights, 1689*) in relation to the Federal Parliament. 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.

It has been incorporated into the laws of all Australian States and Territories, either by the common law or by statute, meaning that practitioners in all Australian jurisdictions need to be aware of its operation in any matter that involves the possible use in a court or tribunal of material that might be considered 'proceedings in parliament'. Case law from all the jurisdictions, much of which is discussed by Professor Campbell in the book, demonstrates that this is a real issue in a surprising number of cases.

Aside from these issues, Professor Campbell deals with various other issues, including the abuse of parliamentary privilege and the introduction, by both Houses of the Federal Parliament, of a 'right of reply'. An interesting feature of the right of reply is the different approaches of the Senate and the House of Representatives, with the Senate evidently being more open to the use of the procedure (based on the number of occasions when the right of reply has been granted) than the House.

There is a dearth of material on parliamentary privilege. While what most regard as the leading Australian authority, *Odgers' Australian Senate Practice*, is very informed and informative, it does tend to put the view of the Senate. The House of Representatives' equivalent, *House of Representatives' Practice*, while similarly informed and informative, contains less discussion on the more controversial aspects of privilege (and, in particular, on issues arising because of tensions between the Executive Government and the Parliament). This leaves *Odgers* as something of a font of all wisdom on some of the more thorny issues of parliamentary privilege. As the Senate clearly has an interest in protecting parliamentary privilege and in ensuring that its protections are maintained and not eroded, the views expressed in *Odgers* are (in this reviewer's experience) not always as objective as they might be. For that reason alone, this thorough and thoughtful work, by an author of renown and with a strong background in the subject area, is a most welcome addition to the learning on a topic where most lawyers have much to learn.