Parliamentary Privilege and Public Interest Disclosures*

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Introduction

One of the features of parliamentary privilege is that it can provide immunities from ordinary law for members of parliament. In certain circumstances some of the immunities and protections associated with privilege can be extended to others who are involved with the proceedings of parliament. This article explores the nature of those protections and the circumstances in which they might apply to people who make public interest disclosures to a member of parliament. High profile cases such as the allegations concerning the conduct of the former Director of Surgery at the Bundaberg Base Hospital have given rise to a number of issues concerning parliamentary privilege and public interest whistleblower protection that are poorly addressed in legislation. These include whether the range of circumstances that are covered by parliamentary informer or whistleblower protection schemes are adequate, the nature of protections, and the relevant procedures to enable protection.

Most of the literature on public interest disclosures focusses on the role of specific legislation and its application to public and private sector employees. There is also a significant amount of research on other organisational, cultural and psychological aspects of speaking out against wrongdoing in the workplace. By contrast, there has been little discussion of the implications of public interest disclosure for parliamentary privilege when there is a strong association between the two. Both parliamentary privilege and public interest disclosures function as mechanisms to

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hold government accountable to parliament and the people. It is not often recognised that most of the landmark privilege cases on the protection of parliamentary informants have arisen as a result of public interest type disclosures being made to members of parliament.[1]

The application of parliamentary privilege to public interest disclosures made to members of parliament and covers the nature of parliamentary privilege, what constitutes public interest whistleblowing and lessons for the Commonwealth from the Queensland public hospitals whistleblowing case study. Citing case law, the circumstances in which parliamentary privilege may extend to public interest disclosures made to parliamentarians, the protections afforded to whistleblowers that make disclosures that are covered under parliamentary privilege, and the legal framework and procedures in place to address the needs of people who make public interest disclosures to parliamentarians are also considered.

Some normative assumptions about the public good of both parliamentary privilege and public interest disclosures are made. Both concepts are essential elements of an accountable parliamentary democracy based on the Westminster system of responsible government. In principle, citizens should be free to communicate with their elected representatives without fear of disadvantage for doing so. Members of parliament should also be free to make use of the information provided to them in performing their parliamentary duties. Public accountability further requires that public servants are able to speak out about wrongdoing within their organisation without fear of reprisal. In communicating directly with the executive and the parliament, the rights, responsibilities and liabilities of citizens should be reasonably clear. However, the practical application of these principles is not always straightforward, often leading to conflicts of values and unresolved issues. These issues are explored.

Parliamentary Privilege

The term 'parliamentary privilege' generally refers to a number of individual rights and collective powers associated with members of parliament and the functions of the Houses of parliament and their committees. Privilege exists for the benefit of the institution of parliament, as McGee pointed out:

> It can only be justified by facilitating the operations of parliament whether this is by ensuring that in its corporate capacity it has the powers it needs to prosecute its work or by ensuring on an individual basis that its members are free of legal restraint in their effective contribution to its work.[2]

Individual rights under parliamentary privilege include freedom of speech in parliament, immunity for parliamentary witnesses, and qualified immunity for members of parliament and parliamentary officers from certain legal processes including the exemption from attendance in court when parliament is sitting. Collective powers of the Houses of parliament include the power to control

members, strangers and visitors, the power to summons witnesses and compel evidence, and the power to summons and punish for contempt of parliament.[3]

The powers and immunities associated with privilege are regarded as 'essential for the proper operation of the parliament'.[4] The protections are regarded as fundamental to the exercise of the functions of members of parliament as individuals and the Houses of parliament as institutions.[5] Privilege promotes free and open discussion in parliament, facilitates the effective operation of committees, supports the authority of the parliament to hold the executive to account and protects each House from conduct that would disrupt its proceedings.[6] Freedom of speech in parliament supported by immunity from liability for defamation is considered the most valuable and important form of parliamentary privilege.[7] It is also the most controversial privilege as it enables members to say what they like in parliament without legal consequence. Thus, freedom of speech in parliament is also the most litigated of privileges.[8]

Parliamentary privilege was written into the Australian Constitution through s. 49 which declared that the 'powers, privileges and immunities' of both Houses, members and committees shall be those of the UK House of Commons until declared by the parliament. At that time, privilege was interpreted by the House of Commons in accordance with Article 9 of the Bill of Rights 1689 which provided 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 was not until the 1980s that the Australian parliament seriously considered clarifying the law on parliamentary privilege following certain decisions taken by the New South Wales Supreme Court which undermined the principle of free speech in parliament.[9] One of the aims of the Commonwealth *Parliamentary Privileges Act 1987* was to give effect to the recommendations of a joint Parliamentary Committee on Privilege and to reinforce the conventional interpretation of Article 9, thereby providing certainty that parliamentary witnesses could not be cross examined in a court on the basis of their evidence to a Committee.[10]

The *Parliamentary Privileges Act 1987* provides three main avenues for the protection of people who are involved with the work of members of parliament, the Houses or committees. Section 12 outlines statutory penalties against improper influence and detrimental action in relation to evidence or proposed evidence of witnesses to parliamentary committees.[11] Section 16 protects 'proceedings in parliament' from being tendered, questioned or referred to in a court or tribunal. Consistent with Article 9, 'proceedings in parliament' is defined as 'all words spoken or acts done in the course of, or for the purposes of or incidental to, the transacting of the business of a House or of a committee' including providing evidence and submissions to a House or committee, and 'the preparation of a document for purposes of or incidental to the transacting of any such business'.[12] Finally, parliament's power to punish for contempt could potentially provide another avenue for the protection of others outside 'proceedings in parliament'. Contempt may be found where it is shown that certain conduct 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.[13]

Public Interest Disclosure Laws

At first glance, protections afforded to members of the public seeking to raise concerns about their workplace appear to be fairly clear in relation to parliamentary functions and the *Parliamentary Privileges Act 1987*. However, as discussed later, each case of public interest disclosure to parliamentarians is unique and parliamentary privileges law contains a degree of uncertainty. Uncertainty is also a key feature of Commonwealth law in relation to the making of public interest disclosures or whistleblowing, in the public sector. Broadly, whistleblowing refers to the 'disclosure by organisation members (former or current) of illegal, immoral or illegitimate practices under the control of their employers, to persons or organisations that may be able to effect action'.[14]

Statutory protections available for whistleblowers in the Commonwealth public sector are generally limited to employees of Australian Public Service (APS) agencies. Section 16 of the *Public Service Act 1999(Clth)* provides for protection against victimisation and discrimination for APS employees who disclose suspected breaches of the APS code of conduct to their agency head or delegate, the Public Service Commissioner or the Merit Protection Commissioner. It is an offence for Commonwealth officers to blow the whistle through any other channel. Section 70 of the *Crimes Act 1914 (Cwlth)* provides a general prohibition against disclosure of official information to an outside entity without authorisation. A penalty of two years imprisonment applies. However, if a disclosure is made through giving evidence to a parliamentary committee or if an unauthorised disclosure is made in proceedings in parliament, parliamentary privilege could be claimed as a defence against prosecution. In 1991 the Commonwealth Solicitor-General advised that general statutory secrecy provisions such as s. 70 do not inhibit the powers of the Houses and their committees unless there is a sufficiently clear declaration under s. 49 of the Constitution.[15]

The Commonwealth is the only Australian jurisdiction without legislation dedicated to the facilitation of public interest disclosures and the protection of the whistle-blowers who make them. Unlike, the states and territories, the Commonwealth does not provide public sector whistleblowers with statutory protection from civil and criminal liability and legal actions such as defamation and breach of confidence. [16] Three parliamentary committees have considered the possible role of specific legislation for whistleblower protection.[17] The House of Representatives Standing Committee on Legal and Constitutional Affairs conducted an inquiry into public interest disclosures legislation to protect whistleblowers in the Australian Government public sector and proposed a framework for new laws in this area.[18] The Government has since committed to implementing new legislation.[19]

A number of additional weaknesses of the Commonwealth whistleblower provisions were noted in submissions to the Committee. For example, the current provisions only apply to about two thirds of Australian Government public sector employees. Employees of agencies under the *Commonwealth Authorities and Companies Act 1997* are not covered. Former employees and contractors and consultants engaged with the sector are not covered. Disclosures about individual grievances and personnel matters, some of them petty, are dealt with through the same procedures as the more serious public interest issues that could pose danger to the community. There are also limited avenues for making a disclosure and limited obligations on agencies to be responsive to the disclosures that they receive.[20]

Whistleblowing Concerning the Bundaberg Base Hospital 2003–05

The events at the Bundaberg Base Hospital in Queensland between 2003 and 2005 highlight the importance of comprehensive public interest disclosure legislation that recognises the role of members of parliament. However, in registering Director of Surgery, Dr Patel, the Queensland Medical Board failed to make inquiries about the doctor's previous practice in the United States. A basic query would have revealed that the doctor was barred from conducting certain types of surgery, was suspended from practice and was unemployed for the previous year. He was appointed to Bundaberg Hospital without any assessment of his clinical skills and competence.[21]

The head nurse at the Bundaberg Hospital Intensive Care Unit, Ms Toni Hoffman, first raised concerns about the conduct of the Director of Surgery in June 2003. Over the next year and a half, the head nurse made a series of formal complaints to her supervisor, the Director of Medical Services, hospital management and the District Manager. The nature of the complaints included allegations that there were a high level of complications arising from surgery, there were a high number of deaths and that the doctor's behaviour was inappropriate.[22] Ms Hoffman's complaints were routinely ignored or downplayed and she was accused of having a 'personality conflict' with Dr Patel.[23]

Ms Hoffman's allegations should have been treated as a public interest disclosure in accordance with the Queensland *Whistleblowers Protection Act 1994*. If recognised as such, Ms Hoffman would have had formal protection against detrimental action in the workplace, criminal liability and civil action. Further, the Act requires that protected disclosures are reported on by the public sector entity, in this case Queensland Health, and that the whistleblower receives 'reasonable information about action taken on the disclosure and the results'.[24] Without assurances that her concerns would be adequately addressed, Ms Hoffman felt it necessary to raise the issue with the state Member for Burnett, Mr Rob Messenger MP. On 23 March 2005, the Opposition Shadow Minister for Health, Stuart Copeland MP and Mr Messenger raised Ms Hoffman's concerns in the Queensland Parliament, naming Dr Patel under parliamentary privilege.[25] The media reported the story leading to a

national public controversy and eventually a police investigation and a commission of inquiry into Queensland public hospitals.[26]

The commission of inquiry completed by retired Court of Appeal Justice Geoff Davies QC, found that Ms Hoffman's decision to approach a member of parliament was crucial in bringing the 'scandalous conduct of Dr Patel to light'.[27] That inquiry heard that Dr Patel's assessments of patients were inadequate, his surgical techniques were defective and 'that there were 13 deaths in which an unacceptable level of care on the part of Dr Patel contributed to the adverse outcome'.[28] Commissioner Davies noted that, in making a disclosure to a member of parliament, Ms Hoffman was not protected under the *Whistleblowers Protection Act 1994*. Among his recommendations, Davies proposed that the authorised recipients of public interest disclosures be expanded to include any member of parliament for matters that had been reported internally but not resolved within 30 days.[29]

Commissioner Davies did not consider whether Ms Hoffman would have been protected under parliamentary privilege in speaking to a member of parliament.[30] In general terms, whether privilege would apply depends on the connection of the disclosure with 'proceedings of parliament'.[31] As her disclosure to Mr Messenger MP was used as a basis for statements in the Legislative Assembly, it appears that the basic requirement for protection under parliamentary privilege would have been met. The law of parliamentary privilege in Queensland, as in the Commonwealth, is based on Article 9 of the UK Bill of Rights. Section 9 of the *Constitution of Queensland Act 2001* provides that the 'powers, rights and immunities of the Legislative Assembly and its members and committees' are defined under an Act, and until such time, are to be that of 'the Commons House of Parliament of the United Kingdom and its members and committees at the establishment of the Commonwealth'. Section 8 of the *Parliament of Queensland Act 2001* defines 'proceedings in the Assembly' in line with s. 16(2) of the Commonwealth *Parliamentary Privileges Act 1987*.

Given the relevant provisions in Queensland statute, it would seem that the protections of parliamentary privilege would have extended to Ms Hoffman following the use of her disclosure in proceedings in the Assembly. Therefore, any detrimental action taken against Ms Hoffman by Queensland Health could have been reported to the Assembly as a privilege matter with a Committee potentially appointed to consider the issue of whether contempt of parliament had been committed. Similarly, Ms Hoffman would in all probability have been immune from defamation action. Case law on the application of privilege to members of the public who communicate with members, while not unanimous, lends strong support to the proposition that Ms Hoffman would have been protected under parliamentary privilege. However, cases discussed below demonstrate that such protection is not unqualified.

Parliamentary Privilege and Whistleblower Cases

The outcome of action taken against the former Senator Bill O'Chee by Mr Michael Rowley suggests that the application of parliamentary privilege to a parliamentary informant can depend on the action taken by the member of parliament in receipt of the information. In June 1995 Senator O'Chee questioned the Minister for Resources and made speeches alleging that Mr Rowley had undertaken prohibited fishing activities in North Queensland. Senator O'Chee also identified Mr David Armstrong, a former manager of a tuna company controlled by Mr Rowley, as the 'informer' or whistleblower on the activities of Mr Rowley.[32] Mr Rowley then threatened legal action against Senator O'Chee and instructed his lawyers to commence defamation proceedings against Mr Armstrong. The matter was then referred to the Senate Privileges Committee.[33] The task of the Senate Committee was to consider if parliamentary privilege extended protection to Mr Armstrong and to decide if Mr Rowley had committed contempt of the Senate. The Committee made findings against Mr Rowley on both issues but did not recommend penalties. Citing advice from the Clerk of the Senate, the Committee noted that:

> The lawfulness of treating as a contempt any interference with the provision of information to a senator is therefore likely to depend on the circumstances, and in particular the closeness of any connection between the provision of information and actual or potential parliamentary proceedings.[34]

Following the tabling of the Senate report in 1997, Mr Rowley sought a court order to access documents held by Senator O'Chee for the purpose of defamation action against Mr Armstrong. The Queensland Court of Appeal found that those documents held by Senator O'Chee were protected by parliamentary privilege because they were held for the transacting of parliamentary business. [35] The Court confirmed the view that privilege depended on the actions of the member in receipt of the correspondence. McPherson JA noted: 'It is not, I think, possible for an outsider to manufacture parliamentary privilege for a document by the artifice of planting the document upon a parliamentarian.'[36]

Balanced against the need to protect privilege from abuse by members of the public was the need to protect the immunity of documents provided to members to ensure the proper functioning of parliament, as Justice McPherson also observed:

> Proceedings in parliament will inevitably be hindered, impeded or impaired if members realise that acts of the kind done here for the purposes of parliamentary debates or question time are vulnerable to compulsory court processes of that kind.[37]

However, an interlocutory decision of the Supreme Court of Queensland did not strike out Rowley's defamation action against the parliamentary informant, Mr Armstrong.[38] Jones J rejected the claim that Armstrong's communication with Senator O'Chee attracted parliamentary privilege. The judgement was heavily criticised by the Clerk of the Senate and consultant legal advisor to the Senate Privileges Committee, Mr Bret Walker QC, primarily on the grounds that it ignored

the reasoning in the previous Privileges report and the judgement in *O'Chee v Rowley*. Mr Walker contended that *Rowley v Armstrong* was 'unlikely to be regarded as adding anything appreciable to the jurisprudence of parliamentary privilege'.[39] The weight of the judgement was not tested as Rowley did not fully pursue his action against Armstrong. The judgement did however, provide enough uncertainty for one commentator to form the view that, on the basis of that reasoning, Ms Hoffman would not have attracted privilege in her disclosure to Mr Messenger.[40]

Defamation action by Ms Wendy Erglis against her former colleagues at the Royal Brisbane Hospital indicates that while material provided to a parliamentarian and used in parliament is covered by parliamentary privilege, the reproduction of that material may not be protected from civil liability. In December 2001 Ms Erglis provided an internal report on the operation of the Bone Marrow Transplant Unit to the then leader of the Opposition in Queensland, Mr Horan MP. In a speech during Matters of Public Interest, Mr Horan identified Ms Erglis as a 'whistleblower' and repeated her allegations of staff bullying, professional misconduct and theft from patients in the Unit. He also noted that whistleblower protection laws in the state had been powerless to prevent detrimental action taken against her.[41] Erglis' former colleagues at the Unit lobbied the Health Minister to refute the allegations in parliament and table their written response. That response made allegations of professional misconduct against Ms Erglis, seemingly in retaliation. Erglis then initiated defamation action against her former colleagues, on the grounds that they knew that the Minister would republish the letter and expose the allegations to a much wider audience. The defendants claimed that 'the plaintiff's action be struck out on the grounds that litigation of the claim will impeach or question the freedom of speech and debates and/or proceedings in the Legislative Assembly'.[42]

Justices Fryberg and Jerrard noted the possible 'chilling effect' of the action on the potential provision of important information to members of parliament. Exposure to liability could cause the 'flow of information from outsiders to dry up.[43] At trial, Helman J found that the production and provision of the letter to the Minister afforded absolute privilege, expressly disagreeing with Jones J in *Rowley v Armstrong*. Justice Helman also held that the liability of the defendants was limited to the republication of the material outside parliament. An appeal to the Queensland Court of Appeal upheld an award of $15,000 damages for the republication of the letter by one of the defendants, on a noticeboard in the hospital. [44]

The Senate privileges case of Dr William De Maria suggests that immunity from employment sanctions could arise from the provision of material to members of parliament by whistleblowers. In May 1997, the self-proclaimed whistleblower, Dr De Maria, provided a document to Senator Woodley containing 18 separate allegations of workplace harassment and victimisation at the University of Queensland. The office of the senator made no undertaking that the document would be tabled when the senator spoke on them in parliament. However, it appears that Dr De Maria later contacted the senator's office insisting that the documents be tabled. Following a misunderstanding within the senator's office, Senator Woodley tabled

the document without reading it. The document adversely identified a number of De Maria's colleagues and the University subsequently took action against De Maria by suspending his employment. The matter was referred to the Senate Privileges Committee to determine if De Maria's document was privileged, the use of the privileged document in other proceedings and whether contempt was involved.[45]

The Committee found that the disciplinary action by the University against De Maria was a direct consequence of his communication with the senator, that De Maria was entitled to absolute privilege and the action by the University as in contempt of the Senate. No penalty was imposed in consideration of the University's decision to reinstate Dr De Maria in light of the Committee's findings. In conducting the inquiry, the Committee sought advice from the Clerk of the Senate and Mr David Jackson QC. The Clerk and Mr Jackson cited *O'Chee v Rowley* and previous privileges inquiries to support the argument that privilege applied. Notably, Mr Jackson commented on the motives of Dr De Maria in deliberately seeking the document to be tabled to enable the protection of parliamentary privilege:

> It does not seem to me that the undoubted collateral purpose, whether or not it was a primary purpose, of Dr De Maria in seeking to obtain the benefit of parliamentary privilege, relevantly alters the character of that act, unless it can thereby be said that the sending of the documents was not for the purposes of the transacting of the business of the House or incidental to it. In my opinion, it cannot.[46]

The three cases discussed above highlight a number of issues in relation to the protection of whistleblowers who make public interest disclosures to a member of parliament. First, the application of parliamentary privilege can depend on the action taken by a parliamentarian in relation to the information provided. Second, the reproduction of the privileged material outside parliament exposes the whistleblower to civil liability. Third, immunity from sanctions may be afforded to whistleblowers where it is established that the privileged information is the direct causal basis for the imposition of the sanction. Further, it is not clear that these outcomes would generally apply to similar circumstances, for example, the law in relation to the provision of a document that was not tabled, yet relevant to a proceeding, is not settled.[47] The range of protections provided by parliamentary privilege to whistleblowers is also not clear, especially compared to state public interest disclosure legislation.

The range of protections for whistleblowers who make disclosures to parliamentarians lacks certainty. The use of the disclosure in parliament may be motivated more by partisan political gain rather than a genuine interest in promoting the public interest, although these interests can coincide. The information provided could be skewed, misrepresented or otherwise diluted in its presentation to parliament. Airing the issue in parliament could interfere with investigations and infringe on the fulfilment of natural justice for persons adversely identified. Parliamentary privilege however, does offer the flexibility that state public interest disclosure regimes do not have, in terms of (potentially) protecting a

disclosure about any matter from any citizen. Whereas public interest disclosure legislation provides limits on who can make a disclosure about certain matters. For example, in South Australia a person can make a protected disclosure about specified misconduct occurring in the public or private sectors.[48] In New South Wales, only 'public officials' can receive protection for disclosures relating to certain specific conduct in the public sector.[49] Further, disclosures made to an unauthorised recipient are not protected, despite its public interest merits.[50]

To facilitate the making of public interest disclosures, the scope of protections afforded to whistleblowers should be consistent with the protection that could be provided under parliamentary privilege. With parliamentary privilege limited by the reach of Article 9 of the Bill of Rights 1689 and a number of areas yet to be settled in courts, the appropriate means of bringing whistleblower law in line with privilege is to provide that members of parliament are authorised recipients of public interest disclosures in statute. The House Legal and Constitutional Affairs Committee report recommended that members of parliament be made authorised recipients of public interest disclosures *lex scripta*.[51] However, this recommendation was rejected by the government, which noted that 'parliamentary privilege and the implied right to freedom of political communication already provide some protection to members of parliament and persons who provide information to them in certain circumstances'.[52]

In contrast to the Commonwealth, some states have provided greater legal certainty for whistleblowers by legislating protections for disclosures to members of parliament. Section 19 of the *Protected Disclosures Act 1994* (NSW) protects disclosures to parliamentarians on the following, rather convoluted, conditions:

> (1) A disclosure by a public official to a member of parliament, or to a journalist, is protected by this Act if the following subsections apply.
>
> (2) The public official making the disclosure must have already made substantially the same disclosure to an investigating authority, public authority or officer of a public authority in accordance with another provision of this Part.
>
> (3) The investigating authority, public authority or officer to whom the disclosure was made or, if the matter was referred, the investigating authority, public authority or officer to whom the matter was referred:
>
> (a) must have decided not to investigate the matter, or
>
> (b) must have decided to investigate the matter but not completed the investigation within 6 months of the original disclosure being made, or
>
> (c) must have investigated the matter but not recommended the taking of any action in respect of the matter, or
>
> (d) must have failed to notify the person making the disclosure, within 6 months of the disclosure being made, of whether or not the matter is to be investigated.
>
> (4) The public official must have reasonable grounds for believing that the disclosure is substantially true.
>
> (5) The disclosure must be substantially true.

Section 5(4) of the *Whistleblowers Protection Act 1993* (SA) provides protection for disclosures made to Ministers of the Crown. Section 26(1A) of the *Whistleblowers Protection Act 1994* (Qld) is the best practice provision on disclosures to members of parliament because it enables protection for disclosures made to any member of the Legislative Assembly, government or opposition, at any time. This provision is most consistent with protections already afforded through parliamentary privilege and provides greater certainty about the nature of protection and the circumstances in which protection applies. The statutory protection of disclosures made to members of parliament under public interest disclosure legislation could also assist in clarifying circumstances where false or misleading allegations are aired in parliament under the cover of privilege. In order that public interest disclosure law does not detract from parliamentary privilege, the obligations on members of parliament in receiving disclosures should not derogate from the duties of members and the functions of the Houses.[53]

In practice, the likelihood of whistleblowers seeking to make disclosures to members of parliament is small. The overwhelming majority of whistleblowing in the Australian public sector occurs within agencies, to supervisors and senior managers.[54] Disclosures to third parties such as members of parliament can function as an important safety value for situations concerning serious matters where a whistleblower considers that raising an allegation internally has failed to resolve the issue or would be counter-productive.[55] Risks associated with making a disclosure to a member of parliament could be mitigated through legislative provisions and amendments to the Standing Orders to advise senators and members of the risks associated with identifying individuals and interfering with investigations.[56]

Conclusion

Both parliamentary privilege and public interest disclosures concern keeping the executive and the parliament accountable to the people. It is not in the public interest that illegal, immoral and improper activities are undertaken within the public sector. Members of parliament have a legitimate interest in drawing attention to and addressing such activities. This paper has discussed some specific areas where the law *vis-à-vis* parliamentary privilege lacks certainty for those who seek to make whistleblower-type allegations to members of parliament. A legal framework to facilitate the making of public interest disclosures and the protection of whistleblowers could be strengthened to include specific provisions where the protections under parliamentary privilege are not settled. ▲

End Notes

[1] For example, *O'Chee v Rowley* (1997) 150 ALR 199, *Erglis v Buckley* [2005] QCA 404. These cases are discussed further below.

[2] McGee, D. 'The scope of parliamentary privilege', *The New Zealand Law Journal*, March 2004, p. 85.

[3] Clark, D. *The Principles of Australian Public Law, Second Edition*, Lexis Nexis, Butterworths, 2007, pp. 141-160.

[4] *House of Representatives Practice*, 5th edn 2005, p. 707.

[5] *Erskine May's Treatise on the Law, Privileges, Proceedings and usage of Parliament*, 23rd Edition, Lexis Nexis, 2004. 75.

[6] Carney, G. *Members of Parliament: Law and Ethics, Prospect Media*, 2000, p. 161.

[7] Campbell, E, *Parliamentary Privilege*, The Federation Press, 2003, p. 10.

[8] Clark, D. *The Principles of Australian Public Law*, Second Edition, Lexis Nexis, Butterworths, 2007, p. 151.

[9] *Regina v Murphy* (1986) 5 NSWLR 18.

[10] Mr Bowen, 'Parliamentary Privileges Bill 1987, Second Reading', House of Representatives, *Debates*, 6 May 1987, p. 2671.

[11] *Parliamentary Privileges Act 1987*, s.12 does not restrict the ability of a House to impose penalties.

[12] *Parliamentary Privileges Act 1987*, s.16 (2).

[13] *Parliamentary Privileges Act 1987*, s. 4.

[14] Miceli, M.P. & Near, J.P. 'The relationships among beliefs, organisational position, and whistle-blowing status: a discriminant analysis', *Academy of Management Journal*, 27(4), p. 689; also cited in Brown, AJ (ed.) *Whistleblowing in the Australian Public Sector Enhancing the theory and practice of internal witness management in public sector organisations*, ANU E Press, 2008, p. 8. There is some debate over whether academic or statutory definitions of whistleblowing should be limited to particularly serious matters relating to the public interest. See Australian Public Service Commission Submission 44, to the House Legal and Constitutional Affairs inquiry into whistleblower protections.

[15] Harris, I. (ed.) *House of Representatives Practice*, 5th edn, Department of the House of Representatives, 2005, p. 648.

[16] Brown, AJ. *Public Interest Disclosure Legislation in Australia: Towards the Next Generation, An Issues Paper*, Griffith University and Commonwealth Ombudsman, 2006, pp. i-vi.

[17] Senate Select Committee on Public Interest Whistleblowing, *In the Public Interest*, 1994; Senate Finance and Public Administration Committee, Inquiry into Public Interest Disclosure Bill 2002 (Senator Murray), House of Representatives Standing Committee on Legal and Constitutional Affairs, Inquiry into Whistleblower protections in the Australian Government public sector. Senate legislative inquiries also criticised the whistleblower provisions of the Public Service Bill 1997, which came into effect in 1999.

[18] Standing Committee on Legal and Constitutional Affairs, *Whistleblower protection: a comprehensive scheme for the Commonwealth public sector*, House of Representatives, 2009.

[19] Australian Government, Response to the Standing Committee on Legal and Constitutional Affairs, *Whistleblower protection: a comprehensive scheme for the Commonwealth public sector*, 17 March 2010.

[20] For example, see submissions to the inquiry from the Commonwealth Ombudsman (Submission 31) and the Australian Public Service Commission (Submission 44).

[21] Davies, G. Queensland Public Hospitals Commission of Inquiry Report, p. 2.

[22] Davies, G. Queensland Public Hospitals Commission of Inquiry Report, p. 143.

[23] Davies, G. Queensland Public Hospitals Commission of Inquiry Report, p. 143.

[24] Section 32(1), *Whistleblowers Protection Act 1994 (Qld)*.

[25] Queensland Legislative Assembly Hansard, 22 March 2005, p. 611, 628.

[26] Dr Patel's case is currently before the Queensland courts.

[27] Davies p. 1.

[28] Davies, pp. 3-4.

[29] Davies, p. 472. The 30 day qualification was not included when this recommendation was implemented. See discussion below.

[30] Solomon, D. 'Whistleblowers, and governments, need more protection', for *Democratic Audit of Australia – February 2006*, p. 1.

[31] Acting Clerk of the House of Representatives, Submission to the House of Representatives Standing Committee on Legal and Constitutional Affairs no. 70, p. 4.

[32] Senator O'Chee, Senate Hansard Adjournment Speech, Monday, 19 June 1995, p. 1370.

[33] Senate Committee of Privileges, *Possible threats of legal proceedings against a Senator and other persons, 67th Report*, 1997.

[34] Clerk of the Senate, cited in *Senate Committee of Privileges, Possible threats of legal proceedings against a Senator and other persons, 67th Report*, 1997, para 2.3.

[35] *O'Chee v Rowley* (1997) 150 ALR 199.

[36] *O'Chee v Rowley* (1997) 150 ALR, 209.

[37] *O'Chee v Rowley* (1997) 150 ALR, 215.

[38] *Rowley v Armstrong* [2000] QSC 88.

[39] Senate Committee of Privileges, *Matters arising from 67th report of the Committee of Privileges, 92nd report*, June 2000, p. 12.

[40] Solomon, D. 'Whistleblowers, and governments, need more protection', for *Democratic Audit of Australia – February 2006*, p. 1.

[41] Mr Horan MP, Legislative Assembly Hansard, 4 December 2001, p. 4126.

[42] *Erglis v Buckley and Ors* [2004] QCA 223.

[43] Fryberg J, *Erglis V Buckley* [2004] 2 Qd R 599.

[44] Campbell, E. & Groves, M. 'Correspondence with Members of Parliament', *Media, Arts and Law Review*, 2006 (11), p. 235. The defendants were indemnified by the Queensland Government.

[45] Senate Committee of Privileges, *Possible improper action against a person (Dr William De Maria)*, 72nd Report, 1998.

[46] Jackson QC, cited in Senate Committee of Privileges, *Possible improper action against a person (Dr William De Maria)*, 72nd Report, 1998, para 2.8.

[47] The tabling of Dr De Maria's document put the issue of privilege beyond doubt.

[48] Section 5(1), *Whistleblowers Protection Act 1993* (SA).

[49] Section 8(1), *Protected Disclosures Act 1994* (NSW).

[50] Part 2, *Protected Disclosures Act 1994* (NSW).

[51] Standing Committee on Legal and Constitutional Affairs, *Whistleblower protection: a comprehensive scheme for the Commonwealth public sector*, House of Representatives, 2009, p. 165.

[52] Australian Government, Response to the Standing Committee on Legal and Constitutional Affairs, *Whistleblower protection: a comprehensive scheme for the Commonwealth public sector*, 17 March 2010.

[53] Acting Clerk of the House of Representatives, Submission to the House of Representatives Standing Committee on Legal and Constitutional Affairs no. 70, p. 9.

[54] Brown, AJ (ed.) *Whistleblowing in the Australian Public Sector Enhancing the theory and practice of internal witness management in public sector organisations*, ANU EPress, 2008, p. 105.

[55] Standing Committee on Legal and Constitutional Affairs, *Whistleblower protection: a comprehensive scheme for the Commonwealth public sector*, House of Representatives, 2009, p. 163.

[56] Australian Government, Response to the Standing Committee on Legal and Constitutional Affairs, *Whistleblower protection: a comprehensive scheme for the Commonwealth public sector*, 17 March 2010. The Government agreed in principle to the Committee's recommendation that Standing Orders of the Houses be amended to assist members in responding appropriately to delicate public interest disclosures in the event that they become aware of such matters.