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How the NSW Legislative Council's Privileges Committee examines matters concerning alleged abuse of freedom of speech and debates: a comparative study and look into the future.

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This paper focuses on the freedom of speech and debates as it operates in the New South Wales Legislative Council (NSW LC) and more specifically, the manner in which the NSW LC Privileges Committee approaches matters concerning allegations that members have abused this privilege. The paper also considers how privileges committees in other jurisdictions have managed these concerns. The paper concludes with a discussion on opportunities for New South Wales to ensure parliamentary privilege, particularly freedom of speech and debate, is fit for purpose in the 21st century.

Part one: NSW Parliament, parliamentary privilege and the NSW LC Privileges Committee

This section briefly discusses the system of government in New South Wales, parliamentary privilege, with a focus on the immunity of freedom of speech and debate, and the concept of contempt in the NSW LC. It then outlines the role and function of the NSW LC Privileges Committee and sets out four matters that demonstrate how the committee has dealt with alleged abuse of freedom of speech.

NSW Parliament and parliamentary privilege

In the tradition of the Westminster system, the NSW Parliament is bicameral. Both Houses, the Legislative Assembly and the Legislative Council, have the same key functions: to represent their constituents, to pass legislation and to scrutinise the actions of the executive government. Significantly, executive government is formed in the Legislative Assembly. Due to various factors, including the differing electoral systems used in New South Wales for each of the Houses, there has not been a government majority in the Legislative Council since 1988. This has led the Upper House to be a very active 'House of Review'.

Parliamentary privilege refers to the sum of the rights, powers and immunities that have been bestowed upon the Legislature – the Houses of Parliament, their members and committees – to ensure it fulfils these functions effectively.¹ Parliamentary privilege is sacrosanct to the operation of parliaments in the Westminster system. There is no specific statute that established parliamentary privilege in New South Wales. Rather, privilege stems from the common law test of necessity, certain legislation, and the statutory adoption of Article 9 of the *Bill of Rights 1689*.²

Moreover, as established in *Kielley v Carson* the powers of the House are protective or self-defensive only. This means that the legislature does not possess powers that are punitive in nature, such as the imposition of fines or arrest and imprisonment.³

¹ Stephen Frappell, *Parliamentary privilege - developments since 2019 and current issues*, Legalwise Seminar, 2 November 2022, p 2.

² Stephen Frappell and David Blunt (eds), *New South Wales Legislative Council Practice*, Second edition, The Federation Press, 2021, p 66; Stephen Frappell, *Parliamentary privilege in New South Wales*, 38th Annual Course of the International Association of Law Libraries, Sydney, 28 October 2019, p 2.

³ Frappell, Blunt (eds), *New South Wales Legislative Council Practice*, p 69.

Freedom of speech and debates

In New South Wales the immunity of freedom of speech and debates finds expression in the statutory adoption of Article 9 of the *Bill of Rights 1689* which, using modern language, effectively states:

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.⁴

Article 9 ensures that members and committee inquiry participants can speak freely during parliamentary proceedings as the substance of their words cannot be interrogated by courts or tribunals.⁵ This allows members to raise and debate matters, whilst protecting them against threats or reprisals.⁶

Article 9 is also part of the constitutional separation of powers between the legislature and the judiciary.⁷ Indeed, there have only been two instances where the NSW LC has expressly legislated to waive this privilege.⁸

Freedom of speech and debate is absolute and unlike qualified privilege it is not abrogated by the presence of malice or of fraudulent purpose or falsity.⁹ This is often thought to mean that members can say whatever they like. However, both Houses place certain constraints on this immunity (examined in the next section).¹⁰ Further, it could be argued that members should be confident in the veracity of the information they are sharing in the House and in committees.

Importantly, freedom of speech and debate extends to records of debates and proceedings of the House which are protected under section 27 of the *Defamation Act 2005*, the *Parliamentary Papers (Supplementary Provisions) Act 1975*, and the standing orders.¹¹

Constraints on the freedom of speech and debate

While the freedom of speech and debate is absolute, there are certain constraints on members speech in the Council, including:

- the rules of debate as set out in the Standing Orders
- the *sub judice* convention
- the right of reply mechanism for private citizens who believe they have been adversely mentioned in the House.¹²

The House can also discipline members for 'offensive conduct'; spoken words that are '... so injurious, grossly defamatory or malicious as to amount to a contempt'.¹³

⁴ Frappell, Blunt (eds), *New South Wales Legislative Council Practice*, p 60. See also: Article 9 of the *Bill of Rights 1689*.

⁵ *Prebble v Television New Zealand Ltd* [1995] 1 AC 321 at 333-334.

⁶ Frappell, Blunt (eds), *New South Wales Legislative Council Practice*, p 91.

⁷ Frappell, *Parliamentary privilege in New South Wales*, (2019) p 5.

⁸ Frappell, Blunt (eds), *New South Wales Legislative Council Practice*, p 175.

⁹ Frappell, *Parliamentary privilege in New South Wales*, (2019) p 6.

¹⁰ Stephen Frappell, *Parliamentary privilege - developments since 2019 and current issues*, p 3.

¹¹ Frappell, Blunt (eds), *New South Wales Legislative Council Practice*, p 127.

¹² Frappell, Blunt (eds), *New South Wales Legislative Council Practice*, pp 91-92.

¹³ Frappell, Blunt (eds), *New South Wales Legislative Council Practice*, pp 92-93.

An understanding of contempt in New South Wales

Unlike certain other jurisdictions, in New South Wales there is no statutory definition of contempt, nor is the concept defined in the LC Standing Orders. Rather, a contempt may encompass any act or omission which the NSW LC determines obstructs or impedes the House, its committees or its members from performing their functions.¹⁴ Consequently, it is not possible to define all the types of conduct which may amount to a contempt.¹⁵

The Council through its privileges committees has a long history of dealing with contempts and matters of privilege, including abuse of the privilege of freedom of speech. The committee and key freedom of speech inquiries are examined in the following sections.

The NSW LC Privileges Committee

Since 1988 the NSW LC Privileges Committee has been appointed by resolution of the House at the commencement of each Parliament, most recently this occurred at the start of the 58th Parliament.¹⁶ The committee consists of eight members; four government members, two opposition members and two crossbench members.¹⁷ Currently, the Hon Stephen Lawrence MLC is Chair of the committee and the Hon Natasha Maclaren-Jones is the Deputy Chair. The resolution establishing the committee also sets out the conduct of committee proceedings, including the publication of submissions, transcripts and answers to questions on notice.¹⁸

The key functions and responsibilities of the NSW LC Privileges Committee include:

- considering and reporting on matters of privilege referred to it by the House or the President and on submissions referred by the President concerning rights of reply
- activities designated under part 7A of the *Independent Commission Against Corruption Act 1988* relating to members' ethics and the *Code of Conduct for Members*
- receiving and considering reports from the Independent Complaints Officer regarding members conduct outside of parliamentary proceedings.¹⁹

As previously mentioned, the NSW LC Privileges Committee has an extensive history of investigating possible contempts. It has been noted that the committee has been '... extremely circumspect' in its investigations of these matters.²⁰ Indeed, the committee has adopted principles that support exercising the contempt power:

- as sparingly as possible
- only when actions or statements are likely to cause substantial interference with the functions of the House, its committees or members
- as a protective or self-defensive mechanism only.

The committee has also previously found:

- a contempt may be intentional or unintentional

¹⁴ Frappell, Blunt (eds), *New South Wales Legislative Council Practice*, p 151 citing *Erskine May's Treatise on The Law, Privileges, Proceedings and Usage of Parliament, 25th ed, (LexisNexis, 2019)*, para 15.2

¹⁵ Frappell, Blunt (eds), *New South Wales Legislative Council Practice*, p 154.

¹⁶ *Minutes*, NSW Legislative Council, 10 May 2023, pp 39-40.

¹⁷ *Minutes*, NSW Legislative Council, 10 May 2023, p 40.

¹⁸ *Minutes*, NSW Legislative Council, 10 May 2023, p 40.

¹⁹ *Minutes*, NSW Legislative Council, 10 May 2023, p 39.

²⁰ Frappell, Blunt (eds), *New South Wales Legislative Council Practice*, p 166.

- a threat for certain action, even if the action is not undertaken, may constitute a contempt.²¹

The committee also considers whether exercising the contempt power would preserve and safeguard the dignity and honour of the Parliament, the House and its committees.

There have only been two occasions where the NSW LC Privileges Committee has made findings of fault and made recommendations for redress. The first was in the matter of the Hon Franca Arena in 1997 (examined later in this paper) and the second related to the Hon Peter Breen in 2003. The House adopted the findings and recommendations in both instances.²²

There have also been a number of occasions where the Privileges Committee has found an irregularity, or unintended contempt, but recommended that the House take no further action.²³

Notably, on at least two occasions the Privileges Committee has made recommendations or findings to support establishing guidelines governing the exercise of the privilege of freedom of speech or identifying conduct which would constitute an abuse of the privilege of freedom of speech.²⁴

Abuse of the privilege of freedom of speech

The following four cases exemplify how the NSW LC has addressed allegations of abuse of the privilege of freedom of speech.

The Hon John Martin

In November 1936, the Hon John Martin made allegations of conspiracy and corruption in the election of the Hon Edward Grayndler.²⁵ The Council established a select committee to inquire into the allegations.²⁶ The committee concluded that there was no evidence to support Mr Martin's claims.²⁷ Subsequently, the House adopted the report on the last sitting day in of 1936.²⁸ However, no further action was taken as the House did not sit for another seven months.²⁹

The Hon Franca Arena

On 17 September 1997, the Hon Franca Arena made statements in the House that several prominent individuals, including the Premier and the Commissioner of the Royal Commission into the New South Wales Police Service, had been involved in a 'cover-up' of high-profile paedophiles.³⁰

In response, the Parliament passed the *Special Commissions of Inquiry Amendment Act 1997* (NSW) which enabled a Special Commission of Inquiry to investigate Mrs Arena's claims. Significantly, section 33D(1) of the Act permitted the House to adopt a collective waiver of privilege in relation to the matter, while section 33D(3) of the Act preserved the right of an individual member to claim

²¹ Frappell, Blunt (eds), *New South Wales Legislative Council Practice*, p 167-168.

²² Frappell, Blunt (eds), *New South Wales Legislative Council Practice*, pp 168-169.

²³ Frappell, Blunt (eds), *New South Wales Legislative Council Practice*, p 169.

²⁴ NSW Legislative Council, Privileges Committee, *Inquiry into statements made by Mr Shoebridge*, 2011, p 10.

²⁵ Hon John Martin MLC, New South Wales, *Hansard*, Legislative Council, 12 November 1936, pp 428-430.

²⁶ *Minutes*, NSW Legislative Council, 25 November 1936, p 50.

²⁷ Report from the Select Committee on charges of corruption made by the Honourable JB Martin MLC, in connection with the election of the Honourable Edward Grayndler to the Legislative Council, December 1936.

²⁸ *Minutes*, NSW Legislative Council, 22 December 1936, p 91.

²⁹ Frappell, Blunt (eds), *New South Wales Legislative Council Practice*, p 154.

³⁰ Hon Franca Arena MLC, New South Wales, *Hansard*, Legislative Council, 17 September 1997, pp 61-68.

privilege.³¹ Mrs Arena challenged the validity of this legislation in the Supreme Court and the Court of Appeal.³² Several grounds were raised, including that parliamentary privilege is essential for the operation of the parliament and cannot be legislatively waived.³³ Ultimately, these challenges failed as did a subsequent application for leave to appeal to the High Court of Australia.³⁴ In November 1997, the Special Commission tabled its report which concluded that Mrs Arena had no evidence to support her claims.³⁵

Subsequently, the Council resolved that the Standing Committee on Parliamentary Privilege and Ethics investigate and report on Mrs Arena's statements and the possible sanctions, including expulsion, she should face for her actions.³⁶ The inquiry involved significant procedural complexities that were exacerbated by the sensitive nature of the evidence.³⁷ Indeed, the committee resolved to conduct all hearings *in camera* to minimise the '... risk that evidence given at public hearings could have caused unnecessary damage to the reputations of individuals, compromised ongoing police investigations, or prejudiced matters currently before the courts.'³⁸ Following the hearings, the committee published certain sections of the transcript that conformed with the principles adopted in its resolution.³⁹ The committee took a similar approach to redacting submissions.⁴⁰ Additionally, solicitors were engaged to provide legal advice to the committee. The committee also provided funding for legal representatives to support Mrs Arena and certain other parties in their appearance before the committee.⁴¹

After analysing the evidence presented, the committee found that the allegations made by Mrs Arena were untrue and her conduct fell below the standard the House is entitled to expect of a member and brought the House into disrepute.⁴² The committee made four recommendations:

- the House call on Mrs Arena to withdraw the allegations and make a written apology in the House, and should these actions not be taken within a certain period, Mrs Arena be suspended from the service of the House until a formal apology is submitted
- the House consider a resolution to the effect of the above

³¹ NSW Legislative Council, Standing Committee on Parliamentary Privilege and Ethics, *Inquiry into the conduct of the Honourable Franca Arena*, 1998, p 4.

³² Standing Committee on Parliamentary Privilege and Ethics, *Inquiry into the conduct of the Honourable Franca Arena*, pp 4-5.

³³ Harry Evans, Franca Arena and Parliamentary Privilege, *Papers on Parliament: Harry Evans: Selected Writings*, 2009, p 60 [This article was first published in *Constitutional Law and Policy Review*, May 1998].

³⁴ Standing Committee on Parliamentary Privilege and Ethics, *Inquiry into the conduct of the Honourable Franca Arena*, p 5.

³⁵ Hon John Nadar RFD QC, Report of the Special Commission of Inquiry into Allegations Made in Parliament by the Honourable Franca 29 Arena MLC, 7 November 1997, p 40.

³⁶ *Minutes*, NSW Legislative Council, 12 November 1997, pp 165-166.

³⁷ Standing Committee on Parliamentary Privilege and Ethics, *Inquiry into the conduct of the Honourable Franca Arena*, p i.

³⁸ Standing Committee on Parliamentary Privilege and Ethics, *Inquiry into the conduct of the Honourable Franca Arena*, p 11.

³⁹ Standing Committee on Parliamentary Privilege and Ethics, *Inquiry into the conduct of the Honourable Franca Arena*, p 12.

⁴⁰ Standing Committee on Parliamentary Privilege and Ethics, *Inquiry into the conduct of the Honourable Franca Arena*, p 12.

⁴¹ Standing Committee on Parliamentary Privilege and Ethics, *Inquiry into the conduct of the Honourable Franca Arena*, pp 9-10.

⁴² Standing Committee on Parliamentary Privilege and Ethics, *Inquiry into the conduct of the Honourable Franca Arena*, p 72.

- the apology be in a certain set of terms
- the apology and withdrawal be read by Mrs Arena in the House and be published in the Minutes.⁴³

In line with the committee's recommendations, the House resolved that Mrs Arena's conduct fell below the standard the House is entitled to expect of a member and brought the House into disrepute. It further resolved that Mrs Arena submit an apology in respect of the statements, and that, failing this, she be expelled from the service of the House. Ultimately, the House agreed to accept a 'statement of regret' from Mrs Arena in place of the apology.⁴⁴

The Hon Michael Gallacher and the Hon John Hannaford

On 8 September 1999, a few days before a local government election, the Hon Michael Gallacher and the Hon John Hannaford, made statements in the House concerning allegations of sexual harassment by the former Lord Mayor of Sydney.⁴⁵ On 14 September 1999, the House agreed to refer Mr Gallacher and Mr Hannaford's statements to the Privileges Committee for inquiry and report into potential abuse of privilege.⁴⁶

In addition to examining the statements made by Mr Gallacher and Mr Hannaford, the inquiry's terms of reference specified that the committee agree to any requests from witnesses, other than members of Parliament, to protect their identity or to provide their evidence *in camera*.⁴⁷ While witnesses appearing at NSW LC committee hearings are provided procedural fairness, a request to give evidence *in camera* is most often at the discretion of the committee.⁴⁸

The committee's report examined the importance of freedom of speech for members and stated that while there are precedents and procedures around what constitutes contempt or a breach of the rules of debate, there are no recognised guidelines or rules governing the appropriate way for members to raise matters in the House.⁴⁹ The committee concluded that without such guidance, or an external investigation, it would be unreasonable to find a member guilty of an abuse of privilege.⁵⁰ In addition, the committee stated that 'any finding of abuse of privilege under present circumstances could be perceived as an unwarranted restriction on members' freedom of speech.'⁵¹

Ultimately, the committee found no abuse of privilege had occurred and indicated that it may be appropriate to develop principles to be applied in relation to the exercise of members' freedom of speech.⁵²

⁴³ Standing Committee on Parliamentary Privilege and Ethics, *Inquiry into the conduct of the Honourable Franca Arena*, pp 84-86.

⁴⁴ *Minutes*, NSW Legislative Council, 16 September 1998, pp 693-694.

⁴⁵ *Hansard*, NSW Legislative Council, 8 September 1999, pp 65-70.

⁴⁶ *Minutes*, NSW Legislative Council, 14 September 1999, pp 52-53.

⁴⁷ *Minutes*, Legislative Council, No. 4, Tuesday 14 September 1999, p 53.

⁴⁸ Frappell, Blunt (eds), *NSW Legislative Council in Practice*, p 818.

⁴⁹ NSW Legislative Council, Standing Committee on Parliamentary Privilege and Ethics, *Inquiry into statements made by Mr Gallacher and Mr Hannaford*, 1999, pp 13-14.

⁵⁰ Standing Committee on Parliamentary Privilege and Ethics, *Inquiry into statements made by Mr Gallacher and Mr Hannaford*, pp 13-14.

Standing Committee on Parliamentary Privilege and Ethics, *Inquiry into statements made by Mr Gallacher and Mr Hannaford*, p 15.

⁵² Standing Committee on Parliamentary Privilege and Ethics, *Inquiry into statements made by Mr Gallacher and Mr Hannaford*, pp 15-16.

The committee also found that the Lord Mayor should be informed of his right to a citizen's right of reply with respect to the statements made by Mr Gallacher and Mr Hannaford.⁵³ Introduced in 1997, following the statements made by Mrs Arena, the right of reply process gives persons who have been adversely reflected upon in the House an opportunity to have a written response to the adverse comment made public in Hansard.⁵⁴

Mr David Shoebridge

On 15 September 2011, Mr David Shoebridge made statements in the House that the Commissioner of Police sought to prevent the release of information about a serial predator in a Sydney Park.⁵⁵ On 12 October 2011 the House referred Mr Shoebridge's statement to the Privileges Committee for inquiry and report into potential abuse of privilege.⁵⁶

In its report, the committee again noted that unlike certain other jurisdictions, the NSW LC has not adopted any guidelines on the exercise of freedom of speech.⁵⁷ The committee concluded that Mr Shoebridge's statement did not amount to an abuse of the privilege.⁵⁸ Additionally, the committee noted its previous comment concerning the 'desirability' of guidelines around the use of this privilege.⁵⁹

Similar to the Mr Gallagher and Mr Hannaford matter, the committee also recommended that the Commissioner of Police be informed of his right of reply with respect to Mr Shoebridge's statements.⁶⁰

In addition, the report noted that Mr Shoebridge had purportedly raised his allegations about the commissioner with the media prior to his statements in the House, and subsequently the media had ostensibly distributed Mr Shoebridge's comments using social networking mediums. The report noted that members in the House had raised concerns about Mr Shoebridge's alleged actions and the reports on social media.⁶¹

While the committee found no evidence as to whether or not this occurred, the report nonetheless stated that any such communication falls under the law of defamation and therefore has no protection under parliamentary privilege. As such, the committee noted that members should exercise considerable care in their communications with the media, adding that this is a matter for individual members rather than the House.⁶²

Part two: How privileges committees in other jurisdictions have addressed matters concerning abuse of freedom of speech

This next section outlines recent examples in how other jurisdictions approach matters regarding alleged abuse of freedom of speech and debate during parliamentary proceedings.

⁵³ Standing Committee on Parliamentary Privilege and Ethics, *Inquiry into statements made by Mr Gallacher and Mr Hannaford*, p 20.

⁵⁴ Frappell, Blunt (eds), *New South Wales Legislative Council Practice*, p 94.

⁵⁵ Mr David Shoebridge, *New South Wales, Hansard*, Legislative Council, 15 September 2011, p 5750.

⁵⁶ *Minutes*, NSW Legislative Council, 12 October 2011, p 478, 479- 480.

⁵⁷ Privileges Committee, *Statements made by Mr Shoebridge*, 2011, pp 6-7.

⁵⁸ Privileges Committee, *Statements made by Mr Shoebridge*, p 10.

⁵⁹ Privileges Committee, *Statements made by Mr Shoebridge*, p 10.

⁶⁰ Privileges Committee, *Statements made by Mr Shoebridge*, 2011, p viii.

⁶¹ Privileges Committee, *Statements made by Mr Shoebridge*, 2011, pp 10- 11.

⁶² Privileges Committee, *Statements made by Mr Shoebridge*, 2011, pp 10- 11.

Queensland Parliament Ethics Committee: Matter of privilege referred by the Speaker on 13 October 2022 relating to an alleged deliberate misleading of the House by the Member for Oodgeroo relating to social housing in the Redlands

In Queensland, the Ethics Committee has a similar remit to the NSW LC Privileges Committee. This committee is responsible for dealing with complaints about the ethical conduct of members of the Queensland Parliament and alleged abuses of parliamentary privilege. It also considers and reports on matters of privilege and possible contempts of parliament referred to it by the Speaker, the Registrar of Members' Interests (the Clerk), a committee, or the House.⁶³

The Ethics Committee is a statutory committee of the Queensland Parliament established under section 102 of the *Parliament of Queensland Act 2001* (POQA). In addition to setting out the responsibilities of the committee, the POQA provides the following definition of a contempt:

- 1) "Contempt" of the Assembly means a breach or disobedience of the powers, rights or immunities, or a contempt, of the Assembly or its members or committees.
- (2) Conduct, including words, is not contempt of the Assembly unless it amounts, or is intended or likely to amount, to an improper interference with—
 - (a) the free exercise by the Assembly or a committee of its authority or functions; or
 - (b) the free performance by a member of the member's duties as a member.⁶⁴

Standing Order 266 (Qld) also sets out examples of contempt whereby (in part), 'without limiting the power of the House, it may treat contempt as 'deliberately misleading the House or a committee (by way of submission, statement, evidence or petition.⁶⁵

The Ethics Committee recently examined a matter involving an alleged contempt of deliberately misleading the House. In late 2022, following a request by certain members of parliament, the Speaker of the Queensland Legislative Assembly referred Dr Mark Robinson MP, Member for Oodergoo, to the Ethics Committee for a possible contempt related to statements he made in the House about discontinued funding for 'Homeless United', a social housing initiative in the Redlands. Specifically, on 23 June 2022, Dr Robinson alleged members of parliament, including the Member for Capaballa, colluded with the housing minister to reduce funding for the organisation.⁶⁶

During the inquiry, the committee examined documents provided by the Member for Capaballa and the housing minister as part of their initial correspondence to the Speaker regarding the matter, and written correspondence from the Member for Oodgeroo in response to these allegations. The committee also contacted the third-party source who provided the information on which the Member for Oodgeroo based his statements, and considered previous committee findings.⁶⁷

In its report, the Ethics Committee set out the three elements to be established when it is alleged that a member has deliberately misled the House:

- first, the statement must, in fact, have been misleading

⁶³ *Parliament of Queensland Act 2001* (Qld) s 104B.

⁶⁴ *Parliament of Queensland Act 2001* (Qld) s 37.

⁶⁵ Legislative Assembly of Queensland, *Standing rules and orders of the Legislative Assembly*, SO266.

⁶⁶ Dr Mark Robinson MP, Queensland, *Record of Proceedings*, Legislative Assembly, 23 June 2022, pp 1816-1817.

⁶⁷ Ethics Committee, Queensland Legislative Assembly, *Matter of privilege referred by the Speaker on 13 October 2022 relating to an alleged deliberate misleading of the House by the Member for Oodgeroo relating to social housing in the Redlands*, p 5.

- second, it must be established that the member making the statement knew at the time the statement was made that it was incorrect, and
- third, in making it, the member must have intended to mislead the House.⁶⁸

In considering the matter before it, the committee addressed each element and analysed the corresponding evidence. Additionally, the committee noted that it '... applies the civil standard of proof, on the balance of probabilities, in making a finding of contempt ... However, proof of a very high order is required to make a finding of contempt, consistent with the test applied in relation to misconduct charges at common law.'⁶⁹

On the basis of the first element, the committee found that the Member for Oodgeroo's statement was misleading.⁷⁰ The committee also found that the Member for Oodgeroo knew at the time of the statement that it was incorrect.⁷¹ However, the committee found that in relation to the third element, it could not prove that the Member intended to mislead the House: 'While the unsubstantiated statement was reckless, and inconsistent with a Member's exercise of their privilege of freedom of speech in the House, in the absence of any direct evidence of an intention to mislead ... the third element is not made out.'⁷²

The committee concluded that the allegations of contempt against the Member for Oodgeroo were not made out and no further action be taken in relation to these allegations.⁷³

New Zealand House of Representatives Privileges Committee: Question of privilege concerning the time taken by the Minister of Education to correct a misleading statement to the House

New Zealand's House of Representatives' Privileges Committee (NZ Privileges Committee) recently examined whether a member had committed a contempt by deliberately misleading the House. Similar to New South Wales and Queensland, in New Zealand, Article 9 of the *Bill Rights 1688* is the foundation of freedom of speech and debate.⁷⁴ However, unlike New South Wales, New Zealand has specific legislation, the *Parliamentary Privileges Act 2014*, that '... reaffirms and clarifies the nature, scope and extent of the privileges enjoyed by the House.'⁷⁵

⁶⁸ Ethics Committee, *Matter of privilege referred by the Speaker on 13 October 2022 relating to an alleged deliberate misleading of the House by the Member for Oodgeroo relating to social housing in the Redlands*, p 3.

⁶⁹ Ethics Committee, *Matter of privilege referred by the Speaker on 13 October 2022 relating to an alleged deliberate misleading of the House by the Member for Oodgeroo relating to social housing in the Redlands*, p 1.

⁷⁰ Ethics Committee, Queensland Legislative Assembly, *Matter of privilege referred by the Speaker on 13 October 2022 relating to an alleged deliberate misleading of the House by the Member for Oodgeroo relating to social housing in the Redlands*, p 5.

⁷¹ Ethics Committee, Queensland Legislative Assembly, *Matter of privilege referred by the Speaker on 13 October 2022 relating to an alleged deliberate misleading of the House by the Member for Oodgeroo relating to social housing in the Redlands*, p 7.

⁷² Ethics Committee, Queensland Legislative Assembly, *Matter of privilege referred by the Speaker on 13 October 2022 relating to an alleged deliberate misleading of the House by the Member for Oodgeroo relating to social housing in the Redlands*, p 8.

⁷³ Ethics Committee, Queensland Legislative Assembly, *Matter of privilege referred by the Speaker on 13 October 2022 relating to an alleged deliberate misleading of the House by the Member for Oodgeroo relating to social housing in the Redlands*, p 8.

⁷⁴ *Office of the Clerk of the House of Representatives*, New Zealand Parliament, *Parliamentary Privilege*, March 2015, p 1.

⁷⁵ D. McGee, *Parliamentary Practice in New Zealand*, 4th ed., edited by Mary Harris and David Wilson, Auckland: Oratia Books, 2017, Chapter 44.

The NZ Privileges Committee is responsible for determining matters relating to privilege. The committee '... focuses on the rights and freedoms that allow the House of Representatives to do its work and make laws free from outside interference.'⁷⁶

In May 2023, the NZ Privileges Committee was referred a matter concerning statements made in the House by the Hon Jan Tinetti, Minister of Education on 22 February 2023, and a subsequent statement she made on 2 May 2023. In her initial statement the Minister said she played no part in delaying the release of certain education data. This statement was incorrect, and the Minister sought to correct the record in her later statement.⁷⁷

Prior to the correction, the Minister received a letter from the Speaker advising that her statement on 22 February 2023 appeared to be incorrect.⁷⁸ According to the NZ Privileges Committee report, the Speaker's letter was prompted by a complaint made by Erica Stanford MP on 20 April 2023 alleging that the Minister deliberately misled the House on a matter that the Minister knew or ought to have known to be inaccurate.⁷⁹

Following the Minister's statement on 2 May 2023, Ms Stanford raised a further complaint stating that the Minister ought to have known she had misled the House based on the Minister becoming aware of the information on 22 February 2023, and that she should have corrected her statement at the earliest opportunity.⁸⁰

On 30 May 2023, the Speaker referred the Minister's actions, specifically her delay in correcting her statement, to the Privileges Committee as a potential contempt of the House.⁸¹ As part of its evidence gathering process, the committee requested and received correspondence from the Minister and invited her to appear at a hearing.⁸² During the inquiry, the committee considered the following questions and criteria to determine the question of privilege:

- truthfulness of Ministerial replies to parliamentary questions
- whether the delay of correcting the statement amounts to contempt as set out in the Standing Orders.⁸³

In examining the issue, the committee noted that providing inaccurate information in the House and delaying its correction impeded the House's ability to perform its functions, which in this case was the scrutiny of the Executive where the facts relating to an answer to question remained inaccurate. The

⁷⁶ New Zealand Parliament, *Privileges*, <https://www.parliament.nz/en/pb/sc/scl/privileges/>.

⁷⁷ Privileges Committee, New Zealand House of Representatives, *Question of privilege concerning the time taken by the Minister of Education to correct a misleading statement to the House*, p 4.

⁷⁸ Privileges Committee, *Question of privilege concerning the time taken by the Minister of Education to correct a misleading statement to the House*, p 4.

⁷⁹ Privileges Committee, *Question of privilege concerning the time taken by the Minister of Education to correct a misleading statement to the House*, 2023, p 4.

⁸⁰ Privileges Committee, *Question of privilege concerning the time taken by the Minister of Education to correct a misleading statement to the House*, 2023, p 4.

⁸¹ Privileges Committee, *Question of privilege concerning the time taken by the Minister of Education to correct a misleading statement to the House*, p 3.

⁸² Privileges Committee, *Question of privilege concerning the time taken by the Minister of Education to correct a misleading statement to the House*, pp 7-8.

⁸³ Privileges Committee, *Question of privilege concerning the time taken by the Minister of Education to correct a misleading statement to the House*, p 9.

report also noted that deliberately misleading the House requires a level of intent to be considered contempt.⁸⁴

The committee found that in failing to correct her inaccurate statement at the earliest opportunity, the Minister made 'an erroneous judgement that caused the House to be misled.'⁸⁵ However, the committee accepted that the Minister's actions 'arose from a high degree of negligence on her part, not an intention that the House be misled.'⁸⁶ Therefore, the committee found that the Minister was not guilty of contempt of the House.⁸⁷

The committee also noted that while some of the committee members found parts of the Minister's evidence 'unconvincing' as to the reasons to her delay in correcting her misleading statement, all members accepted that 'there is an appropriately high bar for making a finding of intent to mislead, which was not met in this case.'⁸⁸

The committee recommended that the Minister be required to apologise to the House for her conduct. Subsequently, the Minister accepted the committee's findings and apologised to the House.⁸⁹

United Kingdom House of Commons - Committee of Privileges, Matter referred on 21 April 2022

Parliamentary privilege, including the freedom of speech in debate, has its foundations in the Houses of Parliament in the United Kingdom. According to Erskine May parliamentary privilege provides that, subject to the rules of debates, during formal proceedings members are free to say whatever they see fit free from the fear of action for defamation, questions or molestation.⁹⁰

The United Kingdom has a broad understanding of contempt, much like in New South Wales. Erskine May discusses the concept of a contempt and explains the process for addressing this type of action. In the first instance, a contempt is broadly defined as:

... any act or omission which obstructs or impedes either House of Parliament in the performance of its functions, or which obstructs or impedes any Member or officer of such House in the discharge of their duty, or which has a tendency, directly or indirectly, to produce such results, may be treated as a contempt even though there is no precedent of the offence.⁹¹

Moreover, it is noted that: 'Any disorderly, contumacious or disrespectful conduct in the presence of either House or a committee will constitute a contempt, which may be committed by members of the

⁸⁴ Privileges Committee, *Question of privilege concerning the time taken by the Minister of Education to correct a misleading statement to the House*, p 10.

⁸⁵ Privileges Committee, *Question of privilege concerning the time taken by the Minister of Education to correct a misleading statement to the House*, p 12.

⁸⁶ Privileges Committee, *Question of privilege concerning the time taken by the Minister of Education to correct a misleading statement to the House*, p 12.

⁸⁷ Privileges Committee, *Question of privilege concerning the time taken by the Minister of Education to correct a misleading statement to the House*, p 12.

⁸⁸ Privileges Committee, *Question of privilege concerning the time taken by the Minister of Education to correct a misleading statement to the House*, pp 12-13.

⁸⁹ Minister for Education, the Hon Jan Tinetti, New Zealand, *New Zealand Debates*, House of Representatives, 28 June 2023.

⁹⁰ Erskine May, *Treatise on The Law, Privileges, Proceedings and Usage of Parliament*, 25th ed, (LexisNexis, 2019), paragraph 13.2,

⁹¹ May, *Treatise on The Law, Privileges, Proceedings and Usage of Parliament*, paragraph 15.2.

public, parties, witnesses or by Members of either House.⁹² Consequently, a contempt may include a member making a deliberately misleading statement.⁹³

In terms of addressing an alleged contempt, the House of Commons may refer a matter to its Committee of Privileges for investigation and report.⁹⁴ The Committee of Privileges is established under Standing Order No. 148A.⁹⁵ The committee consists of seven cross-party backbenchers. The composition of the committee reflects the membership of the House as a whole.⁹⁶ The committee only considers matters concerning parliamentary privilege referred to it by the House.

The Committee of Privileges is separate from the Standards Committee which focuses on the MPs' Code of Conduct and the Commons standards system more generally, including the work of the Parliamentary Commissioner for Standards.⁹⁷

In April 2022, the House of Commons resolved that statements made by the former Prime Minister, the Rt Hon Boris Johnson, be referred to the Committee on Privileges for inquiry and report. The inquiry examined concerns that Mr Johnson had deliberately misled the House about his conduct during events held at 10 Downing Street and the Cabinet Office while Covid-19 pandemic regulations were in place, and whether this conduct amounted to contempt.⁹⁸

The inquiry commenced in late June 2022 with the committee making a public call for submissions and a specific request to Mr Johnson and the Cabinet Office for certain documents.⁹⁹ In July 2022, the committee agreed to its Resolution on Procedure which set out the conduct of the inquiry.¹⁰⁰ This report also included advice from the Speaker about the application of the *Recall of MPs Act 2015*. The advice noted that in accordance with the Act, should the Committee of Privileges recommend that a member be suspended from the service of the House for more than 10 sitting days or 14 calendar days, the Member would be subject to a recall.¹⁰¹

Over the course of the inquiry, the committee received evidence in the form of submissions, papers and oral evidence about matters including Mr Johnson's knowledge of Covid-19 pandemic regulations and the events that occurred at 10 Downing Street.¹⁰² In its March 2023 report, the committee set out instances where Mr Johnson may have misled the Parliament and outlined its intention to question Mr Johnson about this evidence during his oral evidence to the committee.¹⁰³

⁹² May, *Treatise on The Law, Privileges, Proceedings and Usage of Parliament*, paragraph 15.3.

⁹³ May, *Treatise on The Law, Privileges, Proceedings and Usage of Parliament*, paragraph 15.27.

⁹⁴ May, *Treatise on The Law, Privileges, Proceedings and Usage of Parliament*, paragraph 15.32.

⁹⁵ SO148A, Standing Orders of the House of Commons - Public Business 2016.

⁹⁶ United Kingdom, House of Commons, *Role – Committee of Privileges, 2023*, <https://committees.parliament.uk/committee/289/committee-of-privileges/role/>.

⁹⁷ United Kingdom, House of Commons, *Role – Committee of Privileges*, <https://committees.parliament.uk/committee/289/committee-of-privileges/role/>.

⁹⁸ *Votes and Proceedings*, United Kingdom, House of Commons, 21 April 2022, item 3.

⁹⁹ House of Commons Committee of Privileges, United Kingdom, *Matter referred on 21 April 2022: proposed conduct of inquiry*, Report 2, July 2022, p 3.

¹⁰⁰ House of Commons Committee of Privileges, *Matter referred on 21 April 2022: proposed conduct of inquiry*, Report 2, pp 6-8.

¹⁰¹ House of Commons Committee of Privileges, *Matter referred on 21 April 2022: proposed conduct of inquiry*, Report 2, pp 24-33.

¹⁰² House of Commons Committee of Privileges, United Kingdom, *Matter referred on 21 April 2022: (conduct of Rt Hon Boris Johnson): Final report*, June 2023, pp 12-13.

¹⁰³ House of Commons Privileges Committee, United Kingdom, *Matter referred on 21 April 2022: summary of issues to be raised with Mr Johnson*, 3 March 2023, pp 14-18.

On 9 June 2023, prior to the committee's final report being released, Mr Johnson, who had been provided a copy of the document, announced that he was leaving Parliament. In his resignation letter, Mr Johnson made several remarks about the privileges committee and its processes, including describing it as a 'kangaroo court'.¹⁰⁴

In its final report, the committee set out its findings, including that Mr Johnson:

- had knowledge of the Covid-19 pandemic Rules and Guidance
- had knowledge of breaches of the Covid-19 pandemic Rules and Guidance that occurred 10 Downing Street
- misled the House
- was deliberately disingenuous when he tried to reinterpret his statements to the House to avoid their plain meaning and reframe the clear impression that he intended to give.¹⁰⁵

The committee concluded that by deliberately misleading the House Mr Johnson had committed a serious contempt.¹⁰⁶ Moreover, the committee unanimously recommended that the 'minimum sanction' the House should impose on Mr Johnson was '... suspension from the service of the House sufficient to engage the provisions of the *Recall of MPs Act*.¹⁰⁷ The report also included discussion on the comments Mr Johnson made in his statement of resignation about the inquiry and the committee itself.¹⁰⁸ Upon reflection on these statements, the committee stated:

... if he had not resigned his seat, we would have recommended that he be suspended from the service of the House for 90 days for repeated contempts and for seeking to undermine the parliamentary process, by:

- Deliberately misleading the House
- Deliberately misleading the Committee
- Breaching confidence
- Impugning the Committee and thereby undermining the democratic process of the House
- Being complicit in the campaign of abuse and attempted intimidation of the Committee.¹⁰⁹

The committee concluded that as Mr Johnson was no longer a member, it recommended he should not be granted a former Member's pass.¹¹⁰

In June 2023, the committee released a special report entitled 'Matter referred 21 April: Co-ordinated campaign of interference in the work of the Privileges Committee' that detailed its concerns about the

¹⁰⁴ House of Commons Committee of Privileges, *Matter referred on 21 April 2022: (conduct of Rt Hon Boris Johnson): Final report*, pp 100-102.

¹⁰⁵ House of Commons Committee of Privileges, *Matter referred on 21 April 2022: (conduct of Rt Hon Boris Johnson): Final report*, pp 3-4.

¹⁰⁶ House of Commons Committee of Privileges, *Matter referred on 21 April 2022: (conduct of Rt Hon Boris Johnson): Final report*, p 75.

¹⁰⁷ House of Commons Committee of Privileges, *Matter referred on 21 April 2022: (conduct of Rt Hon Boris Johnson): Final report*, p 75.

¹⁰⁸ House of Commons Committee of Privileges, *Matter referred on 21 April 2022: (conduct of Rt Hon Boris Johnson): Final report*, pp 75-77.

¹⁰⁹ House of Commons Committee of Privileges, *Matter referred on 21 April 2022: (conduct of Rt Hon Boris Johnson): Final report*, p 77.

¹¹⁰ House of Commons Committee of Privileges, *Matter referred on 21 April 2022: (conduct of Rt Hon Boris Johnson): Final report*, p 77.

attempts by Members of both Houses to influence the outcome of the inquiry into Mr Johnson's conduct.¹¹¹

Part three: Into the future

The previous sections have reflected on how the NSW LC, the Queensland Legislative Assembly, the New Zealand House of Representatives and the United Kingdom House of Commons have addressed matters relating to members alleged abuse of freedom of speech. The next section discusses how parliamentary privilege in New South Wales may evolve in the future.

Where to from here?

Parliamentary privilege is a 'living concept'.¹¹² As such, the powers, rights and immunities of parliaments need to evolve to suit the requirements of modern legislatures.¹¹³ As previously mentioned, New South Wales does not have specific privileges legislation. Instead, privilege derives from three sources: the common law test of necessity; certain statutes, notably the *Parliamentary Evidence Act 1901 (NSW)*; and from the statutory adoption of Article 9 of the *Bill of Rights 1689*.¹¹⁴ The most significant advantage of this approach is its flexibility: parliamentary privilege can adapt to the ever-changing needs of the Parliament.¹¹⁵

However, there has been discussion about whether New South Wales needs a more prescriptive approach to parliamentary privilege, particularly in regard to the application of freedom of speech and debate. Most notably there have been calls for specific privileges legislation. Discussion about the desirability of dedicated privileges legislation dates almost to the beginning of responsible government in New South Wales. Indeed, there were six failed attempts to introduce comprehensive privileges legislation in New South Wales between 1856 and 1912.¹¹⁶ There have also been proposals for this type of legislation in more recent times. However, for a variety of reasons these proposals have not been progressed.

As previously discussed, other jurisdictions have adopted more prescriptive privileges legislation. For example, the *Parliament of Queensland Act 2001 (POQA)* provides explicit instruction on the application of freedom of speech in the House, stating:

(1) The freedom of speech and debates or proceedings in the Assembly cannot be impeached or questioned in any court or place out of the Assembly.

(2) To remove doubt, it is declared that subsection (1) is intended to have the same effect as article 9 of the *Bill of Rights (1688)* had in relation to the Assembly immediately before the commencement of the subsection.¹¹⁷

As mentioned earlier, the POQA also contains a definition of contempt and Standing Order 266 sets out examples of contempt, including deliberately misleading the House or a committee.¹¹⁸ Moreover,

¹¹¹ House of Commons Committee of Privileges, United Kingdom, *Matter referred on 21 April 2022: co-ordinated campaign of interference in the work of the Privileges Committee*, June 2023.

¹¹² May, *Treatise on The Law, Privileges, Proceedings and Usage of Parliament*, paragraph 15.2.

¹¹³ Frappell, *Parliamentary privilege - developments since 2019 and current issues*, p 22.

¹¹⁴ Frappell, *Parliamentary privilege in New South Wales*, p 1.

¹¹⁵ Stephen Frappell, A Case for a Parliamentary Privileges Act for New South Wales, *Australasian Parliamentary Review*, Autumn/Winter 2015, Vol. 30, No. 1, p 19.

¹¹⁶ Frappell, A Case for a Parliamentary Privileges Act for New South Wales, p 10.

¹¹⁷ *Parliament of Queensland Act 2001 (Qld)*, s 8(1)-(2).

¹¹⁸ *Parliament of Queensland Act 2001 (Qld)*, s 37 and Legislative Assembly of Queensland, *Standing rules and orders of the Legislative Assembly*, SO266(2).

the POQA provides that the Assembly's power to deal with a contempt includes '... power to fine the person and impose imprisonment on the person in default of the payment of the fine.'¹¹⁹

While not comprehensive codifying parliamentary privilege,¹²⁰ New Zealand's *Parliamentary Privileges Act 2014* seeks to 'reaffirm and clarify the nature, scope, and extent of the privileges, immunities, and powers exercisable by the House of Representatives, its committees, and its members'.¹²¹ It also ensures adequate protection of proceedings in Parliament under Article 9.¹²² Indeed, the Act broadly defines 'proceedings of parliament' as '... all words spoken and acts done in the course of, or for purposes of or incidental to, the transacting of the business of the House or of a committee.'¹²³ Moreover, this legislation states 'no necessity test is required or permitted to be used [to determine the immunities of the Parliament of New Zealand]'.¹²⁴

Similarly, the Australian Parliament has enacted the *Parliamentary Privileges Act 1987* (Cth). The Act sets out key privileges and defines the penalties that a House may impose for contempt.¹²⁵ Since 1988, the Act has been supplemented by a suite of Privileges Resolutions which establish certain procedures for the Senate and its committees. Privilege Resolution 9 relates to exercising freedom of speech, and details matters that senators should take into account when speaking in parliamentary proceedings, specifically:

- the need to exercise their valuable right of freedom of speech in a responsible manner
- the damage that may be done by allegations made in Parliament to those who are the subject of such allegations and to the standing of Parliament;
- the limited opportunities for persons other than members of Parliament to respond to allegations made in Parliament;
- the need for senators, while fearlessly performing their duties, to have regard to the rights of others; and
- the desirability of ensuring that statements reflecting adversely on persons are soundly based.¹²⁶

Privilege Resolution 3 details the criteria to be taken into account when determining matters relating to contempt including those to consider in matters concerning alleged abuse of freedom of speech.¹²⁷

As we move towards the bicentenary of the NSW LC, it may be time to consider following in the path of these jurisdictions and adopt a more prescriptive approach the privilege of freedom of speech. Arguments in favour of such action include:

- ensuring a consistent interpretation of 'proceedings in Parliament'.
- the Commonwealth's privileges legislation is well accepted.

¹¹⁹ *Parliament of Queensland Act 2001 (Qld)*, s 39(2).

¹²⁰ *Parliamentary Privileges Act 2014 (New Zealand)*, s 3(2)(a).

¹²¹ *Parliamentary Privileges Act 2014 (New Zealand)*, s 3(1)(a).

¹²² *Parliamentary Privileges Act 2014 (New Zealand)*, s 3(2)(c).

¹²³ *Parliamentary Privileges Act 2014 (New Zealand)*, s 10(1).

¹²⁴ *Parliamentary Privileges Act 2014 (New Zealand)*, s 10(4).

¹²⁵ *Parliamentary Privileges Act 1987* (Cth).

¹²⁶ Australian Senate, Privilege Resolution, no 9. Exercise of freedom of speech.

¹²⁷ Australian Senate, Privilege Resolution, no 3. criteria to be taken into account when determining matters relating to contempt,

- it may put beyond doubt aspects of the operation of Article 9 such as the application of 'effective repetition'.¹²⁸

Additionally, like in Queensland, this type of legislation may also overcome the lack of punitive power that the NSW LC has in relation to contempt.

Should the NSW Parliament choose not to codify parliamentary privilege in this manner, it may consider developing guidelines around the use of freedom of speech and debate in parliamentary proceedings. As previously mentioned, the NSW LC Privileges Committee has considered the utility of such measures. In 1999 when examining the matter relating to Mr Gallacher and Mr Hannaford, the committee noted that other jurisdictions, such as the Australian Senate, have clear principles that govern members' speech.¹²⁹ The committee also reflected that in 1996 it had recommended that the House adopt a draft code of conduct for members which included the following clause:

Members should be mindful of the privileges conferred when speaking in the House and should seek to avoid causing undeserved harm to any individual who does not enjoy the same privileges.¹³⁰

However, this draft code was not adopted by the NSW LC, and the code eventually adopted by the House does not address this issue.¹³¹ The committee further noted that it is of utmost importance to ensure that parliamentary privilege is not unduly limited by rules regarding the use of freedom of speech.¹³²

In 2011, the committee again grappled with the idea of rules to administer freedom of speech and debate. In this instance, the committee stated that despite the absence of guidelines, '... it is nevertheless understood that it is the responsibility of members to ensure that their privilege of freedom of speech is used responsibly and is not abused.'¹³³ Moreover, the committee contended that members should be responsible for determining the veracity of their statements:

A member should take steps before making a potentially damaging accusation against an individual in Parliament to ensure not only that evidence exists to support the accusation but that it comes from a reliable source. Members should also consider the basis, cogency and responsibility of statements they may make.¹³⁴

While not explicitly considered in the NSW LC Privileges Committee reports, it is pertinent to consider the community's expectations regarding members' use of privilege. Arguably, the public may expect that members be subject to certain conditions, such as acting in good faith when speaking during parliamentary proceeding. Similarly, it could be anticipated that the community expects members to

¹²⁸ Frappell, *A Case for a Parliamentary Privileges Act for New South Wales*, pp 15-16.

¹²⁹ Standing Committee on Parliamentary Privilege and Ethics, *Inquiry into statements made by Mr Gallacher and Mr Hannaford*, p 13.

¹³⁰ Standing Committee on Parliamentary Privilege and Ethics, *Inquiry into statements made by Mr Gallacher and Mr Hannaford*, p 15.

¹³¹ Standing Committee on Parliamentary Privilege and Ethics, *Inquiry into statements made by Mr Gallacher and Mr Hannaford*, p 15.

¹³² Standing Committee on Parliamentary Privilege and Ethics, *Inquiry into statements made by Mr Gallacher and Mr Hannaford*, p 13.

¹³³ Privileges Committee, *Statements made by Mr Shoebridge*, p 7.

¹³⁴ Privileges Committee, *Statements made by Mr Shoebridge*, p 7.

consider how their statements may damage an individual's reputation before raising a matter in the House.

Conclusion

The freedom of speech and debate is vital to the functioning of the NSW Legislative Council. This paper demonstrated how this privilege is expressed in the Council and how it is protected and maintained by the NSW LC Privileges Committee. Throughout its long history the committee has demonstrated a willingness to investigate matters relating to alleged abuse of freedom of speech and has been appropriately circumspect in its responses.

As this paper also discussed, no jurisdiction is immune from abuses of freedom of speech, and privileges committees throughout the Westminster system play a vital role in balancing the need to discipline members while maintaining the immunity of freedom of speech and debate.

Finally, while the rights, powers and immunities of parliaments and their members are sacrosanct, the way in which parliaments support members to execute their functions can evolve. This paper highlighted opportunities for New South Wales to follow the precedents of other parliaments and adopt a more prescriptive approach to parliamentary privilege. Specifically, it considered options to partially codify parliamentary privilege or to develop guidelines to administer its use. Taking either action will help ensure parliamentary privilege, particularly the freedom of speech and debate, is fit for purpose in the 21st century.