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Editor: Dr Sarah Moulds, Associate Professor in Law, University of South Australia





Parliamentary disobedience

Expanding parliamentary scrutiny

Exploring the limits of transparency

Australasian Study of Parliament Group

SPRING/SUMMER 2026 • VOL 41 NO 2

AUSTRALASIAN STUDY OF PARLIAMENT GROUP (ASPG) AND THE AUSTRALASIAN PARLIAMENTARY REVIEW (APR)

The APR is the official journal of ASPG, which was formed in 1978 for the purpose of encouraging and stimulating research, writing and teaching about parliamentary institutions in Australia, New Zealand and the South Pacific (see back page for Notes to Contributors to the journal and details of ASPG membership, which includes a subscription to APR). To know more about the ASPG, including its Executive membership and its Chapters, go to www.aspg.org.au

AUSTRALASIAN PARLIAMENTARY REVIEW

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Whitlam Right and Wrong: personal reflections edited by Michael Easson. Connor Court, 2026, xv+124 pp, RRP $34.95, ISBN: 9781923568815.

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* Indicates that the article has been double-blind reviewed.

From the Editor

It is a pleasure to introduce Volume 41, Number 2 of the *Australasian Parliamentary Review*, a collection that brings together timely scholarship on some of the most pressing questions facing contemporary parliaments: how they respond to disruption, how they scrutinise power, and how they maintain public trust while adapting to changing democratic expectations. Drawing on contributions from parliamentary practitioners, scholars and legal experts, this issue highlights the continuing relevance of parliamentary institutions in an era marked by political polarisation, social change and renewed scrutiny of democratic processes.

The articles in this edition invite readers to examine parliament not as a static institution, but as one constantly negotiating competing values and responsibilities. Questions of order and dissent emerge prominently throughout the volume. Iva Glisic's examination of parliamentary protest considers the growing phenomenon of parliamentary disobedience and the challenges it poses for established procedural norms. At the same time, several contributions explore the boundaries of parliamentary privilege and institutional autonomy, including Alistair Sage's analysis of recent Canadian jurisprudence, Evan Smith's discussion of workplace health and safety regulation within parliamentary precincts, and Jessica Summers' thoughtful consideration of parliamentary privilege in the context of child-safety reporting obligations. Together, these papers demonstrate that debates about privilege, accountability and institutional legitimacy remain central to the contemporary parliamentary project.

A second theme running through this issue is the evolving role of parliamentary scrutiny. Matthew Kowaluk's article considers whether the Senate Scrutiny of Bills Committee might adopt a more expansive, pre-introduction approach to legislative review, while Jennefer Bagaporo explores parliamentary committees as sites of public engagement and democratic participation. Focusing on the experiences of vulnerable witnesses in South Australian parliamentary inquiries, Bagaporo highlights the importance of care, trust and accessibility in strengthening committee effectiveness and public confidence. Jessie Halligan examines the complex role of parliamentary committees through a case study of the New South Wales inquiry into past adoption practices, exploring the often difficult balance between transparency, accountability and the protection of individual privacy, and highlighting the long-term consequences that procedural decisions can have for public understanding and historical memory.

The issue also offers important comparative and international perspectives. Leslie Gonye's commentary on the 2026 Hungarian election examines parliamentary democracy in the context of democratic backsliding and institutional resilience, while Paul Williams' analysis of the 2024 Queensland election revisits the enduring influence of regional political cultures and electoral geography on parliamentary representation. These contributions reinforce the value of comparative parliamentary scholarship in understanding both the common challenges and the distinctive characteristics of legislative institutions.

This issue also features two book reviews. I review Charlie Feldman's *Unparliamentary: Tales from Canada's Colourful Parliamentary Past*, a lively account of some of the most memorable

episodes, personalities and controversies to have shaped the Canadian parliamentary tradition. David Clune reviews *Whitlam Right and Wrong: Personal Reflections*, edited by Michael Easson, a collection of essays reflecting on the legacy of the Whitlam Government more than fifty years after its election.

As always, the *Australasian Parliamentary Review* seeks to provide a forum where academic scholarship and parliamentary practice can engage in productive dialogue. The contributions in this volume reflect the richness of parliamentary studies as an interdisciplinary field and demonstrate the continuing value of evidence-based analysis of parliamentary institutions, procedures and culture. At a time when trust in democratic institutions cannot be taken for granted, careful examination of how parliaments operate, adapt and respond to public expectations remains more important than ever.

I extend my sincere thanks to all contributors and reviewers for their thoughtful scholarship and for the depth of insight that practitioner experience brings to this volume.



Dr Sarah Moulds, Associate Professor in Law, Adelaide University

November 2026

Comment

2026 Election in Hungary: A Threat to Parliamentary Democracy Curbed?

Leslie Gonye

Former Parliamentary Officer of the New South Wales Legislative Assembly

In 2004 Hungary joined the European Union (EU) alongside nine other countries, including former communist states. Yet within months of winning the 2014 election, Prime Minister Viktor Orbán pointedly observed that 'the liberal Hungarian state was also incapable of protecting the country from falling into debt and declared that his government was building an "illiberal state"'.[1] His intentions were a clear threat to parliamentary democracy; a process commenced in the previous term. Raising the question as to how this could occur in a member state of the EU and what the broader implications might be. In part, as former Trump advisor Steven Bannon described Orbán, as 'Trump before Trump' and in some ways providing a template for elements of the Heritage Foundation Project 2025.

Hungary, a country of only 9.5 million people, had exhibited a disproportionate influence within the EU. Against the international backdrop of growing global support for national populist politics there was considerable interest in Hungary's election of 12 April 2026 in terms of further consequences for parliamentary democracy, as Orbán sought a fifth consecutive term.

Since the collapse of the Austro-Hungarian Empire Hungary has had two short lived republics, one after each of the world wars, so never established a robust parliamentary democracy.[2] The collapse of Soviet Union domination resulted in the abrupt end to the third republic and a hasty transition to a post-communist state. In summer 1989 the ruling Socialist Workers' Party

[1] Speech given at the open summer university in Băile Tuşnad, Romania on 26 July 2014. Accessed at: https://2015-2019.kormany.hu/en/the-prime-minister/the-prime-minister-s-speeches/prime-minister-viktor-orban-s-speech-at-the-25th-balvanyos-summer-free-university-and-student-camp

[2] András Bozóki, *'Introduction: The Significance of the Roundtable Talks',* András Bozóki (ed.), *The Roundtable Talks of 1989: The Genesis of Hungarian Democracy: analysis and documents,* Central European University Press, 2022, pp. xviii-xix. Accessed at www.degruyterbrill.com/document/doi/10.1515/9789633865453-005/pdf

'entered reconciliation talks with opposition groups and the social representation bodies'.[3] Rather than start from a blank canvass, the negotiators worked on an extensive overhaul of the 1949 Constitution, that held until January 2012. Whereas much more time is required for the transition of a state-run economy to that of a market one. Many wrongly blamed the economic dislocation, especially the privatisation of state assets, on the new political institutional order.[4]

In 1989 Orbán also came to prominence. As a young liberal, he made an impassioned speech at the state occasion for the reburial of Imre Nagy, the executed leader the 1956 Hungarian Revolution, demanding the withdrawal of Soviet troops from Hungary.[5]

Orbán first became prime minister in 1998 when his Fidesz[6] party formed a centre right coalition government. After losing the following two elections, he vowed to return to reshape Hungary's political system.

The breakdown of the Hungarian Socialist Party government and the impact of the global financial crisis paved the way for Fidesz's landslide victory in 2010. Securing a two-thirds parliamentary majority gave Orbán the power to amend the constitution.[7] In an interview to an Austrian newspaper he stated:

> *that in this respect I would like to tie the hands of the next government.*
>
> *And not only the next one, but the next ten governments[8].*

He did not waste the opportunity, as over four terms he used his super majorities to systematically weaken democratic institutions and consolidate his power.

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[3] László Vass, *'Changes in Hungary's Governmental System',* Attila Ágh (ed.), *The Emergence of East Central European Parliaments: The First Steps, Hungarian Centre of Democracy Studies,* 1994, p. 187.

[4] Kim Lane Scheppele in the *Foreword,* Bálint Magyar, *Post-Communist Mafia State the Case of Hungary*, Central European University Press, 2016, p. xvii.

[5] Paul Lendvai, *Orbán Hungary's Strongman*, Oxford University Press, 2017, pp. 6-8.

[6] Fidesz is an acronym for Fiatal Demokratak Szövetsége (Alliance of Young Democrats).

[7] Princeton University, *Hungary 1989 Country Report*, under the Constitution Writing & Conflict Resolution Project. Accessed at: https://pcwcr.princeton.edu/reports/hungary1989.html; then post 2012, *The Fundamental Law of Hungary 2011 Article S (2)* Accessed at: https://www.parlament.hu/documents/125505/138409/Fundamental+law/

[8] *Kronen Zeitung*, 10 June 2011 as quoted Lendvai, *Orbán Hungary's Strongman*, p. 93.

Central to Orbán's plans was the System of National Cooperation (NER), fusing political, economic, and social power. Businesses loyal to the government benefited from state contracts and EU funding through non-competitive tendering.[9] While legislation facilitated the transfer of public assets into politically connected hands.[10]

As Orbán valued fealty above all. Political appointees filled courts and public institutions,[11] eroding the rule of law, judicial independence and constitutional checks and balances. Parliamentary scrutiny steadily declined as Fidesz members 'dutifully' accepted executive actions without question. The executive abused the state of danger provisions of The Fundamental Law.[12] These emergency powers have been in continuous use since 2016, first for the migration crisis, then during the COVID-19 pandemic and again from 2022 due to the armed conflict in a neighbouring country, being the Russia-Ukraine war. This further expanded executive authority to deal with these issues by decree without scrutiny.

There was minimal media independence as most of the media and provincial newspapers were controlled by pro-government oligarchs generously financed by state advertising. Public broadcasting became openly partisan,[13] while repeated amendments to electoral law favoured Fidesz.[14] Though elections remained formally free they were increasingly unfair, allowing Fidesz to secure parliamentary supermajorities with less than half the popular vote.

The beginning of Orbán's political decline came in February 2024 when it emerged that Hungary's president had pardoned a man convicted of covering up child sexual abuse at a state-run children's home.[15] The pardon sparked mass public protest, that unlike the parliament could not be ignored. Both the president and minister of justice were forced to resign[16] and the Thirteenth Amendment to The Fundamental Law was quickly made to abolish the power of the president to grant pardons in cases of child sexual abuse.

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[9] Magyar, *Post-Communist Mafia State the Case of Hungary*, forensically documents the emergence of NER and how it operated during Orbán's first years in office.

[10] The *Public Interest Asset Management Foundations Performing Public Functions (Act IX) 2021* provided one such legal means for hidden privatisation.

[11] Lendvai, *Orbán Hungary's Strongman*, pp. 127-128.

[12] *The Fundamental Law of Hungary 2011, Article 53.*

[13] See '*6.1 Domestication of the media'* Magyar, *Post-Communist Mafia State the case of Hungary*, pp. 208-218.

[14] Scheppele in the *Foreword, Magyar*, *Post-Communist Mafia State the Case of Hungary*, p. xxii.

[15] Case number KEH/2787-6/2023 as reported in https://444.hu/2024/02/02/novak-katalin-kegyelmet-adott-a-bicskei-gyerekotthon-pedofil-exigazgatojat-fedezo-buntarsnak

[16] https://www.the guardian.com/2024/feb/10/hungarys-president-resigns-in-unusual-setback-for-ruling-party

The scandal became a catalyst for much wider public dissatisfaction. Fed up with the government the anti-Fidesz anger coalesced to transform Hungarian politics.

In the absence of a credible political opposition party Péter Magyar[17] filled the vacuum. The divorced husband of the former justice minister with connections to Fidesz emerged after resigning from Fidesz and turning corruption 'whistleblower'. Magyar took the opportunity to revive the dormant, but registered, Tisza Party[18] to contest the 2024 election for the European Parliament.[19].

The European Parliament election results launched Magyar on a continuous 22-month campaign all the way to the 2026 national election. Magyar built support through direct engagement with voters. He conducted a literal grassroots campaign visiting as many as five to six villages a day in traditional Fidesz strongholds across the country. He also undertook a symbolic walk from Budapest to Romania canvassing for the votes of ethnic Hungarians.[20]

Orbán's campaign centred on protecting Hungarian sovereignty and whipping up fear against the bureaucrats of Brussels, illegal migrants, George Soros, LGBTQI rights, and Hungary being dragged into the war in Ukraine. Magyar, as a former insider and of the centre right, proved less vulnerable to the government's well-known fear campaigns and personal attacks which had worn off over the years as Orbán's claims became increasingly incredulous.[21]

Meanwhile, Hungarians had become more concerned with domestic issues. After 16 years of Fidesz government voters displeasure centred on the scale of corruption, neglect of public services, deteriorating infrastructure, the struggling economy and child protection.

[17] Péter Magyar comes from a family prominent in law. His great uncle, Ferenc Madl, was president from 2000 to 2025. Magyar held positions in the Ministry of Foreign Affairs, including a posting to the EU. His last position before embarking on a political career was CEO of the Student Loan Centre. He was a member of the European Parliament from 2024 until his election as Prime Minister.

[18] Tisza is an acronym for Tisztelet és Szabadság (Respect and Freedom).

[19] An indicator of the anger of Hungarians was the fifth highest voter turnout of the 27 EU member states. Of Hungary's 21 seats in the European Parliament, Tisza won seven seats and Fidesz fell to eleven. See European Parliament. *European Elections 2024*. Accessed at <https://results.elections.europa.eu/en/hungary>.

[20] Komuves, A., Fenyo, K., & Than, K. (24 May 2025, updated 24 May 2026). Hungarian opposition leader Magyar walks to Romania, courting ethnic Hungarians. Reuters. Accessed at <https://www.reuters.com/world/hungarian-opposition-leader-magyar-walks-romania-courting-ethnic-hungarians-2025-05-24/>.

[21] Martin, L. (2026, April 8). Europe holds its breath ahead of Hungary's election. The Interpreter, Lowy Institute. Accessed at <https://www.lowyinstitute.org/the-interpreter/europe-holds-its-breath-ahead-hungary-s-election>.

Capitalising on this mood, Magyar promised to expose corruption, pursue legal accountability and prosecutions, recovering stolen assets, removing political appointees from public institutions, restoring the rule of law, and rebuilding Hungary's relationship with the EU.

By the time of the 2026 election parliamentary democracy in Hungary was on life support as the executive was unchecked in the service of Fidesz. Some of the critical contributing factors included the lack of an independent judiciary and media, a skewed electoral system favouring Fidesz to gain two-thirds parliamentary majorities with the consequential power to amend The Fundamental Law and subservient government members failing to prevent the systematic dismantling parliamentary democracy, reducing the parliament to barely even a rubber stamp.

Tisza's landslide victory to secure its own two-thirds majority was remarkable. That the public rose up with the largest ever voter turnout shows the resilience of an engaged democracy with a large majority of Hungarians celebrating the result as a significant rebuff to the Orbán regime.[22]

Yet important questions remain. How will Tisza use its mandate to dismantle Fidesz's institutional changes and then shape Hungary's democratic future. Will it, as seems likely, mark the end of Orbán and Fidesz as political forces? Globally, what does it hold for right-wing populist movements at forthcoming elections and of the capacity to reverse democratic backsliding?

[22] https://www.theguardian.com/world/2026/apr/12/viktor-orban-concedes-defeat-as-opposition-wins-hungarian-election

Articles

Parliamentary Disobedience: MPs' acts of protest and the future of parliamentary order

Iva Glisic[1]

Department of the House of Representatives, The Australian National University, The University of Western Australia

*Peer reviewed article

Abstract: This article examines the relationship between Parliament and protest through three recent instances of dissent within the Parliament of Australia: Senator Mehreen Faruqi's demonstration during the opening of the 48th Parliament in 2025, and protests by Senators Janet Rice and Lidia Thorpe during visits by foreign dignitaries in 2024. In each case, the Senators employed forms of political communication that challenged parliamentary norms and blurred the boundary between institutional politics and extra-parliamentary activism. Through an analysis of Parliament's responses to these incidents, the article explores how freedom of political expression is balanced against the maintenance of parliamentary order and institutional authority. It argues that Parliament has largely relied on existing procedural mechanisms rather than expanding its disciplinary powers, reflecting a preference for flexibility in regulating disorderly conduct amid heightened political polarisation and contestation.

[1] I would like to acknowledge Lisa Deans, Natalie Cooke, and the Australian Parliament House Art Collections team for their generous assistance and for sharing their knowledge and insights into parliamentary history, procedure, and the Parliament's art collection.

INTRODUCTION

This article examines instances in which Members of Parliament (MPs) have engaged in protest within the Parliament of Australia and considers the meaning and implications of those actions within contemporary political discourse. Set against the backdrop of a global surge in mass protests and Australia's own rich tradition of political activism, it focuses on three recent cases in which Australian Senators staged demonstrations during high-profile parliamentary events: Senator Mehreen Faruqi's protest during the opening of the 48th Parliament in 2025, and protests by Senators Janet Rice and Lidia Thorpe during visits by foreign dignitaries in 2024.[2] In each instance, the Senators adopted forms of political communication that deliberately contravened institutional norms designed to uphold order and the dignity of debate and renounced parliamentary privilege, which grants Members broad freedom of expression. Rather than working solely through parliamentary channels, they aligned themselves with protest movements and their tactics, highlighting broader questions about the place of dissent within representative democratic institutions.

Through an examination of how these protests were interpreted and sanctioned by the Parliament, this article considers whether subsequent calls for tighter rules and stronger penalties for parliamentary disobedience strike an appropriate balance between safeguarding dissent as a cornerstone of democratic culture and preserving the integrity of parliament as its principal institution. It argues that the Parliament has largely favoured managing such conduct through existing procedural mechanisms rather than expanding its disciplinary arsenal. In doing so, it has demonstrated a preference for preserving flexibility in the regulation of disorderly conduct. The cases examined here therefore illuminate the relationship between protest, freedom of political expression and parliamentary privilege, and demonstrate how contemporary parliaments negotiate the competing demands of dissent and institutional order.

[2] See, for example, Michael Head, Democracy, Protest and the Law: Defending a Democratic Right. Abingdon: Routledge, 2024; Isabel Ortiz et al, World Protest: A Study of Key Protest Issues in the 21st Century. Cham, Switzerland: Palgrave Macmillan, 2022; Clive Hamilton, What Do We Want? The Story of Protest in Australia. Canberra: National Library of Australia Publishing, 2016.

PARLIAMENTS IN THE AGE OF MASS PROTEST

The opening decades of the twenty-first century have witnessed an extraordinary surge in protest activity, prompting observations about the rise of 'protest society' and the characterisation of this period as 'the age of mass protests.'[3] The century began with a series of so-called 'colour revolutions': largely peaceful, pro-democratic uprisings across former socialist states in Eastern Europe and the post-Soviet space.[4] This was followed in the 2010s with the Arab Spring, as anti-government demonstrations swept through the Middle East and North Africa. Over the past decade, protest has become truly global – spanning pro-democracy rallies in Hong Kong and the Yellow Vests movement in France, anti-corruption campaigns in Eastern Europe, Occupy Wall Street and Black Lives Matter in the United States, anti-government mobilisations across Latin America, and worldwide climate strikes.[5] Despite their diversity, these movements share common grievances based in the perceived failure of current political and economic systems and the absence of 'real democracy.'[6]

Australia has not been immune to this global trend. In recent decades, Australian demonstrations have largely centred on climate action, Indigenous justice, opposition to anti-refugee policies, and ending gender-based violence.[7] While progressive causes tend to dominate, other forms of dissent have emerged – such as the anti-lockdown protests during the COVID-19 pandemic – reflecting the complex and contested nature of contemporary protest culture.[8] These social movements represent a new chapter in Australia's longstanding tradition of activism, which, as Moulds observes, has been integral to Australian democracy since colonisation.[9] Indeed, from the Eureka Stockade and World War I conscription debates to the transformative activism of the 1960s and 1970s – focused on peace, women's and gay

[3] Marco Giugni and Maria Grasso, The Transformation of Protest Politics. Cambridge: Cambridge University Press, 2025, p. 4; Head, Democracy, Protest and the Law, p. 8.

[4] See, for example, Donnacha Ó Beacháin and Abel Polese eds, The Colour Revolutions in the Former Soviet Republics: Successes and Failures. Abingdon: Routledge, 2010.

[5] Head, Democracy, Protest and the Law, pp. 4-21.

[6] Ortiz et al, World Protest, pp. 1-2, cited in Head, Democracy, Protest and the Law, pp. 4-5.

[7] Head, Democracy, Protest and the Law, p. 10; Dr Anne Macduff, 'Protesting and the Law'. Legaldate 37(3) 2025, p. 1.

[8] Frank Bongiorno, 'The changing nature of protests in Australia: Historical reflections'. Australian Quarterly Jan-Mar 2021, pp. 12-19.

[9] Sarah Moulds, 'Climate protest, public assemblies and the law in South Australia'. Adelaide Law Review 46(2) 2025, p. 310.

rights, and Indigenous rights – protest has consistently shaped the nation's social and political landscape.[10]

In Australia, consistent with other Westminster-derived systems, parliament serves as a principal forum for political communication and, by extension, has historically been a prominent site of protest. As Kowol observes, the symbolism of contesting parliament's claim to representation has been almost irresistible to activists – from the suffragettes chained to the House of Commons gallery, to the Aboriginal Tent Embassy outside Parliament House in Canberra.[11] Similarly, a 1997 parliamentary report on the right to protest on national land noted that Australians recognise the ability to protest as an essential part of their democratic tradition, and highlighted that protests within the parliamentary zone have a particular symbolic value as these acts deliver messages directly to those chosen to make decisions on the public's behalf.[12]

Perhaps the most striking nexus between parliament and protest is when parliamentarians themselves engage in acts of protest within the chamber. While Parliament is a site of robust political contestation and enjoys broad protections for speech through parliamentary privilege, it is also governed by rules and conventions designed to maintain order, decorum and institutional authority. This investigation builds on recent scholarship exploring the tensions that arise when MPs engage in activist practices including, for example, endorsing or publicising demonstrations via social media.[13] The discussion centres on three recent cases: protests by Senator Faruqi in 2025, and Senators Rice and Thorpe in 2024. In each case, the Senate voted to censure the Senator concerned. Although a number of censure motions have been considered in the Senate in recent years, these cases occurred during high-profile

[10] Hamilton, What Do We Want? p. vii. See also Sean Scalmer, Dissent Events: Protest, the Media, and the Political Gimmick in Australia. Sydney: University of New South Wales Press, 2002.

[11] Dr Kit Kowol, Parliament of Queensland, 'Disrupting the disruptors: resilient parliamentary procedure and culture in an era of disruptive protest' (Conference Paper, Australasian Study of Parliament Group Annual Conference, 3 October 2024), available at: https://www.aspg.org.au/conferences/2024-new-zealand/. See also Scott Bennett, 'Parliament House and the Australian People.' Parliament of Australia, Parliamentary Library, Research Paper 29 2007-08, pp. 28-32.

[12] The Parliament of the Commonwealth of Australia, Joint Standing Committee on the National Capital and External Territories, A right to protest. May 1997, p. iii.

[13] Kowol, 'Disrupting the disruptors'.

parliamentary events, giving them additional visibility and symbolic significance.[14] Moreover, the conduct in question was directly connected to broader protest movements occurring elsewhere, and as such these acts represent an extension of extra-parliamentary activism into the parliamentary arena.

THE PROTEST AND THE PRIVILEGE

The significance of these episodes is underscored by the uncertain legal grounding of protest in Australia. Although Australia has a strong history of activism, the right to peaceful assembly is not explicitly protected in the Constitution or federal law.[15] Unlike many democracies, Australia does not have a bill of rights that guarantees fundamental civic freedoms, such as freedom of speech and the right to assembly. Two legal sources, however, provide a level of protection for protest activity in Australia. The first of these is the Constitution's implied freedom of political communication – a judicially recognised principle established through a series of High Court decisions, which recognises Australians' ability to communicate on political matters so that they can elect representatives to the parliament.[16] The second source is Article 21 of the International Covenant on Civil and Political Rights, which guarantees the right of peaceful assembly and obliges Australia as a signatory to uphold it domestically.[17]

[14] Senator Pauline Hanson, for example, was the subject of censure motions in 2026 and 2025 in relation to her comments about Australian Muslims and her decision to wear a burqa in the Senate chamber, respectively. Senator Ralph Babet was likewise censured in 2024 for the use of hate speech intended to provoke division, on the same day that the Senate considered the case of Senator Thorpe discussed in this article. See Senate Proof Hansard, Monday 2 March 2026, p. 52; Senate Official Hansard, Tuesday 25 November 2025, p. 2388; Senate Official Hansard, Monday 18 November 2024, p. 4655.

[15] Moulds, 'Climate protest, public assemblies and the law in South Australia,' pp. 314-315; Macduff, 'Protesting and the Law'.

[16] The implied freedom of political communication was first recognised by the High Court in 1992 in *Nationwide News Pty Ltd v Wills* (1992) 177 CLR 1 and *Australian Capital Television Pty Ltd v Commonwealth* (1992) 177 CLR 106, both of which were decided on 30 September that year. The nexus between the implied freedom and defamation was then further developed in *Theophanous v Herald & Weekly Times Ltd* (1994) 182 CLR 104 and *Stephens v West Australian Newspapers Ltd* (1994) 182 CLR 211, and later in *Lange v Australian Broadcasting Corporation* (1997) 145 ALR 96.

[17] Macduff, 'Protesting and the Law'. For a discussion on freedom of speech and assembly in Australia see also Ronald J. Krotoszynski Jr., Free Speech as Civic Structure: A Comparative Analysis of How Courts and Culture Shape the Freedom of Speech. Oxford: Oxford University Press, 2024, pp. 164-205.

Yet these protections are widely regarded as limited.[18] As Bronnit and Williams observe, fundamental freedoms in Australia are not secured through constitutionally or statutorily entrenched rights but rather through 'interpretive presumptions or implications in favour of liberty.'[19] Freedoms of expression, assembly and association thus function largely as residual freedoms, existing only to the extent that they are not restricted by law. Moreover, the implied freedom of political communication does not confer a personal right to free expression, but instead operates as a constitutional limitation on legislative and executive power, restricting laws that might burden political communication necessary for Australia's system of representative and responsible government.[20] Even a law restricting the freedom of political communication may be upheld if deemed to be proportionate to a legitimate objective.[21] As a result, the protection that the implied freedom provides to political protest is generally narrower than commonly assumed.[22]

This comparatively limited protection for protest outside Parliament sits in contrast to the freedoms enjoyed by parliamentarians within it. Within authorised assembly areas in the parliamentary precinct, MPs may engage in peaceful protest subject to the same legal

[18] For the discussion on Australia's rights to protest and their limits see Moulds, 'Climate protest, public assemblies and the law in South Australia'; Azadeh Dastyari, 'Reason for alarm? The Roads and Crimes Legislation Amendment Act 2022 (NSW) and the diminish right to protest in NSW'. Australian Journal of Human Rights 30(2) 2024, pp. 191-210; Chris Charles and Sarah Moulds, 'The Right to Protest for Racial Equality During a State of Emergency: Fundamental Freedom or Sacrificial Lamb?' Bulletin (Law Society of South Australia) 42(10) November 2020, pp. 8-10; Macduff, 'Protesting and the Law'; Head, Democracy, Protest and the Law, pp. 45-72; Simon Bronnit and George Williams, 'Political freedom as an outlaw: republican theory and political protest'. The Adelaide Law Review 18 1996, pp. 289-330. See also Tom Gotsis, 'Protest and the law in NSW'. NSW Parliamentary Research Service, Briefing Paper 7 2015, available at: https://www.parliament.nsw.gov.au/parliamentary-business/research-and-library/research-publications-data

[19] Bronnit and Williams, 'Political freedom as an outlaw', pp. 290-291.

[20] Bronnit and Williams, 'Political freedom as an outlaw', pp. 293-298.

[21] See Parliamentary Library, 'Freedom of expression'. Issues and Insights February 2026, p. 5; Patrick Graham, 'Burdening the implied freedom of political communication: method, ideas, and disagreement'. University of New South Wales Law Journal 48(3) 2025, pp. 1036-1069; Leanne Griffiths, 'The implied freedom of political communication: the state of the law post *Coleman* and *Mulholland*'. James Cook University Law Review 12 2005, pp. 93-111.

[22] Moulds, 'Climate protest, public assemblies and the law in South Australia', p. 311; In the 47th parliament Senator David Shoebridge introduced a Right to Protest Bill, available at: https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query%3DId%3A%22legislation%2Fbillhome%2Fs1449%22

constraints that apply to other citizens.[23] Within the chambers, Members enjoy full freedom of speech under parliamentary privilege – a set of rights and immunities which apply to the Houses, their committees, and Members, and which are considered essential to the functioning of the Parliament.[24] Reflecting on the scope of this privilege, historian Ken Inglis observed that

> *[w]ithin Parliament, speech can in a precise sense be freer than anywhere else […] permitting Members to say with impunity things which outside Parliament would provoke prosecution or litigation.*[25]

The origins of this privilege lie in Article 9 of the Bill of Rights 1688, which protected freedom of speech and debate from Crown interference. This principle was incorporated into the Australian system and is reflected in section 49 of the Constitution.[26] In modern times, privilege has been defined by the *Parliamentary Privileges Act 1987* (Cth), which reiterates that privileges apply to 'proceedings in Parliament' – all words spoken and acts done in the course of, for the purposes of, or incidental to transacting parliamentary business.[27]

The breadth of parliamentary privilege is complemented by a wide range of mechanisms through which Members can express dissent, draw attention to political causes and challenge government action. These include, for example, private Members' business, adjournment and grievance debates, the address-in-reply, questions to ministers, matters of public importance and public urgency, and petitions. Committee work also provides significant opportunities for Members to place their views on the public record, including through dissenting – or 'protest' – reports, by which committee members may formally record opposition to inquiry findings or recommendations.[28] Members may also engage in acts of protest without contravening

[23] On the right to protest within parliamentary precincts see: Australian Government, National Capital Authority, The Right to Protest Guidelines, available at: https://www.nca.gov.au/events/right-protest

[24] D. R. Elder ed and P. E. Flower a/ed, House of Representatives Practice. Canberra: Department of the House of Representatives 7th ed, 2018, p. 733. See also Carren Walker, 'Parliamentary privilege and the common law of Parliament – Can MPs say what they want and get away with it?' Australasian Study of Parliament Group Annual Conference, 2017, available at: https://www.aspg.org.au/wp-content/uploads/2018/01/Parliamentary-Privilege-and-the-common-law-of-Parliament-Carren-Walker.pdf and Kevin Rozzoli, 'Perceptions of Parliamentary Privilege in today's Legislative System'. Australasian Parliamentary Review 17(2) Spring 2002, pp. 232-240.

[25] Ken Inglis, 'Parliamentary Speech'. Papers on Parliament 28 November 1996, available at: https://www.aph.gov.au/About_Parliament/Senate/Publications_and_resources/Papers_and_research/Papers_on_Parliament_and_other_resources/Papers_on_Parliament/28/c04

[26] House of Representatives Practice, pp. 737-740.

[27] Parliamentary Privileges Act 1987 (Cth) s 16.

[28] House of Representatives Practice, pp. 726-727.

parliamentary conventions, such as by abstaining from voting in a division and positioning themselves in the chamber to visibly communicate that abstention to colleagues, observers and the media.[29]

It is important to note that while parliamentary privilege conveys considerable rights, Members remain accountable to their respective Houses for their statements and conduct. As *House of Representatives Practice* notes, the House has the power 'to take action to punish or penalise Members, for example, for some form of extreme obstruction of the business of the House.'[30] This authority derives from section 50 of the Constitution, which empowers each House to determine the rules of its own proceedings.[31] Behaviour in the chambers is accordingly regulated by a parliamentary framework comprising standing orders, resolutions and practice.[32] Importantly, while Members often claim during debate that certain language or conduct is in breach of the standing orders, the orders do not explicitly define what constitutes offensive or objectionable words or behaviour.[33] Instead, standing orders that refer to disorder are articulated in a broad manner and it is the Presiding Officers – the Speaker of the House or the President of the Senate in the Australian Parliament – who rely on the context, and the established practice and rulings by their predecessors, to determine if particular conduct is out of order.[34] The maintenance of order therefore depends not only on formal rules, but also on evolving interpretations of acceptable parliamentary behaviour.

[29] See, for example, the case of Dr Sophie Scamps MP during the Fair Work Legislation Amendment (Closing Loopholes) Bill 2023 debate on 29 November 2023, House of Representatives Official Hansard, Wednesday 29 November 2023, p. 8767; or Mr Bob Katter MP during Asset Recycling Fund (Consequential Amendments) Bill 2014 on 26 August 2014, House of Representatives Official Hansard, Tuesday 26 August 2014, p. 8528.

[30] House of Representatives Practice, p. 733.

[31] House of Representatives Practice, p. 734.

[32] House of Representatives Standing Committee on Procedure*,* Inquiry into disrespectful behaviour towards other Members in the Chamber, Ms Claressa Surtees, Clerk of the House of Representatives, *Submission 10* [1].

[33] For a discussion on what constitutes unparliamentary language, see, for example, Dr Joel Bateman and Ophelia Tynan, ''It's a bit unfair on the bin chickens, don't you think?': Unparliamentary language as self-regulated freedom of speech'. Australasian Parliamentary Review 38(2) Spring/Summer 2023, pp. 188-207.

[34] House of Representatives, Standing and Sessional Orders (as at 23 July 2025), pp. 47-50; The Senate Standing orders and other orders of the Senate (July 2025) pp. 98-102. See also House of Representatives Standing Committee on Procedure, Inquiry into disrespectful behaviour towards other Members in the Chamber, Ms Surtees, *Submission 10* [2].

It is against this backdrop that the cases examined in this article should be understood. Rather than relying on the extensive freedoms afforded by parliamentary privilege or the many established avenues for expressing disagreement, the three Senators deliberately broke rules and disrupted proceedings – actions that were ultimately judged disorderly and met with censure motions.[35] A censure motion – formal procedure used to express strong disapproval or reprimand – is described in *Senate Practice* as an important part of the chamber's 'armoury of accountability.'[36] This measure can only be initiated by a senator, which places the responsibility of bringing a censure motion on the chamber as a whole, rather than the President.[37] In the cases of Senators Faruqi and Thorpe, the censure motions also prohibited them from representing the Senate on parliamentary delegations for the duration of the Parliament, effectively excluding them from overseas delegations and formal engagement with foreign parliamentary counterparts.[38] The choice to communicate through such acts of defiance reflects to an extent the broader climate of protest, and tests the parliament's ability to find a balanced response.

DISORDER, DISORDER!

The most recent example of a major protest by a parliamentarian occurred on 22 July 2025, during the opening of the 48th Parliament. As part of the ceremony, Governor-General Sam Mostyn AC presided over formal proceedings in the Senate, attended by Members of both Houses, the Chief Justice, the Prime Minister, and other dignitaries. The opening of a new parliament – symbolising the sovereign authority of His Majesty the King – is considered as one of the most significant days in Australia's democratic calendar. The start of this parliament took place amid intense public interest in the conflict in Gaza, and Greens Senator Mehreen Faruqi used the opening proceedings to stage a silent protest about Australia's position, holding a sign

[35] In the case of Senators Rice and Thorpe, a motion of censure was moved; in the case of Senator Faruqi a procedural motion was moved, although in her speech Senator Faruqi refers to the process as censure. See Senate Journals 101 (29 February 2024) pp. 3058-3061; Senate Journals 139 (18 November 2024) pp. 4210-4211; Senate Journals 2 (23 July 2025) pp. 62-64; on Senator Faruqi's statement regarding censure, see Senate Official Hansard, Wednesday 23 July 2025, p. 105.

[36] Rosemary Laing ed, Odgers' Australian Senate Practice. Canberra: Department of the Senate 14th ed, 2016, p. 637.

[37] Bateman and Tynan, ''It's a bit unfair on the bin chickens, don't you think?'', p. 193.

[38] Senate Official Hansard, Wednesday 23 July 2025, p. 101 and Senate Journals 2 (Wednesday, 23 July 2025) pp. 62-64; Senate Official Hansard, Monday 18 November 2024, p. 4652 and Senate Journals 139 (Monday, 18 November 2024) pp. 4210-4211.

during the Governor-General's 35-minute address that read: 'Gaza is starving. Words won't feed them. Sanction Israel.' The President of the Senate, Hon Sue Lines, later condemned the act as 'incredibly disorderly and disrespectful,' arguing that it was out of place in the chamber.[39]

The following day, Senator Penny Wong, Leader of the Government in the Senate, moved a motion to express disapproval of Senator Faruqi's 'disrespectful protest,' asserting that her actions were 'contrary to standing orders' and that they undermined the decorum of the event.[40] Senator Faruqi's use of a prop (the protest placard) – in violation of the Senate practice – disrupted the proceedings and, Senator Wong argued, drew non-partisan figures such as the Governor-General and Chief Justice into political controversy. Several senators echoed this view, stressing the collective responsibility to uphold parliamentary standards, particularly on a day regarded as a 'pinnacle in our democracy.'[41] Senator Wong further contended that the sanction was warranted because the conduct had denigrated the Senate as an institution. Importantly, the motion not only expressed the Senate's disapproval but also prohibited Senator Faruqi from representing the Senate on any parliamentary delegation for the duration of the Parliament.[42]

The Leader of the Opposition in the Senate, Senator Michaelia Cash, argued, however, that the motion did not go far enough. She called on Senator Faruqi to apologise for her conduct and contended that, in the absence of an apology, the President should report her for committing an offence under Standing Order 203, which deals with infringements of order and permits the suspension of a senator from a sitting of the Senate. In calling for a stronger response, Senator Cash argued that the conduct represented a serious affront to the Senate, with implications for the dignity of the chamber, public confidence in parliamentary processes, and the reputation of the Parliament more broadly.[43]

Critics dismissed the protest as a political stunt, while others highlighted that Senator Faruqi had numerous avenues to express her views without breaching the rules. Senator Faruqi in turn defended her actions as a moral imperative, accusing colleagues of complicity through

[39] Senate Official Hansard, Tuesday 22 July 2025, p. 12.

[40] Senate Official Hansard, Wednesday 23 July 2025, p. 100.

[41] Senate Official Hansard, Tuesday 22 July 2025, p. 12.

[42] Senate Official Hansard, Wednesday 23 July 2025, pp. 101-102.

[43] Senate Official Hansard, Wednesday 23 July 2025, p. 102; The Senate Standing orders and other orders of the Senate (July 2025) p. 102.

silence. Although the Opposition's proposed amendments were unsuccessful, the Senate voted 50 to 11 in favour of the original motion. Supported by both the Government and the Opposition, the outcome reinforced the principle that inside the chamber debate must occur within the bounds of parliamentary rules.[44]

A similar controversy unfolded on 29 February 2024, when Greens Senator Janet Rice staged a protest during an address to the House of Representatives by Philippine President Ferdinand R Marcos Jr, to which senators were invited. Holding a sign that read 'Stop the human rights abuses,' Senator Rice disrupted an address by a foreign leader which Senator Simon Birmingham, Leader of the Opposition in the Senate, described as 'a symbolic and serious occasion' and a key instrument of Australia's statecraft and diplomacy.[45] Ordered by the Speaker to leave the House, Senator Rice was later subjected to a censure motion moved by Senator Birmingham, which condemned her for 'unparliamentary conduct, disrespect of proceedings and disregard for the importance of Australia-Philippines relations.'[46]

Critics labelled the protest as juvenile, disrespectful and unruly.[47] Senator Rice, however, defended her actions as a necessary response to what she described as longstanding and well-documented human rights abuses under the Marcos and Duterte regimes – issues that received global attention through the work of Nobel Peace Prize laureate Maria Ressa. Drawing on her own experience working on human rights issues in the Philippines, Senator Rice argued that she had a responsibility to speak out. While agreeing that an address to Parliament was a significant and symbolic event, she contended that it was precisely the significance of the occasion that made it inappropriate to honour a leader whose government had been associated with serious human rights concerns. Reflecting on the subsequent censure motion, Senator Rice observed that she was 'struck by having a censure motion moved against me for abusing parliamentary rights, when human rights do not rate a mention.'[48] Ultimately, the Senate passed the motion by a vote of 35 to 12, with support from both Government and Opposition Senators.

Arguably the most controversial act of protest by a Member inside Parliament House in recent times occurred on 21 October 2024, when Senator Thorpe disrupted a parliamentary reception

[44] Senate Official Hansard, Wednesday 23 July 2025, pp. 100-108.

[45] Senate Official Hansard, Thursday 29 February 2024, p. 745.

[46] Senate Official Hansard, Thursday 29 February 2024, p. 742.

[47] Senate Official Hansard, Thursday 29 February 2024, pp. 745-746.

[48] Senate Official Hansard, Thursday 29 February 2024, p. 746.

for King Charles III and Queen Camilla – an event intended to uphold diplomatic decorum and parliamentary tradition.[49] Unlike the previous examples, this protest took place outside the chambers, in Parliament's ceremonial areas of the Great Hall and Marble Foyer. The act involved delivering a notice accusing the Crown of complicity in Indigenous genocide and demanding the return of Indigenous lands, cultural artefacts, and human remains. On the first sitting day after the event, Senator Wong moved a censure motion for 'disrespectful and disruptive protest' and 'disrespect of democratic institutions,' noting that Senator Thorpe had many other appropriate avenues to express her views.[50] As would later be the case for Senator Faruqi, the motion also prohibited Senator Thorpe from representing the Senate as a member of any parliamentary delegation.

Senator Birmingham echoed concerns regarding Senator Thorpe's conduct, characterising the protest as attention-seeking and disorderly, arguing that such actions risked bringing the Senate into disrepute and undermined the dignity of formal occasions.[51] At the heart of his critique was not the substance of Senator Thorpe's protest – as Senator Birmingham emphasised, 'this motion is not about what she said and it is not about her right to say it or her views. Those we defend'[52] – but rather her rejection of the established parliamentary avenues for dissent. The motion was passed by 46 votes to 12, with the support of both the Government and the Opposition. Opposition came from the Greens, one independent senator, and Nationals Senator Matt Canavan, who raised procedural concerns on the basis that Senator Thorpe was not present in the chamber when the motion was debated.[53]

In responding to the censure motion later that day, Senator Thorpe defended her actions as part of a global movement of First Peoples, and noted the protest by Māori Members in the New Zealand Parliament, who had performed a traditional dance on the floor of the parliament in opposition to the proposed bill to redefine the country's founding treaty with Māori

[49] Senate Official Hansard, Monday 18 November 2024, pp. 4652-4655; 4727-4729. See also Tom McIlroy, 'Thorpe set to avoid censure over royal protest'. Australian Financial Review, 23 October 2024, p. 5; Sarah Ison and Noah Yim, 'Senate censures Thorpe over royal antics'. The Australian, 19 November 2024, p. 5.

[50] Senate Official Hansard, Monday 18 November 2024, p. 4652.

[51] Senate Official Hansard, Monday 18 November 2024, p. 4652.

[52] Senate Official Hansard, Monday 18 November 2024, p. 4652.

[53] Senate Official Hansard, Monday 18 November 2024, p. 4654.

people.[54] She further situated her dissent within a long tradition of resistance by parliamentarians – from Mahon's expulsion from the House of Representatives in 1920 for referring to the British Empire as 'bloody and accursed,' to Senator Rice's protest earlier in the year.[55] In doing so, Senator Thorpe framed her conduct as part of a broader tradition of protest both outside and within Parliament itself, arguing that meaningful acts of truth-telling are necessarily uncomfortable and disruptive. As part of the censure motion against Thorpe, arrangements for future addresses to Parliament by visiting leaders were referred to the Senate Standing Committee on Procedure. This referral reflected concerns among some senators that parliamentary censure may be insufficient to prevent future protests by Members.[56]

PARLIAMENTARY INTERPRETATION OF PROTEST

In the cases of Senators Faruqi and Rice, the immediate breach concerned the use of props in the chamber. In describing the conduct of debate, *House of Representatives Practice* notes that while the display of articles to illustrate speech has been permitted in the chamber, 'the general attitude from the Chair has been that visual props are "tolerated but not encouraged."'[57] The *Practice* makes an important distinction

> *between Members displaying articles to illustrate a point being made in a speech and the display of articles or signs by Members who do not have the call. The former is often acceptable to the Chair; the latter is not.*[58]

Odger's Senate Practice similarly reflects on the use of props and, in citing a set of Rulings by President, states that it is not in order for senators 'to hold up newspapers or placards in the

[54] Senate Official Hansard, Monday 18 November 2024, pp. 4727-4729. See also Kelly Ng, 'Three Maori MPs suspended over 'intimidating' haka'. BBC News, 5 June 2025, available at: https://www.bbc.com/news/articles/c5yg9k8x8pwo

[55] H. J. Gibbney, 'Hugh Manon'. Australian Dictionary of Biography, available at: https://adb.anu.edu.au/biography/mahon-hugh-7460

[56] Senate Official Hansard, Monday 18 November 2024, pp. 4652-4653; Karen Middleton, 'Simon Birmingham floats new 'disorderly conduct' penalties after Lidia Thorpe's protest against the king'. The Guardian, 24 October 2024, available at: https://www.theguardian.com/australia-news/2024/oct/24/simon-birmingham-floats-new-disorderly-conduct-penalties-after-lidia-thorpes-protest-against-king-charles

[57] House of Representatives Practice, p. 508.

[58] House of Representatives Practice, p. 508.

chamber or display items such as badges with slogans,'[59] or to wear clothing items that bear slogans. Not only are these items 'disruptive of orderly debate,' but they allow senators to intervene in debate without receiving the call of the Chair.[60]

The use of a prop alone, however, does not usually attract disciplinary consequences. Consider the actions of Greens Senator Sarah Hanson-Young, who sparked controversy during a debate on amendments to the *Environment Protection and Biodiversity Conservation Act* in the final week of the 47th Parliament by producing a decapitated Tasmanian salmon wrapped in a plastic bag from under her desk.[61] The act was intended to highlight a concern over legislative changes that would provide certain exemptions to the Tasmanian salmon industry and permit salmon farming in the Macquarie Harbour, which has adverse environmental impacts. On that occasion, the President directed the Senator to promptly remove the article. Although Senator Hanson-Young quipped that there were no standing orders against salmon (and indeed there are no standing orders referring specifically to props), the President ruled it to be a prop to be removed, after which the Senator complied without further consequences.[62]

What made these recent protests exceptional and attracted disciplinary motions was not merely the use of props, but arguably the symbolic weight of the occasions they disrupted. Senators Rice and Thorpe's protests was staged during high-profile visits by foreign officials, while Senator Farqui's act occurred during the solemn occasion of the opening of a new parliament, a ceremony central to Australia's constitutional order. Senator Faruqi's acts, furthermore, could be interpreted as a particular affront to the parliamentary protocol because in the instance when the Governor-General is in the Chair, the President cannot exercise the usual powers to manage the chamber, and therefore could not sanction the Senator.

In addition to the use of props which allowed them to intervene out of order, and the affront to the parliament protocol at its most ceremonial moments, critics further highlighted that with these acts Senators renounced parliamentary privilege and norms of dissent – and by extension undermined the very rules of engagement they had been elected to uphold. During the debate on the motion against Senator Faruqi, Senator Cash noted:

[59] Odgers' Australian Senate Practice, p. 275.

[60] Odgers' Australian Senate Practice, p. 275.

[61] Senate Official Hansard, Wednesday 26 March 2025, pp. 994-995; 1030-1035.

[62] Senate Official Hansard, Wednesday 26 March 2025, p. 995; Aden Hill, 'Reel story behind stunt'. Adelaide Advertiser, 28 March 2025, p. 12.

> *There are many opportunities – and we are afforded the great privilege – to raise political concerns: in speeches, in debates, in committee hearings, in question time, in press conferences and yes, event at peaceful protests outside this building. But this chamber must remain a place where rules matter,*[63]

with Senator Paul Scarr further highlighting

> *the more vexed, the more difficult, the more problematic the issue […] the more we should cling to the standing orders.*[64]

Similarly, Senator Wong, in reference to Senator Thorpe's case, reminded the chamber

> *We have, legally, absolute privilege in this place, and that should be exercised with a degree of responsibility.*[65]

Senator Birmingham reinforced this point, observing that

> *We are all provided with a platform to speak, unlike anything that almost any other Australian enjoys.*[66]

In each case, the Government and the Opposition adopted a common position in support of censure, defending the norms and expectations that govern parliamentary conduct. In response, the three Senators and their supporters advanced arguments that these acts of protest were reactions to an institution that was out of touch with public expectations.[67] The case of Senator Rice (and Senator Faruqi) can perhaps be read as an instance where parliament becomes a site of tension between Australia's core values and realpolitik. In acknowledging that addressing the Australian Parliament was a privilege that should be awarded with care, Senator Rice stated that 'our relationships with other countries are not just a matter of trade opportunities or military opportunity,' but that they must reflect the nation's commitment to human rights. Senator Thorpe's act, in turn, raised another issue that has long fuelled protests: who gets to set the rules of engagement, and can the rules designed by a dominant group –

[63] Senate Official Hansard, Wednesday 23 July 2025, p. 102.

[64] Senate Official Hansard, Wednesday 23 July 2025, p. 104.

[65] Senate Official Hansard, Monday 18 November 2024, p. 4655.

[66] Senate Official Hansard, Monday 18 November 2024, p. 4652.

[67] Senate Official Hansard, Wednesday 23 July 2025, p. 103.

regardless of where its members sit on the political spectrum – ensure participation on equal grounds in political life.

Importantly, in each of these cases, protests by parliamentarians were tied to broad contemporary protest movements: human rights protest in Melbourne during the ASEAN summit, Indigenous rights protests and campaigns, country-wide rallies for Gaza (including in and around Parliament House), and environment and climate related protests.[68] That all three Senators are members of the Greens (with Thorpe Independent since 2023) is perhaps unsurprising in light of the party's activist roots and its ongoing effort to reconcile that history with parliamentary engagement, yet these incidents also say something about a wider climate of protest that is shaping contemporary politics – and the parliament.[69]

[68] On ASEAN summit protests see Dan Holmes, 'Melbourne protesters accuse ASEAN of ignoring human rights at summit'. The Mandarin, 5 March 2024, available at: https://www.themandarin.com.au/240918-melbourne-protestors-accuse-asean-of-ignoring-human-rights-at-summit/; 'Greens senator censured over rights protest'. Canberra Times, 1 March 2024, p. 18. On Indigenous rights protests see, for example, 'Thousands gather at Invasion Day rallies, calling for rethink of Australia Day'. ABC News, 26 January 2024, available at: https://www.abc.net.au/news/2024-01-26/australia-day-invasion-day-dawn-service-rallies/103389696; Walter Marsh, 'Why Black Lives Matter solidarity must start at home'. The Adelaide Review, 5 June 2020, available at: https://www.adelaidereview.com.au/latest/2020/06/05/why-blacklivesmatter-solidarity-must-start-at-home/. On Gaza-related protests, see Margarida Bacalhau, 'Protesters removed as Gaza concerns disrupt first sitting'. Canberra Times, 23 July 2025, p. 5; Nick Newling and Brittany Busch, 'Pro-Palestine protesters disrupt opening of parliament'. The Sydney Morning Herald, 22 July 2025, available at: https://www.smh.com.au/politics/federal/pro-palestine-protesters-disrupt-opening-of-parliament-20250722-p5mgyc.html; Victor Petrovic and Monte Bovill, 'Pro-Palestine protesters rally on Parliament House laws in solidarity with victims of war in Middle East'. ABC News, 8 October 2024, available at: https://www.abc.net.au/news/2024-10-08/pro-palestine-rally-parliament-house/104445368; Karen Middleton and Josh Butler, 'Four pro-Palestine protesters arrested after scaling roof of Australia's Parliament House to unfurl banners criticising Gaza war'. The Guardian, 4 July 2024, available at: https://www.theguardian.com/australia-news/article/2024/jul/04/pro-palestine-protesters-climb-roof-parliament-house-banners-israel-gaza-war-news-today-ntwnfb. On climate protests see, for example, Australia's Parliament House Chronology series for lists of climate-related protests at Parliament House, available at: https://www.aph.gov.au/About_Parliament/Parliamentary_departments/Parliamentary_Library/Research/Chronologies/2023-24/AustraliaParliamentHousein2023

[69] On the origins of Greens as a movement party see, for example, Ariadne Vromen and Anika Gauja, 'Protesters, Parliamentarians, Policymakers: The Experience of Australians Green MPs'. The Journal of Legislative Studies 15(1) 2009, pp. 90-112.

BEYOND THE CENSURE MOTION?

Senator Thorpe's protest prompted renewed calls for harsher penalties for Members' misconduct both inside and beyond the chamber. The censure motion against her included recommendations that the Procedure Committee review arrangements for future parliamentary addresses. Senator Birmingham argued that an increasing pattern of disruption threatened the ability of governments to host visiting dignitaries without fear of disorder, and urged the Senate to consider granting itself greater powers over formal parliamentary occasions held outside its own sittings, to deter 'disrespectful and disorderly' behaviour.[70] A censure motion – the first step in a resolution – is a type of 'opinion resolution' that expresses the Senate's disapproval of a senator.[71] Such motions are typically directed at government ministers or the government itself, 'signalling a want of accountability or a failure to meet ministerial standards.'[72] They are, however, mostly symbolic, prompting Senator Birmingham to reiterate to the media that censure alone was insufficient to deter future protests, and to suggest that additional measures may be required.[73]

Yet for Senators Faruqi and Thorpe, censure involved more than a symbolic reprimand. Both Senators were prohibited from representing the Senate on parliamentary delegations, an important aspect of a senator's parliamentary responsibilities. Senator Thorpe stated publicly that she expected to be removed from a planned delegation to Tuvalu and Fiji, which she argued would prevent her from engaging with Indigenous peoples in the region.[74] Moreover, as the Opposition argued in the case of Senator Faruqi, the Senate also has at its disposal Standing Orders 203 and 204, which provide for the suspension of a senator for periods ranging from the remainder of a sitting day to seven or, in some circumstances, fourteen sitting days, thereby significantly restricting a senator's capacity to perform their parliamentary duties.[75] Standing Order 206 further empowers the Senate to take into custody a senator who wilfully disobeys an order – a clear illustration of the considerable disciplinary powers available to

[70] Senate Official Hansard, Monday 18 November 2024, p. 4653.

[71] Lisa Butson, 'Developing a Typology of Resolutions: A comparative study of the power of resolutions in the Australian and United States Senate'. Australasian Parliamentary Review 37(1) Autumn/Winter 2022, pp. 77-96.

[72] Department of the Senate, Procedural Information Bulletin 386, 6 December 2024, p. 1, available at: https://www.aph.gov.au/About_Parliament/Senate/Practice_and_Procedure/Procedural_Information_Bulletins/2024/Procedural_Information_Bulletin_No_386.

[73] Middleton, 'Simon Birmingham floats new 'disorderly conduct' penalties after Lidia Thorpe's protest against the king'.

[74] Ison and Yim, 'Senate censures Thorpe over royal antics', p. 5.

[75] The Senate Standing orders and other orders of the Senate (July 2025) p. 102.

Parliament.[76] Importantly, acts of dissent may also attract political sanctions. As Senator Wong observed during the debate concerning Senator Faruqi, voters themselves play a significant role in judging and sanctioning the conduct of elected representatives.[77] The Senate's formal powers are therefore substantial, and they operate alongside the broader accountability imposed through the electoral process.

Senator Birmingham's position in this debate, however, is notable when viewed against recent shifts in parliamentary practice responding to protest activity. Kowol, for example, highlights an amendment to the Queensland Legislative Assembly Standing Orders that added 'inciting or encouraging' disruption as a specific form of contempt following the incident in which environmental protesters released black confetti from the public gallery. That provision was subsequently used when the Speaker referred a Member to the Ethics Committee for endorsing protest actions inside parliament via social media.[78] Moraro observes that calls for stronger penalties against Members mirror a broader trend toward restrictive anti-protest legislation in Australia and abroad.[79] Legal scholars have long argued that the right to protest in Australia is already comparatively weak, and that recent legislative restrictions have further chilled political and activist expression.[80] As Kowol observes, parliaments already possess a broad range of powers to manage disorder and dissent, and confidence in these existing mechanisms is reflected in the absence of significant procedural reforms following the protests discussed above. The Procedure Committee does not appear to have taken any further public steps to inquire into the matter following its initial referral. The decision not to codify additional forms of disorder is also consistent with Parliament's broader approach to regulating conduct, whereby concepts such as disorderly behaviour and unparliamentary language are deliberately defined in general terms, allowing Presiding Officers the flexibility to respond to the particular circumstances of individual cases.

[76] The Senate Standing orders and other orders of the Senate (July 2025) p. 102.

[77] Senate Official Hansard, Wednesday 23 July 2025, p. 101.

[78] Kowol, 'Disrupting the disruptors'.

[79] Middleton, 'Simon Birmingham floats new 'disorderly conduct' penalties after Lidia Thorpe's protest against the king.' On the criminalisation of protesting in Australia see, in addition to footnote 18, Luke McNamara and Julia Quilter, 'Criminalising protest through the expansion of police 'move-on' powers: A case study from Australia'. International Journal of Law, Crime and Justice 58 2019, pp. 22-34.

[80] See footnote 18.

The cases discussed here provide insight into how broader debates about the rise of protest, the right to protest, and legislative efforts to restrict it are increasingly reflected within parliamentary proceedings themselves. They also suggest that Parliament has remained confident in its ability to regulate such conduct through the disciplinary mechanisms already at its disposal. In this context, against a backdrop of growing political polarisation, recent proposals to impose stricter discipline on protesting Members must be seen as presenting a fraught path. Protest occupies a prominent place in Australia's democratic and parliamentary traditions, a fact reflected throughout Parliament House in artistic works commemorating social and political movements: from Meeson's women's suffrage banner, to works by Ball on Indigenous rights, or Dombrovskis' photograph of the Franklin River that gave visual identity to the 'No Dams' campaign and indeed the broader environmental movement in Tasmania. The way in which contemporary protest, including protest by parliamentarians themselves, is accommodated and regulated within Parliament sends an important signal about the place of dissent in Australian democracy and, more broadly, the health of the nation's democratic culture.

Dealing with vulnerable witnesses: committee visibility and value

Jennefer Lyn L. Bagaporo[1]

Research Officer, House of Assembly, Parliament of South Australia

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Abstract: In a representative government, parliamentary committees are crucial for reflecting public interest in policies. Yet the literature suggests that sections of the public may not always be familiar with committees. Enhancing committees' visibility and value to the public is therefore important. Drawing on recent South Australian House of Assembly (HA) inquiries, this paper argues that effective engagement with vulnerable witnesses can strengthen committees' public profile and democratic value. Based on interviews with parliamentary staff involved in three committee inquiries during the HA's 55th Parliament (2022–2026), the case studies show how maximising the culture of care—through identifying vulnerability, leveraging staff as intermediaries between committees and the public, and adapting procedures to support vulnerable witnesses— can raise the committee's profile and strengthen its value as an avenue for public involvement in the democratic process. The treatment of vulnerable witnesses also underscores the public's desire to be heard by their representatives. Developing guidelines or a toolkit for managing

[1] The author thanks House of Assembly colleagues Alison Meeks, Melissa Campaniello, Shane Hilton and Dr Evan Smith for sharing their reflections as the secretariat of the Select Committee on Endometriosis, Select Committee into Stillbirth in South Australia, and Parliamentary Committee on Occupational Safety, Rehabilitation and Compensation Country Fire Service Inquiry, respectively. Interviews were conducted in November 2025. Appreciation is also extended to Dr Iva Glisic (Department of the House of Representatives) for insights on working with vulnerable witnesses, drawing on her experience with the Health, Aged Care and Sport Committee Inquiry into Drugs and Alcohol and the Joint Standing Committee on Implementation of the National Redress Scheme and Dr Sarah Moulds for her valuable comments. Thanks to Dr Alexia Adhikari and Dr Jonathan Zweck for reviewing a draft of this paper, and David Pegram, Deputy Clerk of the House of Assembly, for his review and advice.

vulnerable witnesses, complemented by closing the feedback loop, would promote consistency and strengthen committee capacity in dealing with vulnerable witnesses.

INTRODUCTION

In a representative government, parliamentary committees are crucial for reflecting public interest in policies. Committees allow members of Parliament to connect with the public and for the latter to participate in policy development and scrutiny through public hearings.[2] As Moulds states, 'committees have long been the site of engagement between citizens and members of Parliament'.[3] Public awareness of parliamentary committees and their functions, including ongoing inquiries, is therefore crucial for effective engagement. However, literature suggests that sections of the public may not always be familiar with the parliamentary process, including committees.[4] Hence, enhancing committees' visibility and value to the public is essential.

Vulnerable witnesses are often not the 'usual suspects'[5] of inquiries. This paper explores how managing vulnerable witnesses' engagement in parliamentary committees can raise the visibility and value of committees as platforms for public engagement. Focusing on the South Australian House of Assembly's (HA) approach to managing vulnerable witnesses in recent inquiries, I contend that being mindful in dealing with vulnerable witnesses could enhance the visibility and value of committees. The treatment of vulnerable witnesses also highlights the importance of being heard. This reinforces the need to 'close the feedback loop'[6] to show how public input shaped decisions, or why it could not be adopted.[7] Furthermore, a considerate approach to vulnerable witnesses aligns with the promise of Parliament, where

[2] Gabrielle Appleby, Alexander Reilly and Laura Grenfell, *Australian Public Law*: Oxford: Oxford University Press, 3rd ed, 2019.

[3] Sarah Moulds, 'A Toolkit for Evaluating the Effectiveness of Parliamentary Public Engagement'. *University of South Australia Law Review* (5) 2023, pp. 1-23, p. 11.

[4] See e.g. Pamie Fung and Rachel Macreadie, 'Engaging culturally and linguistically diverse (CALD) communities in parliamentary inquiries'. Parliament of Victoria*:* Department of Parliamentary Services, Research Paper No 4, December 2018.

[5] Anthony Marinac, 'The usual suspects? 'Civil Society' and Senate Committees'. *Papers on Parliament* (42) 2004, pp. 129-139.

[6] Cristina Leston-Bandeira, 'How public engagement has become a must for parliaments in today's democracies'. *Australasian Parliamentary Review* 37(2) 2022), pp. 8-16.

[7] Patrick Glynn, 'We Asked, You Said, We Did': Closing the Feedback Loop in Committees' Public Engagement Processes'. *Australian Parliamentary Review* 40(2) 2025, pp. 52-57.

diverse voices and societal needs are represented by elected representatives in order to act in the best interest of the public.

In the next sections, I discuss the concepts of representative government and public engagement, followed by a brief overview of South Australia's perspective of vulnerable witnesses and the state's committee system. I present three relevant case studies and reflect on them in relation to some theoretical underpinnings, germane practices from adjacent fields, and the South Australian context.

PUBLIC ENGAGEMENT IN A REPRESENTATIVE GOVERNMENT

In a representative government like Australia, the public entrusts elected officials with the power to make political decisions, create laws, and govern on their behalf.[8] Regular elections ensure a peaceful and organised transfer of power and hold elected representatives accountable for their actions, as failing to do so may result in not being re-elected. The election is only one way for the public to make their voices heard. Other mechanisms that link the represented to their representatives and facilitate the public's engagement in policy developments and scrutiny are parliamentary committees and petitions.

In recent years, the concept of representative government has faced criticism that it is in a 'downward trend'.[9] Worldwide trust in public and political institutions is declining or low.[10] Compounding this situation is the growing doubt about governments' capacity to address societal concerns.[11] In Australia, government trust levels remain relatively stable compared to other nations.[12] Nevertheless, there are 'trust gaps' with 'trust levels… consistently lower among several socio-economic and demographic groups, including those experiencing financial stress, individuals with lower education levels, people who identify as belonging to discriminated-against

[8] Appleby, Reilly and Grenfell, *Australian Public Law.*

[9] Simon Tormey. 'The Contemporary Crisis of Representative Democracy'. Accessed at: https://www.aph.gov.au/-/media/05_About_Parliament/52_Sen/Publications_and_resources/Papers_and_research/Papers_on_Parliament/pop66/5_Tormey_POP_66.pdf.

[10] Inter-Parliamentary Union (IPU) and United Nations Development Programme (UNDP), *Global Parliamentary Report 2022 Public engagement in the work of parliament.* Geneva: IPU and UNDP, 2022.

[11] See e.g. Organisation for Economic Co-operation and Development (OECD), *Drivers of Trust in Public Institutions in Australia, Building Trust in Public Institutions.* Paris: OECD Publishing, 2025.

[12] OECD, *Drivers of Trust in Public Institutions in Australia.*

groups, and women.'[13] These conditions affect public engagement - a key element in a representative government.

The Global Parliamentary Report 2022 (GPR 2022), published by the Inter-Parliamentary Union (IPU) and United Nations Development Programme (UNDP), defines public engagement as 'the various ways in which the community is involved in an activity, process or decision, including through information, education, communication, consultation and participation.'[14] With public engagement, everyone is, ideally able to participate in public affairs.[15] The same report acknowledges the decline in public engagement across the world. It cites the dangers these pose to a country, as public engagement 'supports parliament's main functions by giving access to the breadth and depth of information and ideas that are needed for representation, law-making, public policy formulation and oversight that meet people's expectations and aspirations.'[16] The GPR 2022 notes that enhancing citizens' interests and participation in government processes necessitate Parliaments' public engagement mechanisms to be 'strategic, inclusive, participatory, innovative, and responsive.'[17] These attributes of a public engagement strategy underline the need for public awareness of all available avenues for engaging in the democratic process and to see the sincerity of parliaments in hearing their voices.

There's a growing body of literature on committees as public engagement sites.[18] Committees provide information, serve as platforms for public consultation, and facilitate dialogue with parliamentarians and other stakeholders.[19] The literature emphasises the need for committees to adapt their evidentiary practices for better accessibility and availability of information for the public, underlining committees' epistemic function of gathering, testing,

[13] OECD, *Drivers of Trust in Public Institutions in Australia*, p. 8.

[14] IPU and UNDP, *Global Parliamentary Report 2022,* p. 7.

[15] IPU and UNDP, *Global Parliamentary Report 2022*.

[16] IPU and UNDP, *Global Parliamentary Report 2022*.

[17] IPU and UNDP, *Global Parliamentary Report 2022,* p. 9.

[18] See e.g. Moulds, *A Toolkit for Evaluating the Effectiveness of Parliamentary Public Engagement*; Glynn, *We Asked, You Said, We Did.*

[19] These attributes of committees resonate with Bosc's three broad categories of what the public expects of committees, namely: 'the desire for information, the desire to be consulted and, thirdly, the desire to engage in dialogue with parliamentarians and with each other.' Marc Boss, 'E-democracy and the work of parliamentary committees'. *The Table* (72) 2004, pp. 26-35, p. 27.

and producing information for Parliamentary legislation and oversight.[20] The most discussed and proposed mechanisms to encourage public engagement involve modifying practices and procedures related to collecting evidence, including increasing public awareness of and involvement in committees.[21]

The literature on managing vulnerable witnesses in committee hearings is expanding, reflecting a growing recognition of committees as important sites of public engagement. Existing scholarship primarily examines how legislative reforms[22] and procedural innovations[23] have responded to the needs of vulnerable witnesses, with the aim of enhancing both witness experiences and protections when giving evidence. McMichael's 2016 presentation to the Australia and New Zealand Association of Clerks-at-the-Table Conference explored how far committees and secretariats should support mentally vulnerable witnesses. McMichael used two case studies and reviewed support approaches in other jurisdictions, including a 'vulnerable witness protocol' by the New South Wales Legislative Council, but did not cover support services for parliamentary staff.[24] Alluding to McMichael's presentation, Hickman discussed the Western Australian Parliament's work to facilitate evidence-giving by vulnerable witnesses, considering committees' legal duty of care

[20] See e.g. Carolyn M. Hendriks and Adrian Kay, 'From 'opening up' to democratic renewal: Deepening public engagement in legislative committees'. *Government and Opposition,* 54(1) 2017), pp. 25-51; Carolyn M Hendriks, Sue Regan and Adrian Kay, 'Participatory Adaptation in Contemporary Parliamentary Committees in Australia'. *Parliamentary Affairs* (72) 2019, pp. 267–289

[21] Helene Helboe Pedersen, Darren Halpin and Anne Rasmussen, 'Who Gives Evidence to Parliamentary Committees? A Comparative Investigation of Parliamentary Committees and their Constituencies'. *The Journal of Legislative Studies* 21(3) 2015, pp. 408-427; In Cristina Leston-Bandeira and Sven T. Siefken, 'The development of public engagement as a core institutional role for parliaments'. *The Journal of Legislative Studies*, 29 (30) 2023, pp. 361-379, p. 376. The authors note that a key challenge for enhancing understanding parliament's public engagement activities is to map what parliaments do to engage the public—what these activities are, where they are used, and how they are assessed.

[22] See for example South Australia's *Statutes Amendment (Vulnerable Witnesses) Act 2015 and Vulnerable Witnesses (Scotland) Act 2004.*

[23] Taylah Cram and Anita Mackay. 'Protecting Victims and Vulnerable Witnesses Participating in Royal Commissions: Lessons from the 2016-2017 Royal Commission into the Protection and Detention of Children in the Northen Territory' (2019) 3(29) *Journal of Judicial Administration.*

[24] Teresa McMichael, 'Support for vulnerable witnesses'. *Australia and New Zealand Association of Clerks-at-the-Table*, Conference Paper, January 2016.

towards vulnerable witnesses and vicarious trauma risks for parliamentary staff.[25] Hickman also summarised guidelines and protocols used in Australian jurisdictions to manage evidence from vulnerable witnesses.[26] Drawing on recent literature and the experience of the Parliament of South Australia, this paper argues that the treatment of vulnerable witnesses in committee inquiries can enhance the committee's public visibility and value as sites of public engagement.

SOUTH AUSTRALIA (SA) CONTEXT

Several factors render witnesses vulnerable.[27] Examples of individual factors include physical and psychosocial disabilities, including mental health-related issues.[28] Some social factors that could make a witness vulnerable are economic status, language and literacy.[29] Political factors include power asymmetries, exclusion and discrimination.[30] To contextualise the case studies, I briefly outline how vulnerable witnesses are treated in SA's justice system, engaging with some relevant practices in adjacent fields, and SA's parliamentary committee system.

South Australia Vulnerable Witnesses Act

In SA, acknowledgement and support for vulnerable witnesses in the justice system are enshrined in the state's *Statutes Amendment (Vulnerable Witnesses) Act 2015.* This law amended the *Evidence Act 1929* (SA) to make the justice system more accessible to vulnerable witnesses, like children and people with disabilities. The *Vulnerable Witnesses Act* defines who is a vulnerable witness, provides special measures in dealing with them, allows

[25] Alex Hickman, 'Facilitating Evidence by Vulnerable Witnesses to Parliamentary Committees – Recent Western Australian Experience'. *Australian Parliamentary Review* 39(1) 2024, pp. 20 -35.

Hickman discussed the Western Australian Parliament's work to facilitate evidence-giving by vulnerable witnesses, considering committees' legal duty of care and vicarious trauma risks. He summarised guidelines and protocols used in Australian jurisdictions to manage evidence from vulnerable witnesses. [26] Hickman, *Facilitating Evidence by Vulnerable Witnesses to Parliamentary Committees*.

[27] See e.g. Alex Hickman, 'Facilitating Evidence by Vulnerable Witnesses to Parliamentary Committees – Recent Western Australian Experience'. *Australian Parliamentary Review* 39(1) 2024, pp. 20 -35.

[28] See e.g. Hickman, *Facilitating Evidence by Vulnerable Witnesses to Parliamentary Committees.*

[29] See e.g. Fung and Macreadie, *Engaging culturally and linguistically diverse (CALD) communities in parliamentary inquiries.*

[30] McMichael, *Support for vulnerable witnesses*.

for support persons, and reduces some confrontation to support witnesses and minimise distress.

Under SA's *Vulnerable Witness Act*, vulnerable witnesses primarily refer to children under 16 and individuals with cognitive impairments or physical disabilities.[31] Special measures to reduce distress or embarrassment include audio-visual records, closed-circuit television from separate rooms, and screens or partitions between the witness and the accused.[32] Under the Act, support persons can include relatives, friends, or canine court companions.[33] The defendant's ability to directly see or hear the witness is also restricted in certain circumstances.[34] Comparable to these amendments is Scotland's *Vulnerable Witnesses Act 2004.* The Act acknowledges differences in factors contributing to vulnerability, with children automatically assumed as vulnerable due to their age, and adult's potential vulnerability based on factors such as mental disorder or fear from giving evidence.[35]

The *Vulnerable Witnesses Act*, along with SA's Disability Justice Plan (2014-2017), introduced the concept of 'communication assistance' in the state.[36] This included a 'communication partner' (CP) scheme that gave individuals with complex communication needs a formal entitlement to have a communication assistant present during interactions with the justice system.[37] A complex communication need entails difficulty in 'speaking, hearing, listening, understanding, social skills, reading, writing, and using voice' and is different from 'a simple communication need, like nervousness or a mild stutter.'[38] While the *Vulnerable Witnesses Act* says a person who speaks a language other than English does not have a complex communication need just because they are not fluent, the South Australia Law Reform Institute (SALRI) notes that cultural factors beyond language can be a complex

[31] *Statutes Amendment (Vulnerable Witness) Act 2015* (SA), s 4.

[32] *Statutes Amendment (Vulnerable Witness) Act 2015* (SA), s 12B.

[33] *Evidence (Vulnerable Witnesses) Amendment Act 2020* (SA), s 4.

[34] *Statutes Amendment (Vulnerable Witness) Act 2015* (SA), s 12B.

[35] Laura Sharp and Margaret Ross, *The Vulnerable Witness Scotland Act 2004,* Edinburgh University Press, 2008, p. 7.

[36] *Statutes Amendment (Vulnerable Witness) Act 2015* (SA).

[37] *Statutes Amendment (Vulnerable Witness) Act 2015* (SA) s 14A.

[38] P. Malinauskas, South Australia, *Parliamentary Debates*, Legislative Council, 9 June 2016, pp. 4240–1, p. 4240.

communication need for Aboriginal and culturally and linguistically diverse communities.[39] The CP scheme, however, was short-lived due to 'relatively limited use in practice.'[40] The Counsel Assisting vulnerable witnesses in the joint Federal and Northern Territory Royal Commission (NTRC) into the Protection and Detention of Children in the Northern Territory presents a similar arrangement to that of the CP scheme. Aware of the adversarial elements of a formal hearing, Counsel Assisting guided vulnerable witnesses in sharing their personal experiences to the Commissioners.[41]

Court and parliamentary committee witnesses differ in evidentiary protections, the rules governing testimony, and the purpose of appearing. In court, witnesses are liable for perjury, and their evidence may be used against them in later proceedings.[42] Accordingly, witnesses may generally refuse to answer self-incriminating questions (subject to exceptions).[43] Evidence provided to committees, by contrast, attract parliamentary privilege.[44] Evidence given cannot be used against a witness in a court or tribunal.[45] Witnesses may also request that evidence be taken in private (in camera) or kept confidential, although the committee may refuse.[46] Courts hear witnesses to determine breach and adjudicate guilt or liability;[47] committees hear witnesses to inform Parliament, investigate matters of public interest, and hold the executive to account.[48] Despite these differences, SA's *Vulnerable Witnesses Act's* rationale for supporting vulnerable witnesses in the justice system is relevant to the

[39] David Plater, Holly Nicholls, Simone Basso, Anita Brunacci, Jemma Holt, Jennifer Jacobs, Anisa Leaver, Geoff Muecke, Melissa Oxlad, Olga Pandos, Martine Powell, Natalie Wade and Brooke Washusen, *Providing a Voice to the Vulnerable: A study of Communication Assistance in South Australia.* Adelaide: South Australian Law Reform Institute, 2021.

[40] Plater, Nicholls, Basso, Brunacci, Holt, Jacobs, Leaver, Muecke, Oxlad, Pandos, Powell, Wade and Washusen, *Providing a Voice to the Vulnerable,* p. xviii; The factors that contributed to its limited use are also elaborated in this report.

[41] Cram and Mackay, *Protecting Victims and Vulnerable Witnesses Participating in Royal Commissions: Lessons from the 2016-2017 Royal Commission into the Protection and Detention of Children in the Northen Territory*, p. 12.

[42] *Evidence Act 1929* (SA)*, s 13BB, 5c; Criminal Law Consolidation Act 1935* (SA), s 242.

[43] *Evidence Act 1929* (SA)*, s 59,*

[44] R.J Crump (Ed), *Blackmore Manual of the Practice, Procedure and Usage of the South Australian House of Assembly.* South Australia: Wakefield Press, 2025.

[45] Crump (Ed), *Blackmore Manual of the Practice, Procedure and Usage of the South Australian House of Assembly.*

[46] Crump (Ed), *Blackmore Manual of the Practice, Procedure and Usage of the South Australian House of Assembly.*

[47] Appleby, Reilly and Grenfell, *Australian Public Law.*

[48] Crump (Ed), *Blackmore Manual of the Practice, Procedure and Usage of the South Australian House of Assembly.*

treatment of vulnerable witnesses in committees. By defining vulnerability and providing special measures to minimise distress, involvement in committees is more accessible to vulnerable witnesses.

South Australia Parliamentary Committees

The case studies are inquiries from a standing and two select committees in SA. A brief description of the committee context in SA is worthwhile to understand the setting and circumstances of these case studies, especially in relation to resources such as space and staffing, that contribute to how vulnerable witnesses are dealt with in committees.

SA has 10 standing committees across the HA and Legislative Council (LC), established by the *Parliamentary Committees Act 1991* (SA). Each House manages five committees. Members can be from either House, and the committee's functions and powers are defined in the Act and other relevant Acts. The committees are usually chaired by a government member and often have a government majority of members. Committee members are appointed and changed via a motion in the relevant House. Membership is often for the life of the parliament unless there are party reshuffles. These committees investigate specific matters referred to them from the appointing House(s), a direction from the Governor, or the committee's own motion.[49] Select committees are appointed by one or both Houses to inquire into a specific Bill or discrete matter.[50] They have five members unless otherwise ordered[51] and members are nominated by the mover, or elected by ballot if required.[52] Select committees elect one member as Chair.[53] They operate in accordance with the Standing Orders of the originating House(s) and are dissolved upon tabling their final report.[54]

[49] House of Assembly, Parliament of South Australia, 'Standing Committees Information Sheet 2014'. Accessed at: https://intra.parliament.sa.gov.au/Committees/Shared%20Documents/Standing%20Committees%20Information%20Sheet%20March%202014.pdf?csf=1&e=eXFXO5.

[50] Parliament of South Australia, 'Committees Overview'. Accessed at: https://www.parliament.sa.gov.au/en/Committees#:~:text=Select%20Committees%20are%20established%20by,its%20own%20Members%20or%20others.

[51] Parliament of South Australia House of Assembly Standing Orders, No. 317.

[52] Parliament of South Australia House of Assembly Standing Orders, No. 318.

[53] Parliament of South Australia House of Assembly Standing Orders, No. 328.

[54] The rules for Select Committees are set out in the Standing Orders of the appointing Houses.

Standing committees typically have two staff: a parliamentary officer (PO) and a research officer (RO). Select committees receive the same staffing for the duration of an inquiry, with extra staff possible during tight deadlines. LC committees follow a similar structure, usually assigning both a PO and a RO to each.

CASE STUDIES

Conversations with four parliamentary staff from the HA, who were involved in the case studies presented below, revealed similar definitions of who constitutes vulnerable witnesses with that of the *Vulnerable Witnesses Act*. Interviewees classified vulnerable witnesses into a) those who feel threatened to present at inquiries because of the topic or future potential repercussions for participating, and b) those with lived experiences (in the past or currently) of severe psychological distress, who relive their experiences as they provide evidence to committees.

The case studies below are from recent committee inquiries in the HA during the 55th Parliament of South Australia (2022-2026). Two of these inquiries are from select committees on a topic involving women's reproductive health, while the third case is from an inquiry in one of HA's standing committees, the Occupational Safety and Rehabilitation Committee (OSRC). The final reports of the two select committee inquiries are publicly available, while the OSCR report is still being completed. Below are some strategies used in these committees that are unique to each committee and relate to the provisions of the *Vulnerable Witnesses Act* and relevant scholarship and practices from adjacent fields.

Case Study 1: Select Committee on Endometriosis (SCENDO)

SCENDO was established on 21 March 2024 to investigate and report on the prevalence, severity, and impact of endometriosis on South Australians who have the condition, including the existing barriers to timely, accurate, and appropriate care.[55] Twenty-three of the 85 submissions received by the committee and 14 of the 74 who made oral presentations, were from individuals who suffered the disease or those who have family members with endometriosis. SCENDO published its final report on 19 March 2025.

To support vulnerable witnesses and submitters, the committee resolved that response emails to these cohorts, would include a list of service providers for those experiencing

[55] Select Committee on Endometriosis (SCENDO), *Final Report of the Select Committee on Endometriosis*. Adelaide: Parliament of South Australia, *March* 2025, p. 7.

psychological distress after giving evidence. To avoid being seen as favouring certain service providers over others, a statement was also included that the committee was not suggesting these service providers over others, but that they were the ones the committee were aware of, as they had provided evidence to the Inquiry.[56]

Having regional hearings was another way vulnerable witnesses were considered.[57] The evidence presented to the committee highlighted significant disparities between city and regional residents in accessing timely health care and in the availability of services relevant to managing endometriosis. For this reason, the committee held two separate hearings in regional areas in SA.[58] Catherine Hutchesson, the Presiding Member of SCENDO, articulated that the committee was keen 'to hear from women in our smaller regional areas… so that we (committee) better understand the limitations that may occur (in seeking advice and treatment for endometriosis)'.[59]

Case Study 2: Select Committee into Stillbirth in South Australia (SCSB)

Established on 31 October 2024, SCSB examined the best practice stillbirth education and awareness programs, models of care in pregnancy and for parents after stillbirth, and support and training for healthcare professionals.[60] Thirty-nine of the 79 submissions received were from people who experienced stillbirth or who had family members go through the experience. Of the 49 oral presenters to the committee, 14 had lived experiences with stillbirth. The committee's final report was tabled on 29 October 2025.

In anticipation of hearings that could be emotionally and psychologically distressing, one of the mechanisms developed to deal with vulnerable witnesses in this Inquiry was having a separate room ready for witnesses.[61] Those who felt distressed could go to this room to

[56] Interview with Alison Meeks, SCENDO PO (Jennefer Lyn L. Bagaporo, Parliament of South Australia, 14 November 2025).

[57] SCENDO, *Final Report of the Select Committee on Endometriosis*.

[58] Interview with Alison Meeks, SCENDO PO.

[59] Endometriosis stories shared*,* The SE Voice ,11 July 2024. Accessed at: https://sevoice.com.au/endometriosis-stories-shared/.

[60] Select Committee into Stillbirth in South Australia (SCSB), *Final Report of the Select Committee into Stillbirth in South Australia*: Adelaide: Parliament of South Australia, October 2025, p. 7.

[61] In the Parliament of Victoria, committee managers may support witnesses (and staff and Members) by providing a nearby quiet room for use before or after giving evidence. (Parliament of Victoria, *Reducing the psychological*

compose themselves before or after giving a presentation. This arrangement proved more useful with the PO's strategy of having witnesses with lived experience appear on the same day, rather than having other types of witnesses present. In this way, vulnerable witnesses, such as bereaved parents, could feel more at ease knowing that they were with people who had similar experiences.[62] This room also provided a readily available space for witnesses to wait if those who were speaking before the committee did not feel comfortable with additional people listening in the room.

The PO also followed up with some witnesses who were visibly unsettled, during and after their presentations, and contacted these witnesses two days after their presentations to check on their welfare. The PO said:

> *One of the witnesses was visibly distressed (during the hearing), so I contacted her about two days later to check that she was okay. If it was clear that someone had found the experience especially emotional, I made it a priority to follow up with them.*[63]

Case Study 3: Parliamentary Committee on Occupational Safety, Rehabilitation and Compensation (OSRC) - Country Fire Service (CFS) Inquiry

OSRC is a standing HA committee with six members (three HA and three LC).[64] It reviews the administration and operation of the *Occupational Health, Safety and Welfare Act 1986,*[65] *the Workers Rehabilitation and Compensation Act 1986*,[66] and related legislation; scrutinises proposed regulations (particularly those delegating statutory functions to private bodies or individuals); and considers and reports on petitions referred to it under section 16B of the *Parliamentary Committees Act 1991* (SA), and other matters assigned by statute or resolution of either House.[67]

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risk to staff working on sensitive committee inquiries a support guide. Melbourne: Parliament of Victoria, July 2023).

[62] Interview with Melissa Campaniello, SCSB PO(Jennefer Lyn L. Bagaporo, Parliament of South Australia, 11 November 2025).

[63] Interview with Melissa Campaniello, SCSB PO.

[64] *South Australia Parliamentary Committees Act 1991*, Part 5B, p. 12.

[65] This act has been repealed by Sch 6 cl 11 of *Work Health and Safety Act 2012* on 1.1.2013.

[66] This act has been repealed by Sch 9 cl 2 of Return to Work Act 2014 on 1.7. 2015.

[67] *South Australia Parliamentary Committees Act 1991*, Part 5B, p. 12.

On 6 March 2024, the LC passed a resolution for the OSRC to investigate and report on matters concerning the CFS. The issues include assessing support for volunteer firefighters, investigating volunteer conduct, evaluating CFS communication channels and procedures, and any other relevant matters related to the CFS's functioning, governance, and support structures. At the time of writing, the CFS inquiry is still ongoing.[68]

One way that the committee deals with vulnerable witnesses is to exercise careful consideration over pre-hearing arrangements. For example, there was one witness who 'suffered PTSD and was somewhat… disabled and unable to work by the experience, who also had the added complication of living in the country.'[69] The committee gave extra attention to the following matters: a) date and time of the witness' presentation, b) preference of accommodation, and c) bringing a support person during the hearing.

Another way that vulnerable witnesses' conditions are considered are the additional effort and time the PO devotes to addressing their concerns about giving evidence and appearing before the committee. OSRC's PO states, 'I would honestly think that I probably spend more time talking to witnesses than I actually spend in the sessions in which they appear.'[70]

THE 'CULTURE OF CARE' IN PARLIAMENTARY COMMITTEES: A MECHANISM TO RAISE COMMITTEE VISIBILITY AND VALUE

The three case studies present mechanisms that can enhance the value and visibility of parliamentary committees. These are a) knowing who vulnerable witnesses are and what makes them vulnerable, b) parliamentary staff as 'architects of engagement practice'[71] and c) adjusting committee procedures. I conceptualise these strategies as components of a committee-level 'culture of care'. These practices may seem mundane and largely invisible to external observers, but they can be leveraged, alongside the practice of duty of care, to make committees more visible to the public and relevant to public engagement. Altogether, these

[68] Interview with Shane Hilton, OSCR PO (Jennefer Lyn L. Bagaporo, Parliament of South Australia, 12 November 2025).

[69] Interview with Shane Hilton, OSCR PO.

[70] Interview with Shane Hilton, OSCR PO.

[71] Sofia Serra-Silva and Cristina Leston-Bandeira, 'The Invisible Architects of Public Engagement: Understanding the Different Types of Roles Played by Parliamentary Staff'. *Politics and Governance* 14(10589) 2026. Accessed at: https://www.cogitatiopress.com/politicsandgovernance/article/view/10589

mechanisms underline how vulnerable witnesses' perception of 'being heard or listened to' contributes to enhancing committees' public visibility and value as avenues for public engagement.

Awareness of who is a vulnerable witness and the factors that make them vulnerable

The ability to determine who is a vulnerable witness, including the factors that cause their vulnerability, is a key step for committees to deal with vulnerable witnesses.[72] Hickman proposed that this can be done by considering 'the characteristics of individual witnesses, the type of issue under inquiry and points of potential risk during the inquiry process.'[73] Hickman further emphasised the need to perform an individual evaluation of witnesses to ascertain their vulnerability, rather than act on assumptions.[74]

These suggestions resonate with the principles behind SA's *Vulnerable Witnesses Act* and the amendments made further in 2015[75] and 2020.[76] Scotland's *Vulnerable Witnesses Act 2004* provides a comparable illustration of a differentiated approach to vulnerability, establishing separate statutory definitions for child and adult vulnerable witnesses. The legislation acknowledges that vulnerability arises from different sources across these cohorts, presuming children to be vulnerable on the basis of age while requiring the vulnerability of adults to be assessed with reference to factors such as mental disorder, fear, or distress associated with providing evidence.[77] These measures intend to improve the experience of vulnerable witnesses when giving evidence for them to provide the best quality of evidence possible. To give such support, it is necessary to determine who is a vulnerable witness, including the factors that place them at risk.

However, certain entities dominate the evidence-giving process in committee inquiries. These include civil service and public sector, higher education, and not-for-profits, among

[72] See e.g. International Institute for Democracy and Electoral Assistance (International IDEA), 'Engaging Underrepresented Groups 2025, Guides on Citizen Engagement for Parliaments'. Accessed at: https://www.idea.int/sites/default/files/2025-08/engaging-underrepresented-groups.pdf.

[73] Hickman, *Facilitating Evidence by Vulnerable Witnesses to Parliamentary Committees,* p. 22.

[74] Hickman, *Facilitating Evidence by Vulnerable Witnesses to Parliamentary Committees*.

[75] *Statutes Amendment (Vulnerable Witnesses) Act* (SA) *2015.*

[76] *Evidence (Vulnerable Witnesses) Amendment Act* (SA) *2020*.

[77] Laura Sharp and Margaret Ross, *The Vulnerable Witness Scotland Act 2004,* p. 7.

others.[78] I contend that the limited diversity of witnesses also constrains committees' capacity to identify and assess vulnerability, including factors that may render a witness vulnerable. The case of Dr David Kelly of the United Kingdom is highly relevant to my argument.[79] Kelly was a distinguished biological and chemical warfare scientist who worked in the British Ministry of Defence. Kelly's name caught public attention when he was outed as a source of a BBC report accusing the UK government of having 'sexed up' the intelligence it presented to the public in 2003 to justify the war in Iraq.[80] In his presentation to the House of Commons Select Committee on Foreign Affairs (SCFA), Kelly was 'under pressure and strain.'[81] Though Kelly would qualify as a 'usual suspect', the nature of the Inquiry made him a vulnerable witness. A House of Commons Inquiry concluded that Kelly took his own life,[82] possibly because of public humiliation and his reputation tarnished from his involvement in the Inquiry.[83] In the SCFA's Inquiry into the Circumstances Surrounding the Death of Dr David Kelly report, the statement below noted the lack of awareness among committee members of the effect of the committee process on Kelly.

> *Whatever pressures and strains Dr Kelly was subjected to by the decisions and actions taken in the weeks before his death, I am satisfied that no one realised or should have realised that those pressures and strains might drive him to take his own life or contribute to his decision to do so.*[84]

[78] See e.g. Painter, *New Kids on the Block or the Usual Suspects?*

[79] This case is frequently mentioned in relation to other jurisdictions in Australia that have guidelines for sensitive inquiries, namely, the Parliaments of the Australian Capital Territory, New South Wales, Victoria, Western Australia and the Department of the House of Representative of the Federal Parliament; see e.g. McMichael, *Support for Vulnerable Witnesses.*

[80] Vikram Dodd, 'Dr David Kelly: 10 years on, death of scientist remains unresolves for some'. *The Guardian,* 17 July 2013. Accessed at: https://www.theguardian.com/politics/2013/jul/16/david-kelly-death-10-years-on.

[81] These were the actual terms used in describing the process of questioning Kelly by the members of the Select Committee on Foreign Affairs. Select Committee on Foreign Affairs, *Inquiry into the Circumstances Surrounding the Death of Dr David Kelly C.M.G Final Report*: London: UK Parliament, January 2004, p. 3; Also see Mr Olner, United Kingdom, Hansard Select Committee on Foreign Affairs Minutes of Evidence, House of Commons, 15 July 2003, Questions 20 and 61.

[82] There were debates over this finding, with some conspiracy theorist saying Dr Kelly was murdered.

[83] Dodd, *Dr David Kelly*.

[84] Select Committee on Foreign Affairs, *Inquiry into the Circumstances Surrounding the Death of Dr David Kelly C.M.G Final Report,* p. 3.

The statement above also suggests that the House of Commons SCFA lacked the capacity to recognise the circumstances that may render a witness vulnerable, although the Inquiry was deemed controversial. As mentioned earlier, Kelly was unlikely to have been considered a vulnerable witness because of his background in the civil service and public sector—groups that routinely provide evidence to parliamentary committees.

Contrary to Kelly's case, the case studies show that committees are mindful of both potentially vulnerable witnesses and the factors that can make witnesses vulnerable. This knowledge assisted the committees in creating a safe environment for vulnerable witnesses to provide evidence to inquiries as trauma discussion of lived experiences can re-traumatise people.[85] This is exemplified in SCENDO and OSRC, where partners, who also act as carers of vulnerable individuals, presented to the committees together. This is comparable to one of the main changes to the *Evidence Act of 1929* (SA), which is the use of communication assistants or support persons, aimed at reducing distress and improving access to justice.[86] In the NTRC, vulnerable witnesses were not subjected to counsel-driven examination typical of court-like proceedings, but were guided by Counsel Assisting to share their personal experiences directly with the Commissioners[87]as 'Of considerable, if not overriding concern, is the vulnerability of these witnesses…'[88] As OSRC's PO said,

> *I think if we were having a lot of people leaving this place in tears or distraught or further traumatised, that would not be good for our reputation as an organisation and, more importantly, our ability to get people to tell their story in an honest and forthright way.*[89]

Furthermore, committees informing themselves about who constitutes a vulnerable witness and the factors contributing to vulnerability is suggestive of committees' view of vulnerable witnesses as reliable witnesses. SALRI's study on communication assistance for vulnerable witnesses in South Australian courts observed that, within the justice system, vulnerable

[85] Hickman, *Facilitating Evidence by Vulnerable Witnesses to Parliamentary Committees*, p. 22.

[86] *Statues Amendment (Vulnerable Witnesses) Act 2015*.

[87] Cram and Mackay, *Protecting Victims and Vulnerable Witnesses Participating in Royal Commissions: Lessons from the 2016-2017 Royal Commission into the Protection and Detention of Children in the Northen Territory*, p. 12.

[88] Commissioner M. White, Northern Territory, Transcript of Proceedings In the Matter of a Royal Commission into the Child Protection and Youth Detention Systems of the Northern Territory, Darwin, 8 December 2016, p. 478.

[89] Interview with Shane Hilton, OSRC PO.

witnesses—such as children and persons with disabilities—have traditionally been regarded as unreliable.[90] Despite more recent research and legislative reforms challenging this view, such perceptions continue to persist.[91] By contrast, the committees departed from these entrenched prejudices by ensuring that a witness' vulnerability, or the circumstances giving rise to it, did not impede their participation in the democratic process.

Parliamentary staff as architects of engagement practices

Parliaments in each jurisdiction are resourced differently, which could be a barrier to public engagement.[92] As cited earlier, the SA Parliament, as a small parliament, generally allocates only two staff to an inquiry – a PO and a RO. These staff are also assigned to other roles, either to another committee or in the Chamber.

The case studies show that staffing did not impede from providing appropriate treatment to vulnerable witnesses. Those in SCSB and OSRC maximised the implementation of established committee protocols – the pre-hearing preparations and post-inquiry contact with witnesses. These actions were taken to ensure that vulnerable witnesses' participation is safe and the risk of exacerbating their vulnerabilities is reduced. As Hickman said, 'Having effective processes in place to facilitate evidence from vulnerable witnesses protects their safety and well-being. This is consistent with what has been suggested is a moral duty [that] parliaments owe to vulnerable witnesses.'[93]

Another theme emerging from the case studies is the multifaceted role performed by parliamentary staff. As Serra-Silva and Leston-Bandeira observed, parliamentary staff are central to public engagement, functioning as intermediaries between committees and the public while navigating institutional constraints and shifting societal expectations of parliamentary practice.[94] They arrived at six typologies to describe the roles of parliamentary staff relative to public engagement, namely, 'institutional innovator, knowledge facilitator,

[90] Plater, Nicholls, Basso, Brunacci, Holt, Jacobs, Leaver, Muecke, Oxlad, Pandos, Powell, Wade and Washusen, *Providing a Voice to the Vulnerable.*

[91] Plater, Nicholls, Basso, Brunacci, Holt, Jacobs, Leaver, Muecke, Oxlad, Pandos, Powell, Wade and Washusen, *Providing a Voice to the Vulnerable.*

[92] See e.g. Hendriks and Kay, *From 'opening up' to democratic renewal;* IPU and UNDP, *Global Parliamentary Report 2022.*

[93] Hickman, *Facilitating Evidence by Vulnerable Witnesses to Parliamentary Committees*, p. 34.

[94] Serra-Silva and Leston-Bandeira, *The Invisible Architects of Public Engagement.*

strategic decision facilitator, guarantor of institutional legitimacy, coordinator and operational manager, and evaluator and monitor.'[95] The case studies illustrate parliamentary staff's enactment of the coordinator and operational manager role, and the institutional innovator role. The coordinator and operational manager function—'embedded in routine processes'—entails the maintenance, delivery, and adaptation of engagement tools, platforms and services.[96] This is evident in the conduct of regional hearings for SCENDO and the detailed pre-hearing preparations for OSRC. Coordinating such activities demonstrates parliamentary staff's work as active stewards of mechanisms that sustain committees' visibility and public value.[97]

The institutional innovator role[98] is evident in the SCSB's provision of a designated room for distressed witnesses and in the complementary scheduling of witnesses with lived experiences on the same day. Within the SA parliamentary context, these measures constitute 'novel approaches to public engagement'[99] within a committee setting and reflect parliamentary staff's 'normative understanding of how democratic institutions should relate to citizens.'[100] As the PO explained, such arrangements stem from a human-centred rationale. She stated, 'These people are helping our inquiry. They're helping us to form recommendations. They're reliving something that was emotionally taxing, and they're choosing to tell us their story. They deserve to be comfortable.'[101] This statement resonates with the SA Disability Justice Plan's (2014-2017) view of vulnerable witnesses:

> *Vulnerable witnesses are capable of providing comprehensive and reliable testimony but may come up against barriers due to misconceptions about their capability or credibility and because they are not able to access the support they may require to give evidence.*[102]

[95] Serra-Silva and Leston-Bandeira, *The Invisible Architects of Public Engagement,* p. 1.

[96] Serra-Silva and Leston-Bandeira, *The Invisible Architects of Public Engagement,* p. 13.

[97] Serra-Silva and Leston-Bandeira, *The Invisible Architects of Public Engagement.*

[98] Serra-Silva and Leston-Bandeira, *The Invisible Architects of Public Engagement,* p. 7.

[99] Serra-Silva and Leston-Bandeira, *The Invisible Architects of Public Engagement,* p. 9;

[100] Serra-Silva and Leston-Bandeira, *The Invisible Architects of Public Engagement,* p. 9.

[101] Interview with Melissa Campaniello, SCSB PO.

[102] Attorney-General's Department (SA), *Disability Justice Plan 2014–2017* as cited in Plater, Nicholls, Basso, Brunacci, Holt, Jacobs, Leaver, Muecke, Oxlad, Pandos, Powell, Wade and Washusen, *Providing a Voice to the Vulnerable,* p. xiii.

Similarly, the Federal Parliament's Inquiry into the Health Impacts of Alcohol and Other Drugs in Australia, conducted by the Standing Committee on Health, Aged Care and Sport (now the Standing Committee on Health, Aged Care and Disability), implemented measures to support vulnerable witnesses with lived experience, including people affected by addiction and their families or carers.[103] Among these was preparation and support for secretariat staff to strengthen their capacity to engage with vulnerable witnesses [104] This initiative reflects not only an awareness of the potential for vicarious trauma among parliamentary staff,[105] but also recognition of their role as institutional innovators within committee processes.

In performing the institutional innovator role, POs of both OSRC and SCSB ascertained that barriers towards giving evidence among vulnerable witnesses were lessened to facilitate vulnerable witnesses' engagement in parliamentary process.

Adjusting procedures

The traditional characteristics of most parliamentary procedures often impede public engagement in committees.[106] In their study, Hendriks, Regan and Kay noted that parliamentary staff were uncertain whether conventional approaches to engaging the public in committee inquiries were future-proof.[107] The conduct of hearings in regional areas (SCENDO) and the allocation of a room within the parliament building for distressed witnesses (SCSB) exhibit adjustments to conventional processes for handling witnesses to account for the circumstances of vulnerable witnesses. These measures were comparable to those adopted by the Victorian Parliament's Family and Community Development Committee during its Inquiry into the Handling of Child Abuse by Religious and Other Non-government Organisations. Recognising the potential trauma associated with recounting experiences of

[103] Conversation with Dr Iva Glisic of the Parliament of Australia (Jennefer Lyn L. Bagaporo, Parliament of South Australia, 26 August 2025).

[104] Conversation with Dr Iva Glisic, 26 August 2025.

[105] See also Parliament of Victoria, *Reducing the psychological risk to staff working on sensitive committee inquiries* (A support guide, July 2023).

[106] See e.g. IPU and UNDP, *Global Parliamentary Report 2022;* Hickman, *Facilitating Evidence by Vulnerable Witnesses to Parliamentary Committees.*

[107] Hendriks, Regan and Kay, *Participatory Adaptation in Contemporary Parliamentary Committees in Australia*.

abuse, the committee implemented a holistic support framework that provided participants with information and support throughout and beyond the inquiry process.[108]

Moreover, to some degree, the actions of both SCENDO and SCSB resemble the amendments made to the *Evidence Act of 1929* (SA), such as enabling of audio-visual records of interviews to be admitted as evidence,[109] permitting and enhancing pre-trial special hearings[110], and clarifying the admissions of pre-recorded evidence.[111] All of these were aimed at making vulnerable witnesses present their evidence in the best manner and not exacerbate their conditions.

There is often a strict rulebook that parliamentary staff must follow to avoid criticisms regarding impartiality and independence.[112] Most innovations or changes in committee processes are also dependent on members' willingness to adapt procedures. This adaptability within committees is akin to Royal Commissions' 'power to create and regulate their own process so that they are better tailored to the subject matter of their inquiry.'[113] Notwithstanding these conditions, I contend that customising some committee procedures to consider vulnerable witnesses' circumstances plants the seed to create more diversity, flexibility, and opportunities for public engagement. As Moulds states, 'There is a pressing need to move beyond conventional modes of engagement to reach those who have been ignored or excluded from these processes.'[114] The modifications to procedures will not only ensure that vulnerable witnesses' circumstances are considered but also convey the

[108] Family and Community Development Committee, Parliament of Victoria, *Betrayal of Trust Inquiry into the Handling of Child Abuse by Religious and Other Non-government Organisations* (Final Report Vol 1 of 2, November 2013) p. 32.

[109] *Statues Amendment (Vulnerable Witnesses) Act* 2015, s 13BA

[110] *Statues Amendment (Vulnerable Witnesses) Act 2015,* s 12AB*; Evidence (Vulnerable Witnesses) Amendment Act 2020,* s 12AB.

[111] *Evidence (Vulnerable Witnesses) Amendment Act 2020*, s 13BA; also see Scotland's *Vulnerable Witnesses Act 2004* as procedural amendments were made to evidence rules, emphasising a supportive environment for both civil and criminal proceedings.

[112] Moulds, *A Toolkit for Evaluating the Effectiveness of Parliamentary Public Engagement*; Fung and Macreadie, *Engaging culturally and linguistically diverse (CALD) communities in parliamentary inquiries.*

[113] Cram and Mackay, *Protecting Victims and Vulnerable Witnesses Participating in Royal Commissions: Lessons from the 2016-2017 Royal Commission into the Protection and Detention of Children in the Northen Territory*, p. 9.

[114] Moulds, *A Toolkit for Evaluating the Effectiveness of Parliamentary Public Engagement*, p. 20.

committees' appreciation and value of their contributions.[115] As Hendriks, Regan and Kay articulated,

> *They (committees) bring important information and perspectives into the political arena and provide important conduits for citizens, groups and experts to express and share their views. How well committees can play these roles in our contemporary democratic systems relies on their capacity to change and be relevant, connected and responsive to diverse publics.*[116]

The value of 'being heard/respected'

In all the case studies, committee members and parliamentary staff received expressions of thanks from vulnerable witnesses. Parliamentary staff of SCENDO and SCSB further received personal expressions of thanks during the tabling of its final reports. The PO of SCSB said, '…when we had the tabling of the report, I had the witnesses come up to me and thank me for… just the way it was… handled.'[117]

I contend that the appreciation expressed by vulnerable witnesses for their involvement in the inquiries underscores the value citizens place on being genuinely listened to[118] and enhances parliamentary committees' public visibility and value as sites of public engagement. Leston-Bandeira notes research showing that citizens recognise their demands may not always be met; rather, what they most often seek is to be listened to and given a fair opportunity to present their perspectives and lived experiences.[119] The same insight is evident in the NTRC's hybrid inquiry model, which incorporated restorative practices within its procedural framework.[120] In doing so, 'the NTRC performed a therapeutic function by supporting V&VWs [victims & vulnerable witnesses], their families and the community to tell

[115] IPU and UNDP, *Global Parliamentary Report 2022.*

[116] Hendriks, Regan and Kay, *Participatory Adaptation in Contemporary Parliamentary Committees in Australia,* p. 285.

[117] Interview with Melissa Campaniello, SCSB PO.

[118] Hendriks and Kay, *From 'opening up' to democratic renewal.*

[119] Leston-Bandeira, *How public engagement has become a must for parliaments in today's democracies*, p. 14

[120] Cram and Mackay, *Protecting Victims and Vulnerable Witnesses Participating in Royal Commissions: Lessons from the 2016-2017 Royal Commission into the Protection and Detention of Children in the Northen Territory*, p. 10.

their personal stories.'[121] The OSRC PO observed a similar sentiment in interactions with vulnerable witnesses during the CFS inquiry. He said,

> *I know with that gentleman who appeared before the CFS inquiry [that] it was very hard on him. But he did feel that it was worthwhile from both the point of view of the information he was able to provide to the committee and also the sense of kind of release that it gave him personally.*[122]

Furthermore, the case studies demonstrated that closing the feedback loop is another element that boosts committees' public visibility and value as sites for citizen involvement. In parliamentary contexts, closing the feedback loop entails informing citizens how their contributions have informed committee inquiries, reports, or legislative outcomes, thereby bridging the gap between participation and decision-making.[123] The case studies show that closing the feedback loop offers a practical mechanism for demonstrating to vulnerable witnesses that their contributions have been acknowledged and taken seriously, as illustrated by the practices of SCENDO and SCSB, which invited submitters and witnesses to Parliament for the tabling of the final report, followed by morning tea, which is an opportunity for informal engagement.

The treatment of vulnerable witnesses also reflects a more inclusive committee culture, as it brings committees into direct engagement with the experiences of marginalised individuals who are often not the 'usual suspects'.[124] As noted earlier, OSRC members made specific arrangements for the oral presentation of a witness with mental health concerns, and his wife (also carer). When the latter apologised for exceeding their allocated time, the Presiding Member responded,

> *I don't want a single apology. I think we are all incredibly grateful for what you are saying and we would love to unpack it further, it's so important. I*

[121] Cram & Mackay, *Protecting Victims and Vulnerable Witnesses Participating in Royal Commissions: Lessons from the 2016-2017 Royal Commission into the Protection and Detention of Children in the Northen Territory*, p. 10.

[122] Interview with Shane Hilton, OSCR PO.

[123] See e.g. Glynn, *We Asked, You Said, We Did*; Leston-Bandeira, *How public engagement has become a must for parliaments in today's democracies.*

[124] Dermody, Holland, and Humphery, *Parliament Committees and Neglected Voices in Society*, p. 54.

> *do want to thank you both for having the bravery to come and raise this with us and everything that you have been doing in this process.*[125]

Moreover, the means employed in dealing with vulnerable witnesses underlines the committees' openness to diverse views. Leston-Bandeira noted 'unless parliaments explicitly encourage a diversity of views, this does not happen naturally.'[126]

CONCLUSION

Committees can raise their visibility and value as sites of public engagement by how they handle vulnerable witnesses. Vulnerable witnesses value being heard about the issues they care about, but they do not frequently provide evidence to committees due to barriers to their engagement. It is vital therefore, that when vulnerable witnesses participate, considerations for obtaining the best evidence and ensuring they have a meaningful and safe experience are equally observed. These actions convey committees' view of vulnerable witnesses as reliable witnesses.

Maximising the 'culture of care' embedded in committee systems in conjunction with the duty of care for the treatment of vulnerable witnesses can raise the committee's profile and strengthen its value as an avenue for public involvement in the democratic process. The duty of care ensures committees' legal and moral obligations to prevent potential harm to witnesses in the course of their participation in inquiries,[127] while the 'culture of care' emboldens a shared value or ethos among committee members and parliamentary staff to assure that vulnerable witnesses' experience trust, mutual respect, and support and empowerment to speak about their lived experiences. This can be achieved through an awareness of who constitutes a vulnerable witness and the factors that make them vulnerable, harnessing the different roles of parliamentary staff as mediators between committees and the public, and modifying committee procedures to better accommodate vulnerable witnesses.

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[125] O. Savvas, South Australia, Committee Transcript Parliamentary Committee on Occupational Safety, Rehabilitation and Compensation Country Fire Service Volunteer Management and Support, House of Assembly, 13 November 2024, p. 7.

[126] Leston-Bandeira, *How public engagement has become a must for parliaments in today's democracies*, p. 13.

[127] The term 'duty of care' is used in Kathleen Dermody, Ian Holland, and Elton Humphery's, 'Parliament Committees and Neglected Voices in Society'. *The Table* (74) 2006, pp. 45-55. p. 49; see also Hickman, *Facilitating Evidence by Vulnerable Witnesses to Parliamentary Committees.*

Inherent in the idea of a culture of care is 'the notion of continuing but shifting patterns of behaviour, that are characteristic of particular social groups in particular spaces and time.'[128] The case studies demonstrate that a 'culture of care' approach shares key features with established practices for managing vulnerable witnesses in courts, royal commissions, and other inquiries, including trauma-informed procedures, witness preparation, support mechanisms, privacy safeguards, and post-appearance welfare. This suggests that core principles of a culture of care can be adapted or transferable across diverse institutional settings. Vulnerable witnesses may also interpret how they were treated as a genuine commitment by Parliament to engage in dialogue with those it represents. Thus, the mechanisms in place can also be seen as promoting inclusivity in committee processes, which further strengthen and legitimise Parliament's scrutiny of policies and legislation and holding governments accountable.

However, it is also important to recognise that parliamentary committees differ in several important respects from courts and commissions, requiring unique considerations for the management of vulnerable witnesses. These include the lack of judicial and enforcement powers, constraints on time, resources and specialist expertise, the need to reconcile confidentiality with principles of public accountability, and the differing purposes and outputs of committee inquiries. Hence, it is a sensible step for Parliaments to have guidelines or a toolkit for handling vulnerable witnesses to committee inquiries, especially sensitive inquiries. Such guidelines would not only ensure consistency in dealing with vulnerable witnesses but also better equip committees to support them. The vulnerable witness protocol by the NSW's Legislative Council[129] and ACT's Office of the Legislative Assembly,[130] can be reference points.

The guideline or toolkit is similar to Hendriks and Kay's proposal of an engagement strategy that ensures a common set of guiding principles across committees, even as they adopt varied combinations of engagement mechanisms.[131] It is also a worthwhile endeavour to close the feedback loop to give vulnerable witnesses 'a sense that they were genuinely heard as part of a process and not 'speaking into the void.'[132] The feedback loop would complement the

[128] Beth Greenhough, Gail Davies, and Sophie Bowlby. 'Why 'cultures of care?' (2023) 24(1) *Social & Cultural Geography*, DOI: 10.1080/14649365.2022.2105938, p. 2.

[129] McMichael, *Support for vulnerable witnesses.*

[130] Office of the Legislative Assembly, Australian Capital Territory, *Annual Report 2018-2019* (October 2018) p. 17.

[131] Hendriks and Kay, *From 'opening up' to democratic renewal,* p. 42.

[132] Glynn, *We Asked, You Said, We Did,* p. 67.

guideline because it would enable 'more consistent implementation and earlier planning of feedback activities.'[133]

[133] Glynn, *We Asked, You Said, We Did,* p. 67.

Legislated Constraints on Freedom of Speech and Debate in Parliament: The Canadian Supreme Court Speaks

Alistair Sage[1]

Lawyer and independent researcher.

*Peer reviewed article

Abstract: The Canadian Supreme Court recently rejected a challenge to the validity of the National Security and Intelligence Committee of Parliamentarians Act 2017 authorising prosecutions of parliamentarians for disclosing national-security information in Parliament. While the majority's test of constitutionality for a law abrogating parliamentary rights is defensible, there is much to be said for the dissent's critique of its application of that test. Permitting prosecution of parliamentarians for comments in debate recalls ancient political trials and cannot be reconciled with the constitutional settlement after the Glorious Revolution. While each Westminster democracy must apply its own constitutional strictures to the defence of parliamentary privileges, the path travelled here follows a familiar, troubling pattern of national-security deference leading to erosion of longstanding norms.

[1] The author wishes to acknowledge the helpful comments of two anonymous reviewers.

BACKGROUND

On 1 May 2026, the Supreme Court of Canada handed down judgment in *Alford v Canada (Attorney-General)* (*Alford*).[2] It found that sections 11 and 12 of the *National Security and Intelligence Committee of Parliamentarians Act 2017* (Can) (NSICOP Act) were valid enactments of the Parliament of Canada.

The NSICOP Act establishes a statutory committee consisting of parliamentarians: not more than three Senators and not more than eight Members of the House of Commons. Its mandate is to review 'the legislative, regulatory, policy, administrative and financial framework for national security and intelligence' and 'any activity carried out by a department that relates to national security or intelligence' (subject to exceptions where review of an ongoing operation is deemed a risk to national security by the Minister); as well as any matter referred to the Committee by a Minister.

Critically to the proceedings, sections 11 and 12 of the NSICOP Act stated in relevant part:

> *Disclosure prohibited*
>
> *11 (1) Subject to subsection (2), a member or former member of the Committee […] must not knowingly disclose any information that they obtained, or to which they had access, in the course of exercising their powers or performing their duties or functions under this Act and that a department is taking measures to protect.*
>
> *Exceptions*
>
> *(2) A person referred to in subsection (1) may disclose information referred to in that subsection for the purpose of exercising their powers or performing their duties or functions under this Act or as required by any other law.*
>
> *Parliamentary privilege*

[2] [2026] SCC 14 (Wagner CJ, Karakatsanis, Côté, Rowe, Martin, Kasirer, Jamal, O'Bonsawin and Moreau JJ).

> *12 (1) Despite any other law, no member or former member of the Committee may claim immunity based on parliamentary privilege in a proceeding against them in relation to a contravention of subsection 11(1) or of a provision of the Foreign Interference and Security of Information Act or in relation to any other proceeding arising from any disclosure of information that is prohibited under that subsection.*
>
> *Evidence*
>
> *(2) A statement made by a member or former member of the Committee before either House of Parliament or a committee of the Senate, of the House of Commons or of both Houses of Parliament is admissible in evidence against them in a proceeding referred to in subsection (1).*

It is necessary to set out section 18 of the *Constitution Act 1867* (Canada),[3] which formed the principal textual basis for the court challenge:

> *The privileges, immunities, and powers to be held, enjoyed, and exercised by the Senate and by the House of Commons, and by the members thereof respectively, shall be such as are from time to time defined by Act of the Parliament of Canada, but so that any Act of the Parliament of Canada defining such privileges, immunities, and powers shall not confer any privileges, immunities, or powers exceeding those at the passing of such Act held, enjoyed, and exercised by the Commons House of Parliament of the United Kingdom of Great Britain and Ireland, and by the members thereof.*

Lastly, it is necessary to identify what were the privileges of Parliament that the NSICOP Act was said to offend. Plainly enough, it is freedom of speech and debate in parliamentary proceedings, as protected by Article 9 of the *Bill of Rights 1688*, in addition to Parliament's exclusive cognisance to regulate its own affairs. The law trespasses on both aspects of Parliament's privileges by (a) permitting criminal proceedings to be brought for what was said in the exercise of a parliamentarian's freedom of speech on the floor of Parliament and (b) permitting the executive and judicial arms of government to adjudge whether conduct in

[3] Formerly the *British North America Act 1867* (Imp), 30 & 31 Vict c 3, a statute of the Parliament at Westminster renamed as part of the process of 'patriation' of the Canadian constitution. The renaming is given legal force by the Schedule to the *Constitution Act 1982* (Can).

Parliament ought be the subject of sanction, rather than Parliament controlling any such process through electing to consider holding one of its members in contempt. There was no dispute that those aspects of the historical privileges of the House of Commons at Westminster continued to apply to the Parliament of Canada under s 4 of the *Parliament of Canada Act 1985*.[4]

The case was presented to the Supreme Court in somewhat unusual circumstances. At first instance, a law professor who objected to the law's intrusion upon parliamentary privilege, Professor Ryan Alford, filed a claim in the Ontario Superior Court of Justice asserting its unconstitutionality on the basis of asserted inconsistency with s 18 of the *Constitution Act 1867* (Canada). That claim was initially dismissed for lack of standing,[5] before being revived by the Ontario Court of Appeal.[6] On the substantive hearing of the application, the primary judge upheld the claim and declared the law in question *ultra vires* the parliament's legislative authority.[7] The Court of Appeal allowed an appeal and found the law was constitutional.[8] It was the Court of Appeal's judgment that was itself upheld by the Supreme Court in dismissing the final appeal.

Before the Supreme Court, a number of institutional interveners participated in the proceedings. Notably, the Speakers of both the House of Commons and the Senate intervened in support of validity,[9] as did a number of provincial Attorneys-General and presiding officers of provincial legislatures.[10] The Court was thus presented with a case in which no party

[4] *Alford*, [3] (Rowe J). See also *New Brunswick Broadcasting Co. v Nova Scotia (Speaker of the House of Assembly)* [1993] 1 SCR 319, and *Canada (House of Commons) v Vaid*, [2005] 1 SCR 667.

[5] *Alford v Canada (Attorney-General)* (2018) 53 Admin LR (6th) 338 (Newton J).

[6] *Alford v Canada (Attorney-General)* (2019) 62 Admin LR (6th) 285 (Paciocco, Harvison Young and Zarnett JJA).

[7] *Alford v Canada (Attorney-General)* (2022) 161 OR (3d) 546; (2022) 469 DLR (4th) 682 (Fregeau J).

[8] *Alford v Canada (Attorney-General)* (2024) 172 OR (3d) 401; (2022) 496 DLR (4th) 424 (Doherty, Brown and Trotter JJA). (Following the Canadian practice, the appellant is not the first-named party in the citation where they were the respondent below.)

[9] The majority took specific note of the submissions of the Speakers of both Houses of the Federal Parliament '[g]iven their special expertise and direct interest in the issue [the appeal] raises': *Alford*, [30] (Rowe J).

[10] The Attorneys-General of Ontario, Quebec and Saskatchewan and the President of the National Assembly of Quebec expressly supported the validity of the law. The Attorney-General of British Columbia and the Speaker of the Legislative Assembly of Ontario made submissions supporting the view that Parliament's ability to regulate its internal affairs via ordinary legislation should not be limited by further, court-imposed constitutional safeguards.

representing the institutional interests of the legislative branches of government spoke against the limitation on parliamentary privilege in issue. Rather, it was left to non-government litigants to make the case against the limitation.

A majority of eight Justices upheld the validity of the law in a judgment by Rowe J (Wagner CJ, Karakatsanis, Martin, Kasirer, Jamal, O'Bonsawin and Moreau JJ concurring), while one Justice dissented (Côté J). As set out further below, the dissenting judgment accepted the conceptual framework proposed by the majority for analysing whether the law was valid or not. It was only at point of application of that framework to the law in issue that the jurists parted ways.

HOLDING OF THE COURT

Justice Rowe affirmed the longstanding principle applied both in Canada and elsewhere that the courts will only assess the outer bounds of parliamentary privilege but will not assess its application.[11] In the words of the former Chief Justice of Canada, the courts 'will inquire into the existence and extent of privilege, but not its exercise'[12] or, in the words of the former Chief Justice of Australia, 'it is for the courts to judge of the existence in either House of Parliament of a privilege, but, given an undoubted privilege, it is for the House to judge of the occasion and of the manner of its exercise'.[13]

Affirming the unique place of *lex parliamenti* in the constitutional structure of Westminster democracies, Rowe J noted that the common law 'recognizes parliamentary privilege' but 'is not its source' and 'cannot vary or otherwise affect the laws and customs of Parliament.'[14] Of course, the incursion on privilege here was worked by statutory provision rather than the general law.

Justice Rowe concluded that section 18 was a plenary grant of power to the Canadian Parliament to regulate and declare its privileges, powers and immunities, subject to three constraints.[15] First, the Parliament cannot exceed the 'upper limit' set by the express words of

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Only non-government interveners argued against validity: the Canadian Civil Liberties Association and the British Columbia Civil Liberties Association.

[11] *Alford,* [41] (Rowe J).

[12] *New Brunswick Broadcasting Co v Speaker of the House of Assembly (Nova Scotia)* [1993] 1 SCR 319 (Lamer CJ, concurring in the judgment); see also *Stockdale v Hansard* (1839) 9 Ad & El 1.

[13] *R v Richards; Ex parte Fitzpatrick and Browne* (1955) 92 CLR 157 (Dixon CJ).

[14] *Alford*, [42] (Rowe J).

[15] *Alford*, [72] (Rowe J).

s 18, by seeking to grant privileges, powers or immunities that exceed those of the House of Commons at Westminster at the time of the proposed grant. (Curiously, that provision appears to have an ambulatory meaning, rather than being tied to the privileges of the British Commons at a point in time. Might parallel constitutional developments in the United Kingdom still impinge upon the legislative competence of the Canadian Parliament in 2026?)

Second, section 18 cannot authorise a law, or a provision of a law, that would 'fundamentally undermine Parliament's function as a legislature in Canada's Westminster-style parliamentary democracy'. His Honour noted two examples of laws that would be invalid by reason of this constraint: a law that would 'effectively abolish parliamentary privilege as a whole' or a law that had as its purpose to 'fundamentally impair the ability of the Houses of Parliament to carry out their essential functions as deliberative law-making assemblies in which the executive is held to account'.[16]

Third, section 18 cannot be used to seek to enact through ordinary legislation provisions that would be inconsistent 'with other provisions of the Constitution that expressly relate to the functioning of Parliament'.[17] These might include, for instance, rules relating to quorum, voting and term in office.[18]

Applying this framework, Rowe J found the exception to parliamentary privilege created by the NSICOP Act narrow and *intra vires*, emphasising the following factors: (1) it was limited to the disclosure of national-security information obtained through participation in the Committee; (2) it did not apply to like information obtained either (i) through other sources or (ii) through participation in the Committee, but where the Government had not taken any measures to protect it from disclosure; and (3) the limit on immunity only applied to parliamentarians who *chose* to sit on the committee, with no implications for freedom of speech in Parliament or for parliamentarians more broadly.

The national-security context was again emphasised by Rowe J in discussing what the Court described as the 'trade-off' of this limit on parliamentary freedom of speech as the price of additional parliamentary oversight of national-security matters. Before addressing the 'trade-off', his Honour drew attention to the broad powers vested in the Committee to access 'any

[16] *Alford*, [70] (Rowe J).

[17] *Alford*, [72] (Rowe J).

[18] *Constitution Act 1867* (Can) ss 48, 49, 50.

information that is under the control of a department and that is related to the fulfilment of the Committee's mandate'.[19]

While his Honour sought to refrain from 'commenting on the advisability of this trade-off', it was relevant in that the national-security context established a 'clear connection to the policy objective' behind the legislation, viz. 'oversight of Canada's national security apparatus'. And the removal of immunity here was consistent with the criminal sanctions that generally applied to persons who abused access to sensitive information in the national-security context. The Court dismissed other arguments relating to specific structural provisions of the Canadian Constitution that there is not space to address here.[20]

Justice Côté, by contrast, would have invalidated the laws under the same framework. While expressly endorsing Rowe J's three limits described above, her Honour found that s 12 of the NSICOP Act was 'fundamentally incompatible with the role of Parliament in [Canada's] democracy'. While the dissent was wide-ranging, a point her Honour continued to return to was the 'unprecedented' fact that s 12 operated to authorise the executive government to prosecute, and the courts to imprison, a Member of Parliament for what they have said in Parliament.

Her Honour noted in the first paragraph of the judgment that:

> *[f]or over three centuries, no parliamentarian in Canada, the United Kingdom, Australia or New Zealand has been criminally prosecuted for what they have said on the floor of Parliament.*[21]

That was, of course, a pointed reference to the disputes between the Parliament, the Crown and the courts, including political prosecutions, before the Glorious Revolution that led to the passage of the *Bill of Rights 1688*, and which her Honour went on to discuss later in the judgment.[22] Her Honour also pointed to alternative oversight mechanisms that other

[19] *National Security and Intelligence Committee of Parliamentarians Act 2017* (Can) s 13(1), quoted at *Alford*, [76] (Rowe J) (highlighting taken from the judgment).

[20] These went to whether the law impliedly affected the stated 'powers of the Senate' or the role of the Supreme Court itself, rather than *lex parliamenti* with its comparative law relevance.

[21] *Alford*, [102] (Côté J).

[22] *Alford*, [115]-[116] (Côté J).

parliamentary democracies had adopted to ensure preservation of national-security secrecy provisions by parliamentary bodies, without seeking to limit parliamentary privilege.[23]

While the framework for analysis for the dissentient did not differ in form from that of her Honour's colleagues in the majority, it is plain that she took a different view of the constitutional significance to be afforded freedom of speech. Perhaps pointedly, in summarising her historical outline of the importance to parliamentary freedom of speech in both England and Canada, she restated and endorsed comments that Rowe J had written in another context:

> *Taken together, the preamble to the Constitution Act, 1867, the practical functioning of our democracy, and the architecture of our Constitution speak to the fundamental importance of free speech in Parliament. The preamble protects free speech and debate in Parliament as a cornerstone of Parliament's functioning. The role of free speech in facilitating the business of Parliament and in protecting and giving life to responsible government, representative government, and the separation of powers confirms its systemic importance in our Constitution. In light of its role, any restriction on free speech in Parliament must be adopted with the utmost caution. Freedom of speech in Parliament requires 'firm, resounding, and unequivocal confirmation. Confident legislative assemblies are cradles of popular liberty; timorous ones are instrumentalities of control by the well-situated' (Power, at para. 296, per Rowe J., dissenting, but not on this point).*[24]

ANALYSIS

The holding in *Alford* is, of course, unique to the Canadian context, but it raises interesting questions that may apply to the Parliaments of Australasia and other Westminster democracies, particularly those underpinned by a written constitution.

[23] *Alford*, [108] (Côté J).

[24] The extract from Justice Rowe's earlier comments are taken from his Honour's dissenting judgment in *Canada (Attorney General) v Power* [2024] SCC 26; (2024) 494 DLR (4th) 191, [296].

Viewed pragmatically, the approach taken by the majority might be thought to bear some similarity to Marshall CJ's pathbreaking judgment for the United States Supreme Court in *Marbury v Madison*. 'It is emphatically the province and duty of the judicial department to say what the law is.'[25] His Honour's *reasons* entrenched the Supreme Court's judicial review jurisdiction while the Court's formal *ruling* aligned with the position of the Jefferson Administration. It is perhaps the most famous case in which the judiciary made use of an occasion of curial *alignment* with a political branch's interests as the opportunity to demonstrate a constitutional norm that might, in future, limit the powers of that same political branch.

The same might be said in *Alford*. The majority, against the submissions of both the executive and legislative branches of the federal and provincial governments, found a constitutional minimum content to the rights, privileges and immunities of the Parliament that could not be reduced by ordinary legislative process and required constitutional amendment. However, having adopted such a framework, the majority went on to find the law in question derogated from Parliament's privileges in a manner that did not encroach on that constitutional minimum.

In one sense, the appellant's defence of privileges having their origin in Article 9 of the Bill of Rights and the doctrine of exclusive cognisance was at the expense of a broader notion of legislative competence, or Parliament's right to limit its own rights. It represents a tension between two doctrines, Parliament's exclusive cognisance over its own affairs as part of the inheritance of Canada of a 'Constitution similar in principle to that of the United Kingdom'[26] and the supremacy of the constitution as set out in the *Constitution Act 1982* (Can) and *Canada Act 1982* (UK).[27] The question thus was whether the Canadian Constitution relevantly limited Parliament's plenary power to self-regulate. On one view, the majority's conclusion crafts a careful line that upholds the legitimacy of both constitutional principles; charting a narrow path to the statute's legitimacy without giving a future Government with a Commons majority cause to think it could go much further in abrogating parliamentary rights without intruding upon constitutional limits.

The majority may have been influenced by the fact that the Committee itself was expressly defined as other than a parliamentary committee,[28] alongside the apparent breadth of the

[25] *Marbury v Madison* (1803) 5 US 137; 1 Cranch 137.

[26] *Constitution Act 1867* (Can), preamble.

[27] *Constitution Act 1982* (Can) s 52(1): '*The Constitution of Canada is the supreme law of Canada*, and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect.'

[28] *National Security and Intelligence Committee of Parliamentarians Act 2017* (Can) s 4.

information-gathering powers conferred by the statute and the potential to enhance outside oversight of otherwise covert activities of security agencies.[29] It not being a creature of the legislative branch, the Committee arguably constituted one of a species of internal oversight bodies that subsist *within* the penumbra of the executive government, perhaps with some analogy to Australia's Independent National Security Legislation Monitor or the various ombudsman agencies. It differs as such from Australia's Parliamentary Joint Committee on Intelligence and Security constituted by s 28 of the *Intelligence Services Act 2001*. One limitation of the Australian model is the committee is excluded from examining operational matters. The NSICOP Act model arguably seek to address this through its broad terms of reference, but ultimately it still provides the relevant Minister with an unreviewable discretion to prevent a review of an 'activity … that relates to national security or intelligence' where the activity is an 'ongoing operation' and they determine that 'the review would be injurious to national security'.[30]

Alford involved an unusual confluence of factors that resulted in a provision that at face value represents a significant incursion into parliamentary freedom of speech and debate being held to be not inconsistent with the important separation of powers principles that underpin it. The most significant factor was perhaps that, in seeking to find a constitutional constraint on Parliament's ability to legislate its own privileges, the appellant sought to limit Parliament's powers to self-regulate. Further, the claim was brought by a citizen litigator without support from any institutional actors within the political sphere. Presiding officers of Canadian legislatures aligned with first law officers of the executive governments to defend the constitutionality of the law. As in other areas of public law, *Alford* is another case study of the national-security context giving rise for a basis for departure from otherwise settled constitutional norms.

[29] The information-gathering powers, referred to earlier in this article, are set out at s 13(1) of the *National Security and Intelligence Committee of Parliamentarians Act 2017* (Can). However, Rowe J does not analyse how this grant of power goes beyond the existing privileges, immunities and powers of the Canadian Parliament. Its privileges derive from those of the House of Commons at Westminster, which undoubtedly include a broad inquiries power and the right to summons persons and documents. See E Campbell, *Parliamentary Privilege* (Federation Press: 2003), p 152.

[30] *National Security and Intelligence Committee of Parliamentarians Act 2017* (Can) ss 8(1)(b), 31(1).

COMPARATIVE IMPLICATIONS: AUSTRALIA

There can be no bright-line analogies drawn in the approach taken by apex courts to parliamentary privilege across the common-law world. The basis of the enactment of those privileges in diverse local circumstances takes many forms, such as the reception of English law at a point in time by Imperial statute, the express incorporation of particular laws into the law of a colony or the reimagining of particular parts of the *Bill of Rights 1688* or other parts of the *lex parliamenti* through written constitutions or modern statute law.[31]

It is hard to imagine a law similar to the NSICOP Act being passed and its validity debated before the High Court of Australia, for a simple reason. The Australian Senate is a vastly different creature to its Canadian counterpart; being popularly elected albeit on the basis of the same statehood gerrymander as its United States cousin. It has a robust view of its privileges and it is very much the exception rather than the norm that a Government would have a majority within the upper chamber. Indeed, even in cases where Government has exceptionally held a Senate majority, it is not clear that Government Senators would accede to a course of action that would diminish the privileges that they jealously guard.

It is not clear whether a different approach would be taken by the courts of Australasian polities. There has not been the occasion for the High Court of Australia to consider whether the analogue of section 18 in the Australian Constitution, section 49, entrenches a minimum set of privileges as concerns freedom of speech and debate. Judicial commentary has been more directed at the question of whether the *Parliamentary Privileges Act 1987* (Cth) extends the privileges of the Commonwealth Houses of Parliament *beyond* those enjoyed by the House of Commons at Westminster at Federation.

Section 49 is plainly a more expansive provision that section 18. It states:

[31] For instance, the incorporation of the *Bill of Rights 1688* as part of the privileges of its State Parliament of New South Wales derives from the *Imperial Acts Application Act 1969* (NSW). See discussion in *Director of Public Prosecutions (NSW) v President of the Legislative Council of New South Wales* [2026] NSWCA 20, [83] (Leeming and Stern JJA, Griffiths AJA). By contrast, in the State of Tasmania, the status of Art 9 of the Bill of Rights continues to find its source in s 24 of the *Australian Courts Act 1828* (Imp) along with its being 'part of the received common law which Art 9 reflects': *Attorney-General (Tas) v Casimaty* (2024) 98 ALJR 1139 (High Court of Australia), [70] (Edelman J). In Hong Kong, privileges of the Legislative Council are set out in part in the Basic Law and in part in general ordinances: see *Basic Law of the Hong Kong Special Administrative Region*, Art 77; *Legislative Council (Powers and Privileges) Ordinance*, c 382 ss 3-4. The Court of Final Appeal analysed relevant provisions and their relationship to Art 9 of the *Bill of Rights 1688* in *Secretary for Justice v Leung Kwok Hung* [2021] HKCFA 32; (2021) 24 HKCFAR 234 (Cheung CJ, Ribeiro and Fok PJJ, Chan and Lord Reed of Allermuir NPJJ).

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

In contrast with section 18, section 49 contains no express 'upper limit' on the legislative competence of the Parliament to expand its powers, privileges and immunities beyond those conferred on the House of Commons at Westminster in 1901. This, of course, assists an argument that, in the event it is eventually determined by the courts that subsection 16(3) of the *Parliamentary Privileges Act 1987* (Cth) goes beyond the scope of Article 9 of the *Bill of Rights*, it is nonetheless within the power the Parliament to so legislate.[32]

At least one learned commentator, Professor Enid Campbell, considered that the implied constitutional freedom of communication on political and government matters settled by the High Court in *Lange v Australian Broadcasting Corporation* should protect the freedom of speech and debate in the Commonwealth Parliament as well as laws directed at political communication outside of the legislative branch, in the public sphere.[33] That proposition has some force; an alternative formulation may be that it is not necessary to draw upon a constitutional implication to derive a minimum content to the privileges and rights subject to section 49. Any 'implication' to be drawn is simply an extension of the express text of an authorising provision; rather than something to be drawn holistically from the Constitution. In line with the 'special position' that section 49 holds in the constitution, it provides an express and structural freedom of speech and debate for the legislative arm of government that aligns with the implied freedom to speak on political matters given to the public at large. That is, the two are mutually reinforcing principles that support the system of representative and

[32] The question whether s 16(3), the part of the *Parliamentary Privileges Act 1987* centrally directed at overturning the findings of Judges of the Supreme Court of New South Wales in the trials of Justice Murphy, merely restates the 'true' meaning of Article 9 of the *Bill of Rights 1688* or is an expansion upon it has been the subject of much judicial disagreement amongst Australian superior court judges and the subject of commentary by the Privy Council itself in *Prebble v Television New Zealand Ltd* [1995] AC 321. It is not clear that it will be necessary to ever determine the issue except to the extent it is found that the proper ambit of Article 9 is relevant in ascertaining the outer limits of the legislative power under s 49.

[33] (1997) 189 CLR 520.

democratic government that the Constitution establishes federally and, in the case of the States, maintains.

There is force in Professor Campbell's observations and it must at least be open to debate whether the Australian courts would uphold an analogue of section 12 of the NSICOP Act on the basis that it unduly interfered with the minimum parliamentary freedom of speech that s 49 and the implied freedom of political communication vest in the Parliament.

In the cases the High Court has heard concerning the scope of section 49, the Court has been at pains to stress the historical rights and privileges of the Parliament at Westminster and their full incorporation into the scheme of the Australian constitutional settlement. Thus, while the separation of powers doctrine that supports the independence of the judiciary might otherwise appear to prohibit the assumption by Parliament of the right to imprison its contemnors (as intruding upon properly judicial power), that proposition was emphatically rejected in *R v Richards; Ex parte Fitzgerald*, in which writs of habeas corpus were sought against the Speaker of the House of Representatives upon the issuing of warrants for arrest for contempt of Parliament. Section 49 did not permit such a limitation on Parliament's power by subjecting it to judicial oversight. As Dixon CJ, writing for a unanimous court, said in rejecting the structural argument:

> *… Students of English constitutional history are well aware of the controversy which attended the establishment of the powers, privileges and immunities of the House of Commons. Students of English constitutional law are made aware at a very early stage of their tuition of the judicial declarations terminating that controversy, and it may be said that there is no more conspicuous chapter in the constitutional law of Great Britain than the particular matter with which we are dealing. It is quite incredible that the framers of s. 49 were not completely aware of the state of the law in Great Britain and, when they adopted the language of s. 49, were not quite conscious of the consequences which followed from it. We are therefore of opinion that the general structure of this Constitution, meaning by that the fact that it is an instrument creating a constitution of a kind commonly described as rigid in which an excess of power means invalidity does not provide a sufficient ground for placing upon the express words of s. 49 an artificial limitation.*

Two final points should be made. Although it is not explored in the judgments of the Court, the obvious parallel between the position of parliamentarians sitting on the Committee is with Ministers who have direct access to national-security information as a result of holding executive office. In the system of Westminster responsible government, it is necessary that

certain members of parliament will be in possession of national-security information by virtue of their forming the ministry. Apart from the Canadian approach, similar jurisdictions do not appear to have ever thought it necessary that either Ministers of State or backbenchers sitting on oversight committees should be denied parliamentary privilege in respect of their national-security roles.

Professor Campbell has noted that the problem of the intersection of national-security or official secrets legislation with parliamentary privilege 'has not been resolved authoritatively'. She observes that the 'general parliamentary view' has been that official secrets laws cannot undermine freedom of speech and debate in parliament in the absence of express language. At least one report of the Joint Committee on Parliamentary Privilege in the United Kingdom went so far as to state

> *no action should be taken to limit freedom of speech in respect of breaches of the Official Secrets Act in the course of proceedings in Parliament*

while observing it would be open to the Houses to treat as contempt any gross abuse of the right of free speech that, for instance, prejudiced national security.[34] One hopes that prosecutors in Australia will never have cause to seek to prosecute a sitting Federal or State parliamentarian on the ground of unauthorised disclosure of official secrets in the form of a speech on the floor of Parliament, but that is potentially the only way the 'assumed' doctrine referred to above could be tested authoritatively before the courts.

The broader problem is this. It has not been adequately explained why backbenchers in Canada should be held to not just a different standard, but a different penalty and enforcement framework, from Ministers of State entitled to review official secrets as part of their role as dual members of the executive and the legislature that is at the core of Westminster model of responsible government. Notwithstanding the apparent endorsement of this approach by the Speakers of the Canadian Houses of Parliament, it sets a problematic precedent for parliamentary autonomy. While the confluence of factors referred to above may have influenced the Canadian Supreme Court in this case, there is much to be said for the analysis of Côté J in dissent. While her Honour's hypotheticals may appear disproportionate in light of the 'consent' of the legislature to the withdrawal of its privileges, the better view may be that

[34] Quoted in E Campbell, *Parliamentary Privilege* (Federation Press: 2003), p 60. From *First Report of the Joint Committee on Parliamentary Privilege* (Parliament of the United Kingdom, HR 43-I, HC 214-I, Session 1998-99).

they represent a far-sighted and historically informed assessment of the abrogation at the heart of the case. In contrast, the majority's approach places deference to the executive government's view of the needs of contemporary national security above ancient and hard-fought parliamentary rights.

Privilege and the enforcement of health and safety in the parliamentary workplace

Evan Smith[1]

Research Officer, Parliament of South Australia

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Abstract: Over the last decade, there has been increased attention in Australia on parliament as a workplace and concerns over the safety of those who work inside parliament. However the sovereignty of parliament has presented challenges with how to address workplace health and safety issues within parliaments. An aspect of this is the potential clash between the concept of parliamentary privilege and powers of regulatory bodies to enforce workplace health and safety laws. This paper uses a case study of an incident from 2022 in the Australian Capital Territory's Legislative Assembly, when Worksafe ACT implemented two prohibition notices during Estimates over questions about Covid-19 safety. This was deemed to be a breach of parliamentary privilege, but also eventually led to the establishment of a Memorandum of Understanding ('MoU') between the Legislative Assembly and Worksafe ACT. Examining this case study against a longer history of debates over privilege and the parliamentary workplace, the paper asks whether MoUs may be a bridge to addressing these traditional tensions.

INTRODUCTION

In recent years, the concept of parliament as a workplace, for both Members and staff, has received wider attention in Australia, with two factors increasing the focus upon the subject. Firstly, the Covid-19 pandemic raised the concern of how parliaments could function effectively

[1] The author would like to thank Dr Jennefer Bagaporo and Dr Alexia Adhikari for their comments on previous versions of this article. A previous version of this article was presented at the Australasian Study of Parliament Group conference, held in the Parliament of South Australia in October 2025.

while ensuring the safety of parliamentarians and parliamentary staff, particularly during periods of social distancing. Secondly, several inquiries in different jurisdictions found that there was a lack of protections for parliamentary, ministerial and electoral office staff who worked inside parliaments, particularly in regards to sexual harassment and bullying. This is also against a broader background of increasingly viewing parliament as a professional workplace.[2] Due to the sovereignty of parliament, it has often been perceived as different from other workplaces and not subject to the laws and policies that frame safety in the workplace. This includes a question over whether regulatory bodies concerned with workplace safety and culture have powers to enforce workplace health and safety (WHS) laws within parliament.

This paper examines a case study of the limits of the powers an external government agency can employ to enforce WHS laws within parliament, using the example of the WorkSafe ACT's attempts to implement a prohibition notice upon the Territory's Legislative Assembly in 2022. WorkSafe ACT prevented an Estimates Committee hearing from going ahead, following a question about the Assembly adhering to the ACT's Covid-19 protocols. This action was subsequently found to be in breach of parliamentary privilege. After two inquiries into the matter, it was recommended that the Assembly and WorkSafe ACT enter a Memorandum of Understanding (MoU) for the parliament to ensure workplace health and safety obligations were being met. The paper argues that this MoU represents a first for Australian parliaments in formally recognising an ongoing relationship between parliament and the jurisdiction's peak WHS body, offering a way forward for other parliaments around the country.

AUSTRALIAN PARLIAMENTS AS WORKPLACES

Josefina Erikson and Tània Verge have written that the 'realm of politics' is a workplace, but the characteristics and dynamics of the parliamentary workplace require further examination'.[3] Research into parliament as a workplace, particularly a gendered workplace, has been undertaken by scholars in Australia for a number of years,[4] occurring alongside pushes for

[2] Peter Ferguson, Amy Nethery, Zim Nwokora & Andrew Young, 'Has Politics Become More Professional? Career and Legislative Professionalisation in the Australian Parliament since 1950', *Australian Journal of Politics and History*, 71/4 (2025) pp. 620-648.

[3] Josefina Erikson & Tània Verge, 'Gender, Power and Privilege in the Parliamentary Workplace', *Parliamentary Affairs*, 75/1 (2022) p. 1.

[4] For example, see: Mary Crawford & Barbara Pini, 'The Australian Parliament: A Gendered Organisation', *Parliamentary Affairs*, 64/1 (2011) pp. 82-105; Sonia Palmieri, ''Parliaments as Gendered Workplaces', in Marian Sawer, Fiona Jenkins & Karen Downing (eds), *How Gender Can Transform the Social Sciences: Innovation and Impact* (Cham: Springer, 2020) pp. 47-56.

parliaments, at both Commonwealth and state level, to be more inclusive (such as maternity leave, wider scope for proxy voting, family-friendly sitting hours and allowances for babies and small children to be cared for in the chamber).[5] The last half decade has seen a more explicit discussion in Australia of parliament, as a workplace, can ensure the *safety* of parliamentarians and parliamentary staff, as well as ministerial and electoral office staff who frequent parliamentary buildings.[6]

One contributing factor to this was the Covid-19 pandemic and the implementation of lockdowns and social distancing in 2020. Parliaments around the world had to deal with the logistical problem presented by the pandemic as the traditional function of parliament has been to bring a large amount of people into one space to debate and scrutinise prospective legislation or the actions of government.[7] As Harry Hobbs and George Williams wrote:

> *As large collective bodies comprised of relatively older people that tend to be in close contact with more people than ordinary citizens, parliaments may be particularly vulnerable to the transmission of a highly contagious virus.*[8]

Alongside members of parliament sitting in close proximity to each other in the chamber, parliaments around Australia rely heavily on a large amount of staff in numerous capacities to

[5] See: Marian Sawer, 'Misogyny and Misrepresentation: Women in Australian Parliaments', *Political Science*, 65 no 1 (2013) 105-117; Pia Rowe, 'Essential Part of Life or Essentially Ignored? Combining Care Labour with Parliamentary Duties', *Australasian Parliamentary Review*, 36, no 2 (2021) pp. 91-109; Rosalind Dixon, Kate Jackson & Matthew McLeod, *Representing Care: Toward a More Family-Friendly Parliament* (Sydney: UNSW/Pathways to Politics, 2022); Evan Smith, 'Enabling conditions for gradual change: Making South Australian Parliament more 'family-friendly', 1994-2024', *Australasian Parliamentary Review*, 39/2 (2024) pp. 124-149.

[6] Maria Maley, 'Problematic Working Conditions for Female Political Staffers: What Can Be Done?', *Australasian Parliamentary Review*, 36/1 (2021) pp. 54-69; Marian Sawer & Maria Maley, *Toxic Parliaments - And What Can Be Done About Them* (Cham: Palgrave Macmillan, 2024); Amy Yong, 'Psychological Well-Being of Parliament Staff: What Do We Know and What Can Parliaments Do?', *Australasian Parliamentary Review*, 40/1 (2025) pp. 172-180.

[7] See: Stephen Mills, 'Parliament in a Time of Virus: Representative Democracy as a "Non-Essential Service"', *Australasian Parliamentary Review*, 34/2 (2020) pp. 7-26; Hon. Jonathan O'Dea MP, 'Socially Distant but Democratically Together: Towards a Virtual Parliament in NSW', *Australasian Parliamentary Review*, 34/2 (2020) pp. 27-53; Hong Thi Quang Tran, 'Beyond the Pandemic: To What Extent Should Parliament Embrace Remote Participation in the Digital Age?', *Australasian Parliamentary Review*, 40/1 (2025) pp. 153-171.

[8] Harry Hobbs & George Williams, 'Australian Parliaments and the Pandemic', *UNSW Law Journal*, 46 no 4 (2023) p. 1332.

allow parliament to function effectively. Parliamentary workers needed to be taken into consideration when deliberating how to ensure parliament's capacity to sit regularly and in person. Former Speaker of the House of Representatives Tony Smith outlined the challenge that parliaments in Australia faced and posed the question

> *How could 151 members from across Australia come together to undertake their parliamentary duties without jeopardising their own safety and that of their colleagues and staff, not to mention the safety of constituents when they returned home?*[9]

The other major contributing factor is the attention paid to bullying, discrimination and harassment, particularly of a sexist nature, within parliament and the need to address this as a *workplace issue*. This issue gained a national focus in 2021 after Brittany Higgins' allegations of sexual assault within Canberra's Parliament House and the announcement shortly after of a review into sexism in Federal Parliament by the Sex Discrimination Commissioner, Kate Jenkins.[10] The report, published in November 2021, has been described by Marian Sawer and Maria Maley as a 'watershed moment' and made 28 'radical and wide-ranging' recommendations regarding workplace behaviours.[11] The report explicitly framed Commonwealth Parliament as a workplace that needed to address bullying, sexual harassment and sexual assault in a similar manner to other workplaces across the country (which had been the focus of another recent report by the Australian Human Rights Commission in 2020).[12] The report asserted that 'ensuring a safe and respectful parliamentary workplace is essential to public confidence' and should model best practice for the wider community.[13]

Alongside the Jenkins report, several state governments undertook similar inquiries or surveys into bullying and harassment in the parliamentary workplace around the same time, primarily due to events in their own parliaments. This included independent inquiries in New South

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[9] Tony Smith MP, 'Parliament After Covid', in Genevieve Feely & Peter Jennings (eds), *After Covid-19, vol. 3: Voice from Federal Parliament* (Canberra: Australian Strategic Policy Institute, 2020) p. 2.

[10] Sonia Palmieri, Blair Williams & Marian Sawer, 'Parliament as a Gendered Workplace', *Australasian Parliamentary Review*, 36, no 2 (2021) pp. 8-19.

[11] Australian Human Rights Commission, *Set the Standard: Report on the Independent Review into Commonwealth Parliamentary Workplaces* (Canberra: AHRC, 2021); Sawer & Maley, *Toxic Parliaments*, p. 104.

[12] AHRC, *Set the Standard*, p. 12; Australian Human Rights Commission, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces*, Canberra; AHRC, 2020).

[13] AHRC, *Set the Standard*, p. 12.

Wales, South Australia and Tasmania, as well as Victorian Parliament conducting a survey as part of its Gender Equality Action Plan.[14]

One of the recommendations of the Jenkins report was the establishment of an Independent Parliamentary Standards Commission (IPSC)

> *to ensure that there are independent and consistent responses to reports and complaints of bullying, sexual harassment and sexual assault in CPWs [Commonwealth parliamentary workplaces].*[15]

The IPSC was created by the *Parliamentary Workplace Support Service Act 2023* (Cth), but there were doubts over the powers of the new body, particularly regarding the conduct of parliamentarians and its conflict with the notion of parliamentary privilege.[16] This highlights an issue for all parliaments across Australia – how are WHS laws, which exist and are overseen by a legislatively mandated agency in each jurisdiction, effectively enforced in a parliamentary environment?

PARLIAMENTARY PRIVILEGE AND AUSTRALIAN PARLIAMENTARY WORKPLACES

Nearly all workplaces in Australia are covered by a system of legislation regarding wages, conditions and work health and safety, with employment tribunals and WHS regulatory bodies at federal and state level. Decisions of these agencies are legally binding and can be reinforced with fines or other forms of punishment. However a grey area is how these laws apply to parliaments as workplaces and what authority regulatory bodies have to ensure that wages, conditions and safety are adequately maintained.

[14] See: Elizabeth Broderick & Co., *Leading for Change: Independent Review of Bullying, Sexual Harassment and Sexual Misconduct in NSW Parliamentary Workplaces 2022* (Sydney: Elizabeth Broderick & Co., 2022); Equal Opportunity Commission, *Review of Harassment in the South Australian Parliament Workplace* (Adelaide: EOC, 2021); Equal Opportunity Tasmania, *Motion for Respect: Report into Workplace Culture in the Tasmanian Ministerial and Parliamentary Services* (Hobart: EOT, 2022); Parliament of Victoria, *Gender Equality Action Plan, 2022-2025* (Melbourne: Parliament of Victoria, 2022).

[15] AHRC, *Set the Standard*, p. 25.

[16] Michelle Grattan, 'New Watchdog Won't Stop Bad Behaviour in Parliament', *The Conversation*, 21 August, 2024, https://theconversation.com/view-from-the-hill-new-watchdog-wont-stop-bad-behaviour-in-parliament-237210.

This stems from the concept of parliamentary privilege and the separation of powers between the judiciary and parliament, which emanates from Article 9 of the 1689 Bill of Rights. Article 9 stated

> *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.*[17]

Since then, this principle has been known in Westminster system parliaments as 'exclusive cognisance'.[18] Narratives of the concept of parliamentary privilege and the exclusive cognisance of parliament typically touch on several cases from the UK between the 1830s and 1930s[19] to highlight how the scope of this concept has been contested, perhaps unsatisfactorily.[20] In regard to the House being in charge of its own affairs, Westminster system parliaments still rely on the *ex parte Herbert* judgment from the 1930s, despite criticisms that this judgment misinterpreted previous case law.[21] Discussing the application of liquor licensing laws to the House of Commons, Sir Thomas Inskip and Judge Wilfrid Lewis stated that this was 'a matter falling within the area of the internal affairs of the House which the House, and the House alone, is privileged to manage', adding later, '[t]he House has the exclusive right to regulate its own internal concerns'.[22] This broad definition of exclusive cognisance has influenced the Westminster-system parliaments ever since and continues to guide legal thinking about the internal functions within parliament around the Anglophone world.

Most jurisdictions in Australia have adopted the immunities, rights and powers enjoyed by the UK House of Commons and its members at a certain point in time, with Gerard Carney noting that in most instances, these jurisdictions have not attempted to exhaustively define these

[17] 'English Bill of Rights 1689', *The Avalon Project*, https://avalon.law.yale.edu/17th_Century/england.asp.

[18] Leslie Gönye, 'Finding a Balance Between Accountability and Exclusive Cognisance: Some Recent Developments in NSW', *Australasian Parliamentary Review*, 23, no 1 (2008) p. 213.

[19] *Stockdale v Hansard* [1836-37] 173 ER 322; *Bradlaugh v Gossett* [1883-84] 12 QBD 271; *The King v Sir R.F. Graham-Campbell, ex parte Herbert* [1935] 1 KBD 594.

[20] Geoffrey Lock, 'Statute Law and Case Law Applicable to Parliament', in Dawn Oliver & Gavin Drewry (eds), *The Law and Parliament* (London: Butterworths, 1998) pp. 48-70; Charles Robert, 'An Opportunity Missed: The Joint Committee on Parliamentary Privilege, Graham-Campbell and Internal Affairs', *The Table*, 74 (2006) pp. 7-21.

[21] Robert, 'An Opportunity Missed', p. 20; Gönye, 'Finding a Balance Between Accountability and Exclusive Cognisance', p. 214.

[22] *The King v Sir R.F. Graham-Campbell, ex parte Herbert*, at 597, 599.

rights.[23] While the Commonwealth government endeavoured to rectify this with legislation in the 1980s, Carney states,

> *There is no authority other than Ex parte Herbert for holding that parliamentary privilege might extend to the ordinary administrative activities of parliamentary precincts.*[24]

Reliance on this judgment has left courts in several jurisdictions, such as Canada and Australia, to grapple with this question, especially in terms of parliament as a workplace.[25]

The House of Commons Librarian, Geoffrey Lock, wrote an article in 1983 pertaining to labour laws and parliamentary staff, noting the effect of parliamentary privilege on staffing matters.[26] Also invoking the *ex parte Herbert* judgment, Lock stated that the

> *current official view is that [labour law] statutes do not apply to parliamentary staff unless there is an express provision to say that they do [which meant that] the odd situation prevailed that none of the labour laws that Parliament had passed to cover the working population in general applied to its own staff.*[27]

Lock wrote that there was 'general agreement that the subject of parliamentary privilege is surrounded by much uncertainty' and lamented that reliance on *ex parte Herbert* pushed the scope of privilege too far.[28] He quipped about the judgment's definition of internal affairs and privilege:

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[23] Gerard Carney, 'Parliamentary Privilege – Part 1: The Test of Necessity', *Australasian Parliamentary Review*, 32, no 1 (2017) p. 7.

[24] Carney, 'Parliamentary Privilege – Part 1', p. 12.

[25] *Canada (House of Commons) v Vaid* [2005] 1 SCR 667; *Bear v State of South Australia* [1981] 48 SAIR 604; *President of the Legislative Council (South Australia) v Kosmas* [2008] SAIRC 41.

For a discussion of these cases, see: Gareth Griffith, 'Parliamentary Privilege: First Principles and Recent Applications', *Australasian Parliamentary Review*, 24, no 2 (2009) pp. 90-96.

[26] G.F. Lock, 'Labour Law, Parliamentary Staff and Parliamentary Privilege', *Industrial Law Journal*, 12, no 1 (1983) pp. 28-37.

[27] Lock, 'Labour Law, Parliamentary Staff and Parliamentary Privilege', pp. 28-29.

[28] Lock, 'Labour Law, Parliamentary Staff and Parliamentary Privilege', p. 34.

> *After all, the origin of this aspect of privilege was the preservation of freedom of speech for Members of Parliament… It is a far cry from this purpose to its use in restricting the normal rights of staff as employees.*[29]

Lock noted that when the *Industrial Relations Bill 1971* was being debated in the UK, the Secretary of State for Employment was asked whether the legislation would cover parliamentary staff, who answered that it would not, but added

> *The House authorities will ensure, however, that, as far as possible, the staff will receive analogous treatment to employees covered by the legislation.*[30]

Despite these assertions of analogous treatment, the trade unions representing parliamentary staff in the UK argued that unless 'proper statutory coverage' was provided, those working in Parliament were at a disadvantage.[31]

In Canada, an important challenge to the assumptions of *ex parte Herbert* and its coverage of employment conditions in the parliamentary workplace was the Supreme Court case of the Canadian House of Commons against Satnam Vaid. Vaid was employed as a chauffeur by the House of Commons, who alleged that he had experienced discrimination in the workplace contrary to the *Canadian Human Rights Act, RSC 1985, c. H-6*. The Speaker of the House contested the ability to the Canadian Human Rights Tribunal to investigate the matter, primarily on the basis of parliamentary privilege and maintained that the 'management of all employees' fell under the 'internal affairs' of parliament.[32]

The Supreme Court applied the test of necessity to the concept of parliamentary privilege and questioned whether privilege extended to all areas, particularly regarding matters of employment. It cited a UK Joint Committee Report from 1999 that asserted that the heading of privilege that includes its internal affairs 'best serves Parliament if not carried to extreme lengths', adding that parliamentary privilege 'exists to enable members to discharge their duties to the public' and

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[29] Lock, 'Labour Law, Parliamentary Staff and Parliamentary Privilege', p. 32.

[30] House of Commons, *Hansard*, 8 July, 1971, col. 437w, cited in Lock, 'Labour Law, Parliamentary Staff and Parliamentary Privilege', p. 33.

[31] Lock, 'Labour Law, Parliamentary Staff and Parliamentary Privilege', p. 33.

[32] Carney, 'Parliamentary Privilege – Part 1', pp. 8-9; Senator Serge Joyal, 'The Vaid Case and the Protection of Parliamentary Employees Against Human Rights Discrimination', *Canadian Parliamentary Review*, 28, no 4 (2005-06) p. 3.

> *cannot be right that this privilege should have the effect that Parliament itself, within the place it meets, is not required to comply with its own laws on matters such as health and safety [or] employment.*[33]

From this, Justice Binnie wrote:

> *I conclude that British authority does not establish that the House of Commons at Westminster is immunized by privilege in the conduct of all labour relations with all employees irrespective of whether those categories of employees have any connections (or nexus) with its legislative or deliberative function, or its role in holding the government accountable.*[34]

Binnie queried whether 'immunity from outside scrutiny in the management of all services employees' was necessary for the function of parliament and whether there was any indication that 'Parliament intended to exclude its own employees' from coverage under the *Canadian Human Rights Act*.[35] The Supreme Court concluded that the Act 'does apply to employees of the Senate and House of Commons', but also argued that Vaid could pursue his grievances under specific legislation covering the employment of parliamentary staff.[36]

There have also been similar challenges in Australian jurisdictions. South Australia has seen two such cases - one in 1981 and one in 2008 - with one falling on either side of the divide. In 1981's *Bear v State of South Australia*,[37] the State's Industrial Court found that 'an injury to a waitress in the parliamentary dining room was not part of the internal business of Parliament and was not protected by privilege'.[38] In that case, Judge Russell stated:

[33] *Canada (House of Commons) v Vaid* [2005] 1 SCR at 707-708; Joint Committee on Parliamentary Privilege, *Report: Vol 1 – Report and Proceedings of the Committee*, HL Paper 43-I, HC 214-I (London: HMSO, 1999) p. 64, p. 67.

[34] *Canada (House of Commons) v Vaid* [2005] 1 SCR at 709.

[35] *Canada (House of Commons) v Vaid* [2005] 1 SCR at 710, 714.

[36] *Canada (House of Commons) v Vaid* [2005] 1 SCR at 715.

[37] *Bear v State of South Australia* [1981] 48 SAIR 604.

[38] Griffith, 'Parliamentary Privilege', p. 93.

> *In my opinion, the applicant is not precluded from prosecuting her claim against the Committee by reason of the existence of any Parliamentary privilege.*
>
> *The plain fact of the matter is that her relationship with Parliament is not part of the internal business of Parliament but rather it is a relationship between Parliament and a stranger.*[39]

In 2008, a single judge of the same Industrial Court found that parliamentary privilege did not necessarily apply to the employment conditions of Parliament as a former employee made a claim over unpaid overtime working for the Legislative Council. Noting that there is 'an established principle of law that the Crown is not to be bound by a statute unless the legislature has enacted a provision declaring that it is bound', [40] Judge Gilchrist stated:

> *it can, I think, be safely presumed that Parliament did not intend for it to be bound by laws that it made to regulate the employment of those citizens of the State bound by the State's labour laws, in so far as its compliance with those laws could adversely impact upon its work [paragraph 94].*

He acknowledged that there were some provisions of industrial relations legislation that could not apply to Parliament in its dealings with staff

> *because the orders that the Court, Commission or Tribunal could make in respect of applications made under these provisions could compromise the internal workings of Parliament*

but argued

> *there seems to be no obvious capacity for an underpayment of wages claim or any order that this Court could make in relation to such a claim that would undermine the internal workings of Parliament.*[41]

Using the same logic as Justice Binnie in the *Vaid* case (and the UK's 1999 Joint Committee), Gilchrist concluded 'that Parliament did not intend that its employees would have no rights to

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[39] *Bear v State of South Australia* [1981] 48 SAIR at 623.

[40] *Kosmas v Legislative Council (SA) and Others* [2007] SAIRC, paragraphs 84, 94.

[41] *Kosmas v Legislative Council (SA) and Others* [2007] SAIRC, paragraphs 93-94.

compensation under the [*Workers Rehabilitation and Compensation Act*]'.[42] He therefore determined that a claim of parliamentary privilege was 'not required to avoid unacceptable intrusions upon the internal workings of Parliament' and the Industrial Relations Court did have the jurisdiction to the applicant's claim.[43]

However, the Full Court overturned this decision and found that the work which the employee was claiming to be paid overtime was 'so closely and directly connected' to the functions of the Council that privilege was attached.[44] The Court concurred with the *Vaid* judgment that not all employees were connected to the proceedings of parliament and were potentially not covered by privilege, but ruled that the respondent, Georgios Kosmas, was 'directly engaged in the purpose and the business of Parliament', therefore the jurisdiction of the Court was removed by privilege.[45]

In New South Wales, the Public Service Association and the Speaker of the Legislative Assembly went before the Industrial Relations Commission over a dispute concerning Committee staffing arrangements, which was at odds with the wider public service in the state. The matter, Leslie Gönye notes, was settled by negotiation, but raised the possibility that employment at the Legislative Assembly could fall within the bounds of NSW's *Industrial Relations Act 1996* and was not an aspect of exclusive cognisance.[46] Gönye added, the practice of the Legislative Assembly, like many other jurisdictions, has been to broadly accept the conditions of employment seen in the public service, alongside the anti-discrimination and WHS legislation relevant to the workplace.[47]

WORK HEALTH AND SAFETY REGULATION IN AUSTRALIA

Work health and safety is regulated in Australia at both Commonwealth and state level, with all jurisdictions having separate WHS systems and regulators. Under the Rudd government there was a push for the 'harmonisation' of WHS systems across the country and by 2013, all states and territories, besides Victoria and Western Australia, had adopted the Model Work

[42] *Kosmas v Legislative Council (SA) and Others* [2007] SAIRC, paragraph 95.

[43] *Kosmas v Legislative Council (SA) and Others* [2007] SAIRC, paragraphs 96-98.

[44] Griffith, 'Parliamentary Privilege', p. 95.

[45] *President of the Legislative Council (South Australia) v Kosmas* [2008] SAIRC, paragraph 44.

[46] Gönye, 'Finding a Balance Between Accountability and Exclusive Cognisance', p. 224.

[47] Gönye, 'Finding a Balance Between Accountability and Exclusive Cognisance', p. 224.

Health and Safety Act and Regulations.[48] Regulators in each jurisdiction have statutory powers including the powers to 'monitor and enforce compliance with the WHS Act [and] conduct and defend legal proceedings under the Act'.[49] These powers are undertaken by investigators, who have

> *broad powers to enter workplaces to inspect and examine anything (including documents), make enquiries, take measurements, conduct tests, and make sketches or recordings*

to ascertain whether a workplace is compliant with WHS regulations.[50] This includes 'improvement notices to remedy or prevent contraventions of the Act' or 'prohibition notices to prevent serious risks emanating from immediate or imminent exposure to a hazard, non-disturbance notices to preserve or prevent disturbance of a site'.[51]

Under the harmonised WHS laws, primary responsibility for workplace health and safety is placed upon 'a person conducting a business or undertaking' or PCBU, which is broader than the standard definition of employer.[52] The explanatory memorandum that accompanied the model legislation when passed through the Commonwealth parliament in 2011 stated that 'the Crown should not be exempt from the operation of the offence provisions of OHS legislation' and recommended that the Model Bill should bind the Crown.[53] While the Crown and parliament overlap, they are not the same entities;[54] a question that arises from this is whether parliaments are similarly bound to WHS laws and, considering the history of parliamentary privilege and workplace conditions as mentioned above, can WHS regulations be enforced?

[48] Toni Schofield, Belinda Reeve & Ron McCallum, 'Australian Workplace Health and Safety Regulatory Approaches to Prosecution: Hegemonising Compliance', *Journal of Industrial Relations*, 56, no 5 (2014) p. 713; Elizabeth Bluff & Richard Johnstone, 'Supporting and Enforcing Compliance with Australia's Harmonised WHS Laws', *Australian Journal of Labour Law*, 30, no 1 (2017) p. 30.

[49] Bluff & Johnstone, 'Supporting and Enforcing Compliance with Australia's Harmonised WHS Laws', p. 31.

[50] Bluff & Johnstone, 'Supporting and Enforcing Compliance with Australia's Harmonised WHS Laws', p. 31.

[51] Bluff & Johnstone, 'Supporting and Enforcing Compliance with Australia's Harmonised WHS Laws', p. 32.

[52] Tess Hardy, 'Reconsidering the Notion of Employer in the Era of the Fissured Workplace: Traversing the Legislative Landscape in Australia', *Bulletin of Comparative Labour Relations*, 95 (2017) p. 67.

[53] *Work Health and Safety Bill 2011: Explanatory Memorandum* (Canberra: Parliament of Australia, 2011) p. 12.

[54] Nick Seddon, 'The Crown', *Federal Law Review*, 28, no 2 (2000) pp. 245-262.

THE ACT LEGISLATIVE ASSEMBLY AND WORKSAFE ACT

A case study of the tension between the concept of parliament as a workplace, parliamentary privilege and the enforcement of WHS regulations is the intervention of the Worksafe ACT into the functions of the Territory's Legislative Assembly in 2022, resulting from the enforcement of workplace health and safety policies regarding Covid-19. The response by the ACT government to the outbreak of Covid-19 has been viewed as quite successful, compared with its counterpart across the border in New South Wales. A public health emergency was declared in the ACT in March 2020. After an initial lockdown period, the territory had similar containment parameters throughout 2020-21, including some restrictions on large gatherings and border crossings, such as the requirement of Covid-Safe plans for large-scale events.[55] These plans remained in place until early 2023.

Overall, the government response at all levels to Covid-19 had 'an overarching public health framework' and although workplaces have been important sites for the containment of the pandemic, 'the WHS regimes have played an auxiliary role' in these responses.[56] Elizabeth Bluff and Richard Johnstone show that WHS regulators have used the existing harmonised laws to ensure the safety of workers during the pandemic, but their broad mandate to inspect and enforce compliance had been limited, particularly beyond 2020.[57] However there have been instances where WHS regulators, such as Worksafe ACT, have intervened on this matter, as outlined in the case study below.

When the pandemic first struck Australia in 2020, the ACT's Legislative Assembly initially agreed that only 13 socially distanced members would sit in the chamber and that during Question Time, the only Ministers present in the chamber would be those answering questions.[58] Later all 25 members of the Assembly were allowed to be present in the chamber, but the chamber was temporarily widened and other modifications were made to allow

[55] Ben Edwards et al, *Variation in Policy Responses to Covid-19 Across Australian States and Territories: BSG-WP-2022/046* (Oxford: BSG Working Paper Series, 2022) pp. 13-15.

[56] Elizabeth Bluff & Richard Johnstone, 'COVID-19 and the Regulation of Work Health and Safety', *Australian Journal of Labour Law*, 34, nos 1-2 (2021) p. 118.

[57] Bluff & Johnstone, 'COVID-19 and the Regulation of Work Health and Safety', pp. 124-125.

[58] Joy Burch, 'Law in the Time of Corona: Optimising Parliamentary Functions During Long-Term Crises', *The Parliamentarian*, no 1 (2022) p. 11.

members to maintain social distancing.[59] Digital technologies were also utilised, with more virtual meetings and hearings, assisted by support staff from within the Assembly building.[60]

The Office of the Legislative Assembly stated in its 2021-22 annual report that it was 'committed to promoting and maintain a high standard of health and safety and wellbeing for all staff, members, contractors, and visitors', acknowledging that '[e]ach MLA and the Clerk are Persons Conducting Business or Undertaking under the *Work Health and Safety Act 2011*'.[61] The year prior to the incident involving Worksafe ACT, an internal audit of the Office's WHS procedures was undertaken, which showed, according to the annual report, 'there is an overarching framework in place for the management of WHS, with practices and controls that conform with the WHS legislation and standards'.[62] The four key recommendations of the audit, as reported by the Office, were:

- the development of an overarching WHS Framework or manual to bring its current suit of WHS documentation together with WHS Action Plan
- documented process or checklist to ensure a consist and thorough approach to the identification of risks by HSRs
- a formal WHS training package available that can be used as part of the new starter induction package or as a WHS refresher for all staff, and
- a standard set of guidance to ensure that all MLAs clearly understand their obligations as a PCBU under the Act and are observing their obligations under the Act.[63]

Although this audit occurred during the Covid-19 pandemic, the annual report suggests that an emphasis of updating WHS policies and procedures related to bullying and harassment.[64] The Legislative Assembly had implemented a new policy document, titled *Respect in the Workplace*, in May 2021. This was released after the increased attention of the matter following Brittany Higgins' allegations, but previous annual reports state that the policy was being revised after

[59] Burch, 'Law in the Time of Corona', p. 11.

[60] Burch, 'Law in the Time of Corona', p. 11.

[61] Office of the Legislative Assembly, *Annual Report 2021-2022* (Canberra: Office of the Legislative Assembly, 2022) p. 50.

[62] Ibid.

[63] Ibid., pp. 50-51.

[64] Ibid., p. 38, p. 51.

an anti-harassment toolkit was produced by the Commonwealth Women Parliamentarians group, alongside the AHRC's *Respect@Work* report, both published in 2020.[65]

When the pandemic first broke out, the ACT Parliament's committees shifted to meeting via video conference, but when the Tenth Assembly began its session in November 2020, in-person hearings and private meetings resumed.[66] In its annual report for 2020-21, the Office of the Legislative Assembly stated

> *[t]o accomplish this, committees operated in accordance with distancing requirements, room capacity limits, cleaning and hygiene measures, and face mask requirements.*[67]

As much as the Assembly embraced online and remote ways of functioning during the pandemic, there was a desire by the parliament to conduct business in-person and on-site. The opening statement by the Clerk of the Assembly in the Office's 2022-23 annual report demonstrates this sentiment:

> *The last financial year has seen the Office return to (a new) normal in how we manage Covid-19 and other communicable diseases in the workplace. The Legislative Assembly is both a workplace and a public building where Canberrans gather to watch and participate in decision-making that affects their lives. The continued work of the Assembly's Health and Safety Committee ensures we keep such public spaces as healthy as possible to ensure our democracy remains open and accessible.*[68]

This statement also includes an acknowledgment that the Assembly was a workplace that has an obligation to keep people healthy and safe. The incident in August 2022 highlights the tensions of how this is achieved and enforced.

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[65] Office of the Legislative Assembly, *Annual Report 2021-2022*, p. 51; Office of the Legislative Assembly, *Annual Report 2020-21* (Canberra: Office of the Legislative Assembly, 2021) p. 59.

[66] Office of the Legislative Assembly, *Annual Report 2020-2021*, p. 18.

[67] Ibid.

[68] Office of the Legislative Assembly, *Annual Report 2022-2023* (Canberra: Office of the Legislative Assembly, 2023) p. 1.

In August 2022, Worksafe ACT received a query as to whether the Select Committee on Estimates lacked the correct COVID-Safe protocols for adequately holding a public hearing, with the Estimates Committee seeking to hold hearings in person. The Minister for Government, as well as for Industrial Relations and Workplace Safety, Mick Gentleman MLA, had suggested to the Chair of the Estimates Committee that a hybrid meeting take place. However the Chair, James Mulligan, proposed that appropriate measures were in place and that in person hearings were preferred, but hybrid options would be available if requested. This was due to the view that the budget could be scrutinised '[f]ar more effectively and efficiently in person' rather than using a default hybrid model.[69] A media statement by the Select Committee stated

> *[e]very State in Australia has conducted their estimates hearings in-person this year and it was the Committee's view that a hybrid model was the most appropriate way to manage COVID risk.*[70]

That month, two visits were made to the ACT Legislative Assembly by Worksafe ACT regarding this matter.

A subsequent Select Committee on Privileges report stated that the WHS Commissioner referred the matter to Worksafe ACT's compliance and enforcement team after concerns were raised by Mr Gentleman.[71] The Minister told the Select Committee that his contact with the WHS Commissioner was 'a request for advice' and not a direction, but the witness hearing between the Select Committee and the WHS Commissioner, Jacqueline Agius, suggests that the inquiry from the Minister was treated as a complaint, which triggered the inspection.[72] The possibility of ministerial intervention in WHS procedures and proceedings of parliament was examined at length by the Select Committee and raises significant issues which are, unfortunately, outside the scope of this paper.

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[69] Mr Milligan, *Select Committee on Privileges 2022: Transcript of Evidence*, 24 October, 2022, p. 26.

[70] Select Committee on Estimates 2022-2023, Media Release, 19 August, 2022, https://www.parliament.act.gov.au/previous-assemblies-data/tenth-assembly-data/media-releases2/2022/media-release-estimates-2022-2023-committee-statement

[71] Select Committee on Privileges, *Imposition of a Prohibition Notice by Worksafe ACT* (Canberra: ACT Legislative Assembly, 2022) p. 8.

[72] Mr Gentleman, *Select Committee on Privileges 2022: Transcript of Evidence*, 25 October, 2022, p. 58; *Select Committee on Privileges 2022: Transcript of Evidence*, 24 October, 2022, pp. 5-11.

On 12 August, 2022, the first prohibition notice was issued by Worksafe ACT as it deemed that the Legislative Assembly had 'not identified reasonably foreseeable risks in the workplace, or implemented adequate control measures in relation to potential or known risks'. This notice prohibited the Assembly from 'undertaking any hearings or committee meetings'.[73] Both the Clerk and the Speaker maintained that this prohibition notice enlivened issues of parliamentary privilege as it was deemed to exclude an Estimates Committee meeting from occurring. The Speaker stated:

> *On its face, the notice effectively prevents the exercise of the legislative arm of government of its powers of inquiry and substantially and materially inhibits the scrutiny, accountability and representative roles associated with the form of parliamentary democracy that operates in the territory.*[74]

The Speaker asserted that in the absence of 'expressed statutory provisions', it was unlikely that the WHS Act in the territory could interfere with the Assembly's powers of inquiry and that the prohibition notice was 'improper interference' in the work of the Assembly.[75]

Following queries about the assessment of the Legislative Assembly's COVID Safe Plan, this first notice was withdrawn, and a second notice was issued on 15 August, which put forward that there was a lack of consultation with workers and participants over risk assessment and control measures in relation to COVID-19.[76] On the same day, the Speaker wrote to the WHS Commissioner requesting that the notice be withdrawn and that there was the possibility of pursuing this matter in the Supreme Court.[77] It is pertinent to note that according to the Office of Legislative Assembly, the Clerk asked whether the Worksafe inspectors had sought legal advice prior to issuing the notice, to which the inspectors said that they had not, but had consulted with their supervisor.[78] The prohibition notice was lifted a few days later after

[73] Worksafe ACT Prohibition Notice, 12 August, 2022, https://www.parliament.act.gov.au/__data/assets/pdf_file/0003/2070507/Submission-4-Attachment-6.pdf

[74] ACT Legislative Assembly, *Hansard*, 15 August, 2022, p. 2492.

[75] ACT Legislative Assembly, *Hansard*, 15 August, 2022, p. 2493.

[76] Worksafe ACT Prohibition Notice, 15 August, 2022, https://www.parliament.act.gov.au/__data/assets/pdf_file/0018/2070513/Submission-4-Attachment-12.pdf

[77] Select Committee on Privileges, *Imposition of a Prohibition Notice by Worksafe* ACT, p. 10.

[78] OLA submission, cited in Select Committee on Privileges, *Imposition of a Prohibition Notice by Worksafe ACT*, p. 11.

another visit from Worksafe ACT and there was agreement that there had been the necessary consultation concerning the Covid-Safe Plan.[79] Meanwhile the hearings of the Estimates Committee were rescheduled and held in a larger space inside the ACT Parliament that accommodated witnesses, press and observers. The annual report of the Legislative Assembly for 2022-23 noted that the Estimates Committee shifted its hearings from the committee rooms to the chamber and this practice has now continued for whole-of-government hearings.[80]

Chris Monnox has observed that the impasse over estimates was resolved within a week, '[b]ut the affair's constitutional aspect was more troubling'.[81] On the same day as the second prohibition notice was issued, the Assembly passed a resolution that established a Select Committee on Privileges which would:

> *examine whether there has been a breach of privilege relating to the actions of the Work Health and Safety Commissioner and any other person, and whether they have improperly interfered with the free exercise of the authority of the Select Committee on Estimates 2022-23 or breached any other privileges of the Assembly…*[82]

This Select Committee, made up of three members, sat between August and October 2022, with a final report delivered in November.

The report stated that 'express words abrogating parliamentary privilege can be found in a limited number of ACT statutes', such as the *Public Interest Disclosures Act 2012*, the *Evidence Act 2011* or the *Integrity Commission Act 2018*, but the 'Work Health and Safety Act contains no such express words' and thus the actions of Worksafe ACT were 'a breach of privilege'.[83] This was explicitly the case with the first prohibition notice, which stopped the Estimates Committee from proceeding, but legal advice sought by Worksafe ACT and submitted to the Select Committee on Privileges proposed that this was not so clearcut with the second notice.

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[79] Select Committee on Estimates 2022-2023, Media Release.

[80] Office of the Legislative Assembly, *Annual Report 2022-2023* (Canberra: ACT Legislative Assembly, 2023) p. 20.

[81] Chris Monnox, 'Australian Capital Territory: July to December 2022', *Australian Journal of Politics and History*, 69, no 2 (2023) p. 386.

[82] ACT Legislative Assembly, *Hansard*, 15 August, 2022, p. 2494.

[83] Select Committee on Privileges, *Imposition of a Prohibition Notice by Worksafe ACT*, p. 20.

Advice provided by Saul Holt KC and Katherine Brown argued that while the autonomy of parliament allowed it to decide the manner in which it held its hearings

> *the second notice in particular did not… interfere with the privilege because it simply directed the manner in which the hearings were to be heard, but did not prevent them occurring or seek to intervene in their content or conclusions.'*[84]

As online hearings were already permitted, Holt and Brown suggested, the prohibition on in person hearings could hardly be said to interfere with the function of parliament.[85] The report avoided making a finding on the second notice, because, according to the Select Committee, it had already been established that the first notice was a breach of parliamentary privilege.[86]

Focusing on the first prohibition notice, the report avowed that 'it would be difficult to envisage a more egregious example of interference with the Assembly and its committees' and it

> *hoped that the issues raised in this report serve as a reminder to ACT executive agencies that important constitutional and parliamentary principles may arise when engaging with the Legislative Assembly.*[87]

The report added, 'Collaboration, negotiation and mutual respect should be key drivers in future interactions'.[88]

DEVELOPING A MEMORANDUM OF UNDERSTANDING

In legal advice sought by Worksafe ACT and submitted to the Privileges Committee, Saul Holt KC and Katherine Brown argued that the courts had traditionally 'given a "fair, large and liberal" interpretation' of provisions within WHS laws to the protection of workers and other persons,

[84] Saul Holt KC & Katharine Brown, 'In the Matter of the Interpretation of the *Work Health and Safety Act 2011 (ACT)*: Joint Opinion', 20 October, 2022, pp. 11-12, Submission 3.6a to the Select Committee on Privileges, https://www.parliament.act.gov.au/__data/assets/pdf_file/0003/2094564/Submission-3.6-a-WHS-Attachment-Parliamentary-privilege-advice-final.pdf

[85] Holt & Brown, 'In the Matter of the Interpretation…', p. 12.

[86] Select Committee on Privileges, *Imposition of a Prohibition Notice by Worksafe ACT*, p. 23.

[87] Select Committee on Privileges, *Imposition of a Prohibition Notice by Worksafe ACT*, p. 22.

[88] Select Committee on Privileges, *Imposition of a Prohibition Notice by Worksafe ACT*, p. 22.

rather than the interpretation by the Speaker and Clerk of the Legislative Assembly that any statutory curbs on parliamentary privileges need to be explicitly outlined.[89] The advice asserted:

> *The suggestion that courts should presume Parliament does not intend to be bound by its own laws sits uncomfortably with the rule of law. It sits out of step with modern community expectations of Members of Parliament, particularly when it comes to laws of a protective and beneficial character in the workplace.*[90]

This sentiment seems in step with wider community concern about the parliamentary workplace and personal safety, demonstrated by the Jenkins report.

However, while there has been growing agreement that parliaments should be considered workplaces and adhere to regulations around workplace health and safety, there is an issue in how WHS regulations can be enforced within the parliamentary workplace. In its report, the Select Committee recommended

> *that Worksafe ACT develop a memorandum of understanding [MoUs] with the Assembly on how it will exercise its regulatory functions within the Assembly precincts, acknowledging the parliamentary privilege issues engaged.*[91]

The ACT Legislative Assembly had MoUs with other agencies, such as the Australian Federal Police (AFP), but had not yet established one with Worksafe ACT. Taking the MoU with the AFP as an example, the report noted that an MoU have been developed which outlined 'how the AFP may exercise its powers and functions within the Assembly precincts' and could be used by other regulatory agencies in the ACT.[92] In its response to the Select Committee's report, the ACT Government noted this recommendation, but also acknowledged that

[89] Holt & Brown, 'In the Matter of the Interpretation…', p. 4.

[90] Holt & Brown, 'In the Matter of the Interpretation…', p. 6.

[91] Select Committee on Privileges, *Imposition of a Prohibition Notice by Worksafe ACT*, p. 23.

[92] Select Committee on Privileges, *Imposition of a Prohibition Notice by Worksafe ACT*, pp. 22-23.

> *MoUs are not generally regarded as legally binding or enforceable and operate primarily on the basis of reasonable endeavours and agreement, to achieve the desired outcome*

adding that responsibility for such an MoU ultimately fell with the Speaker of the Assembly and Worksafe ACT.[93]

The Select Committee further recommended that the *Work Health and Safety Act 2011* be amended to:

> *provide clarity that the Assembly is a workplace; and*
>
> *provide that nothing in the Act:*
>
> *abrogates or derogates from the powers, privileges and immunities of the Legislative Assembly, its committees or its members; or*
>
> *gives an inspector or any other person the power to prohibit the proceedings of the Assembly or its committees.*[94]

An amendment to the *Work Health and Safety Act 2011* was introduced in late 2022, which inserted a new section (s237a):

> *To remove any doubt, work carried out by a member of the Legislative Assembly in the exercise of the member's functions, and work carried out by other people to support the member in the exercise of the member's functions, is work carried out in the undertaking of this Act.*[95]

The Explanatory Memorandum stated that the purpose of the Bill was 'to confirm the longstanding policy view about the application of the WHS Act to the Legislative Assembly as a

[93] ACT Government, 'Government's Response to the Select Committee's Recommendations', March 2023, https://www.parliament.act.gov.au/__data/assets/pdf_file/0018/2200860/Select-Committee-on-Privileges-2022-Imposition-of-a-prohibition-notice-Govt-Response-tabled-30-March-2023.pdf

[94] Select Committee on Privileges, *Imposition of a Prohibition Notice by Worksafe ACT*, p. 24.

[95] *Work Health and Safety Amendment Bill 2022 (ACT)*, s237a

workplace'.[96] Amendments by the Speaker added, '[n]othing in this Act limits any power, privilege or immunity given under the Self-Government Act' or

> *gives the regulator or anyone else exercising a function under this [WHS] Act the power to improperly prohibit a proceeding of the Legislative Assembly or any of its committees.*[97]

The Standing Committee on Public Accounts conducted an inquiry into this amendment between November 2022 and March 2023.[98] The Committee recommended that an MoU be established between the Assembly and Worksafe ACT, noting that the AFP had an MoU with the Assembly to carry out 'ordinary policing functions' within the Assembly precincts but could not interfere with the free exercise of the Assembly or free performance of a member.[99] However it also noted that while the Bill clarified the definition of 'work' under the 2011 Act, it did not define a 'workplace' as previously recommended by the Privileges Select Committee.[100] In its submission to this inquiry, Worksafe ACT put forward the view that this would be in line with Commonwealth legislation that confirms that parliamentarian officer duties are covered by the Commonwealth *Work Health and Safety Act 2011*.[101] This was implemented in early 2022, when the *Parliamentary Workplace Reform (Set the Standard Measures No. 1) Act 2022* (Cth) clarified that Commonwealth legislation pertaining to WHS and anti-discrimination covered parliamentary workers in the Parliament of Australia.[102] However this definition of a 'workplace' was not carried through to the final version of the Act in 2023.[103]

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[96] '*Work Health and Safety Amendment Bill 2022*: Explanatory Memorandum and Human Rights Compatibility Statement', https://www.legislation.act.gov.au/View/es/db_66794/20221020-79863/html/db_66794.html

[97] ACT Legislative Assembly, *Hansard*, 29 June 2023, p. 1340.

[98] Standing Committee on Public Accounts, 'Inquiry into the Work Health and Safety Amendment Bill 2022', p. ii.

[99] Standing Committee on Public Accounts, 'Inquiry into the Work Health and Safety Amendment Bill 2022', pp. 11-12.

[100] Standing Committee on Public Accounts, 'Inquiry into the Work Health and Safety Amendment Bill 2022', p. 9.

[101] As cited in Standing Committee on Public Accounts, 'Inquiry into the Work Health and Safety Amendment Bill 2022', p. 10.

[102] '*Parliamentary Workplace Reform (Set the Standard Measures No. 1) Bill 2022* (Cth): Replacement Explanatory Memorandum', https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/s1334_ems_5cdc3d15-13c8-47e5-8904-d42235c23332/upload_pdf/JC005041.pdf

[103] See: *Work Health and Safety Amendment Act 2023* (ACT), https://www.legislation.act.gov.au/View/a/2023-31/20221020-81560/html/2023-31.html

The eventual MoU was delivered in February 2024. In its statement of principles, the MoU stated that

> *Worksafe ACT must ensure that all necessary steps are taken to avoid improper interference in the free exercise by the Assembly or its committees… or in the free performance by an MLA.*[104]

It also acknowledged 'there is a presumption that ensuring WHS is a legal duty that is owed by the Speaker, MLAs, the Clerk, and other duty holders' and 'duty holders… must always act in such a way as to ensure the health and safety or workers and others within the Assembly precincts and workplaces'.[105]

To avoid contempt of the Assembly, the parties agree that 'there are benefits in ensuring that the Speaker is appropriately consulted about proposed investigative, enforcement or compliance action before it is taken'.[106] The MoU added that the Speaker and Worksafe ACT inspectors should together consider arrangements that could 'achieve a compliance outcome under the relevant WHS legislation' and/or 'eliminate the risk of a contempt or breach of privilege occurring'.[107] Presently, the MoU encourages the ACT Legislative Assembly to comply with WHS regulations and these efforts can be inspected by Worksafe ACT (with prior permission by the Speaker). However as issues of parliamentary privilege remain, this relies on the Assembly and its duty holders to ensure that WHS practices are upheld.

MEMORANDA OF UNDERSTANDING – A WAY FORWARD?

A Memorandum of Understanding between the Speaker of the ACT Legislative Assembly and Worksafe ACT was established as a way forward for the regulation of workplace health and safety in the ACT Parliament. Other MoUs exist in other jurisdictions around Australia, but primarily relate to investigatory agencies, with Rebecca Burton outlining in 2020 that four

[104] 'Memorandum of Understanding Between Speaker of the Legislative Assembly for the ACT and the ACT Work Health and Safety Commissioner', February 2024, p. 8. https://www.parliament.act.gov.au/__data/assets/pdf_file/0004/2425198/18_MOU-Speaker-and-WorkSafe-ACT-FINAL-February-2024.pdf

[105] 'Memorandum of Understanding…', p. 8.

[106] 'Memorandum of Understanding…', p. 12.

[107] 'Memorandum of Understanding…', p. 12.

jurisdictions having MoUs with the police and with anti-corruption agencies in three jurisdictions.[108] Burton argued that the MoUs that existed between Australian parliaments and investigating agencies 'go some way towards protecting the interests of Parliaments and their Members through protocols' to safeguard parliamentary privilege while investigating potential misconduct by Members.[109]

Taking the MoU between the ACT Legislative Assembly and Worksafe ACT as a model, similar MoUs could be drawn up to protect parliamentary privilege whilst ensuring the safety and well-being of parliamentary workers. In jurisdictions with the model WHS laws, MoUs could recognise that clerks and all members are considered PCBUs (a person conducting a business or undertaking) under the legislation (or equivalent in Victoria and Western Australia) and have a legal duty to protect the health and safety of workers and others within the workplace. The MoUs could also recognise that the safety regulator in each jurisdiction has a duty to enforce WHS regulations and not be obstructed in carrying out their duties, including entry into the parliamentary workplace, the requesting of documents, and the power to seize dangerous workplaces and items. However in exercising these duties, the MoU would also hold that regulators must take the necessary steps to avoid interfering in the function of parliament. Prior to any inspection, the Speaker would need to be consulted, to assess any parliamentary privilege implications. Using the ACT Legislative Assembly's MoU with Worksafe ACT as a guide, the purpose of such a Memorandum of Understanding would be to bring the Speaker and regulator together to achieve compliance with the relevant WHS legislation and eliminate risks of a breach of parliamentary privilege or contempt of parliament.[110]

MoUs established on this basis would provide clarity to both parliaments and safety regulators in how WHS legislation is complied with and enforced throughout the country, recognising that parliaments are both workplaces whilst being protected by parliamentary privilege. It would strengthen commitments by parliament around Australia to adhere to WHS laws and allow inspectors to assess progress being made in these areas. For example, Safework SA conducted an audit of the Parliament of South Australia in August 2024, focusing on the health and safety risks arising from psychosocial hazards, as recommended by the Equal Opportunity

[108] Rebecca Burton, 'Parliamentary Privilege, Search Warrants and Intrusive Powers: Are Memoranda of Understanding Fit For Purpose?', *Australasian Parliamentary Review*, 35, no 1 (2020) p. 140.

[109] Burton, 'Parliamentary Privilege, Search Warrants and Intrusive Powers', p. 139.

[110] 'Memorandum of Understanding…', p. 8, pp. 11-12.

Commission's 2021 report on harassment in the parliamentary workplace.[111] While the Clerks of both houses of the South Australian Parliament and the Chief Officers of the Joint Parliamentary Division have expressed a commitment to implementing policies and procedures to manage WHS risks, an MoU established between Parliament of South Australia and Safework SA would help to formalise this commitment and streamline processes for allowing inspectors to determine whether WHS compliance was being maintained.

CONCLUSION

Since the Glorious Revolution at the end of the seventeenth century, parliamentary privilege has been a fundamental part of parliamentary democracy and the Westminster system across the globe, even if its parameters remain, at times, vaguely defined. Rebecca Burton cites a 2013 Joint Committee report from the UK on parliamentary privilege that neatly summarised the on-going need for such privileges with the statement,

> *[t]he ancient origins of parliamentary privilege, and the archaic language that is sometimes used in describing it, should not disguise its continuing relevance and value …* [as parliament's proceedings] … *must be immune from interference by the executive, the courts or anyone else who may wish to impede or influence those proceedings in pursuit of their own ends.*[112]

But the Joint Committee also acknowledged there were potential limits to parliamentary privilege and such privileges may not apply to matters not considered instrumental to the proceedings of parliament.[113] As this paper has shown, there have been arguments that matters relating to parliament as a workplace may fall into this category, challenging the *ex*

[111] 'Safework SA Undertakes Parliament House Audit', *Safework SA*, 13 September, 2024, https://safework.sa.gov.au/news-and-alerts/news/news/2024/safework-sa-undertakes-parliament-house-audit; EOC, *Review of Harassment in the South Australian Parliament Workplace*, p. 143.

[112] Burton, 'Parliamentary Privilege, Search Warrants and Intrusive Powers', p. 138; Joint Committee on Parliamentary Privilege, *Parliamentary Privilege: Report of Session 2013-14*, HL Paper 30/HC 100 (London: HMSO, 2013) p. 7.

[113] Joint Committee on Parliamentary Privilege, *Parliamentary Privilege*, p. 9.

parte Herbert judgment from the 1930s which proclaimed that parliament has exclusive cognisance over its own affairs.[114]

In the foreword to her *Set the Standard* report, Kate Jenkins wrote, 'while Commonwealth parliamentary workplaces are unique, they are not exceptional.'[115] The Covid-19 pandemic and allegations of sexual harassment and assault within parliament, among other issues, have brought attention to the issue of health and safety within the parliamentary workplace, with the same obligations to its workers and others that apply to most other Australian places of work. Politicians, lawyers and the media in different jurisdictions have questioned why parliament remains largely outside the scope of the laws and bodies that regulate the workplace, such as employment tribunals and WHS legislation. Most workplaces around the country are regulated by the *Fair Work Act 2009 (Cth)* and state or territory equivalents, as well as the WHS legislation largely based on the model WHS laws developed in the early 2010s. These are enforced by a series of tribunals and regulators in each jurisdiction. However, due to parliamentary privilege and the notion of exclusive cognisance, their ability to ensure parliaments comply with the necessary legislation has been limited. Cases in Canada and Australia have raised the possible notion that privilege does not apply to the administration of the parliamentary workplace, but courts have been, to date, reluctant to make such a ruling.

The tension between the enforcement of regulations by external agencies and the exclusive cognisance of parliament is demonstrated in a case study from 2022, when Worksafe ACT sought to impose a prohibition notice on the ACT Legislative Assembly for potential non-compliance with Covid-19 Protocols. Two notices were imposed in August 2022, which temporarily halted the proceedings of the Estimates Committee and required the Committee to change venues for its witness hearings. This led to a complaint by the Speaker that this was a breach of parliamentary privilege, which was confirmed by a Select Committee on Privileges in a subsequent investigation of the matter.

The Select Committee recommended that a MoU be established between Worksafe ACT and the Legislative Assembly to avoid similar episodes in the future. An MoU would encourage timely facilitation of Worksafe inspectors to review WHS compliance by the Assembly, while also recognising the importance of parliamentary privilege and helping to foster co-operation to prevent potential breaches. MoUs were already in place between the Assembly and the Australian Police Force, but this MoU, eventually determined in February 2024, was the first in

[114] *The King v Sir R.F. Graham-Campbell, ex parte Herbert* [1935] 1 KBD 594.

[115] AHRC, *Set the Standard*, p. 8.

the country between a parliament and a WHS regulator. While it has only been in effect for a short period, this MoU points to a possible way forward for parliaments in other jurisdictions to formalise compliance with WHS policies and procedures, especially in a time when there is greater awareness of the health and safety of those working in parliament.

The 2024 Queensland Election: Still 'Six Queenslands'?

Paul D. Williams[1]

School of Humanities, Languages and Social Science, Griffith University

*Peer reviewed article

Abstract: Public opinion polls for the 2024 Queensland election long forecast an electoral landslide for the Liberal-National Party (LNP) and its moderate leader David Crisafulli. The result, however, was a narrow majority for a regionally-strong LNP that barely breached Labor's Brisbane 'wall'. The 2024 election once again underscores the power of the regions in Queensland politics and, as the third in a longitudinal study of the state's regional vote, the article confirms the 'six Queenslands' thesis which posits that Queensland voter behaviour is best analysed across six discrete regions.

INTRODUCTION

This article disaggregates the results of the 2024 Queensland election of 26 October for the state's 58th parliament. The election produced a rare change of government to interrupt, or perhaps terminate, the second Labor 'hegemony'[2] during which Labor governed the state for 30 of the 35 years between 1989 and 2024. Indeed, it is just the third occasion since 1957 on which

[1] The author thanks anonymous referees for their comments on an earlier draft of this paper.

[2] It has been argued that Queensland for much of the 20th and 21st centuries has endured three electoral 'hegemonies': First Labor (1915-29; 1932-57); Coalition / National Party (1957-98); Second Labor (1989-1996; 1998-2012; 2015-2024). See Paul D. Williams, 'The Queensland Election of 7 February 2004: The Coming of the Second Labor Hegemony?' *Australian Journal of Political Science*. Vol. 39, No. 3, 2004, pp. 635-44; Paul D. Williams, 'How did they do it? Explaining Queensland Labor's Second Electoral Hegemony'. *Queensland Review: Labor in Queensland, 1989-2011.* Special Edition. Vol. 18, No. 2, 2011, pp. 112-33; Paul D. Williams, 'Queensland', in *Australia's Politics and Public Policy*, in Peter J. Chen, Nicholas Barry, John R. Butcher, David Clune, Ian Cook, Adele Garnier, Yvonne Haigh, Sara C. Motta and Marija Taflaga. Eds. University of Sydney Press. 2026 pp. 245-64.

conservatives have formed government from opposition at a Queensland general election.[3] The outcome, a Liberal-National Party (LNP) majority, was rarely doubted given a series of opinion polls had long raised expectations of an LNP 'landslide'. Even before a mid-2024 *Resolve Strategic* poll apportioned 58.5 per cent of the two-party-preferred vote (2PP) to the LNP to Labor's 41.5[4] – sufficient to secure 31 additional seats for an LNP total of 65 – Premier Miles had conceded Labor would 'very likely' lose.[5]

The result, however, defied many of those expectations: the LNP captured just 52 of the Legislative Assembly's 93 seats for a narrow majority of five. Critically, the LNP, despite performing strongly outside the capital, failed to make substantial inroads into Brisbane, with Labor retaining 31 of the 40 districts located across Greater Brisbane, defined below. It is this question of regional disparity which drives this research: the third[6] successive study of disaggregated Queensland election results published in this journal. Together, the three articles comprise a unique longitudinal study offering insight into geographically-based electoral behaviour of Queensland voters between 2017 and 2028: a period defined by a single electoral redistribution[7] covering the 2017, 2020 and 2024 state elections.

[3] The Borbidge-Sheldon National-Liberal Coalition Government, 1996-98, assumed office after Labor's defeat in the Mundingburra by-election of February 1996 that saw Labor Premier Wayne Goss resign after losing his parliamentary majority.

[4] Matt Dennien, 'Crisafulli gains more ground with voters as Labor support slides again.' *Brisbane Times*, 10 September 2024. https://www.brisbanetimes.com.au/politics/queensland/crisafulli-gains-more-ground-with-voters-as-labor-support-slides-again-20240909-p5k900.html

[5] Hayden Johnson, 'Long way to go': Premier's 'base camp' backflip after admitting election doubts', *Courier Mail*, 28 April 2024.

[6] Paul D Williams, 'One, Two or Many Queenslands? Disaggregating the regional vote at the 2017 Queensland state election. *Australian Parliamentary Review.* Vol. 33, No. 2, 2018, pp. 57-79; Paul D. Williams, 'Revisiting 'Six Queenslands: Disaggregating the regional vote at the 2020 Queensland State Election'. *Australasian Parliamentary Review*. Vol. 38, No. 1, 2023. pp. 108-27. Paul. D. Williams, 'Queensland's Role in the 2019 Australian Federal Election: A case study of regional difference'. *Australian Journal of Politics and History*. Vol. 67, No. 1, 2021, pp. 158-59.

[7] For context for the expansion of the Legislative Assembly in 2016, see Paul D. Williams, 'Political Chronicle – Queensland, January-June, 2020'. *Australian Journal of Politics and History*. Vol. 66, No. 4, 2020, pp. 630-31.

THE 'SIX QUEENSLANDS' THESIS

Earlier analyses of Queensland electoral behaviour were commonly made under a 'two Queenslands' thesis that assumed Queensland voters could be dichotomised between just two constituencies, routinely described as 'coastal' versus 'rural', or 'Brisbane' versus 'the bush', or simply the 'southeast' versus 'the rest'.[8] Such analysis was not entirely misplaced: it provided broad insight into how Brisbane – home to less than half the state's population[9] and described since the 1990s as a progressive Labor 'fortress'[10] - could behave at the ballot box so differently from the state's northern and western districts. But neither does a 'two Queenslands' thesis capture the clear distinctions between the many seats previously and collectively described as 'regional'. It ignored, for example, the subtle variations in voter behaviour between Maryborough and Mermaid Beach – separated by just 336 km.[11] A 'two Queenslands' thesis also ignores the subtle variations in the populist discourse comprising much of Queensland political culture.[12] Where the cultural nationalism and 'nativism' [13] of One Nation[14] finds traction from the Brisbane fringes to eastern provincial cities to southern and western farmlands, the 'agrarian socialism'[15] of Katter's Australian Party (KAP) is confined to the northern and north-

[8] See, for example, Malcolm Mackerras, 'The Swing: Variability and Uniformity'. *Politics* 8 (1), 1973, p. 238; John Holmes, 'Coast versus Inland: Two Different Queenslands?'. *Australian Geographical Studies* 32 (2), 1994, pp. 167-182; Neils Kraaier, 'How the 2017 Same-Sex Marriage Postal Survey and the 2017 Queensland State Election Underscore the 'Two Queenslands' Thesis'. *Queensland Review* 25 (1), 2018, p. 39.

[9] Queensland remains the only mainland Australian state where more people live outside the capital than within.

[10] Mackenzie Scott and Lydia Lynch, 'LNP wins 7 per cent swing but Labor to retain Brisbane fortress'. *Australian*, 5 November 2024; Paul D. Williams, 'Smith is the fall guy as Labor pays the wages of past political sins.' *Courier Mail*, 1 May 2012, p. 26.

[11] Despite both seats being 'regional', Maryborough has swung between Labor, Liberal-LNP and One Nation while Mermaid Beach has been loyally LNP.

[12] Paul D. Williams, 'Leaders and Political Culture: The Development of the Queensland Premiership, 1859-2009.' *Queensland Review* 16 (1) 2009, pp. 15-34; Paul D. Williams, 'Queensland's Role in the 2019 Australian Federal Election: A case study of regional difference'. *Australian Journal of Politics and History* 67(1) 2021, pp. 150-68.

[13] Benjamin Moffitt and Kurt Sengul, 'The populist radical right in Australia Pauline Hanson's One Nation'. *Journal of Language and Politics* 22 (3), pp. 306-23.

[14] Pauline Hanson's One Nation was officially renamed One Nation in October 2025.

[15] Leisa Scott and Ben Cheshire, 'Bob Katter's been an MP for 50 years but there's one topic he rarely talks about'. *ABC News*, 14 April 2025. https://www.abc.net.au/news/2025-04-14/bob-katter-federal-election-minority-government-mother-mp-qld/105023932.

western hinterland. By contrast, the 'positive populism'[16] of Clive Palmer's United Australia Party appears contained to the Sunshine Coast. As argued previously,[17] this article posits that Queensland voter behaviour is more accurately defined by a 'six Queenslands' taxonomy that divides the state's 93 electoral districts into six distinct regions. These are anatomised below.

IDENTIFYING 'SIX QUEENSLANDS'

The first region, Brisbane City[18], aligns closely with the boundaries of the Brisbane City Council, and is home to 21 districts. Brisbane City boasts a broad occupational mix dominated by professionals and managers, with the number of tertiary-educated residents significantly higher than the Queensland mean.[19] The second region, the Brisbane Fringe[20] – encompassing the satellite cities of Logan, Ipswich, Moreton Bay, and Redlands – is comprised of 19 seats. Residents here have fewer tertiary qualifications, and are more likely to be employed in the trades, and earn lower incomes. The third, Gold Coast,[21] extends from Yatala to the New South Wales border. This region contains 11 seats and is driven largely by small business ('sales' is a major occupation), with residents boasting university qualifications at the Queensland mean. The fourth, Sunshine Coast[22] is home to nine districts and stretches from Beerburrum in the south to Rainbow Beach in the north. While this region also boasts a significant small business

[16] John Wanna, 'Now for the $55 million question: what does Clive Palmer actually want?' *The Conversation*, 2 May 2019. https://theconversation.com/now-for-the-55-million-question-what-does-clive-palmer-actually-want-11635

[17] Williams, 'One, Two or Many Queenslands? Disaggregating the regional vote at the 2017 Queensland state election; Williams, 'Revisiting 'Six Queenslands: Disaggregating the regional vote at the 2020 Queensland State Election'.

[18] Brisbane City covers Aspley, Mansfield, South Brisbane, Ferny Grove, Mt Ommaney, McConnel, Miller, Stretton, Toohey, Greenslopes, Cooper, Bulimba, Lytton, Stafford, Inala, Clayfield, Chatsworth, Everton, Moggill, Maiwar and Nudgee.

[19] Australian Bureau of Statistics, 2021 Census data, 'Greater Brisbane'. https://www.abs.gov.au/census/find-census-data/quickstats/2021/3GBRI

[20] Brisbane Fringe covers Capalaba, Redlands, Springwood, Redcliffe, Pine Rivers, Bancroft, Logan, Kurwongbah, Macalister, Morayfield, Murrumba, Jordan, Waterford, Ipswich, Sandgate, Algester, Bundamba, Oodgeroo and Woodridge.

[21] Gold Coast covers Gaven, Bonney, Currumbin, Coomera, Theodore, Burleigh, Mermaid Beach, Southport, Mudgeeraba, Broadwater and Surfers Paradise.

[22] Sunshine Coast covers Pumicestone, Glass House, Nicklin, Ninderry, Maroochydore, Buderim, Kawana, Noosa and Caloundra.

constituency, its population is significantly older than the Queensland average. The fifth region, Eastern Provincial,[23] follows the seaboard from Gympie to Cape York, and westward to the Great Dividing Range; it is comprised of 21 seats. The region is an eclectic economic mix – Townsville is home to a military base with other centres dominated by tourism and port facilities – that supports inland agricultural, pastoralism and mining enterprises. Blue-collar incomes here are often above the Queensland mean but more subject to global vagaries which can cultivate mercurial voter behaviour and a predilection for populism. The final region, Western Rural,[24] covers 12 seats across western and north-west Queensland where, again, a mix of mining, pastoralism and agriculture dominate. Described as the most conservative region,[25] voters here have fewer university qualifications and are more likely to identify as Christian.

METHOD

This study offers a contextual backdrop to the 2024 election via a brief account of the 57th Parliament before moving to a summary of the campaign between 1 October and 26 October. It then examines public opinion data before a tabling of results – by party and seats won – across Queensland, and in each of the six regions defined above. This research employs a qualitative interpretative method of analysis that, as expounded by Wiesner, moves the researcher toward 'reflection beyond a mere qualitative content analysis'.[26]

[23] Eastern Provincial covers Townsville, Mundingburra, Barron River, Maryborough, Keppel, Cairns, Thuringowa, Rockhampton, Cook, Mackay, Mulgrave, Gladstone, Whitsunday, Burdekin, Bundaberg, Gympie, Hervey Bay, Mirani, Hinchinbrook, Hill and Burnett.

[24] Western Rural covers Traeger, Ipswich West, Gregory, Nanango, Scenic Rim, Southern Downs, Toowoomba North, Toowoomba South, Condamine, Warrego, Lockyer and Callide.

[25] Williams, 'Queensland's Role in the 2019 Australian Federal Election'; Ben Reid and Gang-Jun Liu, 'One Nation and the Heartland's Cleavage: An Exploratory Spatial Data Analysis', in B. Grant, T. Moore and T. Lynch (eds) *The Rise of Right-Populism*. Singapore: Springer. Ben Reid and Gang-Jun Lui, 'One Nation and the Heartlands Cleavage: An explanatory spatial data analysis'. Paper delivered to the Australian Political Studies Association Conference, 2017.
https://dro.deakin.edu.au/articles/chapter/One_Nation_and_the_Heartland_s_Cleavage_An_Exploratory_Spatial_Data_Analysis/20673201

[26] Claudia Wiesner, "Doing qualitative and interpretative research: reflecting principles and principled challenge", *Political Research Exchange*, Vol 4 (2022), pp. 2-3.

The 57th Parliament, 2020-2024

The 2020 election saw the Palaszczuk Labor Government returned with an increased majority, likely via a 'gratitude vote' for its tight management of the Covid-19 pandemic.[27] Labor was initially untroubled by the LNP Opposition or its moderate leader, David Crisafulli, until questions of integrity arose in early 2022. By late 2022, the LNP had changed tactics to personally attack Palaszczuk as a 'red carpet', 'checked out' leader. By 2023, public policy failures – from closed maternity wards to forensic laboratory blunders – coalesced with deepening 'crises' in the 'cost of living', youth crime, housing, and health.[28] Despite collapses in public opinion polls, Palaszczuk resisted calls to resign but, in December 2023, when United Workers' Union head Gary Bullock shifted his support from Palaszczuk to the Left's Steven Miles, the latter assumed the premiership. As discussed below, Miles's accession provided Labor with a brief 'honeymoon' but, between mid-2024 and the commencement of the campaign proper, Labor and Miles's public approval significantly lagged the LNP and Crisafulli's. The LNP faced its own challenges, including claims of branch-stacking, and public division between state and federal leaders over nuclear energy.[29] Crisafulli also appeared to be personally damaged by reports he acted as director of a training agency in 2015-16 before the company went into liquidation in June 2016, owing creditors $3 million.[30]

The Campaign Proper, 1-26 October

Miles entered the campaign assertively with popular 'cost of living' policies, including already implemented $1000 electricity rebates and 50-cent public transport fares, and pledges for state-owned petrol stations, capped fuel increases, and free school lunches for primary school children.[31] Miles also undertook a pervasive *TikTok* social media campaign that framed him as

[27] Paul D. Williams, 'The Grateful State: The 2020 Queensland Election.' *Queensland Review*. 28 (1) 2021, pp. 57-72.

[28] SEC Newgate, *Mood of the Nation*, September 2024, p. 30. https://www.secnewgate.com.au/wp-content/uploads/2024/09/SEC-Newgate-Mood-of-the-Nation-Report-September-24.pdf

[29] Paul. D. Williams, 'Political Chronicle, Queensland, January-June, 2024, p. 806.

[30] Hayden Johnson and Taylah Fellows, 'Crisafulli got funding for ineligible students', *Courier Mail*, 11 September 2024, p. 7.

[31] The Australia Institute. 'Polling – Queensland Labor policies', 23 October 2024**.** https://australiainstitute.org.au/wp-content/uploads/2024/10/Polling-Queensland-Labor-policies-Web.pdf

both doting father and hyper-masculine weightlifter.[32] As argued below, Labor and Miles's public approval thereafter improved substantially, especially among younger voters and those living in Brisbane. Commentators rated Miles the 'winner' of the campaign overall,[33] with Labor's promises costed at $9.7 billion.

The LNP, too, began strongly with its capstone 'adult crime, adult time' laws, with Crisafulli pledging to resign as premier should youth crime numbers not fall.[34] Crisafulli also pledged to abolish Labor's Pioneer-Burdekin Pumped Hydro project, abandon the First Nations Truth-Telling and Healing Inquiry, and review Labor's Olympic infrastructure plans.[35] However, the LNP campaign was soon derailed by KAP leader Robbie Katter's declaration he would introduce a bill to repeal Labor's *Termination of Pregnancy Act 2018.* With some LNP candidates publicly supporting the recriminalisation of abortion, Crisafulli repeatedly insisted there would be 'no change' to existing abortion laws under his government, despite repeated refusals to disclose his personal view on a woman's right to choose.[36] Only in the campaign's final week did Crisafulli affirm his support for a woman's choice but, when a *DemosAU* poll finding 75 per cent of Queenslanders supporting legal abortion,[37] it appeared the damage, especially in Brisbane, was already done. The LNP's policies were costed at $7.1 billion, despite the Opposition offering arguably the smallest policy target seen in modern Queensland.[38]

[32] Mackenzie Scott, 'TikTok push a winner for Miles', *Australian*, 2 November 2024, p. 6.

[33] Cameron Milner, 'Elite Miles won the battle, but small target Crisafulli won the war', *Courier Mail*, 27 October 2024.

[34] Hayden Johnson, 'Crime slogan's reality check', *Courier Mail*, 5 October, p. 4.

[35] Mackenzie Scott, 'LNP muddies water on dam row', *The Australian*, 14 October 2024, p. 2.

[36] Madura McCormack, 'LNP'S Conscience vote is unclear', *Courier Mail*, 9 October 2024, p. 5.

[37] Madura McCormack, 'Voters deliver clear message to rogue MPs on abortion', *Courier Mail*, 10 October 2024.

[38] Editorial, 'Editor's view: Cashed-up 'daggy dad' vs small target yes man - Qld deserves better', *Courier Mail*, 17 September 2024.

PUBLIC OPINION

This section explores Queenslanders' voting intention, as published in public opinion polls, between February 2022 and October 2024.

Figure 1[39]

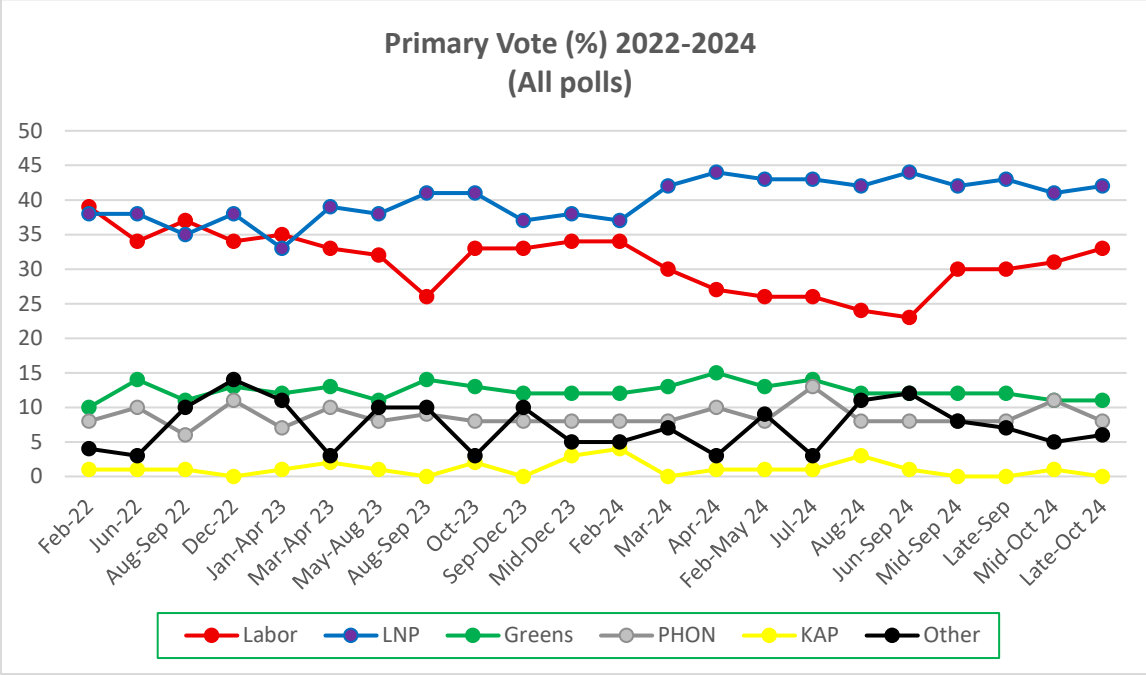


Figure One, above, reveals Labor's primary support was slightly ahead of the LNP's early in 2022 before allegations of compromised integrity engulfed the Palaszczuk Government. Labor's fortunes eroded further from late 2022 when the LNP attacked Palaszczuk for an alleged 'red carpet' life. From mid-2023, the increasing salience of 'youth crime' saw a more dramatic collapse in Labor support to just 26 per cent.[40] Labor's minor recovery from September is

[39] Source: An aggregation of all polls published between 2022 and 2024, including YouGov, Newspoll, Resolve Strategic, AFR Freshwater, UComms and SEC Newgate, as published in The Courier Mail, The Australian, Brisbane Times, Australian Financial Review and Guardian Australia. NB: No polls were published between the 2020 election and February 2022.

[40] Stephanie Bennett, 'New Qld poll shows 'strong mood' to dump Labor'. *Courier Mail*, 9 September 2023.

plausibly attributable to Palaszczuk's 'strong' leadership when she defied calls to resign.[41] Miles's succession as leader offered Labor another minor recovery early in 2024 before the government entered a longer and more profound decline that saw Labor reach a nadir of just 23 per cent – lower than the party's 2012 result – between June and September.[42] Labor's generous 'cost-of-living' measures likely explains a subsequent increase in Labor's primary support in the weeks preceding the campaign proper. The Government's revival continued throughout October – Labor closed the campaign on 33.6 per cent support[43] - with Premier Steven Miles also enjoying improved public approval.[44] The LNP, by contrast, established its first clear lead over Labor from April 2023, and continued to lead the government until polling day. Labor's moderate recovery in late 2023, and a Miles 'honeymoon' in early 2024, saw a commensurate decline in LNP support, with the Opposition reaching a low of 37 per cent in February.[45] From March, however, the LNP opened a significant lead – reaching 43 per cent in a February-May *Redbridge* poll[46] - with the opposition then 21 points ahead of Labor between June and September.[47] LNP support stabilised between April and September before suffering a minor decline during the campaign proper which the LNP ended on 39.3 per cent.[48] Support for the Greens, KAP and One Nation was largely stable, while support for 'Other' candidates was more volatile.

[41] Hayden Johnson, 'I'm going nowhere', *Courier Mail*, 12 September 2023, p. 1.

[42] Dennien, 'Crisafulli gains more ground with voters as Labor support slides again.'

[43] Matt Eaton, 'As Queensland's election campaign enters its final hours, there are signs the ground has shifted', *ABC News*, 25 October 2024. https://www.abc.net.au/news/2024-10-25/queensland-election-campaign-poll-shows-ground-shifting/104516204

[44] Rose Innes, 'Youth vibing with Mr TikTok', *Courier Mail*, 19 October 2024, p. 4.

[45] Hayden Johnson, 'From Miles back to even Steven', *Courier Mail*, 23 February 2024, p. 6.

[46] Lucy Slade, 'Queensland Labor government to facing election wipe-out, exclusive polling data reveals', *9News*, 5 June 2024.

[47] Dennien, 'Crisafulli gains more ground with voters as Labor support slides again'.

[48] Matt Eaton, 'As Queensland's election campaign enters its final hours'.

FIGURE 2[49]

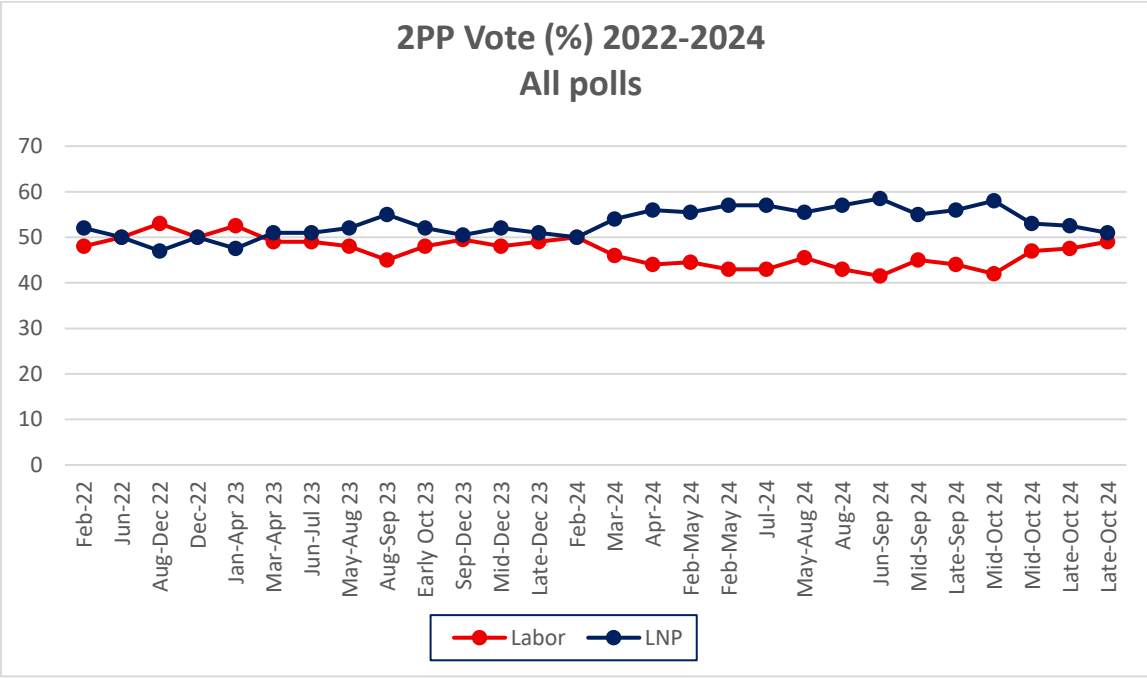


Figure Two, above, shows the 2PP vote lead changing hands several times before mid-2023, at which point 'crime' – and other 'crises' such as 'cost of living', 'housing' and 'hospital ramping' – peaked in voter salience. Labor never again led in 2PP support.[50] New leader Miles again closed the 2PP gap – tied at 50-50 in February 2024[51] – before widening to a significant 17 points, 41.5 to 58.5, between June and September.[52] Perhaps most remarkably, Labor concluded its

[49] Source: An aggregation of all polls published between 2022 and 2024, including YouGov, Newspoll, Resolve Strategic, AFR Freshwater, UComms and SEC Newgate, as published in The Courier Mail, The Australian, Brisbane Times, Australian Financial Review and Guardian Australia. NB: No polls were published between the 2020 election and February 2022.

[50] SEC Newgate, *Mood of the Nation.*

[51] Hayden Johnson, 'From Miles back to even Steven'.

[52] Dennien, 'Crisafulli gains more ground with voters as Labor support slides again'.

campaign just two points behind the LNP, 49 to 51, with Miles overtaking Crisafulli as preferred premier for the first time, 45 to 42 per cent.[53]

RESULTS

As seen in Table One, below, the LNP secured strong primary and 2PP swings overall, yet won just 52 seats in the Legislative Assembly.

TABLE 1: 2024 QUEENSLAND STATE ELECTION BY VOTE, SWING (%) AND SEATS WON (N)[54]

Party	Cand. (+/-) N (change)	Pri. Vote	Pri. Swing (+/-)	2PP Vote	2PP Swing (+/-)	Seats (+/-) N (change)
LNP	93 (0)	41.52	+5.63	53.8	+7.0	52 (+18)
Labor	93 (0)	32.56	-7.01	46.2	-7.0	36 (-16)
Greens	93 (0)	9.89	+0.42	-	-	1 (-1)
PHON	93 (+3)	8.00	+0.88	-	-	0 (-1)*
Katter's Australian	11 (-2)	2.44	-0.08	-	-	3* (0)
Family First	59 (+59)	1.86	+1.86	-	-	0 (0)
Legalise Cannabis	29 (+6)	1.60	+0.69	-	-	0 (0)
Animal Justice	12 (-1)	0.31	-0.03	-	-	0 (0)
Libertarian	4 (+4)	0.13	+0.13	-	-	0 (0)
Independent	38 (-31)	1.69	-0.79	-	-	1 (0)

[53] Matt Eaton, 'As Queensland's election campaign enters its final hours.'

[54] Source: Electoral Commission of Queensland. *2024 State General Election.* https://results.elections.qld.gov.au/SGE2024 NB: Libertarian Party was formerly the Liberal Democratic Party. *Stephen Andrew was first elected to Mirani for PHON in 2017, then disendorsed in 2024. He joined KAP in late 2024, then lost the seat to the LNP on 26 October.

REGIONAL DISAGGREGATION

To identify exactly where the LNP failed to attain a larger majority, the article now disaggregates results – by primary vote and seats won – across Queensland's six regions.

TABLE 2: LABOR PRIMARY VOTE AND SWING (%), 2024 QUEENSLAND STATE ELECTION, BY REGION[55]

Region	Primary Vote 2024	Primary Vote 2020	Primary Swing (+/-)
Brisbane City	37.85	42.98	-5.13
Brisbane Fringe	42.73	50.84	-8.11
Gold Coast	26.37	33.47	-7.10
Sunshine Coast	27.49	31.73	-4.24
Eastern Provincial	30.27	38.90	-8.63
Western Rural	20.88	27.89	-7.01

Table Two reveals the swing against Labor was most contained in Brisbane City, excepting the swing in the Gold Coast region which saw Labor decline votes from an already low base. Also expected were the significant swings against Labor in those districts most vulnerable to 'cost of living' pressures, especially on the Brisbane Fringe and in Eastern Provincial districts.

[55] Source: Author's calculation from ECQ data

TABLE 3: LABOR SEATS WON, 2020 AND 2024 QUEENSLAND STATE ELECTIONS, BY REGION[56]

Region	Total seats in region	Seats won 2024	% region won 2024	Seats won 2020	% region won 2020	% change 2020-2024
Brisbane City	21	16	76.2	15	71.4	+5.2
Brisbane Fringe	19	15	78.9	18	94.7	-15.8
Gold Coast	11	1	9.1	1	9.1	0
Sunshine Coast	9	0	0	3	33.3	-33.3
Eastern Provincial	21	3	14.3	14	66.7	-52.5
Western Rural	12	1	8.3	1	8.3	0

As outlined earlier, Labor's loss of seats across Greater Brisbane was modest: the party lost three in the Brisbane Fringe and just one in Brisbane City. As Table Three indicates, Labor maintained its sole Gold Coast seat despite facing a high-profile LNP candidate in Gaven.[57] Not unexpectedly, Labor lost its entire Sunshine Coast representation, one temporarily enhanced in 2020 via a pandemic 'gratitude vote'. While Labor maintained its sole Western Rural representative – Ipswich West, a semi-rural constituency despite its proximity to Brisbane[58] – the party was decimated in the more volatile Eastern Provincial region after losing 11 of its 14 seats. In short, the region opened for the LNP an essential if narrow gateway to government.

[56] Source**:** Author's calculation from ECQ data

[57] Taylor Fellows, 'Meaghan Scanlon's almighty scare, backs Steven Miles to lead Labor', *Courier Mail*, 30 October 2024.

[58] Ipswich West was lost by Labor to the LNP in a by-election in early 2024. See Paul D. Williams, 'Political Chronicle: Queensland, January-June 2024'. *Australian Journal of Politics and History* 70 (4) 2024, p. 810.

TABLE 4: LNP PRIMARY VOTE AND SWING (%), 2024 QUEENSLAND STATE ELECTION, BY REGION[59]

Region	Primary Vote 2024	Primary Vote 2020	Primary Swing (+/-)
Brisbane City	38.07	34.24	+3.83
Brisbane Fringe	35.03	26.53	+8.50
Gold Coast	51.36	46.04	+5.32
Sunshine Coast	45.47	40.75	+4.72
Eastern Provincial	37.19	31.27	+5.92
Western Rural	51.55	46.22	+5.33

Table Four, above, confirms the smallest swings to the LNP occurred in Brisbane City where the LNP's appeal was likely muted by Brisbane's enthusiastic adoption of 50-cent public transport fares,[60] and by leader David Crisafulli's poor handling of the abortion issue. The swing to the LNP on the Brisbane Fringe, traditionally comprised of Labor strongholds, was the largest in the state, with the party enjoying substantial swings across the remaining regions.

[59] Source: Author's calculation from ECQ data

[60] Will Murray, 'Queensland's 50c public transport fares hit six-month mark, with patronage up nearly 20pc'. *ABC News* 10 February 2024. https://www.abc.net.au/news/2025-02-10/queensland-50c-fares-public-transport-analysis/104910866

TABLE 5: LNP SEATS WON, 2020 AND 2024 QUEENSLAND STATE ELECTIONS, BY REGION[61]

Region	Total seats in region	Seats won 2024	% region won 2024	Seats won 2020	% region won 2020	% change 2020-2024
Brisbane City	21	4	19.0	4	19.0	0
Brisbane Fringe	19	4	21.1	1	5.3	+15.8
Gold Coast	11	10	90.9	10	90.9	0
Sunshine Coast	9	8	88.9	5	55.6	+33.3
Eastern Provincial	21	16	76.2	4	19.0	+57.2
Western Rural	12	10	83.3	10	83.3	0

Table Five, above, indicates the extent to which the LNP was constrained in Greater Brisbane. While the Opposition made no new gains in Brisbane City – contrasting strongly with the LNP's landslide in this region under Campbell Newman in 2012[62] – the party seized just three additional seats on the Brisbane Fringe for a modest total of eight across Greater Brisbane. The LNP continued to dominate the Gold Coast, Sunshine Coast and Western Rural regions, and seized a majority of seats in the Eastern Provinces.

[61] Source: Author's calculation from ECQ data

[62] Paul D. Williams, 'Political Chronicle: Queensland, January-June 2012'. *Australian Journal of Politics and History* 58 (4) 2012, pp. 642-43.

TABLE 6: GREENS PRIMARY VOTE AND SWING (%), 2024 QUEENSLAND STATE ELECTION, BY REGION[63]

Region	Primary Vote 2024	Primary Vote 2020	Primary Swing (+/-)
Brisbane City	18.47	17.39	+1.08
Brisbane Fringe	9.10	7.92	+1.18
Gold Coast	7.98	8.14	-0.16
Sunshine Coast	9.06	10.09	-1.03
Eastern Provincial	5.50	5.08	+0.42
Western Rural	5.36	4.72	+0.64

Table Six, above, confirms pre-election expectation of a growth in Greens support across Brisbane City. The party's modest growth, however, surprised many, and it appears Labor's 'cost-of-living' policy program, and Miles's aggressive social media campaign targeting younger voters, slowed the 'greening' of Queensland.[64] Also unexpected was the minor party's (small) increase in conservative strongholds on the Brisbane Fringe, in the Eastern Provinces, and even in Western Rural districts. Only in the Gold Coast and Sunshine Coast regions did Greens support contract.

[63] Source: Author's calculation from ECQ data

[64] Paul D. Williams, 'The Greening of the Queensland Electorate?' *Australian Journal of Political Science* 41 (3) 2006, pp. 325-37.

TABLE 7: GREENS SEATS WON, 2020 AND 2024 QUEENSLAND STATE ELECTIONS, BY REGION[65]

Region	Total seats in region	Seats won 2024	% region won 2024	Seats won 2020	% region won 2020	% change 2020-2024
Brisbane City	21	1	4.8	2	9.5	-4.7
Brisbane Fringe	19	0	0	0	0	0
Gold Coast	11	0	0	0	0	0
Sunshine Coast	9	0	0	0	0	0
Eastern Provincial	21	0	0	0	0	0
Western Rural	12	0	0	0	0	0

Table Seven, above, appears to contradict earlier data. Despite increasing their vote across the state – and expectations of not only retaining their two seats but seizing four more from Labor[66] – the Greens won no new representation, and lost South Brisbane,[67] due, in part, to the LNP's decision to preference Labor above the Greens across Brisbane.[68]

[65] Source: Author's calculation from ECQ data

[66] Ben Smee, 'Low and slow: the tactics that have made the Greens a threat in traditionally safe Queensland Labor seats,' *Guardian*, 22 October 2024 https://www.theguardian.com/australia-news/2024/oct/22/low-and-slow-the-tactics-that-have-made-the-greens-a-threat-in-traditionally-safe-queensland-labor-seats

[67] The subsequent 2025 federal election of 3 May saw the Greens vote in Queensland contract by 1.18 percentage points, with the loss of two seats, Brisbane and Griffith. See Australian Electoral Commission, *Tally Room – Queensland*, 28 May 2025. https://results.aec.gov.au/31496/Website/SenateStatePage-31496-QLD.htm

[68] Lydia Lynch, Jamie Walker and Michael McKenna, 'Miles in cheap stunt to dissolve parliament,' *Australian*, 1 October 2024, p. 6.

TABLE 8: PHON PRIMARY VOTE AND SWING (%), 2024 QUEENSLAND STATE ELECTION, BY REGION[69]

Region	Primary Vote 2024	Primary Vote 2020	Primary Swing (+/-)
Brisbane City	7.28	6.16	+1.12
Brisbane Fringe	11.43	9.72	+4.71
Gold Coast	7.77	6.31	+1.46
Sunshine Coast	7.28	6.16	+1.12
Eastern Provincial	11.43	9.72	+4.71
Western Rural	11.58	10.10	+1.48

Table Eight, above, reveals four regions experienced the modest growth in PHON support across the state, despite PHON suffering a negative primary swing just months before at the Ipswich West by-election. However, two regions recording strong PHON support at the 1998 election[70] – Brisbane Fringe and Eastern Provincial, each especially exposed to 'cost-of-living' pressures – saw substantially larger increases.

[69] Source: Author's calculation from ECQ data

[70] Geoffrey Brennan and Nicole Mitchell, 'The Logic of Spatial Politics: The 1998 Queensland Election.' *Australian Journal of Political Science* 34 (3) 1999, pp. 379–90; Paul D. Williams, 'The Queensland Election of 17 February 2001: Reforging the Electoral Landscape?' *Australian Journal of Political Science* 36 (2) 2001, pp. 363–71.

TABLE 9: PHON SEATS WON, 2020 AND 2024 QUEENSLAND STATE ELECTIONS, BY REGION[71]

Region	Total seats in region	Seats won 2024	% region won 2024	Seats won 2020	% region won 2020	% change 2020-2024
Brisbane City	21	0	0	0	0	0
Brisbane Fringe	19	0	0	0	0	0
Gold Coast	11	0	0	0	0	0
Sunshine Coast	9	0	0	0	0	0
Eastern Provincial	21	0	0	1	4.8	-4.8
Western Rural	12	0	0	0	0	0

Table Nine, above, confirms One Nation's constrained support across the state; only from late 2025 did the party enjoy a public opinion surge. One Nation lost its sole representative – Stephen Andrew, elected for the central Eastern Provincial seat of Mirani in 2017 – before polling day when, months prior, Andrew moved to KAP before losing the seat to the LNP in October.

[71] Source: Author's calculation from ECQ data

TABLE 10: 'OTHER' PRIMARY VOTE AND SWING (%), 2024 QUEENSLAND STATE ELECTION, BY REGION[72]

Region	Primary Vote 2024	Primary Vote 2020	Primary Swing (+/-)
Brisbane City	1.86	2.63	-0.77
Brisbane Fringe	6.10	6.40	-0.30
Gold Coast	6.52	6.04	+0.48
Sunshine Coast	10.71	11.27	-0.56
Eastern Provincial	15.60	15.03	+0.57
Western Rural	10.64	11.07	-0.43

Table 10 reveals no significant change in support for other minor party and Independent candidates in any region. Once again, the Sunshine Coast, the Eastern Provinces and Western Rural districts – often home to populist or 'maverick' politics[73] – boasted the strongest 'Other' support.

[72] Source: Author's calculation from ECQ data

[73] Paul D. Williams, 'The George Christensen formula — how do maverick MPs succeed in Australian politics?' *The Conversation*, 2 September 2021. https://theconversation.com/the-george-christensen-formula-how-do-maverick-mps-succeed-in-australian-politics-166190

TABLE 11 'OTHER' SEATS WON, 2020 AND 2024 QUEENSLAND STATE ELECTIONS, BY REGION[74]

Region	Total seats in region	Seats won 2024	% region won 2024	Seats won 2020	% region won 2020	% change 2020-2024
Brisbane City	21	0	0	0	0	0
Brisbane Fringe	19	0	0	0	0	0
Gold Coast	11	0	0	0	0	0
Sunshine Coast	9	1	11.1	1	11.1	0
Eastern Provincial	21	2	9.5	2	9.5	0
Western Rural	12	1	8.3	1	8.3	0

Table 11, above, indicates no change in 'Other' representation, with Noosa MP Sandy Bolton remaining the sole Independent in the Legislative Assembly. As outline above, however, there was internal movement on the populist right: Mirani MP Andrew's move to KAP eliminated One Nation's representation, and bolstered the KAP's temporarily before KAP returned to its three established seats: Traeger, Hill and Hinchinbrook.[75]

CONCLUSION

This article completes a longitudinal study of Queensland elections that disaggregates voter behaviour across six geographical regions, and across the lifespan of a single electoral distribution under which the elections of 2017, 2020 and 2024 were conducted. The conclusions

[74] Source: Author's calculation from ECQ data

[75] KAP unexpectedly lost Hinchinbrook to the LNP in a November 2025 by-election when MP Nick Dametto resigned to contest (and win) the Townsville Mayoralty.

offered here are consistent with those drawn from studies following the 2017 and 2020 polls. First, a 'six Queenslands' thesis remains of far greater utility than the traditional 'two Queenslands' model when identifying the nuances of regional voter behaviour. Second, the research confirms Brisbane – defined as either Brisbane City or Greater Brisbane – remains a 'Labor town' in which the party again attained its highest primary vote and seat share. It can also be concluded that the LNP's small parliamentary majority – and potentially precarious prospects for holding government in 2028 – is a function of the LNP's failure to win a more seats across Greater Brisbane. The research also confirms that LNP strongholds remain on the Gold Coast, the Sunshine Coast, and in the Western Rural region, with Eastern Provincial seats offering mixed evidence. While the LNP captured three-in-four provincial districts, the LNP's primary vote here was the second lowest in Queensland. That finding, too, suggests the LNP faces serious challenge to its hold on government after the next election. It can also be concluded that, once again, the Greens' strongest base is found in Brisbane City where support was two and three times as strong as in other regions. The data also offer mixed fortunes for the Greens: while their vote increased, albeit marginally, the halving of their state representation (and subsequent poor performance federally in 2025) suggests the party has met a 'ceiling'. The article also finds support for PHON increased insignificantly across four regions, and most profoundly on the Brisbane Fringe and in the Eastern Provinces. It also attributes PHON's loss of its sole representative to internal party dynamics rather than diminishing support, as the party's public opinion surge in 2026 is testimony.[76] Finally, the data reveal no significant movement for 'Other' minor parties and Independent candidates in any region, but the decline in KAP support is potentially problematic for a geographically confined party now competing directly with One Nation. The next Queensland election will be conducted under a new distribution, delivered in 2026, that produced 'moderate to significant changes' to 50 of the state's 93 seats.[77] Two districts have been abolished (Hill in the state's far north, and Stretton in Brisbane's south) and two created (Springfield in Greater Brisbane's west, and

[76] One Nation recorded a high of 24 per cent among Queensland state election respondents in a May-June *Resolve* poll. See Matt Dennien, 'Labor support sinks as One Nation ties for second in Queensland,' *Brisbane Times*, 16 June 2026. https://www.brisbanetimes.com.au/politics/queensland/one-nation-s-queensland-support-passes-1998-breakthrough-to-equal-miles-labor-20260615-p606tt.html

[77] Alex Brewster, "Queensland state electorates of Stretton and Hill to be abolished after review", *ABC News*, 29 June 2026. See also Electoral Commission of Queensland, "Final electoral redistribution", June 2026. https://redistribution.ecq.qld.gov.au/redistribution-reports/final-electoral-redistribution

Caboolture on the northern Brisbane Fringe) to produce an electoral map one report suggested was favourable to the LNP.[78] The next election is scheduled for 28 October 2028.

Critically, this article also finds implications for the Queensland Parliament. Given the state is now almost evenly cleaved between a Labor-dominated Brisbane and an LNP-dominated 'rest', questions inevitably arise as to how the Legislative Assembly can, or should, accommodate this division. The executive branch (cabinet), for example, has long recognised the needs of voters and industry distant from the capital, with ministers and assistant ministers frequently appointed to administer policy affecting voters outside Brisbane. By contrast, the legislative branch (parliament) makes no such provision – except for travel expenses, parliamentary accommodation, multiple electorate offices for MPs representing geographically large districts, and occasional regional sittings of the House. This article therefore recommends the Queensland Parliament inquire into how it might improve its own regional representative function, with particular reference to an amendment to Standing Orders regarding a guarantee of regional members on all of parliamentary committees, and the potential reinstatement of a Legislative Council where multi-member electorates can be located in discrete central, western, northern, and far northern regions. Such proposals are likely to invite vigorous debate.

[78] Hayden Johnson, "Battle lines drawn", *Courier Mail*, 30 June 2026, p. 8.

The limits of transparency in parliamentary committee inquiries: Lessons from the NSW inquiry into past adoption practices

Jessie Halligan

Principle Council Officer NSW Legislative Council

Abstract: This article explores the challenge parliamentary committees face in balancing transparency with the need to protect individual privacy. It uses the inquiry into adoption practices in New South Wales (1998-2000) as a case study, in which the Social Issues Committee resolved to keep 293 submissions from individuals confidential due to their sensitive content and the practical difficulty of redacting them. While this decision prioritised the privacy and safety of individuals, it also attracted criticism for creating 'archival silence', by limiting public access to the evidence and affecting how the inquiry's findings have been understood over time. Furthermore, not all the contributors intended their submissions to be kept confidential, and the decision reduced opportunities for public scrutiny. This article examines this decision within the context of the late 1990s, when technological, procedural, and resource constraints shaped how committees handled evidence. It also considers the broader consequences for transparency, accountability, and restorative justice within parliamentary inquiries.

INTRODUCTION

New South Wales Legislative Council committees operate with a tension – how can they conduct inquiry activity transparently, while protecting the privacy, dignity, and safety of individuals? This challenge is heightened when committees examine complex social policy issues involving personal accounts of systemic injustice, or serious allegations of wrongdoing.

This article is an edited version of a paper originally written in January 2026.[1] It explores the tension within parliamentary committee inquiries through the case study example of the inquiry into adoption practices in New South Wales (1998-2000).

The article examines how parliamentary committees managed highly sensitive evidence at the time of the inquiry, and how it influenced the Social Issues Committee to keep 293 submissions from individuals with lived experience confidential. While this decision protected privacy, some stakeholders argued that it has created 'archival silence' by limiting the publics access to submissions and shaping how the public interrogates the evidence and how the inquiry findings and recommendations have been scrutinised and understood over time.[2] It concludes by identifying potential reforms, such as improved consent processes, clearer publication protocols, and time-based access controls, that may better balance transparency, privacy, and trust in parliamentary committee inquiries.

THE ROLE AND FUNCTION OF NSW LEGISLATIVE COUNCIL COMMITTEES

Parliamentary committee inquiries are among the most important mechanisms of accountability in the New South Wales Legislative Council. Dating back to 1825, inquiries have evolved to become a structured way for the Legislative Council to scrutinise government and review proposed laws.[3] They also provide a public forum for debate on complex social issues, allowing community members to share their views on matters of critical importance.[4]

By convention, committee inquiries are usually conducted publicly. This reflects the principle that parliamentary proceedings should be transparent and accessible.[5] Submissions are a primary way for committees to canvass community views and gather expert knowledge.[6] When

[1] This article was first written for the Parliamentary Law, Practice and Procedure Course, submitted in January 2026.

[2] See for example, Standing Committee on Social Issues, Minutes No 2, 11 October 2023; Standing Committee on Social Issues, Minutes No 3, 7 December 2023; Standing Committee on Social Issues, Minutes No 16, 6 February 2025; New South Wales, Parliamentary Debates, Legislative Council, 20 September 2012, p 15510; Standing Committee on Social Issues, Minutes No 3, 7 December 2023; Standing Committee on Social Issues, Minutes No 16, 6 February 2025.

[3] Stephen Frappell and David Blunt, *New South Wales Legislative Council Practice* (Second Edition, The Federation Press, 2021), p 726.

[4] Sarah Moulds, 'Committees of Influence: The Impact of Parliamentary Committees on Law Making and Rights Protection in Australia' (2019), AIAL Forum 97, p 12.

[5] Frappell and Blunt, *New South Wales Legislative Council Practice* (2021), p 750.

[6] Frappell and Blunt, *New South Wales Legislative Council Practice* (2021), pp 761-763.

a submission is received, it remains confidential until the committee reviews it and resolves to publish it, making it available online for all interested parties to read. On occasion, committees may exercise discretion and keep some evidence confidential either at the request of the author, or to protect privacy, or for other sensitive reasons.[7] Nonetheless, once accepted by a committee, authors benefit from parliamentary privilege. This means that they are immune from defamation and other civil and criminal proceedings in relation to the evidence provided.[8]

PARLIAMENTARY PRIVILEGE AND PROCEDURAL FAIRNESS

Parliamentary privilege is a set of rights and immunities that protect the activities of parliament, including committees, ensuring they can perform their functions without fear of external interference or legal consequence.[9] Unlike other jurisdictions, New South Wales has never codified a Parliamentary Privileges Act, instead, privilege is upheld through a combination of sources:

- Article 9 of the *Bill of Rights Act 1689* - guarantees freedom of speech in Parliament[10]
- Section 27 of the *Defamation Act 2005 (NSW)* - provides that all documents connected with the 'proceedings of the House' are protected from defamation claims[11]
- Section 12(1) of the *Parliamentary Evidence Act 1901* (NSW) - provides assurance against legal reprisal for evidence given to a parliamentary committee, under oath or otherwise[12]
- Common law doctrine of 'reasonable necessity' - grants NSW Parliament implied

[7] Frappell and Blunt, *New South Wales Legislative Council Practice* (2021), pp 761-762.

[8] Susan Want and Jenelle Moore, *Annotated Standing Orders of the New South Wales Legislative Council*, (The Federation Press, 2018), p 728.

[9] See for example: Frappell and Blunt, *New South Wales Legislative Council Practice* (2021), pp 59-60; Erskine May, UK Parliament, 'What constitutes privilege'. Accessed at: https://erskinemay.parliament.uk/section/4570/what-constitutes-privilege/; Parliament of Australia, 'Infosheet 5 – Parliamentary Privilege'. Accessed at: https://www.aph.gov.au/About_Parliament/House_of_Representatives/Powers_practice_and_procedure/00_-_Infosheets/Infosheet_5_-_Parliamentary_privilege

[10] *Bill of Rights 1689 (Imp)* art 9

[11] *Defamation Act 2005* (NSW) s 27.

[12] *Parliamentary Evidence Act 1901* (NSW) s 12(1).

> powers and immunities essential for legislating and holding the executive accountable.[13]

Although privilege protects individuals from legal consequences, inquiry participants are reminded that committee inquiries are not a forum to make adverse comments about specific individuals.[14] This is because the primary purpose of inquiries is to examine broader systemic issues rather than investigate individual grievances.

To facilitate fairness during the inquiry process, the NSW Legislative Council adopted the Procedural Fairness Resolution in 2018, which outlines the rights and responsibilities for inquiry participants.[15] As outlined in the resolution, if committee members believe that evidence adversely reflects on an individual, the committee will consider redacting or, in exceptional circumstances, expunging the evidence. This ensures the essential function of committees is upheld while protecting third-party privacy and reputation, especially when it may cause serious harm.[16]

Prior to the adoption of the Procedural Fairness Resolution, procedural protections were based on standing orders, ad hoc resolutions and longstanding practices, that were sometimes inconsistent, and led to frustration for some inquiry participants.[17] Without clarity and established safeguards, committees struggled to balance transparency with the need to protect the privacy, dignity and safety of individuals. The consequences of this procedural uncertainty were demonstrated in the inquiry into adoption practices in New South Wales.

[13] The common law doctrine of 'reasonable necessity' was established by the Privy Council in *Kielley v Carson*, and subsequent case law from the High Court of Australia and the New South Wales Supreme Court, see *Fenton v Hampton* (1858) 14 ER 727; *Barton v Taylor* (1886) 11 AC 197; *Norton v Crick* (1894) 15 LR (NSW) 172; *Armstrong v Budd* (1969) 71 SR (NSW) 386; *Egan v Willis and Cahill* (1996) 40 NSWLR 650; *Egan v Willis* (1998) 195 CLR 424; Egan v Chadwick (1999) NSWLR 563.

[14] Frappell and Blunt, *New South Wales Legislative Council Practice* (2021), pp 822-823; NSW Legislative Council, 'Making a submission', (Factsheet); NSW Parliament, 'NSW Legislative Council witness briefing' (YouTube, 21 April 2023), <www.youtube.com/watch?v=m3VVgLuNKEw>.

[15] NSW Legislative Council Privileges Committee, *Procedural Fairness for Inquiry Participants* (Parliament of New South Wales, 2018).

[16] Frappell and Blunt, *New South Wales Legislative Council Practice* (2021), pp 818-819.

[17] NSW Legislative Council Privileges Committee, *Procedural Fairness for Inquiry Participants* (2018), p vii.

CASE STUDY: INQUIRY INTO ADOPTION PRACTICES IN NEW SOUTH WALES

In June 1998, the NSW Legislative Council referred to the Standing Committee on Social Issues an inquiry into adoption practices in New South Wales ('past adoption practices'). The inquiry examined coercive and unethical practices that took place between 1950 and 1998, when many unmarried mothers were pressured by professionals, including social workers, doctors and nurses, to relinquish their children.[18]

Submissions to the inquiry into past adoption practices

During the inquiry, the committee received 306 submissions, including 13 from government agencies and organisations, which were made publicly available.[19] The other 293 submissions were from individuals with lived experience, which the committee resolved to keep confidential as authorised by the standing orders.[20] This blanket approach to submissions proved to be a contentious decision.

As discussed previously, inquiries are usually conducted openly and transparently, however committees may decide to restrict publication of evidence to protect privacy or prevent reputational harm. In the inquiry into past adoption practices, many submissions contained serious allegations against doctors, nurses, and social workers (amongst others), along with highly sensitive material, such as the identity of children and medical records. Because many submissions were handwritten and the volume of sensitive material was so great, redacting this evidence was impractical.

Landmark public forum

In light of the committee's decision to keep the 293 submissions confidential, and to ensure survivors' voices were heard, the committee held 10 public hearings, as well as a landmark

[18] NSW Legislative Council Standing Committee on Social Issues, *Releasing the past* (2000), pp iv and xiii.

[19] In 1998-1999, "public" submissions were available to view in-person from the Table Office, and submission authors were advised their submission could be read (and possibly photocopied) by anyone who made an appointment with the Clerk's Office.

[20] NSW Legislative Council Standing Committee on Social Issues, Minutes No 52, 6 December 2000.

public forum held in the Legislative Council chamber on 18 October 1999.[21] The public forum provided an opportunity for 28 mothers and adoptees to share their personal stories of forced adoption, including being denied access to their babies, and being coerced into signing consent forms to relinquish their children. The committee then made the unprecedented decision to publish the transcripts in two interim reports (November 1998 and June 2000), with the names of third-party individuals replaced with job titles, and witnesses with codes (e.g. 'Witness K'), making the evidence easily available to the public without risking reputational harm or breaching privacy.[22]

Report and findings

The committee tabled its final report, *Releasing the Past*, on 8 December 2000. The report contained 20 recommendations, including to improve adoption services, establish post-adoption support, and for the government to issue a formal apology to those who had suffered as a result of past adoption practices.[23] The core message was that many women did not freely 'give up' their children, and that forced adoption practices had caused deep and lasting harm for mothers, adoptees, families, and future generations.

The 2012 apology and ongoing debate

On 20 September 2012, both Houses of NSW Parliament formally apologised for the State's role in forced adoption. The event was attended by many who had suffered as a result of these practices. Leaders from across the Parliament acknowledged the courage of mothers and adoptees, many who had shared their personal stories during the inquiry. Premier Barry O'Farrell acknowledged the role of the Social Issues Committee in exposing these injustices:

> *We have come to know about this shameful episode of our history because of the courage, commitment and strength of many individuals: mothers, fathers, people adopted as children, who refused to stay silent about the injustices they suffered. Their mistreatment was first publicly acknowledged*

[21] NSW Legislative Council Standing Committee on Social Issues, *Interim Report: Inquiry into adoption practices* (November 1998); Standing Committee on Social Issues, *Second Interim Report: Inquiry into adoption practices* (June 2000).

[22] Standing Committee on Social Issues, *Second Interim Report: Inquiry into adoption practices* (June 2000), p x.

[23] Standing Committee on Social Issues, *Releasing the past* (2000), pp xiv-xvi.

> *by this Parliament in the December 2000 report, entitled 'Releasing the Past', of an inquiry into those past adoption practices.*[24]

Other members, including Hon Jan Barham MLC and the Hon Luke Foley MLC, honoured the strength of inquiry participants and the importance of their evidence.[25]

One of the inquiry participants, Lyn, addressed the Legislative Assembly with a powerful poem, *The Child You Stole Was Mine*, sharing her lifelong grief and sense of injustice.[26] The poem concludes:

> *I lost the child for whom I grieve*
>
> *It wasn't my plan for him to leave.*
>
> *You forced us to live apart*
>
> *How do a stranger and I start*
>
> *To cover the intervening years*
>
> *And the reason for all those tears*
>
> *One thing I need you to know*
>
> *Pain everlasting does not show*
>
> *Something I will never forget*
>
> *Nor will others, you can bet*
>
> *To the outside world there is no sign*
>
> *But the child you stole, was mine!*[27]

[24] New South Wales, *Parliamentary Debates*, Legislative Assembly, 20 September 2012, p 15540.

[25] New South Wales, *Parliamentary Debates*, Legislative Council, 20 September 2012, pp 15508-15510.

[26] New South Wales, *Parliamentary Debates*, Legislative Assembly, 20 September 2012, pp 15538-15539.

[27] New South Wales, *Parliamentary Debates*, Legislative Assembly, 20 September 2012, pp 15538-15539.

Despite the apology and subsequent media coverage, some stakeholders continue to vent their disappointment with the committee and the decision to keep 293 submissions confidential. Advocates have argued that many authors expected their submissions to be made public, and that publishing these stories would deepen the public's understanding of past adoption practices.[28] This was supported by the Hon Jan Barham MLC, who said that publishing the submissions would assist ongoing research and help inform redress efforts:

> *Those who made submissions to the New South Wales inquiry expect that their submissions will be made publicly available to allow others to read of the personal experiences, to better understand the pain and suffering.*[29]

PARLIAMENTARY CONSTRAINTS AND PROCEDURAL DISCRETION

The inquiry into past adoption practices highlights the tension between a committee's control over evidence and the public's expectation of openness and transparency. Under the standing orders, committees can decide whether evidence is published, redacted, or kept confidential.[30] Although these rules are intended to support their work, decisions are often shaped by practical limits such as time, staffing and resources.[31]

In this case, the committee's decision to keep all personal submissions confidential was influenced by both the volume of submissions and by their sensitive and personal content. Many were handwritten or contained serious allegations or identifying details, making it difficult to redact for safe publication. As a result, the decision to keep them all confidential reflected practical challenges as well as concerns about risk and harm.

However, for the women and the adopted children at the centre of the inquiry, this approach may have created a sense that the committee, rather than the individuals themselves, controlled their stories. This highlighted the challenge for committees in handling sensitive evidence while also meeting expectations for transparency, accountability and justice.

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[28] Standing Committee on Social Issues, Minutes No 2, 11 October 2023; Standing Committee on Social Issues, Minutes No 3, 7 December 2023; Standing Committee on Social Issues, Minutes No 16, 6 February 2025.

[29] New South Wales, *Parliamentary Debates*, Legislative Council, 20 September 2012, p 15510.

[30] Susan Want and Jenelle Moore, *Annotated Standing Orders of the New South Wales Legislative Council*, (The Federation Press, 2018), pp 728-729.

[31] Susan Want and Jenelle Moore, *Annotated Standing Orders of the New South Wales Legislative Council*, (The Federation Press, 2018), p 760.

Committees as quasi-restorative spaces and their limitations

Public inquiries often carry the promise of restorative justice, by offering survivors a platform to share their experiences and contribute to systemic reform. However, parliamentary committees are not courts of law, and it is not their usual role to determine guilt or fully test the accuracy of claims made by participants. Instead, their role is to examine broader systemic issues which can help inform policy reform.[32] In some instances, committees restrict themselves from discussing ongoing criminal and civil legal matters, in accordance with the s*ub judice* convention.[33]

Parliamentary committees are political bodies with broad investigative powers, however, unlike courts, parliamentary committees do not operate with the same level of scrutiny applied in courts or tribunals.[34] This means that evidence may go untested and can potentially cause reputational harm.[35] Parliamentary committees are viewed as more flexible and less formal, compared to the tightly controlled nature of judicial scrutiny.[36]

Parliamentary privilege plays an important role in this context. It protects participants allowing them to speak freely, but also allows allegations to be made without the usual legal constraints or consequences. Statements made to committees cannot be challenged in court, and those named may have limited options for response or redress. As a result, some have argued this protection can be used in ways that go beyond its original intent.[37]

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[32] Matthew Johnson, 'Informal Evidence' in Committee Inquiries: A Case for its Wider Use' *Australasian Parliamentary Review 40(1),* 2025, pp 36-40; Peta Leeman and Arizona Hart, 'The (in)adequacy of protections for witnesses to

parliamentary committee inquiries: recent experience in the NSW Legislative Council', *Australasian Parliamentary Review 39(2)*, pp 71-77.

[33] The *sub judice* convention is a practice whereby members of the House refrain from making reference in proceedings to matters before the courts where this could prejudice proceedings or harm specific individuals, see Frappell and Blunt, *New South Wales Legislative Council Practice* (2021), 770.

[34] Privileges Committee, 'Procedural Fairness for Inquiry Participants', Legislative Council, New South Wales Parliament, 28 June 2018, pp 1-3.

[35] Peta Leeman and Arizona Hart, 'The (in)adequacy of protections for witnesses to parliamentary committee inquiries: recent experience in the NSW Legislative Council', *Australasian Parliamentary Review 39(2)*, p 88.

[36] Sarah Moulds, ' Democratic and Judicial Review of Enacted Laws in Australia: A Case Study of the Rights Scrutiny Work of Australian Parliamentary Committees', Revue générale de droit, pp 88-89.

[37] See; Jarryd Bartle, 'What is Parliamentary Privilege in Australia' (Web Page, 23 June 2023), www.sydneycriminallawyers.com.au/blog/what-is-parliamentary-privilege-in-australia; Gareth Griffith,

Despite these protections, committees still try to manage the risks of potentially harmful or defamatory material. One way they do this is by controlling what evidence is made public. The Procedural Fairness Resolution states that where evidence may seriously damage the reputation of a person or body, the committee 'may consider keeping some or all of the evidence confidential'.[38] However, this discretion is not always well understood by inquiry participants, which can lead to confusion and frustration.

In recent years, the NSW Legislative Council has taken steps to better manage expectations and handle evidence responsibly. These improvements include:

- authors can now lodge their submissions through an online portal and clearly indicate their publication preference
- committees will notify authors if their evidence will be made public or confidential, and allow them to rewrite and resubmit their submission if appropriate
- adverse mention and sensitive material can be easily identified and redacted (rather than withholding the entire submission)
- third-party individuals may be given an opportunity to respond to allegations made in evidence.[39]

It is important to note that these safeguards were not standard practice at the time of the inquiry into past adoption practices.

The digital shift and the evolving meaning of 'public'

Another significant development that has occurred since the inquiry into adoption practices (1998-2000) has been the rapid expansion of the internet, and the increased accessibility of parliamentary materials. This digital shift has fundamentally changed what it means for a submission to be considered 'public'.

In the late 1990s, public submissions were only available in-person from the Table Office, and submission authors were advised their submission could be read (and possibly photocopied)

'Parliamentary Privilege: Use, Misuse and Proposals for Reform' (Briefing Paper No 4/97, NSW Parliamentary Library Research Service, 1997) p 45; Richard Best, 'Freedom of Speech in parliament: Constitutional safeguard or sword of oppression?', Victoria University of Wellington Law Review, 1994, 24(1), 91–102.

[38] Privileges Committee, 'Procedural Fairness for Inquiry Participants', Legislative Council, New South Wales Parliament, 28 June 2018, p 2.

[39] Privileges Committee, *Procedural Fairness for Inquiry Participants* (2018), p 4.

by anyone who made an appointment with the Clerk's Office. This practice changed in 2000 when NSW Parliament launched a new website that improved access to inquiry documents. For the first time, authors could lodge their submissions electronically and indicate whether they wanted their submission to be made public or kept confidential.[40] Procedural changes continued to evolve, and by 2011 most committees routinely published submissions online, and by 2015 the default assumption was that all submissions would appear on the inquiry website unless confidentiality or concerns of adverse mention were raised.[41]

Without an understanding of this historical context, the Social Issues Committee's decision to keep 293 submissions confidential has led a small number of stakeholders to assume the committee deliberatively sought to restrict the public's access to the inquiry documents. In reality, the digital systems, redaction processes, and publication protocols now in place did not exist at the time. It is also important to consider that submission authors in 1998 and 1999 had not consented to online publication, and applying these practices retrospectively could expose authors and others to serious harm and re-traumatisation.

Committee authority after dissolution of Parliament

Another procedural constraint is that the current Social Issues Committee cannot overturn decisions made by previous committees. This means its ability to revisit the decision to keep 293 submissions confidential is limited.

When the 52nd Parliament dissolved on 28 February 2003, the Social Issues Committee, as it stood, ceased.[42] Under the standing orders, committees are established by the House and only exist for the duration of a single Parliament (usually four years). While there is some debate about whether committees can continue operating during prorogation, it is generally accepted that committees lose all authority once Parliament is dissolved. At that point, they cannot meet, make decisions, or revise prior ones.[43]

Although the inquiry into past adoption practices spanned both the 51st and 52nd Parliaments, this was only possible because the House explicitly authorised it. On 25 May 1999, the Social

[40] NSW Legislative Council, *Annual Report 1999-2000*, p 36.

[41] Want and Moore, *Annotated Standing Orders of the New South Wales Legislative Council* pp 727-732

[42] NSW Legislative Council, *Annual Report 2003, Volume 1*, p 7.

[43] Susan Want and Jenelle Moore, *Annotated Standing Orders of the New South Wales Legislative Council*, (The Federation Press, 2018), pp 677-678.

Issues Committee was reconstituted and formally authorised to consider evidence from the earlier committee.[44] Without this formal resolution of the House, the Social Issues Committee could not have continued the inquiry or relied on prior evidence.

Custody of inquiry records

Under Standing Order 51(4), the Clerk of the NSW Legislative Council holds custody of all committee inquiry records once they are tabled, and they become records of the House. These documents cannot be removed unless authorised by a resolution of the House or, if the House is adjourned for more than two weeks, by approval of the President.[45]

Other Australian jurisdictions have varied approaches to access and custody of historical committee records including time-based controls for confidential material. For example, in the Australian Senate, as well as the Queensland and Victorian Parliaments, confidential committee records remain in the custody of the Clerk once tabled, and may be released after 30 years, subject to approval by the relevant presiding officer.[46]

Comparatively, Royal Commission records are retained permanently by the National Archives, and confidential Royal Commission material can only be released after 99 years.[47] This reflects the historical importance of these records and ensures that the documents are preserved for future generations, while also safeguarding privacy during the lifetimes of those involved.

RESPONSBILE RECORD KEEPING AND ITS INFLUENCE ON COLLECTIVE MEMORY

As outlined above, parliamentary clerks are custodians for committee inquiry records, and accurate record keeping is essential to the functioning of Parliament. Without reliable records, members of parliament could not effectively make legislation or hold governments to account. However, archives are not neutral repositories of information, and decisions about what is made public and what is kept confidential can shape society's collective memory.[48]

[44] New South Wales, *Parliamentary Debates*, Legislative Council, 25 May 1999, p 293.

[45] New South Wales Legislative Council, *Standing Order SO 51(4)*.

[46] Australian Senate, *Standing Order SO 37(3)*; Queensland Parliament. *Standing Order SO 20*; Legislative Council of Victoria *Standing Order SO 19.04*.

[47] *Archives Act 1983* (Cth) ss 3(7), 22; *Royal Commissions Act 1902* (Cth) s 6OM.

[48] Joan Schwartz and Terry Cook, 'Archives, Records, and Power: The Making of Modern Memory' (2002), Arch*ival Science 2* 1-19.

As prominent Aboriginal researcher and historian Rodney G. S. Carter observed, archives are ‘spaces of power’ which can provide a platform for certain narratives while suppressing others.[49] Scholars describe this as ‘archival silence’ - the gaps created when records are destroyed, omitted, or withheld.[50] In a parliamentary committee context, decisions about whether to publish evidence can influence how the public interpret the committee's findings.[51] If submissions remain unpublished, the committee risks erasing these voices, and potentially perpetuating systemic injustices. Conversely, indiscriminate publication can expose individuals to harm.

Parliamentary archives often include accounts of trauma, including coercion, abuse, and systemic failures. Researchers describe these as repositories of ‘trauma and pain’, particularly when they document accounts of human suffering and injustice.[52] While these records are essential for historical accuracy, they can profoundly affect those who engage with them.

These ethical challenges are even greater in today's digital age. Digitisation makes records more accessible, but it also increases the risk of privacy breaches and re-traumatisation. As access expands, questions arise about who controls information, who is represented, and who might be harmed. Archivist and author Margot Note wrote:

> *Archivists operate between information stewardship and public accountability, often navigating conflicting expectations of transparency, privacy, ownership, and access … As institutions digitise records and expand online access, new questions arise: Who controls the data? Who is represented - or misrepresented? Who might be harmed?*[53]

The idea that greater transparency is always beneficial has also been questioned. Researcher Ellen LeClere illustrated how digitisation of records can sometimes have unintended consequences. She wrote that archives in liberal democracies can create a sense of accountability, but often come at the expense of marginalised groups:

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[49] Rodney G.S Carter, 'Of Things Said and Unsaid: Power, Archival Silences, and Power in Silence' (2006) 61 *Archivaria*, p 216.

[50] Michael Moss and David Thomas (ed), *Archival Silences: Missing, Lost and Uncredited Archives*, (Routledge, 2021).

[51] David Thomas, Simon Fowler and Valerie Johnson, *The Silence of the Archive*, (Facet Publishing 2017), p 1.

[52] Chryl Regehr et al, 'Development of the trauma-informed archival practices scale', (2025), Arch Sci 25.

[53] Margot Note, 'The Archivist's Dilemma: Ethical Approaches to Surveillance', (2025), Think Clearly Blog.

> *… access to archives has been historically controlled by privilege and power. While marginalised and underrepresented groups have always been present in archives, their stories have been told 'through the lens of dominant, powerful social groups or societies' … while digital archives create more democratic access, they also create more opportunities for private and/or sensitive information within archives to be disseminated widely, and often without consent.*[54]

For these reasons, responsible record keeping requires recognising that archives shape collective memory and ensuring efforts to improve transparency do not come at the expense of people's privacy, safety and dignity.

WHAT DID THE INQUIRY INTO PAST ADOPTION PRACTICES REVEAL?

The Social Issues Committee's blanket decision to keep submissions from individuals confidential, and the frustrations expressed by some, demonstrates the importance of balancing participants' wishes with third-party safety. Although this decision unintentionally created 'archival silence', where voices of survivors' were accepted by the committee but not publicly available, it did not reflect an intentional effort by the committee to silence individuals. Rather, the archival silence arose from the procedural and resourcing constraints of the time, including technology limitations, procedural gaps, and privacy permissions and expectations of the late 1990s.

Since the inquiry concluded, successive Social Issues Committees have continued to receive requests from stakeholders seeking the publication of the 293 confidential submissions. These stakeholders appear to be unaware that current committees do not have the authority to overturn decisions made during the 52nd Parliament. Nonetheless, the current Social Issues Committee has continued to consult with the Clerk of the Legislative Council and engage with key adoption organisations to carefully consider the risks and benefits of publication, in order to inform its current practices, and to respond to the requests.[55]

[54] Ellen LeClere, 'Breaking rules for good? How archivists manage privacy in large-scale digitisation projects', (2018), *Archives and Manuscripts Vol 46(3),* p 300.

[55] Standing Committee on Social Issues, Minutes No 3, 7 December 2023; Standing Committee on Social Issues, Minutes No 16, 6 February 2025.

LEARNINGS FROM OTHER JURISDICTIONS

Approaches from other Australian jurisdictions offer alternate models that could help guide reform in New South Wales. As explored earlier, the Queensland, Victorian, and Commonwealth parliaments apply time-based access mechanisms that allow confidential material to be released after 30 years, with approval from the presiding officers. Royal Commissions apply an even longer restriction with confidential records becoming available after 99 years. These approaches recognise the historical importance of these documents while also protecting individual privacy.

Other parliaments also provide clear guidance to inquiry participants about what may or may not be included in submissions, particularly in relation to identifying details and adverse mention. For example, the Senate of Canada advises authors that written evidence must not include confidential or sensitive personal information.[56] To an even greater extent, New Zealand's standing orders permit committees to return submissions they consider to be irrelevant, offensive, potentially defamatory, or subject to a court order.[57] These practices help ensure that participants clearly understand how their evidence will be handled and what standards and limitations apply.

CONCLUSION

The inquiry into past adoption practices (1998-2000) demonstrates the significant challenges parliamentary committees face when examining social policy issues involving systemic injustice.

In the 25+ years since the inquiry, the NSW Legislative Council has improved frameworks for managing highly sensitive evidence, placing particular importance on:

- Informed consent – ensuring participants fully understand how their evidence will be used and what can and cannot be included, supported by clear guidelines;
- Safe publication protocols – providing the committee secretariat with the tools and resources needed to review submissions for privacy and adverse mention, and to

[56] Senate of Canada, 'How to participate in a Senate Committee Study: Oral and written evidence' (2021), p 2.

[57] New Zealand House of Representatives, *Standing Order SO 220, which state that a committee 'may return or expunge any evidence or statement that it considers to be irrelevant to its proceedings, offensive, possibly defamatory, or suppressed by an order of a New Zealand court'*.

publish responsibly;

- Careful records management – managing committee records carefully and ethically to maintain transparency while safeguarding the privacy of individuals.

These developments reflect a better understanding that transparency must be balanced with the protection of privacy, dignity, and safety of individuals.

However, these modern standards should not be applied retrospectively without careful consideration. People who provided submissions in 1998 and 1999 did not consent to their stories and evidence being published online in a permanent and easily accessible format. At the time, public access was limited to in-person viewing of the materials in the Table Office. Publishing these records online now could expose submission authors, their families, and third-party individuals to harm, including re-identification, reputational damage, and re-traumatisation.

While transparency measures can always be improved, it is also important to consider and respect the historical conditions under which evidence was originally provided. Responsible stewardship of parliamentary committee records requires a careful, context-sensitive approach that balances openness with the need to avoid further harm. This protects individuals while upholding the integrity, legitimacy and democratic purpose of NSW parliamentary committee inquiries.

Expanding Parliamentary Scrutiny: Considering a Pre-introduction Approach

Matthew Kowaluk[1]

Assistant Director, Department of the Senate, Parliament of Australia

Abstract: This article argues that the Senate Standing Committee for the Scrutiny of Bills should adopt a 'pre-introduction' scrutiny approach, focused on the scrutiny of draft bills before their introduction into the Parliament. Pre-introduction scrutiny would operate alongside the Committee's existing scrutiny model, offering a pragmatic way to improve the committee's ability to contribute to the deliberative process and to secure improvements to the technical quality of legislation. Significantly, this approach would also assist in the promotion of a key set of parliamentary norms within the executive. Embracing pre-introduction scrutiny would also shift the focus of the committee away from a narrow view of bills before the Parliament towards a wider view of the legislative process as a whole. This would be a welcome change in light of calls for increased involvement from the democratic branch of government within the legislative process.

INTRODUCTION

In recent years there have been increasing calls for Parliament to re-assert its constitutional position as lawmaker-in-chief. In particular, commentators have called on Parliament to more rigorously engage in the legislative scrutiny process.[2]

This has stemmed from a number of fronts. For instance, the High Court's insistence on the constitutional importance of parliamentary scrutiny over executive action in *Williams v*

[1] My thanks to Toni Matulick and Glenn Ryall for their comments and advice. The views in this article are my own, as are any mistakes.

[2] See e.g: The Centre for Public Integrity, *Law-making with Integrity: Enhancing the quality of laws and public trust in law-making* (21 February 2026).

Commonwealth [No. 1] has prompted a growing body of literature on parliamentary accountability.[3] In addition, there have been increasing concerns about the trend towards the delegation of law-making power from Parliament to the executive. While this trend is longstanding,[4] it was both exacerbated and highlighted by the COVID-19 pandemic.[5] Finally, increased complexity, alongside shortened timeframes for legislative development, has led to concerns about the technical quality of legislation.[6]

This article argues that a shift in the focus of the Senate Standing Committee for the Scrutiny of Bills (the 'committee') towards a systematic 'pre-introduction' scrutiny approach offers one pragmatic way for Parliament to strengthen its legislative scrutiny processes. This approach would focus on the scrutiny of draft bills before their introduction into Parliament. As well as improving technical legislative outcomes, it is argued that a key benefit of this would be embedding a set of parliamentary norms focused on deliberation, democratic decision-making, and rights protection into the very earliest stages of the legislative process.

The article begins by outlining the structure and practices of the committee, before moving on to a discussion of the committee's purpose, including its role as a norm-builder and a facilitator in the deliberative process. The article then provides a definition of pre-introduction scrutiny, before discussing the benefits and drawbacks of a pre-introduction scrutiny approach.

BACKGROUND AND PRACTICES OF THE SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

As will be shown, the committee's existing practices are both well-established and highly systematised. The model of pre-introduction scrutiny that is proposed below is intended to fit within and extend these practices rather than overturn them, a suggestion that also

[3] *Williams v Commonwealth [No. 1]* (2012) 248 CLR 156; Gabrielle Appleby and Joanna Howe, 'Scrutinising Parliament's Scrutiny of Delegated Legislative Power'. *Oxford University Commonwealth Law Journal* 15(1) 2015, 3; Glenn Ryall, 'Williams v. Commonwealth—A Turning Point for Parliamentary Accountability and Federalism in Australia?'. *Papers on Parliament* 60 2014.

[4] See e.g: Lord Gordan Hewart, *The New Despotism,* United Kingdom, Ernst Benn Ltd, 1929.

[5] Leighton McDonald, Kristen Rundle and Emily Hammond 'Delegated Legislation', in Leighton McDonald, Kristen Rundle, Emily Hammond (eds), *Principles of Administrative Law*, Oxford University Press Australia and New Zealand, 2023, 349-350; 373-374.

[6] For example, this was raised as a concern in the 2021-22 Review of the *Legislation Act 2003*, see: Attorney-General's Department, Commonwealth, *Report – 2021-22 Review of the Legislation Act 2003.* Accessed at: https://www.ag.gov.au/legal-system/publications/report-2021-2022-review-legislation-act-2003.

consciously takes account of the committee's precedent-based and cautious approach to change. It is therefore important to understand how the committee currently operates, as well as its historical background, before proceeding to a discussion of pre-introduction scrutiny.

Background

The Scrutiny of Bills Committee is one of three legislative scrutiny committees within the Commonwealth Parliament, sitting alongside the Senate Standing Committee for the Scrutiny of Delegated Legislation and the Parliamentary Joint Committee on Human Rights. As the committee itself has noted, the work of all three committees is complementary, and they routinely draw on each other's work.[7]

Established in 1981, the committee's structure and practices are modelled on the older Delegated Legislation Committee.[8] Both committees operate on a nonpartisan basis to scrutinise legislation against a set of 'scrutiny principles' focusing on individual rights, liberties and obligations, and on parliamentary scrutiny. These principles, alongside other orders relating to the committee's scrutiny function, membership and powers, are set out in Senate standing order 24 which derives its authority from section 50 of the Constitution.[9]

The committee's membership comprises three government and three non-government senators, including a non-government Chair.[10] Although the Chair holds a casting vote, the committee's longstanding practice is to operate on a consensual basis.[11] The consensual nature of the committee's work is demonstrated by the fact that, in over forty years, the committee has never tabled a dissenting or minority report.

The committee is supported in its work by a secretariat and a legal adviser.[12]

[7] Senate Standing Committee for the Scrutiny of Bills, Parliament of Australia, *Annual Report 2024.* Canberra: Department of the Senate, February 2025, 4.

[8] Rosemary Laing (ed), *Annotated Standing Orders of the Australian Senate*, Canberra: Department of the Senate, 1st ed, 2009, 116, 575.

[9] Rosemary Laing (ed), *Odgers' Australian Senate Practice,* Canberra: Department of the Senate, 14th ed, 2016, 34.

[10] Senate standing order 24(2)(a); 24(4).

[11] Senate Standing Committee for the Scrutiny of Bills, above n 7, 3.

[12] Senate Standing Committee for the Scrutiny of Bills, above n 7, 6.

Practices

The committee scrutinises all bills introduced into Parliament, including private bills. The scrutiny process begins once a bill is introduced into either House of Parliament and ends, where possible, before Parliament's consideration of the bill has concluded. For this reason, the scrutiny process often takes place under extreme time pressure.[13]

The committee describes the form of scrutiny it undertakes as 'technical' in nature. While the appropriateness of this term has been questioned,[14] its use does draw attention to a key difference between the form of analysis undertaken by the committee and that undertaken by other parliamentary committees. Most significantly, the policy intent of a bill is not explicitly considered, except insofar as that intent may justify a potential inconsistency with the scrutiny principles.[15] Also unlike other legislative committees, analysis often takes place based on precedent. For example, the committee is empowered to consider whether a bill unduly trespasses on rights and liberties.[16] However, the committee's consistent interpretation of this potentially wide-ranging principle has been narrowed by the decades-long practice of focusing on a limited number of clearly defined civil and common law rights.[17]

The committee addresses potential scrutiny concerns through what Moulds terms a 'dialogue model'.[18] Where the committee has identified inconsistencies with its scrutiny principles, it raises those concerns directly with the bill proponent, providing an analysis and typically requesting further information. This correspondence continues until the committee concludes

[13] In rare cases scrutiny will continue long after consideration by Parliament has ended. This practice appears to have been adopted in the case of legislation that is expected to be introduced in a similar form in the future, such as Appropriation Bills, see e.g: Senate Standing Committee for the Scrutiny of Bills, Parliament of Australia, *Scrutiny Digest 8 of 2021.* Canberra: Department of the Senate, 16 June 2021, 5; Senate Standing Committee for the Scrutiny of Bills, Parliament of Australia, *Scrutiny Digest 13 of 2021.* Canberra: Department of the Senate, 25 August 2021, 5; Senate Standing Committee for the Scrutiny of Bills, Parliament of Australia, *Scrutiny Digest 16 of 2021.* Canberra: Department of the Senate, 21 October 2021, 47; Senate Standing Committee for the Scrutiny of Bills, Parliament of Australia, *Scrutiny Digest 18 of 2021.* Canberra: Department of the Senate, 36.

[14] Sarah Moulds, 'Reconceptualising Australian Parliamentary Scrutiny Committees as Norm Builders and Pre-Deliberation Facilitators'. *International Journal of Parliamentary Studies* 5(2) 2025, 271-302.

[15] Senate Standing Committee for the Scrutiny of Bills, Parliament of Australia, *Guidelines.* Canberra: Department of the Senate, July 2022, 4.

[16] Senate standing order 24(1)(a)(i).

[17] Carolyn Evans and Simon Evans 'Legislative Scrutiny Committees and Parliamentary Conceptions of Human Rights'. *Public Law Review* 785 2006, 795; These are largely set out in the committee's *Guidelines*: Senate Standing Committee for the Scrutiny of Bills above n 15, 6-10.

[18] Moulds above n 14, 277.

its consideration of the bill, either by drawing its concerns to the attention of the Senate, making recommendations, or noting that concerns have been addressed. Recommendations commonly consist of requests for updates to explanatory materials but also include recommendations for textual amendments to legislation or, on occasion, are non-legislative in nature.[19] The committee rarely uses direct language to make recommendations, instead preferring to rely on a continuation of the dialogue model by requesting advice as to whether a particular amendment can or should be made.[20] Committee dialogue is published in the Scrutiny Digest and generally only takes place in relation to government bills.[21]

Alongside bills, the standing orders also allow for the consideration of Acts and exposure drafts. However, in practice, this rarely occurs. The committee published its first ever commentary on an exposure draft only recently, in response to proposed legislation in the wake of the Bondi terror attack.[22] Meanwhile, the committee's technical scrutiny of Acts has taken place under equally unusual circumstances, with the committee publishing an analysis of the *Biosecurity Act 2015* (Cth) during the COVID-19 pandemic.[23]

[19] For example, in concluding its examination of coercive powers in the Customs Amendment Strengthening and Modernising Licensing and Other Measures) Bill 2024, the committee did not recommend amendments, but noted its view that the entry and search powers in the *Customs Act 1901* should be reviewed, see: Senate Standing Committee for the Scrutiny of Bills, Parliament of Australia, *Scrutiny Digest 11 of 2024.* Canberra: Department of the Senate, 28 February 2024, 42.

[20] For example, the committee recently noted that it 'recommends that consideration be given' to amending a power within the Health Legislation Amendment (Improving Choice and Transparency for Private Health Consumers) Bill 2026 that allows fees to be set in delegated legislation, while in relation to a similar power in the Australian Criminal Intelligence Commission (National Policing Information Charges) Bill 2026 the committee requested advice as to 'whether the bill could be amended': Senate Standing Committee for the Scrutiny of Bills, Parliament of Australia, *Scrutiny Digest 5 of 2026.* Canberra: Department of the Senate, 25 March 2026, 40; *Scrutiny Digest 6 of 2026.* Canberra: Department of the Senate, 6 May 2026) 23.

[21] From the beginning of the 47th Parliament, the committee has adopted a practice of addressing scrutiny concerns raised by private bills in a summarised form, rather than through the dialogue process. See Senate Standing Committee for the Scrutiny of Bills, Parliament of Australia, *Scrutiny Digest 4 of 22.* Canberra: Department of the Senate, 7 September 2022, 20.

[22] Senate Standing Committee for the Scrutiny of Bills, Parliament of Australia, *Scrutiny Digest 1 of 2026.* Canberra: Department of the Senate, 19 January 2026, 4.

[23] This occurred on recommendation of the Delegated Legislation Committee: Senate Standing Committee for the Scrutiny of Bills, Parliament of Australia, *Scrutiny Digest 7 of 2021.* Canberra: Department of the Senate, 12 May 2021, 4; *Scrutiny Digest 1 of 2022.* Canberra: Department of the Senate, 4 Feb 2022.

ROLE AND INSTITUTIONAL VIEW OF THE SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

Beyond practical considerations relating to the background and practices of the committee, a clear view of the committee's role is critical in determining whether it is the appropriate vehicle to pursue a pre-introduction scrutiny approach and what such an approach may hope to achieve.

Meanwhile, noting that any changes would need to be pursued by committee members themselves, it is important to consider how the committee is viewed by senators, and how this view has evolved over time. This is also relevant to a secondary question: whether the committee's scrutiny analysis can be validly represented as expressing an institutional view of the Senate. This secondary question goes directly to the potential scope of the pre-introduction approach and to its legitimacy as a vehicle for parliamentary scrutiny.

The multi-faceted role of the committee and its expression in the committee's dialogue process

A primary purpose of the committee is to provide legal analysis of bills to assist senators in their deliberations while the bill is before Parliament, including by seeking and publishing further explanatory information from the executive. The importance of this purpose is evidenced by comments made by senators reflecting on the committee's establishment, which emphasise the need for assistance in analysing an increasingly high volume of increasingly complex legislation.[24] The committee's practice of undertaking a truncated scrutiny process in order to publish its analysis while a bill is before Parliament, and therefore while this analysis may be of direct use to senators in debate, demonstrates the importance of this purpose in the eyes of the committee. Where the scrutiny process has been delayed because of slow ministerial responses, the committee has publicly expressed its frustration at this fact, including by drawing attention to the effect of delayed responses on parliamentary debate. For example, the committee concluded its examination of the Migration Amendment (Bridging Visa Conditions) Bill 2023 with the following comments:

[24] See, e.g. Fred Chaney, 'The Operation of the Senate Standing Committee for the Scrutiny of Bills: 1981-1991' *Seminar to mark the tenth anniversary of the Senate Standing Committee for the Scrutiny of Bills*. Canberra: Department of the Senate, 25 November 1991, 23.

> *The committee notes with significant disappointment that the minister was over one year late in responding to the committee's queries, and in that time the law under consideration was declared unconstitutional and has since been amended. The delay in the minister's response has frustrated the committee's scrutiny process which is intended to be contemporaneous with parliamentary debate. The committee reiterates its consistent scrutiny view that legislation, particularly legislation that may trespass on personal rights and liberties, should be subject to a high level of parliamentary scrutiny. This includes ensuring the scrutiny committees can engage in a meaningful and timely dialogue with the executive.*[25]

A secondary purpose is to directly improve the quality of legislation through recommendations to the executive made unilaterally by the committee. Earlier iterations of the committee appear to have considered that direct intervention in the legislative process in this way was a matter more appropriately left to the Senate as a whole.[26] However, direct recommendations have become increasingly common. For example, the committee made one hundred and ten recommendations for textual amendments to bills during the 47th Parliament, while only fifteen recommendations were made over the course of the 40th Parliament.[27]

The committee's growing confidence in making recommendations may reflect a view that decades of consistent analysis, based on precedent and an unchanging set of scrutiny principles, has placed the committee in a position to express 'standard' or 'routine' scrutiny views that will be accepted as such by the Senate as a whole. That is, the scrutiny principles and, crucially, the consistent way in which those principles are applied, have evolved into a set of accepted parliamentary norms.

[25] Senate Standing Committee for the Scrutiny of Bills, Parliament of Australia, *Scrutiny Digest 1 of 2025* Canberra: Department of the Senate, 5 February 2025, 52.

[26] Barney Cooney, 'The Operation of the Senate Standing Committee for the Scrutiny of Bills: 1981-1991' *Seminar to mark the tenth anniversary of the Senate Standing Committee for the Scrutiny of Bills*. Canberra: Department of the Senate, 25 November 1991, 11, 18; Laing above n 8, 117; Laing above n 9, 323.

[27] This figure was determined through a direct examination of each *Scrutiny Digest* and *Report* tabled in the Senate during the relevant periods. As noted under footnote 19, the committee does not use consistent language to frame its comments and, therefore, whether a comment is considered a recommendation is necessarily a subjective assessment that is open to interpretation.

This situation is reinforced by the apparent confidence of senators that the nonpartisan, consensual, and technical basis of the committee's work will continue to be upheld. This confidence is reflected in commentary in *Odgers' Australian Senate Practice* which notes 'the question of which party has a majority has been of no significance to the operation of the committee'.[28]

Taking these two purposes into account, the committee's dialogue process can be conceived of as taking place simultaneously between both:

- the *committee membership* and the *Senate*, where the primary purpose is to assist senators in their legislative deliberations; and
- the *Senate* and the *executive*, where the primary purpose is to reinforce a set of established parliamentary norms.

In this way, the dialogue model both directly improves parliamentary processes and seeks to entrench the norms that underpin those processes within the executive branch of government.

A third more indirect effect of the dialogue process is also significant here: that of providing analysis for the benefit of the public and of generating public discussion that is informed by parliamentary norms and processes. It is apparent that the parliamentary scrutiny committees were intended to take up this role from their earliest conception. For instance, during parliamentary debate on the establishment of the committee's sister Delegated Legislation Committee it was noted that one key task of the committee would be to 'give information to the Senate, and, through the Senate to the public'.[29] One practical expression of this indirect impact is that committee analysis is regularly reflected in commentary made by civil society groups and academics.[30]

The non-technical impact of the committee is therefore potentially substantial despite its relative invisibility compared to the technical aspects of the committee's work, as has recently been highlighted by Moulds.[31]

[28] Laing, above n 9, 322.

[29] Senator Hal Colebatch, Commonwealth, *Parliamentary Debates*, Senate, 28 September 1932, 787.

[30] For example, the Law Council of Australia lists the committee's *Guidelines* on its 'Best Practice Legislative Development Checklist', see: Law Council of Australia, *Best Practice Legislative Development Checklist.* Accessed at: https://lawcouncil.au/resources/policies-and-guidelines/best-practice-legislative-development-checklist.

[31] Moulds, above n 14.

The committee as a norm-builder and pre-deliberation facilitator

Commenting on the work of the parliamentary scrutiny committees as a whole, Moulds draws a distinction between the technical function of the committees and their role as 'norm-builders' and 'pre-deliberation facilitators'.[32] Emphasising the unseen role of the committees in indirectly influencing the legislative process through the integration of the scrutiny principles into the daily work of public servants, as well as the committees' focus on dialogue, Moulds characterises the scrutiny committees as 'norm builders'.[33] Moreover, noting the committees' influence on the deliberative function of Parliament, Moulds argues that the committees also take on an important role as 'pre-deliberation facilitators'.[34] This understanding contrasts with a narrower conception of the scrutiny committees as playing merely a technical or 'remedial' role, concerned only with direct legislative outputs. This aligns with how the committee itself describes the impact of its work, with an elaboration of the 'unseen influence' of the committee forming a regular part of the committee's annual reports, alongside references to the more direct technical impact of the committee.[35]

Rather than focusing only on direct technical impacts, conceptualising the committees as norm-builders and pre-deliberation facilitators instead highlights their importance in building a 'culture of rights compliance',[36] and a 'culture of justification',[37] and of reinforcing a set of norms based on parliamentary notions of deliberation and democratic decision-making.[38] These norms link directly to the committee's scrutiny principles and the dialogue model the committee has adopted to promote those principles. The committee's influence in reinforcing

[32] Ibid.

[33] Ibid, 282-285.

[34] Ibid, 285-287.

[35] Senate Standing Committee for the Scrutiny of Bills, above n 7, 13.

[36] Moulds, above n 14, 294, 295. In adopting this term, Moulds draws on the work of Kinley, see: David Kinley, 'Parliamentary Scrutiny of Human Rights: A Duty Neglected' in Philip Alston (ed), *Promoting Human Rights Through Bills of Rights: Comparative Perspectives.* Oxford University Press, 1999, 158.

[37] Ibid, 284, 294. In adopting this term, Moulds draws on the work of Hunt and Hiebert, see: Murray Hunt, Hayley Jane Cooper and Paul Yowell, *Parliament and Human Rights: Redressing the Democratic Deficit.* Hart Publishing 2015, 39; Janet Hiebert 'Legislative Rights Review: Addressing the Gap Between Ideals and Constraints' in Murray Hunt, Hayley Jane Cooper and Paul Yowell, *Parliament and Human Rights: Redressing the Democratic Deficit*. Hart Publishing 2015, 39.

[38] Moulds, above n 14.

other parliamentary norms could perhaps also be added here, most notably the committee's role in reinforcing Australian notions of federalism.[39]

A pre-introduction scrutiny approach would strengthen the committee's role in enforcing these norms and provide new opportunities to improve deliberative processes and the committee's technical output.

PRE-INTRODUCTION SCRUTINY

Suggested approach

As noted above, the committee currently adopts a highly systematised approach to its work. Given the benefits of consistency in embedding the committee's role as a norm-builder, a pre-introduction scrutiny process would benefit from a similarly systematic approach.

The approach suggested here is one in which the committee scrutinises all draft bills for which exposure drafts have been published and public submissions sought. Rather than publishing commentary in the *Scrutiny Digest*, which is appropriately limited to commentary on bills and Acts, scrutiny analysis would be presented in the form of a publicly available submission. This would complement, rather than replace, existing scrutiny practices leading to a two-pronged approach in which bills are scrutinised both before and after introduction.

While a focus on exposure drafts would not capture all bills under development, it would have the practical benefit of requiring no change to existing executive practices and of aligning with the Senate standing orders which already allow for the consideration of exposure drafts by the committee.[40] Moreover, this approach recognises that it is appropriate for the committee to provide analysis where the executive has actively sought public comment.

Noting that explanatory materials would not always be available during the exposure draft stage, the nature of the committee's analysis would also be different. When identifying a scrutiny concern, the committee places significant weight on the explanation provided.[41] Inconsistencies with the scrutiny principles can often be overridden by a clear justification

[39] Glenn Ryall and Jessica Strout, 'Scrutiny committees: a vehicle to safeguarding Federalism and the constitutional rights of Parliament'. *Papers on Parliament* 67 2017.

[40] Senate standing order 24(1)(b).

[41] Hence every scrutiny issue identified in the committee's *Guidelines* is accompanied by high-level commentary on what matters should be addressed in the accompanying explanatory memorandum: Senate Standing Committee for the Scrutiny of Bills, above, n 11.

found in the explanatory materials. At the pre-introduction stage, the committee's analysis would therefore centre on identifying *potential* scrutiny issues and providing advice on what manner of explanation may, or may not, be appropriate to justify those issues. The committee would also provide advice on options for ameliorating scrutiny concerns if no such justification exists, such as through amendments to the text of the bill.

Potential benefits

One of the most significant issues currently faced by the committee is the speed with which bills are considered by Parliament.[42] This reduces the time available for the committee to scrutinise a bill, for quality responses to be provided to committee questions, for committee recommendations to be considered and implemented, and for senators to consider and respond to committee reports. Undertaking scrutiny at an earlier stage of the legislative process directly addresses all four of these issues by reducing the time pressure to which the scrutiny process is currently subjected. In addition, the committee's scrutiny analysis would be available to senators from a much earlier stage. This has the added benefit of recognising that the engagement of senators with legislation is not limited to the parliamentary debate stage, but also includes consideration of draft legislation, often driven by lobbying from constituents.

In addition, the politically charged nature of legislative debate once a bill is before the Parliament can make it difficult for committee recommendations to be accepted by the executive even where those recommendations are otherwise non-controversial. Accepting a committee recommendation at this stage may be seen as a tacit admission that the bill proponent had 'got it wrong' in their initial presentation of the bill and may provide ammunition for political rivals.[43] Similarly, the committee's practice of undertaking dialogue directly and publicly with the minister's office, while appropriate in a parliamentary context, can lead to an equally heightened atmosphere.

[42] Senate Standing Committee for the Scrutiny of Bills, above n 7, 39. This is also a longstanding issue for the Senate as a whole, see: Harry Evans, 'Role of the Senate'. *Reform* 78 2001, 99.

[43] For example, where ministers have accepted committee recommendations for amendment this has highlighted the initial scrutiny issue for senators, with the result that the circulation of such an amendment has led to criticism over the legislative process from non-government senators. See e.g. debate on the Private Health Insurance Legislation Amendment (Medical Device and Human Tissue Product List and Cost Recovery) Bill 2022: Senator Jordon Steele-John, Commonwealth, *Parliamentary Debates*, Senate, 7 March 2023, 540; debate on the Therapeutic Goods Amendment (2022 Measures No. 1) Bill 2022: Senator Malcolm Roberts, *Parliamentary Debates*, Senate, 8 March 2023, 647-648.

Raising scrutiny issues directly with the responsible legislation team at the exposure draft stage would reduce the politically charged nature of the dialogue, leading to an increased number of accepted committee recommendations. This is borne out by the experience of the Delegated Legislation Committee, which engages in a significant level of correspondence directly with agencies in relation to minor and routine issues, only engaging directly with the minister's office in relation to novel, legislatively significant or politically controversial issues.[44]

Pre-introduction scrutiny would also assist on the rare but significant occasions on which Parliament is considering the enactment of uniform laws. Uniform laws are those laws that seek to standardise a particular legislative framework across multiple jurisdictions.[45] In Australia, this process is typically driven by inter-governmental councils comprising representatives of the various executive governments of the Commonwealth, states and territories, with little parliamentary involvement.[46] Many uniform laws cover matters that directly interact with the scrutiny principles, such as matters of criminal law or civil rights.[47] However, because they often require the enactment of identical legislation across every participating jurisdiction, the ability of the Parliament and the committee to undertake effective scrutiny of uniform laws is severely curtailed.[48] The committee directly considered this issue in its 2011 'Inquiry into the future direction and role of the Scrutiny of Bills Committee' and recommended that scrutiny of exposure drafts be considered as one way of maintaining an element of parliamentary scrutiny over the text of uniform laws.[49] Unfortunately, it appears that the committee's recommendation that copies of exposure drafts for uniform laws be sent to the committee for analysis has not been taken up. The implementation of pre-introduction scrutiny would overcome executive reluctance to adopt

[44] For example, of the 254 scrutiny issues identified by the Delegated Legislation Committee in 2024, 69% were raised at the agency level. In 2023, 72% of total scrutiny issues were raised at the agency level: Senate Standing Committee for the Scrutiny of Delegated Legislation, Parliament of Australia, *Annual Report. Canberra: Department of the Senate* 2024, 9.

[45] See e.g: Australasian Parliamentary Counsel's Committee, *National Uniform Legislation.* Accessed at: https://pcc.gov.au/uniform_legislation_official_versions.html.

[46] Senate Standing Committee for the Scrutiny of Bills, Parliament of Australia, *Inquiry into the future direction and role of the Scrutiny of Bills Committee*. Canberra: Department of the Senate, May 2012, 40.

[47] For example, the *Australian Crime Commission Act 2002* has implications for civil rights and criminal procedure and has been enacted in every Australian jurisdiction.

[48] Senate Standing Committee for the Scrutiny of Bills, above n 46, 43.

[49] Ibid.

this recommendation by placing the initiative on the committee to make the practical changes necessary to facilitate regular analysis of exposure drafts.

In addition, beginning the scrutiny process at the exposure draft stage would reinforce the committee's status as a norm-builder, embedding the scrutiny principles as a routine consideration for public servants and stakeholders at the very earliest stages of legislative development. As Moulds notes, the type of norm-building engaged in by the committee is vulnerable if public servants have a low awareness of the committee's scrutiny principles.[50] Directly engaging public servants at multiple stages of the legislative process would help build this understanding. The committee has done much in recent years in this regard, including by publishing a set of *Scrutiny Guidelines*,[51] distributing a *Scrutiny News* publication,[52] and running regular training sessions for public servants.[53] The inclusion of the scrutiny principles in executive produced guidance documents, such as the *Legislation Handbook,*[54] the Attorney-General's *Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers*, [55] and the various Office of Parliamentary Counsel Drafting Directions,[56] also indicates the committee's success in embedding its principles into the legislation process. Pre-introduction scrutiny would represent a valuable extension of this work.

For similar reasons, a pre-introduction scrutiny approach would assist the committee's work in building a culture of justification within the public service.[57] Most significantly, it would provide

[50] Moulds, above n 14.

[51] Senate Standing Committee for the Scrutiny of Bills, above n 15.

[52] Senate Standing Committee for the Scrutiny of Bills, *Scrutiny News*. Accessed at: https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Bills/Scrutiny_new.

[53] Senate, *Senate Training Programs.* Accessed at: https://www.aph.gov.au/About_Parliament/Senate/News_and_events/Senate_training_and_lectures/Senate_training_programs.

[54] Department of the Prime Minister and Cabinet, *Legislation handbook.* Accessed at: https://www.pmc.gov.au/resource-centre/government/legislation-handbook.

[55] Attorney-General's Department, *Guide to framing Commonwealth offences, infringement notices and enforcement powers.* Accessed at: https://www.ag.gov .au/publications/guide-framing-commonwealth-offences-infringement-notices -and-enforcement-powers.

[56] Office of Parliamentary Counsel, *Drafting Directions*. Accessed at: https://www.opc.gov.au/drafting-resources/drafting-directions.

[57] Hunt and Hiebert, above n 37. See also: Daniel Reynolds, Winsome Hall and George Williams, 'Australia's Human Rights Scrutiny Regime'. *Monash University Law Review* 46(1) 2020, 256, 289-290.

an opportunity for the committee to clearly state its expectation that a justification is given for identified provisions at a point in time in which the explanatory materials for those provisions are still under development. Crucially, it would also provide an opportunity to articulate the committee's view as to what may, or may not, constitute an appropriate justification beyond the high-level guidance set out in the committee *Guidelines*. Where an appropriate justification was still not forthcoming after this process, the committee's final analysis in the *Scrutiny Digest* would be free to express its disappointment directly to the minister from the first round of correspondence. The committee may also feel emboldened to question why an exposure draft process had not been undertaken in relation to particular bills, promoting an ethos of public consultation within the executive.

Potential concerns

There are three possible concerns related to the adoption of a pre-introduction scrutiny approach.

The first is that this approach may be perceived as an inappropriate extension of the committee's role, moving it away from its initial conception as a body designed to provide technical analysis for the benefit of Senate deliberations. This could lead to a perception that the committee was inappropriately influencing the content of legislation before its consideration by the Senate as a whole.[58] As noted above, there has been a longstanding trend towards the committee providing direct input into the legislative process through the making of recommendations. As this trend has developed, the Senate has demonstrated a high level of confidence in the nonpartisan and norm-driven nature of the committee's work and has not commented adversely on the committee providing direct input on bills. If pre-introduction scrutiny is seen as a continuation of this longstanding trend, then this first potential concern will not present as an issue. For this to occur, the committee may see a need to limit its analysis to the set of accepted norms which it has developed over the last four decades and to focus its pre-introduction analysis on routine scrutiny issues.

Secondly, there are practical considerations preventing the adoption of pre-introduction scrutiny. In particular, this approach could lead to an increased workload for the committee. Although in the long term it is hoped that pre-introduction scrutiny would reduce the number of scrutiny issues presented to Parliament, it would also require the committee to undertake

[58] Similar concerns were raised when the committee was first established. See Dennis Pearce, 'Opening Address: Ten Years of Scrutiny' *Seminar to mark the tenth anniversary of the Senate Standing Committee for the Scrutiny of Bills*. Canberra: Department of the Senate, 25 November 1991.

two rounds of analysis on many of the bills put before Parliament and would also require the analysis of exposure drafts that are never introduced. Addressing this issue would require increased resources, including additional secretariat staff.

An increased workload and an approach focused on identifying routine scrutiny issues before their consideration by Parliament also risks rendering scrutiny as a formalistic checklist process, dominated by dialogue between two areas of the bureaucracy – parliamentary servants and public servants – in which the only expectation is that standard responses are provided to standard questions. Although the committee is tasked with promoting scrutiny from the democratic branch of government, bureaucratisation of the committee's scrutiny process in this way could ironically lead to a democratic deficit built into the scrutiny process itself. Both this issue and the issue of appropriate resourcing can only be addressed if senators see the value of an expanded role for the committee and actively engage in that expanded role. The fact that this expanded scrutiny process would represent a continuation of existing trends may increase the likelihood of this occurring. Moreover, the ability of the Senate to unilaterally enact these changes, without input from the executive-dominated House of Representatives, also increases the likelihood of their adoption. For this reason, locating improvements to parliamentary accountability in the work of the Senate scrutiny committees is a significantly more pragmatic approach than other possibilities, such as amendments to the *Legislation Act 2003.* For example, it is notable that the only fully implemented recommendations from the Delegated Legislation Committee's *Exemption of delegated legislation from parliamentary oversight* report are those that were capable of being implemented unilaterally by the Senate.[59] Nonetheless, these three concerns represent a significant impediment to the implementation of a pre-introduction scrutiny approach.

CONCLUSION

Adopting a pre-introduction scrutiny approach, alongside the committee's existing scrutiny processes, would help to embed a key set of parliamentary norms into the earliest stages of the legislation process. These norms include a focus on parliamentary democracy and accountability, federalism, and a culture of justification and rights compliance. This would be a welcome development in light of recent calls to restore Parliament's constitutional role as

[59] Senate Standing Committee for Delegated Legislation Committee, Parliament of Australia, *Exemption of delegated legislation from parliamentary oversight.* Canberra: Department of the Senate*,* 16 March 2021.

lawmaker-in-chief. In addition, a pre-introduction approach would improve technical legislative outcomes by making it more straightforward for the executive to accept committee recommendations without attendant political risks and by reducing the time pressure to which the scrutiny process is currently subject.

While the benefits are potentially significant, there are practical and principled considerations relating to the role and resourcing of the committee that may prevent moves to a pre-introduction approach. Ultimately, whether these concerns can be overcome depends on the political will of the Senate.

Finally, many of the arguments advanced in this article would also support the adoption of a post-enactment scrutiny approach, focused on the technical scrutiny of Acts. Equally, many of the same arguments would support the scrutiny of exposure drafts by the Delegated Legislation Committee. If adopted, this would represent a shift in the focus of the Senate scrutiny committees towards the legislative process as a whole, with a 'Scrutiny of Primary Legislation Committee' sitting alongside a renewed Scrutiny of Delegated Legislation Committee. This is an idea worth exploring in more detail elsewhere.

Balancing Privilege and Protection: Parliamentary committees and child-safety reporting

Jessica Summers[1]

Legislative Council Committees, Parliament of Victoria.

Abstract: Children have a fundamental right to be protected from sexual abuse. Victorian law reflects this by requiring adults and certain professionals to report suspected child sexual abuse. However, should a parliamentary committee receive evidence making allegations of child sexual abuse, it is unclear how these reporting obligations interact with parliamentary privilege. This article examines the tension between parliamentary privilege and child-safety reporting obligations. It considers how Parliament should balance the important principles underpinning parliamentary privilege with the expectation that institutions act to protect children from harm. The article argues that Parliament has a responsibility to establish clear guidance for handling committee evidence containing allegations of child sexual abuse, providing greater certainty for parliamentary staff while ensuring that child safety remains appropriately prioritised.

INTRODUCTION

Protecting children from harm is one of society's most basic responsibilities.[2] In Victoria, the law clearly establishes the expectation that information indicating a child is being sexually abused must be reported to police.[3] This legal framework has two pillars: mandatory reporting obligations for specified professionals,[4] and the broader 'failure to disclose' offence, which applies to all adults.[5] Together, these mechanisms reflect the legislature's longstanding

The views in this article are those of the author and no not necessarily reflect those of the Victorian Parliament or its members.

[2] United Nations, *Conventions on the Rights of the Child,* 20 November 1989, Treaty Series, vol. 1577, 3.

[3] *Children, Youth and Families Act 2005 (*Vic) pt 4.4, *Crimes Act 1958,* (Vic) s 327.

[4] *Children, Youth and Families Act 2005 (*Vic) pt 4.4.

[5] *Crimes Act 1958,* (Vic) s 327.

intention that the safety of children be prioritised, and that those who encounter information suggesting a child is at risk have both a legal and moral duty to act.[6]

The operation of these reporting obligations becomes more complex in the context of parliamentary committee inquiries. Committees, particularly those examining sensitive or high-risk subject areas, may receive evidence containing allegations of child sexual abuse. As evidence provided to a committee attracts parliamentary privilege, uncertainty arises as to how that privilege interacts with child-safety reporting laws and whether Parliament and its staff are required to report such allegations to police. Given that parliamentary privilege and child-safety reporting obligations are both underpinned by significant and principled rationales, understanding how best to balance these obligations in the event of a conflict is challenging. This article explores the tension between Parliament's long-standing adherence to institutional privilege and the evolving moral expectation that it act to protect children. It argues that Parliament has an institutional responsibility to set out clear guidance to ensure the proper handling of committee evidence that contains allegations of child sexual abuse.

CHILD-SAFETY REPORTING OBLIGATIONS IN VICTORIA

In Victoria, the law establishes a framework to ensure that child-safety concerns are reported to police so that protective action can be taken. This framework includes both mandatory reporting obligations for designated professionals[7] and the broader 'failure to disclose' offence that applies to all adults.[8]

Mandatory reporting obligations were first introduced in Victoria in 1993[9] and are now covered by the *Children, Youth and Families Act 2005* (Vic) (the Act). Under the Act, mandatory

[6] For example, see Victoria, *Parliamentary Debates,* Legislative Assembly, 26 March 2014, 914, Robert Clark, Attorney-General; Victoria, *Parliamentary Debates,* Legislative Assembly, 6 May 2014, 1370, Brad Battin; Victoria, *Parliamentary Debates,* Legislative Assembly, 6 May 2014, 1372, David Morris; Victoria, *Parliamentary Debates,* Legislative Assembly, 6 May 2014, 1376, Natalie Hutchins; Victoria, *Parliamentary Debates,* Legislative Assembly, 6 May 2014, 1390, David Morris; Victoria, *Parliamentary Debates,* Legislative Assembly, 6 May 2014, 1390, Graham Watt; Victoria, *Parliamentary Debates,* Legislative Council, 8 May 2014, 1522, Gordon Rich-Phillips; Premier of Victoria, *Expanding Mandatory Reporting to Better Protect Kids'* (22 October 2018), < https://www.premier.vic.gov.au/expanding-mandatory-reporting-better-protect-kids>; Victorian Department of Justice and Community Safety, *Failure to disclose offence* < https://www.justice.vic.gov.au/safer-communities/protecting-children-and-families/failure-to-disclose-offence>.

[7] *Children, Youth and Families Act 2005 (*Vic) s 182

[8] *Crimes Act 1958,* (Vic) s 327.

[9] *Children and Young Persons Act 1989,* s 64.

reporters *must* make a report if, while carrying out their professional duties, they form a reasonable belief that a child needs protection from physical or sexual abuse.[10] If a mandatory reporter does not report when required and has no reasonable excuse, they may be charged with an offence.[11]

The Act expressly lists the professions classified as mandatory reporters, including doctors, nurses, teachers, police officers, registered psychologists, and specified youth and welfare workers.[12] The list of mandatory reporters has expanded over time. For example, in 2019, when changes to the legislation confirmed that abuse disclosures made in religious confession were not exempt,[13] and persons in religious ministry were added as mandatory reporters.[14] The broadened scope of professionals designated as mandatory reporters suggests that the legislature is increasingly seeking to extend this obligation to strengthen the reporting of risks to children. Additionally, the Act also allows for voluntary reports to be made by *any* person who has formed a belief on reasonable grounds that a child is in need of protection.[15]

Independent of mandatory reporting requirements, every adult in Victoria is subject to what is known as the 'failure to disclose' offence.[16] The 'failure to disclose' offence requires all adults to report to police any reasonable belief that an adult has sexually abused a child under 16, unless the person has a reasonable excuse.[17] Examples of a reasonable excuse include situations in which the person fears that reporting would endanger someone other than the alleged offender, or where they believe on reasonable grounds that the information has already been provided to police.[18] Exemptions are also carved out for information that would be privileged *(per the meaning given in Part 3.10 of the Evidence Act 2008 (Vic*)) or confidential

[10] *Children, Youth and Families Act 2005 (*Vic) s 184(1).

[11] ibid.

[12] *Children, Youth and Families Act 2005 (*Vic) s 182.

[13] ibid, s 184(2A).

[14] ibid, s 182(ea).

[15] *Children, Youth and Families Act 2005 (*Vic) s 183.

[16] *Crimes Act 1958,* (Vic) s 327.

[17] Ibid.

[18] Ibid, s 327(3).

(per the meaning given in section 32B of the Evidence (Miscellaneous Provisions) Act 1958 (Vic)).[19]

The 'failure to disclose' offence was introduced in 2014 in response to the recommendations made by the 2012 *Betrayal of Trust* Parliamentary Inquiry, which examined the handling of child abuse in religious and other non-government organisations.[20] The 'central purpose'[21] of the 'failure to disclose' legislation was to signal to all adults that they are 'not only morally, but legally, obliged to act to protect [a] child'.[22] In creating this duty, the legislature unequivocally prioritised children's safety as 'front and centre and key in any situation where they are unable to protect themselves'.[23]

By expanding the mandatory reporting framework and enacting the broad 'failure to disclose' offence, successive Victorian legislatures have articulated a clear intention:

> *Victorians have a moral – and legal – responsibility to pass information to police to enable protective interventions for vulnerable children.*

By explicitly outlining the narrow circumstances in which exemptions apply, successive legislatures have reinforced that reporting obligations are intended to apply broadly and that the protection of children is the foremost priority.

EVIDENCE SUBMITTED TO PARLIAMENTARY COMMITTEES THAT CONTAIN INFORMATION RELATING TO ALLEGED CHILD SEXUAL ABUSE

The Victorian Parliament has several committees that conduct inquiries across a wide range of subject areas.[24] In conducting inquiries, parliamentary committees call for public submissions as a key source of evidence.[25] Given the focus of some inquiries, a parliamentary committee

[19] Ibid, s 327(7).

[20] Family and Community Development Committee, Parliament of Victoria, *Inquiry into the Handling of Child Abuse by Religious and Other Organisations* (Final Report, 13 November 2013).

[21] Victoria, *Parliamentary Debates,* Legislative Assembly, 26 March 2014, 911, Robert Clark, Attorney-General.

[22] ibid.

[23] Victoria, *Parliamentary Debates,* Legislative Assembly, 6 May 2014, 1378, David Southwick.

[24] Parliament of Victoria, *Committees,* (Web Page) < https://www.parliament.vic.gov.au/committees>.

[25] Parliament of Victoria, *Guidance for making a submission* (Web Page) < https://www.parliament.vic.gov.au/get-involved/submissions/>.

may expect to receive submissions that include information that supports a reasonable belief that a child has been sexually abused.

At the time of writing, the Victorian Parliament is conducting two inquiries that may attract submissions containing information that supports a belief that a child has been sexually abused. The first example is the Legislative Council Select Committee's Inquiry into the early childhood education and care sector in Victoria. This inquiry was prompted by widespread public alarm following media revelations of child sexual abuse in childcare settings, most prominently the case involving former childcare worker Joshua Dale Brown.[26] The second example is the Legislative Assembly Legal and Social Issues Committee's Inquiry into the recruitment method and impacts of cults and organised fringe groups. This inquiry is examining how cults and organised fringe groups in Victoria recruit, control, and influence their members, and the harms caused through coercive or manipulative practices.[27]

Both inquiries may attract public submissions containing information alleging child sexual abuse. If such circumstances arise, questions may emerge as to whether parliamentary committees, individual committee members and the staff supporting them are subject to a duty to report allegations of child sexual abuse to police. Such questions arise largely from uncertainty about how the child-safety reporting framework interacts with the scope and operation of parliamentary privilege.

PARLIAMENTARY PRIVILEGE

Submissions protected by parliamentary privilege are unlikely to trigger reporting obligations

Parliamentary privilege is grounded in the need to equip Parliament with the powers required to perform its functions. This includes safeguarding the speech of members and inquiry participants, not to elevate them above the law, but to ensure that a fear of legal retribution does not undermine open and free debate in parliamentary proceedings. However, as explored

[26] Parliament of Victoria, 'Inquiry into the Early Childhood Education and Care Sector in Victoria' *Select Committee on the Early Childhood Education and Care Sector in Victoria* (Web Page) < https://www.parliament.vic.gov.au/earlyeducation>.

[27] Parliament of Victoria, 'Inquiry into the recruitment methods and impacts of cults and organised fringe groups' *Legislative Assembly Legal and Social Issues Committee,* (Web Page) < https://www.parliament.vic.gov.au/cofg>.

below, this privilege can sometimes sit in tension with certain child safety reporting legal frameworks which are designed to protect and promote the rights of children.

Section 19 of the *Constitution Act 1975* (Vic) provides that the Victorian Parliament, its members, and its committees hold the same powers, privileges and immunities as those exercised by the UK House of Commons on 21 July 1855, the date when Victoria gained responsible government.[28] Because the *Constitution Act 1975* (Vic) does not enumerate specific powers, this incorporation gives the Victorian Parliament a broad grant of authority guided by Westminster practice and case law.[29]

To be covered by Parliamentary privilege, information must form part of, or be incidental to, parliamentary proceedings.[30] Material from committee hearings and submissions accepted by a committee clearly meet this threshold and are protected by parliamentary privilege.[31] It follows that an accepted submission to a parliamentary committee that alleges child sexual abuse is likewise part of parliamentary proceedings and therefore privileged.

It appears uncontroversial to conclude that neither Parliament nor its staff fall within the mandatory reporting framework established under the Act.[32] If the legislature had intended to designate itself as a mandatory reporter, it would have stated so explicitly in section 182 of the Act.[33]

By contrast, the application of the 'failure to disclose' offence to Parliament and its staff is less clear—the key question being whether information protected by parliamentary privilege is exempt from reporting under the 'failure to disclose' offence. The Attorney-General in his second reading speech clearly motivated the introduction of this offence as having a broad application 'to any person',[34] distinct from existing mandatory reporting frameworks, and explicitly signalled that it is 'not acceptable to put the interests of an adult or an organisation

[28] *Constitution Act 1975* (Vic), s 19.

[29] Anthony Walsh, 'Orders for Documents: An Examination of the Powers of the Legislative Council of Victoria' (2010) (Autumn) Vol. 25(1), *Australasian Parliamentary Review,* 194.

[30] Prebble v Television New Zealand Ltd [1995] 1 AC 321, R v Richards; Ex parte Fitzpatrick and Browne (1955) 92 CLR 157, Egan v Willis (1998) 195 CLR 424, UK Parliament, *Erskine May's treatise on the law, privileges, proceedings and usage of parliament* (25th edition, 2019).

[31] Ibid.

[32] *Children, Youth and Families Act 2005 (*Vic) s 182.

[33] Ibid.

[34] Victoria, *Parliamentary Debates,* Legislative Assembly, 26 March 2014, 914, Robert Clark, Attorney-General.

ahead of the interests of a child'.[35] Section 327 of the *Crimes Act 1958* (Vic) creates exemptions for information considered privileged, as defined in Part 3.10 of the *Evidence Act 2008* (Vic).[36] Even though parliamentary privilege is not specified in this Part, section 10 of the *Evidence Act 2008* (Vic) operates to preserve its effect.[37] Had the legislature intended to displace parliamentary privilege, one would expect an express provision to that effect.[38] This is made more compelling by the *Crimes Act 1958* (Vic)'s explicit removal of the privilege that ordinarily applies to religious confessions under the *Evidence Act 2008* (Vic).[39] For these reasons, a decision by Parliament or its staff not to report child sexual abuse information provided in a committee submission would likely not amount to a breach of the 'failure to disclose' offence. To this author's knowledge, the scope of section 327 of the *Crimes Act 1958* (Vic) has not been judicially considered, so this assessment is untested.

While this may be the likely legal position, the possibility that Parliament and its staff could receive information alleging child sexual abuse—and refrain from reporting it on the basis of parliamentary privilege—raises complex moral questions. Namely, how should Parliament reconcile its traditional commitment to institutional privilege with the growing legal recognition of the duty it owes to children at risk?

Parliamentary privilege is grounded in principled rationales that should be maintained

Any attempt to balance parliamentary privilege with a duty of care must begin with a clear understanding of the origins of that privilege and the rationale for its continued importance.

A 'simplistic view of parliamentary privilege is that it exists just to allow members of Parliament to slander people in Parliament without fear of defamation action'.[40] Framed in this way, parliamentary privilege can be perceived as elevating members beyond the ordinary operation

[35] ibid.

[36] *Crimes Act 1958,* (Vic) s 327(7).

[37] *Evidence Act 2008* (Vic), pt 3.10, *Evidence Act 2008* (Vic), s10.

[38] *Coco v The Queen* (1994) 179 CLR 427, 437, Bruce Chen, 'The Principle of Legality: Issues of Rationale and Application' (2015) 41(2) *Monash University Law Review,* 330.

[39] *Crimes Act 1958,* (Vic) s 327(7)(b).

[40] Alex Somlyay, 'The Use and Abuse of Parliamentary Privilege' (2002) (Spring) Vol 17(2), *Australasian Parliamentary Review,* 241-247.

of the law.[41] Such a perception can understandably lead to frustration among those who view this elevation as unjust.[42]

However, when seen in its proper context, privileges—including the protection of free speech without fear of retribution—are rooted in the need to equip Parliament with the powers it requires to perform its functions.[43] The determination of which powers are 'reasonably necessary' for Parliament to carry out its functions is inherently ambulatory,[44] turning on the context and needs of the period in which the judgment is made.[45]

An essential aspect of how parliamentary committees function is ensuring that witnesses have the protections required to offer complete and honest evidence.[46] Providing witnesses with parliamentary privilege to facilitate the giving of full evidence is, accordingly, both justified and desirable. Weakening these protections may deter witnesses from coming forward, ultimately diminishing the quality of evidence a committee receives.

When understood in this sense, parliamentary privilege is less about shielding members from legal consequences and more about ensuring that those who engage with parliament have the confidence to provide committees with the evidence they need to fulfil their investigatory functions. This is a principled motivation and one that underpins the effective functioning of parliamentary committees.

How should these duties be balanced if they come into conflict?

Parliament has a duty to safeguard its independence and ensure that it can function effectively.[47] When setting the child-safety standards, the legislature has not expressly

[41] Ibid.

[42] Ibid.

[43] Prebble v Television New Zealand Ltd [1995] 1 AC 321, R v Richards; Ex parte Fitzpatrick and Browne (1955) 92 CLR 157, Egan v Willis (1998) 195 CLR 424, UK Parliament, *Erskine May's treatise on the law, privileges, proceedings and usage of parliament* (25th edition, 2019).

[44] New South Wales Parliament, 'Parliamentary Privilege: Immunities and Powers of the House' in *New South Wales Legislative Council Practice*, (The Federation Press, 2008), 47, 57.

[45] Egan v Willis (1998) 195 CLR 424.

[46] UK Parliament, *Erskine May's treatise on the law, privileges, proceedings and usage of parliament* (25th edition, 2019) pt 6, ch 38, para 38.59.

[47] Odgers, J.R (James Rowland), 1914-1985, *Odgers' Australian Senate Practice as revised by Harry Evans* (14th ed, 2012), 41.

signalled any intention to displace the ordinary function of parliamentary privilege. Given that undermining parliamentary privilege is likely to have significant implications for Parliament's functioning, the absence of any express intention to limit it should be read as an expectation that the privilege continues to operate without disruption.[48]

But the legislature also has taken steps to unequivocally signal that everyone has a duty to protect children—and if it receives evidence that leads it to form a reasonable belief that a child is being sexually abused, it arguably carries an obligation, akin to the one it imposes on all adults through legislation, to report that belief to police. It remains unclear whether this is properly understood to be a legal obligation upon Parliament, a moral one, or both.

While not passing on information protected by parliamentary privilege to police may be legally permissible, it may nevertheless fall short of the moral standard the public expects Parliament to uphold. After all, Parliament is the very body that has established the obligation to report child sexual abuse to police and made it clear that these duties apply broadly to all adults. The messaging and language used by successive Parliaments have been unequivocal—the interests of vulnerable children are intended to prevail.[49]

> *It is important that this Parliament commits in a bipartisan way to ensuring that we have the best possible protections for our young people in Victoria. It is our duty of care to ensure we do everything we can, whether it is in a government organisation, a private organisation or a home, to put in place the best practices to ensure the protection of our children.*[50]

[48] *Coco v The Queen* (1994) 179 CLR 427, 437, Bruce Chen, 'The Principle of Legality: Issues of Rationale and Application' (2015) 41(2) *Monash University Law Review,* 330.

[49] For example, see Victoria, *Parliamentary Debates,* Legislative Assembly, 26 March 2014, 914, Robert Clark, Attorney-General; Victoria, *Parliamentary Debates,* Legislative Assembly, 6 May 2014, 1370, Brad Battin; Victoria, *Parliamentary Debates,* Legislative Assembly, 6 May 2014, 1372, David Morris; Victoria, *Parliamentary Debates,* Legislative Assembly, 6 May 2014, 1376, Natalie Hutchins; Victoria, *Parliamentary Debates,* Legislative Assembly, 6 May 2014, 1390, David Morris; Victoria, *Parliamentary Debates,* Legislative Assembly, 6 May 2014, 1390, Graham Watt; Victoria, *Parliamentary Debates,* Legislative Council, 8 May 2014, 1522, Gordon Rich-Phillips; Premier of Victoria, *Expanding Mandatory Reporting to Better Protect Kids'* (Web Page) (22 October 2018),< https://www.premier.vic.gov.au/expanding-mandatory-reporting-better-protect-kids>; Victorian Department of Justice and Community Safety, *Failure to disclose offence* (Web Page) < https://www.justice.vic.gov.au/safer-communities/protecting-children-and-families/failure-to-disclose-offence>.

[50] Victoria, *Parliamentary Debates,* Legislative Assembly, 6 May 2014, 1370, Brad Battin.

Accordingly, even though parliamentary privilege is underpinned by valid and important principles, it is worth questioning whether it is an adequate reason for Parliament to withhold information about child sexual abuse—or whether such conduct risks being perceived as a hypocritical abuse of institutional authority.[51] A moral tension arises because each of these responsibilities is underpinned by an important and principled rationale. A judgment about how to balance these obligations is inherently value-laden and will vary depending on what each person considers most important.

What responsibilities fall to staff members placed in this conflict?

The dominant understanding in Victoria is that committees are not subject to child-safety reporting obligations, as the material they receive falls under parliamentary privilege. However, these obligations remain somewhat inconsistently understood. In practice, this degree of uncertainty means that committee staff lack clear guidance about the legal and moral obligations they have should they be confronted with a submission containing allegations of child sexual abuse.

There is also the personal dimension to consider. Committee staff may experience their own moral discomfort when faced with evidence containing allegations of child sexual abuse. Focusing solely on legal obligations risks overlooking this moral element, as some individuals may feel a strong personal conviction that such information *should* be reported to police, regardless of the legal position. This internal tension—between what the law may permit and what one's conscience demands—can create genuine moral strain for staff who do not want to feel complicit in withholding information that could prevent harm.

In circumstances where clear institutional guidance is lacking, the burden may fall onto individual staff to determine, on an ad hoc basis, how to respond to information relating to child sexual abuse. This is not only poor practice but also increases institutional risk, as parliamentary staff may act without the Parliaments oversight or support. Together, these points make clear that Parliament should establish firm guidance, so that staff are not left to navigate such serious matters alone.

[51] To read more about how parliamentary workplaces should model the standards they set, see the Australian Human Rights Commission, *Set the Standard: Report on the Independent Review into Commonwealth Parliamentary Workplaces* (Report, November 2021), 12, 221.

PARLIAMENT HAS AN OBLIGATION TO GUIDE STAFF IN MANAGING EVIDENCE CONTAINING ALLEGATIONS OF CHILD SEXUAL ABUSE

To ensure that committee evidence containing allegations of child sexual abuse is managed appropriately, it is important that Parliament provide staff with clear and reliable guidance. Greater certainty for staff also helps ensure that sensitive evidence is handled appropriately and consistently across committees.

Without clear institutional direction, staff may take actions that inadvertently violate legal obligations or unintentionally erode the protections afforded by parliamentary privilege. Institutional guidance helps minimise this risk, as such guidance is generally developed with legal input and after substantial reflection.

Another risk lies in establishing policy after the fact, as such policy may contradict the expectations held by those who submitted evidence. One contributor may expect their disclosure to trigger a report, whilst another may rely on parliamentary privilege to ensure confidentiality. Contributors need certainty about how their evidence will be handled, and committees take on significant risk when this is determined after the evidence has already been provided. Institutional guidance ensures committees can set clear expectations for contributors from the outset.

A lack of institutional direction may shift the burden onto individual staff members, who then must grapple with this tension on their own. This can create anxiety about making the 'wrong' decision or lead to paralysis, where no action is taken for fear of error. Institutional guidance can ease staff stress by clarifying the actions required when particular evidence is received.

Multiple committees are likely to encounter comparable challenges over time. An absence of institutional direction risks producing inconsistent responses, as some allegations may be reported whilst others are overlooked, creating further confusion for staff. Institutional guidance promotes shared organisational learning and prevents each case from being managed in a vacuum.

Perhaps most importantly, the absence of institutional guidance creates a real risk that reports of child sexual abuse may be lost in the process, or that delays and confusion in responding to allegations may result in inaction that leaves a child exposed to ongoing harm. Clear institutional direction ensures that committee staff can act promptly when required or expected to do so.

CONCLUSION

Victoria's child-safety reporting framework makes it clear that passing on information to protect children from sexual abuse is a duty grounded in both law and morality. Yet should allegations of child sexual abuse arise in submissions to parliamentary committees, it is not clear how this duty to report interacts with parliamentary privilege. Although it is likely that parliamentary privilege exempts such material from reporting requirements, not reporting child sexual abuse to police can create moral tensions – particularly given Parliament's role in setting the reporting standards that the wider community are bound by. Parliamentary committee staff may need to balance complex legal requirements with personal moral concerns, in circumstances where guidance is not always clearly defined. This article argues that to protect children, retain public confidence, and properly support its staff, Parliament should establish clear and centralised guidance for dealing with evidence that alleges child sexual abuse. This will ensure that parliamentary privilege continues to serve its principled purpose without inadvertently undermining child-safety objectives or leaving staff to navigate these serious matters alone.

Book Reviews

Unparliamentary: Tales from Canada's Colourful Parliamentary Past, by Charlie Feldman, 2026, AEVO Publishing, pp. 332, RRP $39.95 (USD/CAD), ISBN: 9781049805221

Sarah Moulds

Associate Professor in Law, Adelaide University

For those of us fascinated by legislatures, parliamentary procedure and the personalities that occupy our chambers, Charlie Feldman's *Unparliamentary* is a delight. Drawing on an impressive range of archival and historical sources, Feldman reminds readers that parliaments are not merely institutions of lawmaking and accountability. They are also profoundly human places where ambition, humour, error, eccentricity and occasionally outright chaos collide. It is a direct challenge to what Feldman describes as 'Ottawa's reputation for being soul-suckingly unfun'[1] and loving tribute to the lives of those who live and work in and around Canada's Parliament.

A self-described parliamentary nerd, Feldman has spent much of his professional career studying, supporting and working within Canada's parliamentary institutions. His experience spans the Senate, the House of Commons and the Library of Parliament, giving him a rare perspective on both the formal workings and informal culture of Parliament. He also has experience as Legislative Counsel with Canada's Department of Justice and he has also served as Parliamentary Counsel to the Senate, President of the Canadian Study of Parliament Group, a parliamentary analyst and a parliamentary assistant. Educated at McGill University, where he completed a Master of Laws degree, Feldman has further broadened his parliamentary expertise through placements with the United States Congressional Research Service, the US House of Representatives and, more recently, the Scottish Parliamentary Counsel Office. This combination of scholarly interest, practical experience and genuine enthusiasm for parliamentary institutions is evident throughout *Unparliamentary*. The book is meticulously

[1] Charlie Feldman, *Unparliamentary: Tales from Canada's Colourful Parliamentary Past* (AEVA / University of Toronto Press, 2025), p. 267.

researched, but it also works as an insider's guide to the peculiar traditions, characters and unexpected episodes that make parliaments such endlessly fascinating places. And I am very pleased to be able to personally attest to this enthusiasm for visiting legislatures around the world (having had the pleasure of bumping into Charlie in Oxford and New Zealand!), which, combined with his strong opinions on parliamentary gift shops, only reinforces the guarantee that this is a book written by someone who truly delights in the world of parliament.

Covering the period from Confederation to the present day, Feldman explores the less formal side of Canada's national legislature. The book chronicles fights between parliamentarians, procedural controversies, scandals, protests, practical jokes, public demonstrations and administrative mishaps across both the House of Commons and the Senate. Many of the incidents once generated headlines but have since faded from public memory. Feldman's achievement lies in recovering these stories and situating them within the broader history of Canadian parliamentary life.

One of the book's great strengths is its ability to demonstrate that parliamentary institutions, often portrayed as rigid and ceremonial, can also be surprisingly absurd. For example, Feldman recounts the marathon voting session of 2012, where MPs sought ways to endure an all-night sitting. The scene included Play-Doh and stuffed animals, while a decade later, during extended proceedings in 2023, members were observed watching Netflix, knitting and signing holiday cards.[2] Such episodes reveal the practical realities of parliamentary life, where endurance can become almost as important as debate. The author's eye for detail is evident throughout the volume, transforming what might otherwise be curiosities into revealing insights about parliamentary culture.

The historical chapters are particularly engaging. A memorable example concerns the summer heat of 1914, when conditions inside Parliament became so oppressive that business was effectively disrupted. Attempts to dispatch the Sergeant-at-Arms were ultimately frustrated, 'but for a shady nook on such a hot day'.[3] The story captures both the practical limitations of early parliamentary life and the timeless tendency of legislators to seek comfort wherever they can find it.

Feldman is equally effective in recounting the history of protest on Parliament Hill. His discussion of the 1970 'Abortion Caravan' protest is especially illuminating. The demonstrators famously burned a placard containing the abortion provisions of the Criminal Code and 'staged

[2] Charlie Feldman, *Unparliamentary: Tales from Canada's Colourful Parliamentary Past* (AEVA / University of Toronto Press, 2025), pp. 90-91.

[3] Feldman, *Unparliamentary*, p. 112.

a decoy demonstration at the Centennial Flame on the Hill'.[4] Feldman details the ingenuity that underpinned the protest, including assistance from women working in government departments and MPs' offices who reportedly helped secure materials and forged passes. The episode highlights Parliament Hill not simply as a workplace for legislators but also as a powerful symbolic site for political activism.

Throughout the book, Feldman delights in uncovering unusual corners of parliamentary history. Readers learn, for example, that it is an offence to describe a location as being on Parliament Hill when it is not actually situated there.[5] This obscure point of law emerges in a story about an establishment that attempted to trade under the name 'Holiday Inn - Parliament Hill ' in Ottawa during the 1970s. Such anecdotes reveal the ways parliamentary institutions extend beyond politics into questions of identity, branding and public culture – tapping into the ever-present tension between the 'serious constitutional work of the legislature, and the more creative, dynamic expression of political representation that sits at the heart of parliament as 'the people's house'.

Among the most remarkable chapters is Part IX, titled 'It's a Bird, It's a Plane, It's a … Pick-Up Truck?' In 1982, Clifford Kemp arranged for a crane to suspend his Ford pick-up truck in the air near the Peace Tower as a protest against unemployment and economic conditions. The demonstration took place shortly before Question Period, with some newspapers reporting that the vehicle remained aloft for two hours. It is difficult to imagine a more dramatic illustration of Parliament Hill's capacity to serve as a stage for political theatre.

Throughout the book, chapters continue this blend of humour and surprise. Feldman recounts campaigns involving 242 plastic pigs placed on Parliament's lawns in 1995 by the Canadian Taxpayers Federation to protest proposed changes to MPs' pension arrangements.[6] He discusses niche children's books devoted to the Senate's resident owls,[7] and includes photographs of a strategically snapped naked G8 protester on Parliament Hill,[8] reminding us of the colour and passion that exists outside of the walls of Parliament as well as withing.

The book concludes with a reflection that neatly encapsulates its purpose. Feldman observes:

> *While Ottawa may be boring and frumpy, Canada's Parliament deserves credit for being interesting and - as I hope this book has shown - sometimes*

[4] Feldman, *Unparliamentary*, p 130.

[5] Feldman, *Unparliamentary*, p. 178.

[6] Feldman, *Unparliamentary*, p. 262.

[7] Feldman, *Unparliamentary*, p. 260.

[8] Feldman, *Unparliamentary*, p 265

> *entertaining! Parliament is so much more than a news clip of Question Period in the House. It's not just the legislative process and its three readings of a bill. It's a place of substance, sure, but it is also where wild, wacky, and wonderful things happen. It has an often fascinating cast, even if they sometimes go off script.*[9]

This sentiment captures the essence of *Unparliamentary*. Feldman does not seek to diminish Parliament by focusing on its eccentric moments. Rather, he demonstrates that these incidents form part of the lived history of representative institutions. Parliamentary democracy depends upon rules, traditions and procedures, but it is also inhabited by human beings who are capable of creativity, folly, mischief and protest.

Unparliamentary is a thoroughly enjoyable contribution to parliamentary history. Well researched, accessible and consistently entertaining, it will appeal to historians, political scientists, parliamentarians and anyone interested in the culture surrounding democratic institutions.

[9]Feldman, *Unparliamentary*, p 268.

Whitlam Right and Wrong: personal reflections edited by Michael Easson. Connor Court, 2026, xv+124 pp, RRP $34.95, ISBN: 9781923568815.

David Clune

David Clune is an Honorary Associate in the Department of Government and International Relations, University of Sydney

The anniversaries of the 1972 election and the Dismissal of the Whitlam Government[1] have seen the publication of a number of worthwhile books. This collection edited by Michael Easson is one of the more original. The aim is to encompass a broad range of personal reflections not only on the Dismissal itself but on Whitlam in general and his legacy for government and politics. Most of the essays are by people who lived through the events. Easson has chosen a wide range of well-qualified authors who bring contrasting, thought-provoking perspectives to their chapters. In his Introduction he notes:

> *This is not a celebratory, uncritical reckoning. Whitlam's memory and what his government and political battles meant for the nation, would be ill-served by mere sycophancy. The essays dwell on promise, disappointment, mistakes, grandeur and failure.*[2]

Easson poses the question: what was Whitlam? He aptly describes him as

[1] On 11 November 1975, after a series of dramatic events including a 1974 double dissolution and a budgetary supply crisis, the Gough Whitlam-led Labor government became the first – and only – federal government in Australian history to be dismissed by the Governor-General. See e.g. National Museum of Australia (4 December 2025). *Whitlam dismissal: 1975: Governor-General dismisses Whitlam government* available at <https://www.nma.gov.au/defining-moments/resources/whitlam-dismissal>. For the background to these events see also T Bramston, *Whitlam: the vista of the new* (HarperCollins, 2026) and S Prasser and D Clune eds *The Whitlam Era: A Reappraisal of Government, Politics and Policy* ((Connor Court, 2022).

[2] 'Introduction' in M Easson ed, *Whitlam Right and Wrong: personal reflections* (Connor Court, 2026), pp. 27-28.

> *both lodestar and crashed meteorite … creative and destructive, careful and impulsive, innovative and inspiring and reckless and disaster-prone … In office, Whitlam was transformational.*[3]

There is no doubt that Whitlam spectacularly crashed to earth like a flaming meteorite when he was dismissed by Governor-General Sir John Kerr in December 1975. Easson provides a good summary of the conflicting schools of thought on the validity of Kerr's actions:

> *Some scholars argue that [Kerr] acted within his reserve powers, while others contend that the Dismissal represented a profound breach of democratic norms. A middle ground is that Kerr was within his powers, but that he should have warned and counselled the Prime Minister of his thinking.*[4]

Frank Bongiorno and James Watson point out that the Dismissal has proved in retrospect not to be the apocalyptic event that many prophesised at the time:

> *The nation left the Dismissal behind, tucked away in the back of the wardrobe along with safari suits, flared trousers, wide collars and other unfashionable legacies of the 1970s … The idea that the events of November 1975 might carry deeper meaning for one's judgements about the quality of Australian democracy seemed to be less in evidence as the years passed.*[5]

Ironically, one of the reasons why the Dismissal proved to be less of a political watershed than many anticipated was because Bob Hawke and a new generation of Labor MPs saw the political disasters of the Whitlam Government as something to be avoided at all costs. Bongiorno observes that the nature of Australian democracy has not basically changed since the turbulence of 1975 and, in fact, its stability is now more popularly, if superficially, celebrated. He warns against a dangerous complacency: 'We would do well to regard it with a more critical eye, and a more careful vigilance, than has become fashionable'.[6]

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[3] 'Introduction' in M Easson ed, *Whitlam Right and Wrong: personal reflections*, p. 2.

[4] 'Introduction' in M Easson ed, *Whitlam Right and Wrong: personal reflections*, p. 15.

[5] 'The Dismissal from below' in M Easson ed, *Whitlam Right and Wrong: personal reflections*, p. 33.

[6] 'The Dismissal from below' in M Easson ed, *Whitlam Right and Wrong: personal reflections*, p. 50.

Ros Kelly gives a personal account of what it was like to be a young, carefree ALP activist in the Whitlam era:

> *The Dismissal stayed entrenched in my memory and helped mould my future political career. Looking back now I can see I wasn't motivated by outrage or disappointment although I obviously felt both, especially with the results of the [1975] election which Labor so dramatically lost. I think it was more the value of seeing what an ALP government could do if we were in power … However, without the reforms of Gough Whitlam, there would have been no pathway for a woman like me … The Whitlam Government was pushing a very exciting agenda at a hectic pace, and we really did feel that Australia was entering a Brave New World. A world I wanted to be part of.*[7]

One of the effects of the Whitlam years was the beginning of the transformation of the ALP from a party of blue collar workers to one dominated by tertiary educated professionals.

Rod Wise's chapter is a powerful personal polemic. He was Secretary of the Werriwa Labor Federal Electorate Council, Whitlam's seat, and local campaign manager for the elections of the 1970s. A by-election was held in 1973 in the seat of Parramatta which the ALP had come very close to winning in 1972. In an extraordinary lapse of political judgement, Whitlam had announced just before the poll that Sydney's second airport would be built at Galston in the Parramatta electorate. It was a bitter campaign marked by personal attacks on the Prime Minister. Unsurprisingly, the ALP lost by a significant margin. From his close association with Whitlam at this time, Wise believes the by-election defeat 'seriously undermined Whitlam's belief in himself as the spearhead of the modernising impulse to reform Australia'[8]. Although Whitlam was narrowly re-elected in 1974 he became 'a mere shadow of what he had been: the most effective opposition leader in living memory' (between 1967 and 1972), a tribute flowing from the synthesis of a uniquely comprehensive policy programme and his extraordinary capacity to engage with the broadest reaches of society. However, by the time of the Dismissal he was 'tired, exhausted by the turmoil of reckless and ill-disciplined ministers and the tribulations of governing'.[9]

Wise is one of those who is disillusioned with the modern ALP and nostalgic about the Camelot of the Whitlam era:

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[7] 'What November 11th in 1975 meant personally' in M Easson ed, *Whitlam Right and Wrong: personal reflections*, p69.

[8] 'Confessions of a Labor has-been' in M Easson ed, *Whitlam Right and Wrong: personal reflections*, p. 148.

[9] 'Confessions of a Labor has-been' in M Easson ed, *Whitlam Right and Wrong: personal reflections*, p. 148.

> *Today I look back on 50 years from the demise of the Whitlam government and find that our kids cannot even afford to buy their own family homes. There are now the Haves, the Have yachts, and the rest. How can Labor be satisfied with the non-egalitarian nation it now presides over? Today's Australia it is quite sobering to observe, is a long way from the optimism that Whitlam Labor once promised in those stirring days of distant memory.*[10]

In his chapter, David Kemp launches a swingeing attack on Whitlam and his record, describing it as 'one of the worst governments in Australia's history'.[11]

> *The record shows that Whitlam made fundamental errors in choosing his policy priorities, in his strategy of reform and in the design of major initiatives and his most ambitious reforms largely failed to achieve the outcomes he sought. Despite great ambition and even bolder claims, the Whitlam government became an example of how not to reform Australian policy to achieve improved economic opportunity, social justice, or a more democratic country.*[12]

Kemp argues that many of Whitlam's reforms built on the legacy of previous Coalition governments. The McMahon government effectively ended Australia's commitment of troops to the Vietnam war. Australia's engagement with Asia was begun by the Coalition's reopening of relations with Japan. Menzies largely dismantled the White Australia policy.

In terms of 'achievements', the Whitlam government's economic incompetence 'promoted inflation, increased joblessness, discouraged enterprise, made home buying more expensive, [and] stirred industrial conflict'.[13] Whitlam's commitment to empower ordinary Australians in the decision-making process was undermined by centralised power given to technocrats:

[10] 'Confessions of a Labor has-been' in M Easson ed, *Whitlam Right and Wrong: personal reflections*, p. 160.

[11] 'Whitlam and Menzies: reform legacies' in M Easson ed, *Whitlam Right and Wrong: personal reflections*, p. 80.

[12] 'Whitlam and Menzies: reform legacies' in M Easson ed, *Whitlam Right and Wrong: personal reflections*, p. 78.

[13] 'Whitlam and Menzies: reform legacies' in M Easson ed, *Whitlam Right and Wrong: personal reflections*, p. 84.

> *The strengthening of administrative capacity to over-turn decisions, was actually gifting power to non-elected officials, weakening the accountability of elected representatives.*[14]

In other key reform target areas:

> *Despite needs-based funding of schools, basic skills levels of disadvantaged students remained stagnant … Despite the grant of free access to public hospitals and subsidised medical care, health outcomes among the most disadvantaged remained relatively poor … Despite free universities, benefits flowed principally to higher income citizens.*[15]

Scott Prasser provides at first-hand a perspective rarely written about: a small family firm trying to cope with the Whitlam government's mismanagement of the economy. In essence, this was why Australians abandoned Gough in droves in 1975. Prasser concludes:

> *If Fraser hadn't stared down Whitlam, who knows where the Prasser family and so many others like us would have ended up. Fifty years later it's still a thought that brings a shudder.*[16]

One of Australia's leading constitutional scholars, Anne Twomey, explores the war-gaming by the Government and Governor-General before the Dismissal. Intensive research by the public service into the likelihood and ramifications of a dismissal concluded that

> *the Governor-General could dismiss the government and appoint another to advise an election in extreme circumstances, such as when the survival of orderly government was in real jeopardy as a result of the Senate refusing to grant supply. It noted that in such a case it was not possible to suggest rules or principles the Governor-General should apply.*[17]

The public service advising canvassed various options for dealing with such a situation. According to Twomey, Whitlam preferred to follow his own view that

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[14] 'Whitlam and Menzies: reform legacies' in M Easson ed, *Whitlam Right and Wrong: personal reflections,* p. 87.

[15] 'Whitlam and Menzies: reform legacies' in M Easson ed, *Whitlam Right and Wrong: personal reflections*, pp. 78-79.

[16] 'Saving the Prassers from Whitlam' in M Easson ed, *Whitlam Right and Wrong: personal reflections*, p106.

[17] 'War-gaming the Dismissal' in M Easson ed, *Whitlam Right and Wrong: personal reflections*, p135.

> *Kerr would do as Whitlam told him and was too weak to act otherwise. It was this flawed psychological assessment and Whitlam's excessive confidence in his own judgement which outflanked all the war-gaming and preparations by the public servants. Whitlam was just not interested in considering the views of others.*[18]

Kerr's lack of adequate war-gaming meant that the success of his dismissal plan was

> *dependent upon the unlikely series of events that Whitlam would go home to lunch, not tell his Senators of his dismissal, and that none of the Labor Senators would think to use parliamentary procedures to prevent Supply being passed by the Senate. The success of Kerr's action was a consequence of good fortune, rather than good planning.*[19]*.*

Twomey concludes: 'Neither Whitlam nor Kerr proved to be the master tacticians they seemed to believe they were, leaving events to play out uncontrolled'.[20]

[18] 'War-gaming the Dismissal' in M Easson ed, *Whitlam Right and Wrong: personal reflections*, p. 135.

[19] 'War-gaming the Dismissal' in M Easson ed, *Whitlam Right and Wrong: personal reflections*, p. 142.

[20] 'War-gaming the Dismissal' in M Easson ed, *Whitlam Right and Wrong: personal reflections*, p. 142.