Balancing Privilege and Protection: Parliamentary committees and child-safety reporting

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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.