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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

OFFENCES AGAINST THE PARLIAMENT BILL 1981

EXPLANATORY MEMORANDUM

(Circulated by Senator John Button)

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The Bill borrows heavily from a Bill first drafted in 1910 and again prepared for introduction by the then Attorney-General, John Latham, in 1934.

In the first drafts of this Bill the more serious offences outlined in clauses 7 to 11 were directly transcribed from the Latham Bill. In the final version of the Bill as circulated the language has been modernized.

In addition a number of other breaches of privilege are dealt with in clauses 12 to 22.

All offences outlined in the Bill have been held to be breaches of privilege by Houses of Parliament in the past. They range from the relatively trivial, e.g., service of writs within the precincts of the House - cl. 12, to possibly serious offences such as interfering with witnesses and molesting members of Parliament.

Cl. 4(2) provides that if an act is an offence under the Bill, a House of Parliament may not proceed against such acts except according to the procedures set down in the Bill.

This means that the House cannot punish such acts, but may refer the matter to a court for trial, and, if the accused is found guilty, punishment.

In deference to the views of the Select Committee of the British House of Commons on Parliamentary Privilege of 1967, no attempt has been made to exhaustively codify offences against Parliament, although the offences created in the Bill range fairly widely over the old ambit of 'contempt of Parliament'.

Accordingly there may be a residuum of offences against Parliament which are not covered by the Bill. The Parliament remains free to decide what those further offences are.

It may punish in such cases but cannot, without referring the matter to a court, imprison a person - cl. 4(3).

This would enable the Houses to retain exclusive jurisdiction over their own precincts by way of orders to their officers.

Cl. 4(4) enables a court inquiring into an offence, or other non-compliance with the Bill, to examine records of the proceedings of Parliament, but only so far as is necessary for making its determinations.

Offences under clauses 7 to 22 include:

- Cl. 7 Interference with Parliament
- 8 Improper influence of members
- 9 Molestation of members
- 10 Disturbing Parliament
- 11 Defaming Parliament or its members
- 12 Unauthorised service of writs in the precincts of a House
- 13 Falsely reporting proceedings
- 14 Disobedience of orders of a House
- 15 Obstruction of orders of a House
- 16 Interference with a witness
- 17 Molestation of witnesses
- 18-21 Failure of witnesses to cooperate
- 22 Unauthorised publication of in camera evidence

Cl. 23 creates the mechanism for reference to a court.

(2) A House may pass a resolution requiring the Attorney-General to institute proceedings.

(3) Whereupon the Attorney-General will be required to do so.

Trial for an offence under the Bill will go to a court with federal jurisdiction as set out in Cl. 24.

Cl. 23(1) & (4) The trial will be on indictment unless the Attorney-General, considering the seriousness of the offence, permits summary conviction and the accused consents.

Cl. 25 Maximum Penalties

Cl. 25(1) 1 year imprisonment or \$10,000 fine on indictment OR 6 months imprisonment or \$1,000 fine on summary conviction.

Cl. 25(3) A House may lower the maximum penalties in any particular case. This is to ensure that, if it wishes, a House can guard against a court imposing a heavier penalty than the House would have imposed itself.

Cl. 25-28 provide for some semblance of natural justice to be given by a House inquiring into a possible offence against it.

Cl. 26(1) provides that in investigations into breaches of privilege (whether under the Bill or not) a House cannot call witnesses but it may do so in the less intimidating context of a committee.

Cl. 26(2) requires any such committee to accord a witness various basic rights, most of which are based on the requirements of natural justice, all of which are accorded in normal judicial proceedings.

- (a), (b) the right to notice of the hearing and the nature of the hearing.
- (c) a right to be heard in public session.
- (d) the right to counsel.
- (e) the right against self-incrimination.
- (f) the right to know the evidence against him.
- (g) the right to cross-examine his accusers.

Cl. 27 provides any person whose conduct is called in question with a right to be heard in his own defence.

Cl. 28 Seeks, as far as is practicable, to prevent a committee from being biased, and to prevent personally interested members from taking part in a vote in a House on a resolution to direct the Attorney-General to initiate proceedings.

Cl. 29 As there can be no real safeguards without sanctions for their breach, Cl. 29 provides that where the Bill is not complied with the High Court of Australia may require compliance with the Bill.

Under a written Constitution there is no conflict between the concept of Parliamentary Sovereignty and supervision by the High Court.

Any order made by the court for compliance with the Bill would be on the authority of the Parliament as expressed in this legislation.

The Parliament would remain competent to amend or repeal the legislation at any time.

Accordingly Parliamentary sovereignty would not be at risk.

What arguably could be novel is that the High Court could require each House to behave according to law set down by the Parliament in its legislation.

Such a requirement would be in aid of - rather than in derogation of - the principle of Parliamentary Sovereignty.

Cl. 31(1) & (2) permits regulations to be made subject to the approval of both Houses.

