

Parliamentary Privilege Bill

Government Bill

As reported from the Privileges Committee

Commentary

Recommendation

The Privileges Committee has examined the Parliamentary Privilege Bill and recommends that it be passed with the amendments shown.

Introduction

This bill seeks to implement the recommendations we made in our 2013 report on the *Question of privilege concerning the defamation action Attorney-General and Gow v Leigh* (2013) AJHR I.17A, including recommendations restated in that report from various earlier Privileges Committee and Standing Orders Committee reports.

While the bill responds to specific recommendations we made in the context of particular questions of privilege, its coverage is broader than the particular issues raised by the events leading to the referral of those individual questions. In accordance with our recommendations in the *Question of privilege concerning the defamation action Attorney-General and Gow v Leigh* report, the bill seeks to restore and reaffirm understandings of the scope of aspects of parliamentary privilege, and to consolidate and modernise existing legislation.

Underpinning this legislation is the principle of comity: the mutual respect the legislature and the judiciary must have for each other in

a functioning democracy. The important roles and rights of both the courts and Parliament must be protected; this bill seeks to help clarify areas in which the authority of these institutions meet, with a view to strengthening the existing respectful relationship.

The importance of this bill for our country and parliamentary democracy should not be understated. Once enacted, it will form part of our constitutional framework. It will sit alongside the Constitution Act 1986, which contains provisions relating to the Sovereign as New Zealand's Head of State, and to the three branches of government in New Zealand. The legislation will set the framework for the operations of our legislative branch of government, by affirming the key safeguards and immunities that Parliament (and particularly the component of it that is the House of Representatives) possesses to preserve its independence and to enable it to carry out its functions.

Parliamentary privilege is one of the building blocks of our democracy; it is the cornerstone of an effective Parliament, and protection of parliamentary privilege safeguards democracy itself. Parliamentary privilege ensures that we, the people's representatives, can debate and deal with the issues of the day freely and frankly, without fear of coercion or punishment, and without concern that matters of accountability will be adjudicated by bodies outside the House. Protection of parliamentary privilege ensures that our democracy remains healthy and strong.

Parliamentary privilege evolved from a time when the repercussions of participation in parliamentary proceedings could be serious; members' participation could be (and often was) challenged in the Sovereign's courts as sedition. While such threats are long past, they are so largely because of the development of the protections afforded to Parliament by parliamentary privilege.

The long-protected group of privileges, immunities, and powers which form parliamentary privilege belong to Parliament itself, not its members. While it is inevitable that the members who make up the Parliament also experience the benefit of these privileges, we acknowledge that these privileges do not exist for the benefit of the members personally. We note that others who interact with Parliament, such as media and members of the public or officials, may also benefit from the protection of parliamentary privilege. We understand that with these privileges comes obligation; we must be

circumspect in the use and application of these privileges, and must be mindful of their source and purpose when seeking to invoke them. The Bill does not set out to amend directly, or limit or detract from, any other operation of Article 9 of the Bill of Rights 1688, the first formal instrument from a Parliament protecting the freedom of speech and debates or proceedings in Parliament. We note that the bill does not seek to codify comprehensively, or to replace entirely with legislation, every aspect of parliamentary privilege. It is particularly concerned with one aspect: Parliament's freedom of speech, and the associated matter of communicating proceedings in Parliament to the public.

We recommend a number of amendments to strengthen and streamline the bill. Our commentary covers the major amendments we recommend. It does not cover minor or technical amendments.

Purpose and scope of the bill

We recommend that the bill be restructured into five parts. The bill as introduced is cast in two parts: one which deals with substantive provisions, and the other with savings provisions, related amendments, and repeals. Our suggested five-part structure organises the core elements of the legislation more clearly, with Part 1 to consist of general overarching provisions (purpose and interpretation), and new Part 1A the fundamental provisions relating to parliamentary privilege; new Part 1B setting out protections for communication of proceedings in Parliament, and Part 1C miscellaneous but important other provisions relating to parliamentary privilege (such as powers of the House). The scope of the final part of the bill (Part 2) would remain largely the same. Much of Part 1 of the bill as introduced would be simply shifted and restated elsewhere, unchanged, in this restructuring. In our view the restructure, together with some of the key amendments discussed below, reflects better the role this legislation will play as a new principal Act, which will form part of the fabric of our constitutional framework.

The restructure we suggest, along with many of the key amendments we propose, reflects our desire that the bill be of general application in those areas of privilege addressed by the bill as introduced, rather than simply a direct response to specific events leading to the referral of particular questions of privilege. We expect the bill to provide

guidance on how to deal with the kinds of issues that may come up in relation to, for example, statements which effectively repeat proceedings in Parliament. To simply respond directly to the approach taken by a court in any one particular case, setting out provisions according to issues rather than thematically, might not achieve the coverage we intend.

Interpreting the legislation

Comity is a key principle that underpins parliamentary privilege. It is about reciprocal courtesy and respect between the judiciary and the legislature: the mutual respect and restraint that is essential in maintaining the constitutional relationship between the two, and the independence of each.

We note that the principle of comity is not an isolated principle asserted by Parliament. Rather, comity—and the rationale behind it—has been expressed most eloquently and confidently by the courts themselves. In *Pickin v British Railways Board*,¹ Lord Reid cited comity as a basis for considering questions relating to the actions of Parliament, saying that “for a century or more both Parliament and the courts have been careful not to act so as to cause conflict between them”, and that (regarding an investigation into how and why Parliament enacted a certain piece of legislation), “the whole trend for over a century is clearly against any such investigation”. In the same case, Lord Simon of Glaisdale stated:

It is well known that in the past there have been dangerous strains between the law courts and Parliament—dangerous because each institution has its own particular role to play in our constitution, and because collision between the two institutions is likely to impair their power to vouchsafe those constitutional rights for which citizens depend on them. So for many years Parliament and the courts have each been astute to respect the sphere of action and the privileges of the other—Parliament, for example, by its sub judice rule, the courts by taking care to exclude evidence which might amount to infringement of parliamentary privilege.

Our proposed new clause 3A emphasises the importance of understanding context when dealing with questions relating to parliamentary privilege or proceedings in Parliament. It would provide clear

¹ [1974] UKHL 1.

direction that the Act must be interpreted so as to promote the purposes we set out in the legislation (both the purposes of the bill, and the purpose of parliamentary privilege; see clause 3A(1)(c)). In addition, new clause 3A would ensure that, along with the purposes set out in the bill, the principle of comity was always uppermost in the minds of decision-makers interpreting and applying this legislation. We recommend changes to the purpose clause (clause 3). The original purposes set out in the bill as introduced would not be lost, but would become subsidiary purposes (new clause 3(2)), supplementing the main purposes (new clause 3(1)), which would be to reaffirm and clarify the nature, scope, and extent of the privileges, immunities, and powers exercisable by the House, and to ensure adequate protection from legal liability for communication of, and of documents relating to, proceedings in Parliament. This is not a policy change; it was always the intention that a Parliamentary Privilege Bill responding to our original recommendations should do these things. While the bill as introduced did indeed include provisions to do so, it did not contain these high-level statements. We consider these statements important to set the scene for anyone who needs to interpret and apply the legislation.

We also recommend a revision of clause 6, which sets out the purpose of parliamentary privilege. Our changes (in new clause 6) would help to make clear the underlying justifications for parliamentary privilege; the privileges, immunities, and powers in the bill exist to uphold the integrity of the House as a democratic legislative assembly, and to secure the independence of the House, its committees, and its members, in the performance of their functions. Without the protection of parliamentary privilege, it has been suggested that “parliaments probably would degenerate into polite but ineffectual debating societies”.²

Interaction with defamation law: removal of defamation concepts (adequacy of protection)

We recommend amending the bill by removing clauses 9 to 13, and clause 33(2), which propose specifying particular parliamentary matters that are to be protected by absolute privilege against any kind of

² Campbell, Enid, *Parliamentary Privilege in Australia*, Melbourne, 1996, p.28.

criminal or civil liability. This recommendation is not made because we wish to reduce the level of protection available under Article 9 of the Bill of Rights 1688 regarding any of the specified matters, or because we do not consider these matters to be protected against liability in defamation by absolute privilege. Rather, we consider that introducing defamation concepts into this legislation is confusing and unnecessary, and that the existing absolute privilege protections against liability in defamation are best left in the Defamation Act 1992 itself.

We are particularly concerned that incorporating new absolute privilege protections modelled on defamation concepts into parliamentary privilege legislation might inadvertently extend the scope of parliamentary privilege, particularly to providing protection for statements made outside Parliament other than those that communicate accurately or effectively repeat proceedings in Parliament. We wish to restore the scope and understanding of parliamentary privilege to its proper balance, as it was in law before certain modern New Zealand courts' decisions, such as those in *Attorney-General and Gow v Leigh*,³ and *Buchanan v Jennings*.⁴ Extending the protection of parliamentary privilege into uncharted and inappropriate territory—by adopting broad new absolute privilege protections against all liabilities—was never our intent.

We suggest instead retaining and strengthening the more orthodox approaches to parliamentary privilege taken elsewhere in the bill. For example, we recommend taking only an evidential prohibition approach regarding liabilities from statements that effectively repeat statements made in proceedings in Parliament (commonly known as “effective repetition”), and relying on reinforced provisions for stays of court or tribunal proceedings in respect of specified authorised communications of proceedings in Parliament.

We consider that these traditional approaches, together with retaining the pertinent provisions of the Defamation Act in that Act itself (rather than in the new legislation), should provide sufficient protection. In some of the reinstated clauses regarding communicating proceedings in Parliament (new subpart 2 of Part 1B), we recommend replacing all references to “qualified privilege” with “qual-

³ [2011] NZSC 106, [2012] 2 NZLR 713 (SC).

⁴ [2004] UKPC 36, [2005] 2 All ER 273 (PC).

ified immunity”, to reduce the potential for confusion with well-known defamation concepts and principles. Our other recommended amendments regarding the evidential prohibition for effective repetition statements are discussed below.

Our proposed new clause 20(2) would also make it clear, for the avoidance of doubt, that the Defamation Act’s absolute privilege and qualified privilege provisions would remain unaffected by the provisions of this bill, except where our recommended new qualified immunity provisions (subpart 2 of Part 1B, discussed below) would replace the qualified privilege provisions in clauses 1 to 3 of Schedule 1 of the Defamation Act (or where clause 33 aligns terminology).

Exercisable

We recommend defining the new term “exercisable” (clause 4), and using it as a key term throughout the legislation when referring to the privileges, immunities, or powers of the House (or of the House of Commons), its committees, or its members. The legislation as introduced uses for this purpose the conventional terminology, “held, enjoyed, and exercised”, as used in section 242(1) of the Legislature Act 1908. This bill seeks to repeal the Legislature Act 1908, and replace its provisions.

Our use of this new, defined term is to simplify expression only, so is not intended to change what is protected, or to prevent continued application of the legal precedents associated with these terms: it is simply an effort to modernise and rationalise the current legislation. We are confident that the extensive history and body of precedent associated with the terms “held, enjoyed, and exercised” would not be lost, if these terms are included in the definition of “exercisable”, as we recommend.

Protection afforded by parliamentary privilege

Our new subpart 2 of new Part 1A would replace clause 8 of the bill as introduced. This subpart sets out how this legislation relates to Article 9, and also defines proceedings in Parliament. Making sure that these provisions are clear, simple, and easy to understand is crucial if the bill is to achieve the purpose we intend. Our changes would disaggregate the key components of clause 8 into eight separate clauses,

and simplify and modernise the language so that the provisions were as unambiguous as possible.

Our new clauses 8A to 8H reaffirm and clarify Article 9 of the Bill of Rights 1688, in accordance with the main purpose of the bill (set out in clause 3(1)(a)). They also (in accordance with the subsidiary purposes in clause 3(2)(b), (c), and (d)) would

- make clear what “proceedings in Parliament”, as used in Article 9, means, and in particular seek to alter the law in the decision in *Attorney-General v Leigh*
- stop evidence being offered or received, questions being asked, or statements, submissions, or comments made, about proceedings in Parliament, to inform or support “effective repetition” claims and liabilities in court or tribunal proceedings (exemplified by the decision in *Buchanan v Jennings*).

The provisions we recommend broadly follow section 16 of the Parliamentary Privileges Act 1987 (Australia). Like this model, they would not replace, but declare the effect of, Article 9.

Clauses 8A to 8H require Article 9 to be taken to have a specified effect. However, they are not intended to directly override, or amend, Article 9. Rather, the provisions we suggest would sit alongside Article 9, for reference should clarification be needed in the areas covered by these clauses.

Interaction of this legislation with Article 9 of the Bill of Rights 1688

One of the main purposes of this bill (clause 3(1)(a)) is to reaffirm and clarify the nature, scope, and extent of the privileges, immunities, and powers of the House. One of these privileges, freedom of speech, is set out in Article 9 of the Bill of Rights 1688 (which is part of the laws of New Zealand, through the Imperial Laws Application Act 1988).

Article 9 says:

Freedom of speech

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.

Our new clause 8A would require Article 9 to be taken to have the effect specified in the subpart, but also makes it clear that this would not stop any other effect of Article 9 beyond the matters dealt with

in the subpart. It also makes it clear that there would be times where the Article 9 rights were overridden by specified Crimes Act 1961 offences.

Impeaching or questioning

While we have taken a general approach of suggesting simpler and modernised drafting, we recommend continuing to reflect directly some of the wording of Article 9 (particularly: “That... proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament”). Our new clauses 8C to 8F would make clearer what is covered or excluded by the term “impeaching or questioning” in respect of proceedings in Parliament.

We considered whether it might be useful to replace references to “impeaching or questioning” with more current terminology, but wanted to avoid the risk that the scope of parliamentary privilege protected by Article 9 would be broadened or narrowed, or that the courts might interpret any change in terminology as a shift away from the concepts established since the 17th century.

While these terms may today be considered synonymous, at the time Article 9 was drafted they probably reflected subtle differences of meaning. *Erskine May* says, “Use of the term ‘impeached’ in the context of the defence of parliamentary freedoms goes at least as far back as the Commons Protestation of 1621, where it appears in a very broad context along with ‘imprisonment...molestation, censure’.”⁵ Today, we understand freedom of speech to be “impeached” where there is an attempt to make a member or other person liable in criminal or civil proceedings on account of what they have said or done in Parliament. Freedom of speech is “questioned” when there is an attempt to use what is said or done in Parliament in criminal or civil proceedings in a way that involves a critical examination of that statement.⁶

While Article 9 excludes evidence where the reason the evidence is offered or admitted is to “impeach or question”, it does not prevent evidence being used—with no impeaching or questioning—to estab-

⁵ Malcolm Jack, *Erskine May’s Treatise on the Law, Privileges, Proceedings and Usage of Parliament*, 24th ed., pp. 233–234.

⁶ David McGee, *Parliamentary Practice in New Zealand*, 3rd ed, p. 625.

lish that something was said or done in Parliament as a matter of fact.⁷ Our new clause 8G is intended to recognise that the bill would not change this established position.

Definition of proceedings in Parliament

We recommend amending the definition of proceedings in Parliament (new subclauses 8B(3) and (4)), to make it clear that proceedings include matters which relate to the transacting of any “reasonably apprehended” business, and to ensure that it would be clear that necessity is not the appropriate test to apply when determining what might be a proceeding in Parliament. To avoid any doubt on this last point, we also recommend inserting new subclause 8B(7), to ensure that our definition applied despite any contrary law, including the decision made in *Attorney-General and Gow v Leigh*.⁸

This definition is a key provision of the proposed legislation: an understanding of what a proceeding in Parliament is underpins many of the operative protection provisions in the legislation. It was always the intention that this legislation would reverse the shift in understanding, and the reduction in the scope of parliamentary privilege, resulting from the decision made in *Attorney-General and Gow v Leigh*. Our amendments make this irrefutably clear.

Our proposed definition recognises that much of the vital business of Parliament is transacted away from the floor of the House, or in reasonable anticipation of parliamentary business, and it is critical that privilege apply to such proceedings. Whether or not particular words, actions or documents are covered will require an examination of the particular matter and the occasion.

We discussed at length the types of matter we consider are “incidental to” the transacting of the business of the House or of a committee, and therefore covered by the legislation. We expect that any words or acts sufficiently connected to, or occurring in conjunction with, the business of the House or its committees are covered. We consider that advice provided to Ministers in preparation for reasonably expected questions in the House, as occurred in regard to *Attorney-General and Gow v Leigh*, are proceedings in Parliament under this definition.

⁷ Philip Joseph, *Constitutional and Administrative Law in NZ*, 4th ed., pp. 437–438.

⁸ [2011] NZSC 106, [2012] 2 NZLR 713 (SC).

Beyond this, while coverage will need to be determined case by case, we note (without intending to limit the definition) that we expect matters covered to include preparation associated with questions for oral or written answer or preparation of notices of motion for lodging by a member, the preparation of evidence for a select committee by an individual or organisation, the preparation or the submission of a petition from an individual to a member for presentation to the House, and the preparation of documents for a member for use in a debate or for raising questions in the House. Other matters covered by the definition might include a member's speech notes regarding a document tabled in Parliament, or written communications between a member and a Minister or a Minister and their department regarding an issue under discussion (or a document which is later tabled) in the House. We note that the main subclauses defining a proceeding in Parliament (clauses 8B(1) and 8B(2)) would reinstate the wording of clause 8(2) of the bill as introduced. This expressly draws on the comparable provision in the Australian Parliamentary Privileges Act 1987.⁹ We heard from our Australian Senate counterparts that this provision has served them well, and there has been no evidence of either limitation caused by the definition, or a need to expand the items specified. In view of this experience, we consider that the definition should also be satisfactory in New Zealand. We note an additional benefit of retaining this direct reflection of the Australian legislation; it should ensure that their body of case law remains relevant to the New Zealand context.

Effective repetition

We recommend the addition of new paragraphs (d) and (e) to clause 8C (which otherwise reinstates clause 8(3) of the bill as introduced), to strengthen the evidential prohibition for proceedings in Parliament. These new paragraphs would replace clause 8(4) of the bill as introduced, and would prevent proceedings in Parliament being relied upon to prove or disprove facts necessary to establish liability in court, or otherwise being used to resolve, support, or resist court proceedings.

Our recommended new clause 3(2)(d) (which refines clause 3(1)(e) of the bill as introduced) emphasises the strength of this prohibition,

⁹ Section 16(2).

by making it clear that the prohibition (on use of proceedings in Parliament to inform or support “effective repetition” claims and liabilities in proceedings in a court or tribunal) is a subsidiary purpose of the Act.

At the heart of these changes are the protections we consider necessary to address the issues raised in *Buchanan v Jennings*.¹⁰ The principal issue in this case was the extent to which something said by a member inside Parliament could be used in a defamation claim on the basis of an effective (as opposed to actual) repetition of the parliamentary statement outside the House. In summary, the case established that, where a statement was made that the court considered to be effectively repeating a parliamentary proceeding, the proceeding itself could become evidence. In our 2013 report, we recommended abolishing this doctrine of effective repetition.

The bill as introduced takes a “belt and braces” approach to addressing this issue, by including a statement in clause 10 that effective repetition statements are protected by absolute privilege, and also by establishing an evidential barrier preventing the use of proceedings in Parliament in court proceedings (clause 8(4) of the bill as introduced). We recommend the deletion from this legislation of all provisions relating to absolute privilege, including clause 10. Our preferred approach to dealing with effective repetition is rather to ensure that the evidential barrier against a court using proceedings in Parliament is simple, clear, and complete. We consider that clause 8C, with our proposed additions of paragraphs (e) and (d), would achieve this purpose.

Confidential proceedings

We recommend replacing all references to “private evidence” with “advice, evidence, or otherwise” in our new clause 8D (which replaces 8(5)(a)(i) and 8(5)(b)(i) from the bill as introduced). This change makes it clear that it is not just evidence received in private that a court could not require to be produced; all information which is confidential to the House or a committee is protected from disclosure, unless the House or committee has communicated the material to the public or authorised its communication to the public.

¹⁰ [2004] UKPC 36, [2005] 2 All ER 273 (PC).

Use of proceedings in interpreting legislation or to establish historical event or other fact

We recommend the insertion of new clauses 8E and 8G, so that a proceeding in Parliament could be used only for the purpose of interpreting legislation, or to establish a relevant historical event or fact, provided there was no impeaching or questioning of the proceedings in Parliament. New clause 8E would allow a court to examine proceedings in certain circumstances, for example by referring to Hansard or committee reports to ascertain the will of Parliament in enacting particular legislation, if faced with a question about the proper interpretation of that legislation. We consider such a reference entirely correct and not a breach of privilege.

Communication of proceedings in Parliament

Our recommended new Part 1B deals with communication of proceedings in Parliament. It would simplify the framework for protecting publishing and broadcasting of parliamentary proceedings, by replacing clauses 11 to 13 and 15 to 16 of the bill as introduced with a single new clause 15. New clause 15 provides for a stay of court or tribunal proceedings¹¹ that are commenced on the basis of a proceeding in Parliament, or a document related to a proceeding in Parliament, communicated under the authority of the House (such as broadcasts made under the authority of the House). This clause would also provide for a stay of court or tribunal proceedings for which a copy of such a document was the basis.

Subpart 2 of this new Part deals with qualified immunity. Qualified immunity would be available as a defence for fair and accurate reports of proceedings in Parliament, or extracts or summaries of documents published under the authority of the House or related to proceedings in Parliament (clause 19), and for delayed communications of proceedings not made under the authority of the House (such as re-broadcasts of Parliament TV) (clause 18), providing that the defendant did not abuse the occasion of communication (for example, by acting in bad faith or with a predominant motive of ill-will) (clause 17).

¹¹ A stay of proceedings is an order of the court or tribunal (in civil and criminal procedure) which halts any further legal process.

Definitions of communications and communication to the public

We recommend that the terms “communication” and “communication to the public” be defined (clause 4), and that they be used to rationalise the legislation, and obviate the need for use of multiple distinct terms such as parliamentary papers, authorised parliamentary papers, broadcasts, and statements. Consequently, we recommend the removal of these terms throughout the bill, and the deletion of these extraneous definitions.

Our proposed new definition of communication is designed to future-proof this legislation, by covering in a technology-neutral way all communications in any form. Regarding current technology, it is expected to capture delivery of a printed copy of a document, as well as transmission of an electronic copy of a document (whether by email, internet posting, or the like). It would also cover radio broadcasts, television broadcasts, webcasts, and podcasts. The definition also captures all transmissions regardless of the role or purpose of the transmitter; those who act solely as distributors, those who are reproducers of content, and suppliers of transmission services are all covered by the amended bill.

Hansard

In suggesting our amendment to remove the definitions of parliamentary paper, or an authorised parliamentary paper, from this bill, we recognise that what such “papers” might comprise is a matter for the House to determine. Likewise, the production of Hansard and the saving of approved forms or rules for Hansard must come under the exclusive cognisance of the House. Accordingly, we recommend the deletion of clauses 14 and 32, and we leave any rules needed in this regard in the hands of the House itself.

Process for issue of a certificate to stay proceedings

New subclauses 15(2) to 15(5) set out the process to be followed for a stay of proceedings to be granted. These new subclauses reflect modern court and tribunal practice and procedure. An application for a certificate would be made to the Speaker of the House of Representatives; and where the Speaker granted a certificate it would be required to state the nature of the communication for which the certificate was granted (see clause 15(2)(a)), and copies of each docu-

ment relating to the communicated proceedings in Parliament or the authorised parliamentary communication in question would have to be appended to the certificate. Once a certificate was granted, the applicant could apply to the relevant court or tribunal for a stay of proceedings, and would have to append the certificate to their application (clause 15(3)). The court or tribunal registrar would then refer the matter to the presiding judicial officer, who would have to immediately stay the proceedings related to the certificate (clause 15(4)). The order staying the proceedings must be processed in accordance with the practice and procedure of the relevant court or tribunal, but without fee (clause 15(5)).

As proposed in the bill as introduced, once stayed, the court proceedings would have to be taken as finally determined (clause 15(6)). We recommend a minor change to make it clear that the process to apply for a stay of proceedings would not prevent a plaintiff or prosecutor from discontinuing or withdrawing the court or tribunal proceedings (clause 15(7)).

Conclusion

The nature of Parliament's relationship with the courts underpins the core proposals in this legislation. Both institutions are charged with separate constitutional responsibilities designed to protect the interests of, and maintain, our free and democratic society. To discharge our duties properly, we each need to be able to uphold our own independence, both from each other, and from others. We should each operate in a way that acknowledges and supports the other's independence and role.

In this bill, we are looking to strike a harmonious balance in the area where the privileges necessary to protect the independence of Parliament, and the important role of the courts, intersect. Under New Zealand's constitutional arrangements (like those of the United Kingdom), the precise boundaries of the authority of the courts and Parliament can be indistinct. It is of the utmost importance that conflict is avoided by careful and respectful considerations of each other's constitutional roles.

By clarifying this area, we expect to enhance the ability of both institutions to live fruitfully and respectfully alongside each other, each making its own important contribution to fair and stable governance

within New Zealand. In our view, the provisions in this bill, with our suggested amendments, would strike the right balance.

Appendix

Committee process

The Parliamentary Privilege Bill was referred to the committee on 11 December 2013. The closing date for submissions was 28 February 2014. We called publicly for submissions, along with inviting submissions from a number of interested parties and our counterparts in certain other jurisdictions. We received and considered nine submissions in response, and heard from the Legislation Advisory Committee, the New Zealand Law Society, and the Clerk of the House of Representatives. We would like to thank all the submitters for their considered views.

We received advice from the Ministry of Justice, the Office of the Clerk of the House of Representatives, and our independent specialist adviser Mr John Pike QC.

Committee membership

Hon Christopher Finlayson QC (Chairperson)

Hon John Banks

Hon Gerry Brownlee

Dr Kennedy Graham

Chris Hipkins

Hon Murray McCully

Hon David Parker

Rt Hon Winston Peters

Grant Robertson

Hon Anne Tolley

Hon Tariana Turia

Parliamentary Privilege Bill

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

text deleted unanimously

Hon Gerry Brownlee

Parliamentary Privilege Bill

Government Bill

Contents

	Page
1 Title	3
2 Commencement	3
Part 1	
General provisions	
3 Purposes of this Act	4
3A Interpretation of this Act	5
4 Interpretation	6
5 Act binds the Crown	9
Part 1A	
Parliamentary privilege: fundamental provisions	
Subpart 1—Privileges generally of House, committees, and members	
6 Purpose of parliamentary privilege	22
7 Privileges exercisable and part of laws of New Zealand, journals as evidence	23
Subpart 2—Effect of Article 9 of Bill of Rights 1688, and proceedings in Parliament defined	
<i>Reaffirmation, and clarification of aspects, of Article 9</i>	
8A Article 9 to be taken to have specified effect	24
<i>Definition</i>	
8B Proceedings in Parliament defined	24

Parliamentary Privilege Bill

*Scope of prohibited impeaching or questioning, in court
or tribunal proceedings, of proceedings in Parliament*

8C	Facts, liability, and judgments or orders	25
8D	Production or use of documents or oral evidence House or committee received in private, or as secret evidence	26
8E	Use of certain documents in interpretation of legislation	27
8F	Operation of Parts 1B and 1C	27
8G	Use of proceedings to establish, without impeaching or questioning, historical events or other facts	28
<i>Subpart is declaratory, and prospective only</i>		
8H	Subpart is for avoidance of doubt, and does not apply to existing court or tribunal proceedings	28

Part 1B

Communicating proceedings in Parliament

Subpart 1—Stays of court or tribunal proceedings in respect of specified communications		
15	Communications of proceedings in Parliament, related documents, or specified copies	28
Subpart 2—Qualified immunity from civil or criminal liability		
17	Effect and operation of qualified immunity under this Act	30
18	Delayed communication to public, not under House's authority, of proceedings in Parliament	31
19	Communication of certain parliamentary documents	31
20	Other laws unaffected	31

Part 1C

Parliamentary privilege: other provisions

Subpart 1—House's power to fine for contempt		
21	House may impose fine on person determined by House to have committed contempt of House	32
Subpart 2—House has no power to expel from membership of House		
22	Members' seats become vacant only as provided in Electoral Act 1993	33
Subpart 3—Parliamentary witnesses		
23	House or committee may administer oath or affirmation	33
24	Privileges and immunities of witness giving evidence on oath or affirmation	33

	Subpart 4—Members’ and certain officers’ participation in court or tribunal proceedings	
25	Member or officer may apply to Speaker for certificate exempting from attendance	34
26	Speaker determines application for exemption certificate	34
27	Extent of exemption under certificate granted	34
28	Order or certificate exempting Speaker from attendance	34
29	Effect of certificate or order	36
	Subpart 5—Judicial notice of Speaker’s signature on certificates	
30	Judicial notice must be taken of Speaker’s signature	36
	Part 2	
	Savings provision, related amendments, and repeals	
	<i>Savings provision</i>	
31	Existing court or tribunal proceedings	37
	<i>Related amendments</i>	
32A	Canterbury Earthquake Recovery Act 2011 amended	37
33	Defamation Act 1992 amended	37
33A	Epidemic Preparedness Act 2006 amended	38
34	Intelligence and Security Committee Act 1996 amended	38
	<i>Repeals</i>	
35	Legislature Act 1908 and Legislature Amendment Act 1992 repealed	39

The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Parliamentary Privilege Act **2013**.
- 2 Commencement**
This Act comes into force on the day after the date on which it receives the Royal assent. 5

Part 1 Substantive ~~General~~ provisions

Subpart 1—General provisions

3 Purposes of this Act

- (1) The purpose of this Act is to—
- (a) recognise the mutual respect and restraint (also together referred to as the principle of comity) in the important constitutional relationship between the legislative and judicial branches of government; and
 - (b) reaffirm generally in a single Act and clarify the purpose and certain other aspects of, but avoid comprehensive codification of, the privileges, immunities, and powers held, enjoyed, and exercised by the House of Representatives, its committees, and its members; and
 - (c) provide for Article 9 of the Bill of Rights 1688 to be taken to have, for the avoidance of doubt, a specified effect (in addition to any other operation, and subject to applicable overriding enactments); and
 - (d) define for the avoidance of doubt “proceedings in Parliament” for the purposes of Article 9 of the Bill of Rights 1688, in particular to alter the law in the decision in *Attorney-General v Leigh* [2011] NZSC 106, [2012] 2 NZLR 713 (SC); and
 - (e) abolish the “effective repetition” in the decision in *Buchanan v Jennings* [2004] UKPC 36, [2005] 2 All ER 273 (PC), and ensure effective repetition statements are protected by absolute privilege; and
 - (f) replace with modern legislation the law about parliamentary privilege formerly contained in the Legislature Act 1908, the Legislature Amendment Act 1992, and certain provisions of the Defamation Act 1992.
- (1) The main purposes of this Act are to—
- (a) reaffirm and clarify the nature, scope, and extent of the privileges, immunities, and powers exercisable by the House of Representatives, its committees, and its members; and

- (b) ensure adequate protection from civil and criminal legal liability for communication of, and of documents relating to, proceedings in Parliament.
- (2) The subsidiary purposes of this Act, to help it to achieve its main purposes, are to— 5
- (a) reaffirm generally in a single Act and clarify the purpose and certain other aspects of, but avoid comprehensive codification of, parliamentary privilege; and
- (b) provide for Article 9 of the Bill of Rights 1688 to be taken to have, for the avoidance of doubt, a specified effect (in addition to any other operation, and subject to specified overriding offence provisions); and 10
- (c) define, for the avoidance of doubt, “proceedings in Parliament” for the purposes of Article 9 of the Bill of Rights 1688, and in particular to alter the law in the decision in *Attorney-General v Leigh* [2011] NZSC 106, [2012] 2 NZLR 713 (SC); and 15
- (d) abolish and prohibit evidence being offered or received, questions being asked, or statements, submissions, or comments made, concerning proceedings in Parliament, to inform or support “effective repetition” claims and liabilities in proceedings in a court or tribunal and exemplified by the decision in *Buchanan v Jennings* [2004] UKPC 36, [2005] 2 All ER 273 (PC); and 20
- (e) replace with modern legislation the law formerly contained in the Legislature Act 1908, the Legislature Amendment Act 1992, and certain provisions of the Defamation Act 1992. 25

3A Interpretation of this Act

- (1) This Act must be interpreted in a way that— 30
- (a) promotes its main and subsidiary purposes; and
- (b) promotes the principle of comity that requires the separate and independent legislative and judicial branches of government each to recognise, with the mutual respect and restraint that is essential to their important constitutional relationship, the other’s proper sphere of influence and privileges; and 35

- (c) ensures privileges, immunities, and powers of the House of Representatives, its committees, and its members are exercisable for the purpose stated in **section 6**.
- (2) **Subsection (1)** does not affect the application of the Interpretation Act 1999 to this Act. 5

4 Interpretation

- (1) In this Act, unless the context otherwise requires,—
- authorised parliamentary paper** means any parliamentary paper published by order or under the authority of the House
- broadcast** means a transmission (even if, but not limited to, a transmission solely as a distributor, a reproducer of content, or a supplier of transmission services)—
- (a) using a means of telecommunication; and
- (b) for reception or access (whether free of charge or by payment, and whether on-demand or at a scheduled time or times) by, or by a class of, the public, and using any device or equipment (including, without limitation, a radio, television, or device connected to the Internet or any other electronic medium); and 10 15
- (c) not made solely for performance or display in a public place 20
- committee** means a committee, or subcommittee of a committee, of the House
- communication**, of a document or proceedings, includes—
- (a) communication to or for any people, in any form, on any basis, and using any medium or media, of the document or proceedings; and 25
- (b) live or delayed original communication, and delayed recommunication, of the document or proceedings; and
- (c) live or delayed communication to the public of the document or proceedings 30

Examples

- Delivery of a printed copy of the document
- Email of an electronic copy of the document
- Internet posting for viewing or downloading of an electronic copy of the document 35

Examples—*continued*

- Radio broadcast of, or of an audio file or recording of, the proceedings
- Television broadcast (free of charge or by payment) of, or of a video file or recording of, the proceedings
- Internet webcast or podcast (on-demand or scheduled) of, or of an audio or video file or recording of, the proceedings 5
- Transmission solely as a distributor, a reproducer of content, or a supplier of transmission services, of the document or of, or of an audio or video file or recording of, the proceedings. 10

communication to the public, of a document or proceedings, means communication of the document or proceedings to or for, or to or for a class of, the public

copy, in relation to a document (~~including, without limitation, any journals, paper, or report~~), includes a copy of a copy and a copy that is not an exact copy of the document but is identical to the document in all relevant respects 15

court means—

- (a) the Supreme Court, the Court of Appeal, the High Court, or a District Court; or 20
- (b) any of the following specialist courts: the Court Martial of New Zealand established by section 8 of the Court Martial Act 2007, the Court Martial Appeal Court constituted by the Court Martial Appeals Act 1953, the Employment Court, the Environment Court, the Māori Appellate Court, and the Māori Land Court 25

document means any of the following:

- (a) any material, whether or not it is signed or otherwise authenticated, that bears symbols (including words and figures), images, or sounds or from which symbols, images, or sounds can be derived, including (without limitation) material that is any of the following: 30
 - (i) a label, marking, or other writing that identifies or describes a thing of which it forms part, or to which it is attached: 35
 - (ii) a book, map, plan, graph, or drawing:
 - (iii) a photograph, film, or negative:

- (b) information electronically recorded or stored (including, without limitation, an audio or video file or recording), or information derived from that information:
- (c) a copy of, or part of, a document as defined in **paragraph (a) or (b)** 5

exercisable, for privileges, immunities, or powers and for a House, its committees, or its members, means that the privileges, immunities, or powers are held, enjoyed, and exercised by the House, its committees, or its members

House means the House of Representatives continued by section 10 of the Constitution Act 1986 10

member means a member of the House known, in accordance with section 10(4) of the Constitution Act 1986 and section 27 of the Electoral Act 1993, as a member of Parliament

officer,— 15

- (a) in **subpart 7** of this Part ~~subpart 4 of Part 1C~~ (Members' and certain officers' participation in court or tribunal proceedings), means only an officer of the House who is any of the following:

- (i) the Clerk, or ~~a~~ the Deputy Clerk, of the House; or 20
(ii) a Clerk-Assistant of the House; or
(iii) the Serjeant-at-Arms; and

- (b) in the rest of this Act, means any officer of the House (including, without limitation, an officer referred to in **paragraph (a)(i), (ii), or (iii)**, or a person authorised by the Clerk of the House to perform or exercise any of the Clerk's functions or powers under the House's Standing Orders or to be a clerk of a committee; and a person employed by or on behalf of the House to make a transcript of proceedings of the House or of a committee) 30

parliamentary paper means any document that is a report, paper, votes, or proceedings

proceedings in Parliament has the meaning given to it by **section 8(2)8B**

report includes— 35

- (a) a record or transcript; and
(b) part of a report

Speaker means—

- (a) every person who is the Speaker of the House (as chosen and confirmed, and continuing in office, under sections 12 and 13 of the Constitution Act 1986); or a Deputy Speaker of the House; or a person for the time being acting in either of those capacities; or 5
- (b) in relation to the period commencing immediately after the close of any polling day at a general election and ending with the first meeting of the House after the general election, every person who ~~(even if in an acting capacity only)~~ held on that polling day the office of Speaker of the House or Deputy Speaker of the House 10

statement means a statement in any form ~~(including, without limitation, an oral statement or a written statement)~~

summons, of a court or tribunal, includes a writ, subpoena, or other process— 15

- (a) that is a process of, or issued by or on behalf of, the court or tribunal; and
- (b) that requires attendance at the court or tribunal

tribunal means any person or body (other than the House, a committee, or a court, but including, without limitation, an inquiry to which section 6 of the Inquiries Act 2013 applies) ~~acting judicially or~~ with power to summons witnesses and take evidence on oath or affirmation 20

under the House's or a committee's authority includes, without limitation, by, or by order of, the House or the committee. 25

- (2) The examples provided in **subsection (1)**, or in **section 8F**, of the operation of that provision—
- (a) do not limit that provision; and 30
- (b) may extend the operation of that provision.

5 Act binds the Crown

This Act binds the Crown.

Subpart 2—Privileges generally of House, committees, and members

6 Purpose of parliamentary privilege

- (1) The privileges, immunities, and powers held, enjoyed, and exercised in accordance with the rest of this Act by the House of Representatives, its committees, and its members are held, enjoyed, and exercised for the purpose of enabling them to carry out their functions. 5
- (2) That purpose must be taken into account in determining the extent and scope of a privilege, immunity, or power held, enjoyed, and exercised in accordance with the rest of this Act, and in determining whether in a particular case an occasion of privilege exists. 10
- (3) This section does not limit the rest of this Act (including, without limitation, the House's exclusive right to control its own proceedings, or the House's right to legislate on any matter or to consider delegated legislation). 15

7 Privileges held and part of laws of New Zealand, journals as evidence

Privileges, etc, held 20

- (1) The House, committees, and members hold, enjoy, and exercise every privilege, immunity, and power that complies with both of the following:
- (a) it was on 1 January 1865 (by parliamentary custom or practice and rules, statute, or common law) held, enjoyed, and exercised by the Commons House of Parliament of Great Britain and Ireland, its committees, or its members; and 25
- (b) it is not inconsistent with, or repugnant to, the New Zealand Constitution Act 1852 of the Parliament of the United Kingdom as in force on (the date of the coming into operation of the Parliamentary Privileges Act 1865, namely) 26 September 1865. 30

Privileges, etc, part of laws of New Zealand

- (2) Those privileges, immunities, and powers are part of the laws of New Zealand. 35

- Judicial notice of privileges, etc*
- (3) All courts and all persons acting judicially must take judicial notice of those privileges, immunities, and powers:
- Use, on privileges, etc, inquiry, of House of Commons Journal*
- (4) On any inquiry touching those privileges, immunities, and powers, a copy of the Journals of the Commons House of Parliament that purports to be printed or published by order of the Commons House of Parliament must be admitted as evidence of those journals by all courts, persons acting judicially, and other persons, without any proof being given that the copy was so printed or published.
- Compare: 1865 No 13 ss 4, 5; 1908 No 101 s 242

~~Subpart 3—Provisions related to
Article 9 of Bill of Rights 1688 or to
proceedings in Parliament~~

Aspects of effect and meaning of Article 9

- 8 Parliamentary privilege in court or tribunal proceedings**
- Article 9 to be taken to have specified effect*
- (1) Article 9 of the Bill of Rights 1688 must be taken to have the effect required by the rest of this section (in addition to any other operation of, and subject to applicable enactments overriding, Article 9 of the Bill of Rights 1688):
- Definition of proceedings in Parliament*
- (2) For the purposes of Article 9 of the Bill of Rights 1688, and for the purposes of this Act, **proceedings in Parliament** means all words spoken and acts done in the course of, or for purposes of or incidental to, the transacting of the business of the House or of a committee, and therefore includes (without limiting that general definition) the following:
- (a) the giving of evidence (and the evidence so given) before the House or a committee;
- (b) the presentation or submission of a document to the House or a committee;
- (c) the preparation of a document for purposes of or incidental to the transacting of any business of the House or of a committee:

- (d) the formulation, making, or publication of a document, including a report, by or pursuant to an order of the House or a committee (and the document so formulated, made, or published).

Scope of prohibited external impeaching or questioning 5

- (3) In proceedings in a court or tribunal, it is not lawful for evidence to be offered or received, questions asked or statements, submissions, or comments made, concerning proceedings in Parliament, by way of, or for the purpose of, all or any of the following: 10

- (a) questioning or relying on the truth, motive, intention or good faith of anything forming part of those proceedings in Parliament:

- (b) otherwise questioning or establishing the credibility, motive, intention or good faith of any person: 15

- (c) drawing, or inviting the drawing of, inferences or conclusions wholly or partly from anything forming part of those proceedings in Parliament.

- (4) In proceedings in a court or tribunal, it is not lawful for evidence (including, without limitation, *Hansard*) to be offered or received, questions asked or statements, submissions, or comments made, concerning proceedings in Parliament, by way of, or for the purpose of, ascertaining any content, effect, or meaning of a statement (in **section 10** called an **effective repetition statement**)— 20 25

- (a) made outside proceedings in Parliament by any person; and

- (b) to the effect (regardless of its form or terms) that the person affirms, adopts, endorses, or refers to the content, effect, or meaning of a statement or an action that a participant in proceedings in Parliament (who may, but need not, be the person) made or took in those proceedings; but 30

- (c) that, if considered alone, does not in and of itself repeat that content, effect, or meaning. 35

- (5) A court or tribunal must not (unless the House or a committee has published, or authorised the publication of, that document or a report of that oral evidence)—

- (a) require to be produced; or admit into evidence; or admit evidence relating to; a document that has been prepared for the purpose of submission; and submitted; to the House or a committee; and that—
- (i) was received as private evidence by; and so is confidential to; the House or the committee; or 5
- (ii) was received as secret evidence by the House or the committee; and so generally cannot be disclosed; or
- (b) admit evidence concerning; or require to be produced or admit into evidence a document recording or reporting; any oral evidence taken by the House or a committee; and that— 10
- (i) was heard as private evidence by; and so is confidential to; the House or the committee; or 15
- (ii) was heard as secret evidence by the House or the committee; and so generally cannot be disclosed.
- (6) In relation to proceedings in a court or tribunal so far as they relate only to ascertaining the meaning of; or the meaning that can be given to; an enactment; neither this section nor the Bill of Rights 1688 prevents or restricts a court or tribunal allowing only for that purpose— 20
- (a) the admission in evidence (or judicial notice being taken) of a report of proceedings in Parliament published by or with the authority of the House or a committee; or 25
- (b) the making of statements; submissions; or comments based on that report.

Section is for avoidance of doubt, and existing proceedings

- (7) **Subsections (1) to (6)** declare and enact, for the avoidance of doubt; the effect that Article 9 of the Bill of Rights 1688 had; on its true construction; before this Act's commencement; but (in accordance with **section 31**) do not apply to proceedings in a court or a tribunal and that commenced before this Act's commencement. 30 35

Compare:—1908 No 101 s 253(4); Parliamentary Privileges Act 1987 s 16(1)–(5); (7) (Aust); Defamation Act 1996 s 13(4); (5) (UK)

Absolute privilege

- 9** · **Proceedings in Parliament**
 Proceedings in Parliament are protected by absolute privilege.
 Compare: 1992 No 105 s 13(1)
- 10** · **Effective repetition statements** 5
 Effective repetition statements (as defined by **section 8(4)**)
 are protected by absolute privilege.
- 11** · **Live broadcasts of proceedings in Parliament**
 A live broadcast, by any broadcaster, of proceedings in Parli-
 ament is protected by absolute privilege. 10
 Compare: 1992 No 105 s 13(2)
- 12** · **Ordered or authorised delayed broadcasts or rebroadcasts
 of proceedings in Parliament**
 A delayed broadcast or a rebroadcast, by any broadcaster, of
 proceedings in Parliament, if made by order or under the au-
 thority of the House, is protected by absolute privilege. 15
 Compare: 1992 No 105 s 13(2)
- 13** · **Publication of certain parliamentary documents or reports**
 The following publications are protected by absolute privi-
 lege: 20
- (a) · the publication, by or under the authority of the House,
 of any document:
 - (b) · the publication, to the House, of any document, either
 by presenting the document to, or laying the document
 before, the House: 25
 - (c) · the publication, by or under the authority of the House,
 or under the authority of any enactment, of an offi-
 cial or authorised report (including, without limitation,
Hansard) of proceedings in Parliament:
 - (d) · the publication of a correct copy of any document or 30
 report specified in **paragraph (a) or (c)**:
 Compare: 1992 No 105 s 13(3)

*Official report of proceedings in Parliament***14** · *Hansard*

- (1) · An official report (to be known as *Hansard*) must be made of all the portions of proceedings in Parliament (if any) that are portions of that kind for the time being determined for the purposes of this subsection by the House or by the Speaker. 5
- (2) · The report must be made in the form (if any); and subject to the rules (if any); as may be from time to time approved for the purposes of this subsection by the House or by the Speaker. 10
- Compare: 1908 No 101 s 253A; 1991 No 146 s 11

*Stays of court or tribunal proceedings in respect of specified publications***15** · **Parliamentary paper published by order or under authority of House**

- (1) · This section applies if civil or criminal proceedings in a court or tribunal are commenced against a person in respect of the publication, by the person or the person's employee, by order or under the authority of the House, of a parliamentary paper. 15
- (2) · The person may produce to the court or tribunal a certificate signed by the Speaker stating that the parliamentary paper in respect of which the proceedings are commenced was published, by the person or the person's employee, by order or under the authority of the House. 20
- (3) · But the certificate cannot be produced in accordance with this section unless counsel for, or the party who is, the plaintiff or prosecutor in the proceedings, is given at least 24 hours' notice of the person's intention to produce the certificate. 25
- (4) · On the production in accordance with this section of the certificate, the court or tribunal must immediately stay the proceedings. 30
- (5) · The stayed proceedings are required by this section to be taken to be finally determined.

Compare: 1954 No 46 s 18; 1992 No 106 ss 2, 4; Parliamentary Papers Act 1840 s 1 (UK)

16 · Publication of copy of authorised parliamentary paper

- (1) · This section applies if civil or criminal proceedings in a court or tribunal are commenced against a person in respect of the publication of a copy of an authorised parliamentary paper.
- (2) · The person may, at any stage of the proceedings, produce to the court or tribunal the following documents: 5
- (a) · the authorised parliamentary paper and the copy of it;
 - (b) · an affidavit verifying the authorised parliamentary paper and the correctness of the copy of it.
- (3) · On the production of the documents required by **subsection (2)**, the court or tribunal must immediately stay the proceedings. 10
- (4) · The stayed proceedings are required by this section to be taken to be finally determined.

Compare: 1954 No 46 s 19; 1992 No 106 ss 2, 5; Parliamentary Papers Act 1840 s 2 (UK) 15

*Qualified privilege***17 · Effect and operation of qualified privilege under this Act**

- (1) · Qualified privilege under this Act is an immunity from any civil or criminal liability for the relevant broadcast, re-broadcast, or publication. 20
- (2) · The immunity is a defence to liability, but the defence is available to the defendant only if—
- (a) · the defence is pleaded, or otherwise raised as a defence, by or on behalf of the defendant; and 25
 - (b) · the defence is not made unavailable by **subsection (3)**.
- (3) · The defence is unavailable if, in proceedings against the defendant that relate to the relevant broadcast, rebroadcast, or publication, the plaintiff or prosecutor proves that, in publishing the matter that is the subject of the proceedings, the defendant— 30
- (a) · was predominantly motivated by ill will towards the person who is the subject of that matter; or
 - (b) · otherwise took improper advantage of the occasion of publication.

- (4) The defence does not fail because the defendant was motivated by malice, unless the defence is made unavailable by **subsection (3)**:

Compare: 1992 No 105 ss 16(1), (3), 17, 19; Schedule 1 Part 1 cl 1

18 Other delayed broadcasts or rebroadcasts of proceedings in Parliament 5

A delayed broadcast or a rebroadcast, by any broadcaster, of proceedings in Parliament, if not made by order or under the authority of the House, is protected by qualified privilege.

Compare: 1992 No 105 ss 16(1), (3), 17, 19; Schedule 1 Part 1 cl 1

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19 Publication of certain parliamentary documents or reports

- (1) The following publications are protected by qualified privilege:

(a) the publication of a fair and accurate report of proceedings in Parliament:

15

(b) the publication of a fair and accurate extract from, or summary of, a document or report specified in **section 13(a) or (c)**:

- (2) A document or report is (for the purposes of **subsection (1)(b)**) specified in **section 13(a) or (c)** if the document or report is—

(a) a document published by or under the authority of the House; or

(b) an official or authorised report (including, without limitation, *Hansard*) of proceedings in Parliament, published by or under the authority of the House or under the authority of any enactment.

25

Compare: 1992 No 105 ss 16(1), 17, 19; Schedule 1 Part 1 cls 2, 3

Relationship with other laws

20 Other laws about absolute privilege or qualified privilege unaffected 30

This Act does not limit or affect any other laws relating to absolute privilege or qualified privilege.

Compare: 1992 No 105 ss 15, 16(3)

Subpart 4—House's power to fine for
contempt

21 House may impose fine on person determined by House to have committed contempt of House

Power to fine for contempt of House

5

- (1) The House may impose on a person, for a contempt of the House determined by the House to have been committed by that person, a fine not exceeding \$1,000.

Enforcement

- (2) A fine imposed on a person under **subsection (1)** is payable and enforceable under Part 3 (and all other relevant provisions) of the Summary Proceedings Act 1957 as if it were a fine (as defined in section 79(1) of that Act) that is, or is a part of, an amount of money that the person is obliged to pay under an order imposed by a court for a contempt of court.

15

Power to fine is exclusive, but other penalty powers unaffected

- (3) This section replaces all other powers, if any, of the House, under any other laws, to impose a fine on a person for a contempt of the House determined by the House to have been committed by that person, but does not limit or affect the House's powers to penalise the person for the contempt otherwise than by imposing a fine on the person (whether the other penalty is instead of, or as well as, the imposition of a fine).

20

Power to fine is for avoidance of doubt

- (4) **Subsection (1)** (except for the \$1,000 maximum) declares and enacts, for the avoidance of doubt, part of the effect that section 242 of the Legislature Act 1908 had, on its true construction, before this Act's commencement.

25

Compare: Parliamentary Privileges Act 1987 s 7(5)–(8) (Aust)

Subpart 5—House has no power to expel
from membership of House

30

22 Members' seats become vacant only as provided in Electoral Act 1993

- (1) The House has no power to make a member's seat become vacant by expelling the member (whether to discipline or punish the member, to protect the House by removing an unfit mem-

35

ber, or for any reason or purpose) from membership of the House.

- (2) **Subsection (1)** overrides any law to the contrary.
Compare: Parliamentary Privileges Act 1987 s-8 (Aust)

Subpart 6—Parliamentary witnesses 5

23 House or committee may administer oath or affirmation

The House or a committee respectively may, for the purpose of taking evidence on oath or affirmation from a witness examined before the House or that committee, administer an oath or affirmation to the witness.

Compare: 1908 No 101 s 252

10

24 Privileges and immunities of witness giving evidence on oath or affirmation

- (1) A witness examined before the House or a committee and giving evidence on oath or affirmation has, in respect of that evidence, the same privileges and immunities as has a witness giving evidence on oath or affirmation in a court.

15

- (2) This section is subject to any contrary enactment.
Compare: 1875 No 20 s 2; 1908 No 101 s 253(5)

Subpart 7—Members² and certain officers² participation in court or tribunal proceedings 20

25 Member or officer may apply to Speaker for certificate exempting from attendance

A member (other than the Speaker) or officer may apply to the Speaker to be exempted from attendance if the member or officer is required by a court's or tribunal's summons to attend personally at the court or tribunal—

25

- (a) as a party or witness in a civil proceeding; or
(b) as a witness in a criminal proceeding.

Compare: 1908 No 101 ss 257, 261

30

26 Speaker determines application for exemption certificate

- (1) The Speaker must, on an application under **section 25**, grant the member or officer an exemption certificate unless satisfied,

after any inquiry the Speaker thinks fit to make, that non-compliance with the summons would—

(a) · delay injuriously, or defeat, the interests of justice; or

(b) · cause irreparable injury to a party to the proceeding.

(2) · The certificate must be signed by the Speaker, attach a copy of the summons, and identify the attendance concerned. 5

Compare: 1908 No 101 s 263

27 · **Extent of exemption under certificate granted**

An exemption certificate granted to a member or an officer under **section 26** exempts the member or officer from attendance (whether in compliance with the summons, or otherwise) until the earlier of the following times: 10

(a) · the end of the session during which the certificate was granted:

(b) · the end of the calendar year after the calendar year during which the certificate was granted. 15

Compare: 1908 No 101 s 264

28 · **Order or certificate exempting Speaker from attendance**

When and how House to consider making exempting order

(1) · This subsection applies if the Speaker— 20

(a) · is required by a court's or tribunal's summons to attend personally at the court or tribunal—

(i) · as a party or witness in a civil proceeding; or

(ii) · as a witness in a criminal proceeding; and

(b) · either has already acted under **subsection (5)** but can now submit the matter to the House without delay because the House has since ceased to be adjourned; or cannot act under **subsection (5)** because— 25

(i) · the House is not adjourned; or

(ii) · the House is adjourned but the Speaker is not satisfied that it is necessary to act without delay. 30

(2) · The Speaker must if **subsection (1)** applies submit the matter to the House at the first convenient opportunity.

(3) · The House may, on a matter submitted under **subsection (2)**, make any order the House thinks fit, but an order of the House that the Speaker be exempted from attendance exempts the 35

Speaker from attendance (whether in compliance with the summons; or otherwise) until the earlier of the following times:

- (a) · the end of the session during which the order was made:
- (b) · the end of the calendar year after the calendar year during which the order was made: 5

Speaker to grant temporary exempting certificate if House adjourned, etc

- (4) · This subsection applies if the Speaker—
 - (a) · is required by a court's or tribunal's summons to attend personally at the court or tribunal— 10
 - (i) · as a party or witness in a civil proceeding; or
 - (ii) · as a witness in a criminal proceeding; and
 - (b) · cannot submit the matter to the House without delay because the House is adjourned; and 15
 - (c) · is satisfied that it is necessary to act without delay; and
 - (d) · is not satisfied, after any inquiry the Speaker thinks fit to make, that non-compliance with the summons would—
 - (i) · delay injuriously, or defeat, the interests of justice; or 20
 - (ii) · cause irreparable injury to a party to the proceeding.
 - (5) · The Speaker must if **subsection (4)** applies grant to the Speaker an exemption certificate.
 - (6) · The certificate must be signed by the Speaker, attach a copy of the summons; and identify the attendance concerned: 25
 - (7) · An exemption certificate granted under **subsection (5)** exempts the Speaker from attendance (whether in compliance with the summons; or otherwise) until both of the following have occurred: 30
 - (a) · the matter is submitted at the first convenient opportunity to the House; under **subsection (2)**; and
 - (b) · the House has made an order on the matter; under **subsection (3)**: 35
- Compare: 1908 No 101 s 260

29 Effect of certificate or order

If a certificate granted, or order made, under **section 26 or 28**, is presented to the court or tribunal,—

- (a) the member, officer, or Speaker is exempted from attendance as provided in (as the case requires) **section 27, 28(3), or 28(7)**; and 5
- (b) no proceedings (civil or criminal) may be commenced or continued against the member, officer, or Speaker in respect of his or her non-compliance with the summons, or other non-attendance during his or her exemption; and 10
- (c) the court or tribunal may adjourn the proceeding on any terms it thinks convenient and just in light of that exemption. 15

Compare: 1908 No 101 s 264

Subpart 8—Judicial notice of
Speaker's certificates

30 Judicial notice must be taken of Speaker's signature

All courts and all persons acting judicially must take judicial notice of the Speaker's signature on a certificate granted under **section 15, 26, or 28**. 20

Compare: 1908 No 101 s 268

Part 1A

**Parliamentary privilege:
fundamental provisions** 25

**Subpart 1—Privileges generally
of House, committees, and members**

6 Purpose of parliamentary privilege

The privileges, immunities, and powers exercisable in accordance with the rest of this Act by the House, committees, and members, are exercisable to— 30

- (a) uphold the integrity of the House as a democratic legislative assembly; and
- (b) secure the independence of the House, committees, and members, in the performance of their functions. 35

7 Privileges exercisable and part of laws of New Zealand, journals as evidence

Privileges, etc, exercisable

- (1) The privileges, immunities, and powers exercisable by the House, committees, and members are every privilege, immunity, or power that complies with both of the following: 5
- (a) it was on 1 January 1865 (by parliamentary custom or practice and rules, statute, or common law) exercisable by the Commons House of Parliament of Great Britain and Ireland, its committees, or its members; and 10
- (b) it is not inconsistent with, or repugnant to, the New Zealand Constitution Act 1852 of the Parliament of the United Kingdom as in force on (the date of the coming into operation of the Parliamentary Privileges Act 1865, namely) 26 September 1865. 15

Privileges, etc, part of laws of New Zealand

- (2) Those privileges, immunities, and powers are part of the laws of New Zealand.

Judicial notice of privileges, etc

- (3) All courts and all persons acting judicially must take judicial notice of those privileges, immunities, and powers. 20

Use, on privileges, etc, inquiry, of House of Commons Journal

- (4) On any inquiry touching those privileges, immunities, and powers, a copy of the Journals of the Commons House of Parliament that purports to be printed or published by order of the Commons House of Parliament must be admitted as evidence of those journals by all courts, persons acting judicially, and other persons, without any proof being given that the copy was so printed or published. 25

Compare: 1865 No 13 ss 4, 5; 1908 No 101 s 242 30

Subpart 2—Effect of Article 9
of Bill of Rights 1688, and
proceedings in Parliament defined

*Reaffirmation, and clarification of aspects,
of Article 9*

5

8A Article 9 to be taken to have specified effect

Article 9 of the Bill of Rights 1688 must be taken to have, in addition to any other operation, the effect required by this **subpart**, unless a different effect is required for prosecution of an offence related to proceedings in Parliament and against any of the following provisions of the Crimes Act 1961:

10

(a) section 102 (corruption and bribery of Minister of the Crown):

(b) section 103 (corruption and bribery of member of Parliament):

15

(c) section 109 (perjury).

Compare: 1908 No 101 ss 252, 253(4); Parliamentary Privileges Act 1987 s 16(1) and (6) (Aust)

Definition

8B Proceedings in Parliament defined

20

(1) **Proceedings in Parliament**, for the purposes of Article 9 of the Bill of Rights 1688, and for the purposes of this Act, means all words spoken and acts done in the course of, or for purposes of or incidental to, the transacting of the business of the House or of a committee.

25

(2) The definition in **subsection (1)** must be taken to include the following:

(a) the giving of evidence (and the evidence so given) before the House or a committee:

(b) the presentation or submission of a document to the House or a committee:

30

(c) the preparation of a document for purposes of or incidental to the transacting of any business of the House or of a committee:

(d) the formulation, making, or communication of a document, under the House's or a committee's authority (and the document so formulated, made, or communicated):

35

- (e) any proceedings deemed by an enactment to be (or a thing said or produced, or information supplied, in an inquiry or proceedings, if an enactment provides the thing or information is privileged in the same way as if the inquiry or proceedings were) for those purposes 5
proceedings in Parliament.
- (3) In determining under **subsection (1)** whether words are spoken or acts are done for purposes of or incidental to the transacting of the business of the House or of a committee, words spoken or acts done for purposes of or incidental to the transacting of reasonably apprehended business of the House or of a committee must be taken to fall within **subsection (1)**. 10
- (4) In determining under **subsection (1)** whether words are spoken or acts are done for purposes of or incidental to the transacting of the business of the House or of a committee, no necessity test is required or permitted to be used. 15
- (5) **Necessity test** includes, but is not limited to, a test based on or involving whether the words or acts are or may be (absolutely, or to any lesser degree or standard) necessary for transaction of the business. 20
- (6) **Subsections (2) and (3)** do not limit **subsection (1)**.
- (7) This section applies despite any contrary law (including, without limitation, every enactment or other law in the decision in *Attorney-General v Leigh* [2011] NZSC 106, [2012] 2 NZLR 713 (SC)). 25
 Compare: Parliamentary Privileges Act 1987 s 16(2) (Aust)

*Scope of prohibited impeaching or questioning,
 in court or tribunal proceedings, of proceedings
 in Parliament*

- 8C Facts, liability, and judgments or orders** 30
In proceedings in a court or tribunal, evidence must not be offered or received, and questions must not be asked or statements, submissions, or comments made, concerning proceedings in Parliament, by way of, or for the purpose of, all or any of the following: 35

- (a) questioning or relying on the truth, motive, intention, or good faith of anything forming part of those proceedings in Parliament:
- (b) otherwise questioning or establishing the credibility, motive, intention, or good faith of any person: 5
- (c) drawing, or inviting the drawing of, inferences or conclusions wholly or partly from anything forming part of those proceedings in Parliament:
- (d) proving or disproving, or tending to prove or disprove, any fact necessary for, or incidental to, establishing any liability: 10
- (e) resolving any matter, or supporting or resisting any judgment, order, remedy, or relief, arising or sought in the court or tribunal proceedings.
- Compare: Parliamentary Privileges Act 1987 s 16(3) (Aust) 15

8D Production or use of documents or oral evidence House or committee received in private, or as secret evidence

- (1) This subsection applies to a document that has been prepared for the purpose of submission, and submitted, to the House or a committee, and that— 20
- (a) was received (as advice, evidence, or otherwise) in private by, and so is confidential to, the House or the committee; or
- (b) was received as secret evidence by the House or the committee, and so generally cannot be disclosed. 25
- (2) A court or tribunal must not require to be produced, or admit into evidence, or admit evidence relating to, a document to which **subsection (1)** applies, unless the House or the committee has communicated to the public, or authorised the communication to the public of, that document. 30
- (3) This subsection applies to oral evidence taken by the House or a committee, and that—
- (a) was received (as advice, evidence, or otherwise) in private by, and so is confidential to, the House or the committee; or 35
- (b) was heard as secret evidence by the House or the committee, and so generally cannot be disclosed.

- (4) A court or tribunal must not admit evidence concerning, or require to be produced or admit into evidence a document recording or reporting, oral evidence to which **subsection (3)** applies, unless the House or the committee has communicated to the public, or authorised the communication to the public of, that oral evidence. 5

Compare: Parliamentary Privileges Act 1987 s 16(4) (Aust)

8E Use of certain documents in interpretation of legislation

- (1) This section applies to proceedings in a court or tribunal so far as those proceedings are for the purpose of ascertaining the meaning of, or the meaning that can be given to, an enactment. 10
- (2) Neither this **subpart** nor the Bill of Rights 1688 prevents or restricts the court or tribunal only for that purpose—
- (a) admitting in evidence (or taking judicial notice of) a document relating to proceedings in Parliament communicated under the House’s or a committee’s authority; or 15
- (b) allowing the making of statements, submissions, or comments based on that document. 20

Compare: Parliamentary Privileges Act 1987 s 16(5)(b) (Aust)

8F Operation of Parts 1B and 1C

Neither this **subpart** nor the Bill of Rights 1688 prevents or restricts proceedings in Parliament being used for the purposes of **Parts 1B and 1C**.

Examples

A court’s or tribunal’s presiding judicial officer under **section 15(4)** determining whether a Speaker’s certificate granted under **section 15** (and to which **section 30** applies) covers communications related to claims or charges in civil or criminal proceedings in the court or tribunal. 25

A court or tribunal under **section 29**, if the certificate or order is presented to it, giving effect to a Speaker’s certificate granted under **section 26 or 28** (and to which **section 30** applies) or an order of the House made under **section 28**. 30

8G Use of proceedings to establish, without impeaching or questioning, historical events or other facts

- (1) In relation to proceedings in a court or tribunal, neither this **subpart** nor the Bill of Rights 1688 prevents or restricts evidence being offered or received, questions being asked, or statements, submissions, or comments made, concerning proceedings in Parliament, by way of, or for the purpose of, establishing with no impeaching or questioning of the proceedings in Parliament a relevant historical event or other fact. 5
- (2) This section is explanatory only, and does not limit or affect the prohibition in Article 9 of the Bill of Rights 1688 (operating as this **subpart** requires, or independently) on impeaching or questioning proceedings in Parliament. 10

Subpart is declaratory, and prospective only

8H Subpart is for avoidance of doubt, and does not apply to existing court or tribunal proceedings 15

- (1) This **subpart** declares and enacts, for the avoidance of doubt, the effect that Article 9 of the Bill of Rights 1688 had, on its true construction, before this Act's commencement.
- (2) However (in accordance with **section 31**) this **subpart** does not apply to proceedings— 20
- (a) in a court or a tribunal; and
- (b) that commenced before this Act's commencement.

Compare: Parliamentary Privileges Act 1987 s 16(7) (Aust)

Part 1B 25

Communicating proceedings in Parliament

Subpart 1—Stays of court or tribunal proceedings

in respect of specified communications 30

15 Communications of proceedings in Parliament, related documents, or specified copies

- (1) This section applies if civil or criminal proceedings in a court or tribunal are commenced against a person in respect of either or both of the following: 35

- (a) the communication, by the person or the person's agent or employee, and under the House's or a committee's authority, of either or both of the following:
- (i) proceedings in Parliament:
 - (ii) a document relating to proceedings in Parliament: 5
- (b) the communication, by the person or the person's agent or employee, of a copy of a document (an **authorised parliamentary communication**)—
- (i) relating to proceedings in Parliament; and 10
 - (ii) communicated under the House's or a committee's authority.
- (2) The Speaker may, on an application for the purpose made to the Speaker by or on behalf of the person, grant the person a certificate— 15
- (a) stating that the person, or the person's agent or employee did (as the case may be) all or any of the following:
- (i) communicated, under the House's or a committee's authority, the proceedings in Parliament, the document relating to proceedings in Parliament, or both: 20
 - (ii) communicated the authorised parliamentary communication; and
- (b) appending copies of each document relating to proceedings in Parliament or authorised parliamentary communication communicated, and stating that true copies of them were communicated; and 25
- (c) signed by the Speaker.
- (3) The person may, by doing both of the following, apply for a stay of the proceedings in the court or tribunal: 30
- (a) filing in, or lodging with, the court or tribunal (without fee) a notice of application for the purpose appending the certificate (and that may, but need not, include or append a draft order staying the proceedings); and 35
 - (b) serving (or taking all reasonable steps to serve) copies on, or on counsel for, all other parties to the proceedings (including, without limitation, the plaintiff or prosecutor in the proceedings).

- (4) The court's or tribunal's registrar must, if satisfied (on any evidence the registrar requires) the person has applied for a stay of the proceedings in accordance with **subsection (3)**, refer the file to the court's or tribunal's presiding judicial officer, who must immediately stay the proceedings (except claims or charges unrelated to communications the certificate covers). 5
- (5) The order staying the proceedings must (without fee) be sealed, dated, and served, and entered in the court's or tribunal's formal or permanent record, in accordance with its practice and procedure. 10
- (6) The stayed proceedings are required by this section to be taken to be finally determined.
- (7) This section does not prevent or restrict the plaintiff's or prosecutor's discontinuing or withdrawing the proceedings. 15
Compare: 1954 No 46 ss 18, 19; 1992 No 106 ss 2, 4, 5; Parliamentary Papers Act 1840 ss 1, 2 (UK)

Subpart 2—Qualified immunity from civil or criminal liability

- 17 Effect and operation of qualified immunity under this Act**
- (1) Qualified immunity under this Act is an immunity from any civil or criminal liability for the relevant communication. 20
- (2) The immunity is a defence to liability, but the defence is available to the defendant only if—
- (a) the defence is pleaded, or otherwise raised as a defence, by or on behalf of the defendant; and 25
- (b) the defence is not made unavailable by **subsection (3)**.
- (3) The defence is unavailable if, in proceedings against the defendant that relate to the relevant communication, the plaintiff or prosecutor proves that, in communicating the matter that is the subject of the proceedings, the defendant abused the occasion of communication. 30
- (4) The defendant abused the occasion of communication if the plaintiff or prosecutor proves that, in communicating the matter that is the subject of the proceedings, the defendant did either or both of the following: 35
- (a) acted in bad faith;
- (b) acted with a predominant motive of ill will.

(5) Subsection (4) does not limit subsection (3).

Compare: 1992 No 105 ss 16(1), (3), 17, 19, Schedule 1 Part 1 cl 1

18 Delayed communication to public, not under House's authority, of proceedings in Parliament

A delayed communication to the public, by any communicator, of proceedings in Parliament, if not made under the House's or a committee's authority, is protected by qualified immunity. 5

Compare: 1992 No 105 ss 16(1), (3), 17, 19, Schedule 1 Part 1 cl 1

19 Communication of certain parliamentary documents

The following communications are protected by qualified immunity: 10

(a) the communication of a fair and accurate report of proceedings in Parliament:

(b) the communication of a fair and accurate extract from, or summary of,— 15

(i) a document communicated under the House's or a committee's authority; or

(ii) a document relating to proceedings in Parliament, and communicated under—

(A) the House's or a committee's authority; or 20

(B) the authority of any enactment.

Compare: 1992 No 105 ss 16(1), 17, 19, Schedule 1 Part 1 cls 2, 3

20 Other laws unaffected

(1) This Act does not limit or affect any laws relating to absolute privilege or qualified privilege. 25

(2) Those laws include, without limitation, sections 13 to 19 of the Defamation Act 1992.

Compare: 1992 No 105 ss 15, 16(3)

Part 1C

Parliamentary privilege: other provisions

Subpart 1—House’s power to fine for contempt

- 21** House may impose fine on person determined by House to have committed contempt of House 5
- Power to fine for contempt of House*
- (1) The House may by resolution impose on a person, for a contempt of the House determined by the House to have been committed by that person, a fine not exceeding \$1,000. 10
- Enforcement*
- (2) A fine imposed on a person under **subsection (1)** is payable and enforceable under Part 3 (and all other relevant provisions) of the Summary Proceedings Act 1957 as if it were a fine (as defined in section 79(1) of that Act) that is, or is a part of, an amount of money that the person is obliged to pay under an order imposed by a court for a contempt of court. 15
- (3) The Clerk of the House must ensure a copy of a resolution under **subsection (1)** is sent to the Registrar of the District Court at Wellington— 20
- (a) for service on the person under the Summary Proceedings Act 1957 (as if it contained the same information, except appeals information, as a notice of fine under section 84(2) of that Act); and
- (b) for enforcement against the person under that Act. 25
- Power to fine is exclusive, but other penalty powers unaffected*
- (4) This section replaces all other powers, if any, of the House, under any other laws, to impose a fine on a person for a contempt of the House determined by the House to have been committed by that person, but does not limit or affect the House’s powers to penalise the person for the contempt otherwise than by imposing a fine on the person (whether the other penalty is instead of, or as well as, the imposition of a fine). 30
- Power to fine is for avoidance of doubt*
- (5) **Subsection (1)** (except for the \$1,000 maximum) declares and enacts, for the avoidance of doubt, part of the effect that 35

section 242 of the Legislature Act 1908 had, on its true construction, before this Act's commencement.

Compare: Parliamentary Privileges Act 1987 s 7(5)–(8) (Aust)

Subpart 2—House has no power to expel
from membership of House 5

22 Members' seats become vacant only as provided in
Electoral Act 1993

(1) The House has no power to make a member's seat become vacant by expelling the member (whether to discipline or punish the member, to protect the House by removing an unfit member, or for any reason or purpose) from membership of the House. 10

(2) **Subsection (1)** overrides any law to the contrary.

Compare: Parliamentary Privileges Act 1987 s 8 (Aust)

Subpart 3—Parliamentary witnesses 15

23 House or committee may administer oath or affirmation

The House or a committee respectively may, for the purpose of taking evidence on oath or affirmation from a witness examined before the House or that committee, administer an oath or affirmation to the witness. 20

Compare: 1908 No 101 s 252

24 Privileges and immunities of witness giving evidence on
oath or affirmation

(1) A witness examined before the House or a committee and giving evidence on oath or affirmation has, in respect of that evidence, the same privileges and immunities as has a witness giving evidence on oath or affirmation in a court. 25

(2) This section is subject to any contrary enactment.

Compare: 1875 No 20 s 2; 1908 No 101 s 253(5)

Subpart 4—Members’ and certain officers’
participation in court or tribunal proceedings

25 Member or officer may apply to Speaker for certificate exempting from attendance

A member (other than the Speaker) or officer may apply to the Speaker to be exempted from attendance if the member or officer is required by a court’s or tribunal’s summons to attend personally at the court or tribunal— 5

(a) as a party or witness in a civil proceeding; or

(b) as a witness in a criminal proceeding. 10

Compare: 1908 No 101 ss 257, 261

26 Speaker determines application for exemption certificate

(1) The Speaker must, on an application under **section 25**, grant the member or officer an exemption certificate unless satisfied, after any inquiry the Speaker thinks fit to make, that non-compliance with the summons would— 15

(a) delay injuriously, or defeat, the interests of justice; or

(b) cause irreparable injury to a party to the proceeding.

(2) The certificate must be signed by the Speaker, attach a copy of the summons, and identify the attendance concerned. 20

Compare: 1908 No 101 s 263

27 Extent of exemption under certificate granted

An exemption certificate granted to a member or an officer under **section 26** exempts the member or officer from attendance (whether in compliance with the summons, or otherwise) until the earlier of the following times: 25

(a) the end of the session during which the certificate was granted;

(b) the end of the calendar year after the calendar year during which the certificate was granted. 30

Compare: 1908 No 101 s 264

28 Order or certificate exempting Speaker from attendance

When and how House to consider making exempting order

(1) This subsection applies if the Speaker—

- (a) is required by a court's or tribunal's summons to attend personally at the court or tribunal—
 (i) as a party or witness in a civil proceeding; or
 (ii) as a witness in a criminal proceeding; and
- (b) either has already acted under **subsection (5)** but can now submit the matter to the House without delay because the House has since ceased to be adjourned, or cannot act under **subsection (5)** because—
 (i) the House is not adjourned; or
 (ii) the House is adjourned but the Speaker is not satisfied that it is necessary to act without delay. 5
- (2) The Speaker must if **subsection (1)** applies submit the matter to the House at the first convenient opportunity.
- (3) The House may, on a matter submitted under **subsection (2)**, make any order the House thinks fit, but an order of the House that the Speaker be exempted from attendance exempts the Speaker from attendance (whether in compliance with the summons, or otherwise) until the earlier of the following times:
 (a) the end of the session during which the order was made;
 (b) the end of the calendar year after the calendar year during which the order was made. 15
- Speaker to grant temporary exempting certificate if House adjourned, etc*
- (4) This subsection applies if the Speaker— 25
 (a) is required by a court's or tribunal's summons to attend personally at the court or tribunal—
 (i) as a party or witness in a civil proceeding; or
 (ii) as a witness in a criminal proceeding; and
 (b) cannot submit the matter to the House without delay because the House is adjourned; and 30
 (c) is satisfied that it is necessary to act without delay; and
 (d) is not satisfied, after any inquiry the Speaker thinks fit to make, that non-compliance with the summons would—
 (i) delay injuriously, or defeat, the interests of justice; or 35
 (ii) cause irreparable injury to a party to the proceeding.

- (5) The Speaker must if **subsection (4)** applies grant to the Speaker an exemption certificate.
- (6) The certificate must be signed by the Speaker, attach a copy of the summons, and identify the attendance concerned.
- (7) An exemption certificate granted under **subsection (5)** exempts the Speaker from attendance (whether in compliance with the summons, or otherwise) until both of the following have occurred: 5
- (a) the matter is submitted at the first convenient opportunity to the House, under **subsection (2)**; and 10
- (b) the House has made an order on the matter, under **subsection (3)**.

Compare: 1908 No 101 s 260

29 Effect of certificate or order

If a certificate granted, or order made, under **section 26 or 28**, is presented to the court or tribunal,— 15

- (a) the member, officer, or Speaker is exempted from attendance as provided in (as the case requires) **section 27 or 28(3) or (7)**; and
- (b) no proceedings (civil or criminal) may be commenced or continued against the member, officer, or Speaker in respect of his or her non-compliance with the summons, or other non-attendance during his or her exemption; and 20
- (c) the court or tribunal may adjourn the proceeding on any terms it thinks convenient and just in light of that exemption. 25

Compare: 1908 No 101 s 264

Subpart 5—Judicial notice of Speaker’s signature on certificates

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30 Judicial notice must be taken of Speaker’s signature

All courts and all persons acting judicially must take judicial notice of the Speaker’s signature on a certificate granted under **section 15, 26, or 28**.

Compare: 1908 No 101 s 268

35

Part 2 Savings provisions, related amendments, and repeals

Savings provisions

- 31 Existing court or tribunal proceedings** 5
This Act's provisions (other than this section) do not apply to proceedings—
- (a) in a court or a tribunal; and
 - (b) that commenced before this Act's commencement.
- Compare: Parliamentary Privileges Act 1987 s 16(7) (Aust) 10
- 32 Existing determinations, and approved form or rules, relating to *Hansard***
- (1) Any determinations made for the purposes of section 253A(1) of the Legislature Act 1908, and in force immediately before the commencement of this Act, after that commencement continue in force, and may be amended, revoked, or revoked and replaced, as if they were made for the purposes of **section 14(1)** of this Act. 15
 - (2) Any form, or rules, approved for the purposes of section 253A(2) of the Legislature Act 1908, and in force immediately before the commencement of this Act, after that commencement continue in force, and may be amended, revoked, or revoked and replaced, as if they were approved for the purposes of **section 14(2)** of this Act. 20

Related amendments

25

32A Canterbury Earthquake Recovery Act 2011 amended

- (1) This section amends the Canterbury Earthquake Recovery Act 2011.
- (2) In section 71(6)(c), replace “or the New Zealand Bill of Rights Act 1990” with “the New Zealand Bill of Rights Act 1990, or the Parliamentary Privilege Act **2013**”. 30

33 Defamation Act 1992 amended

- (1) This section amends the Defamation Act 1992.
- (2) Replace section 13 with:

“13 Absolute privilege in relation to proceedings in Parliament
The Parliamentary Privilege Act ~~2013~~ protects by absolute privilege the proceedings, statements, broadcasts or rebroadcasts, and publications specified in ~~sections 9 to 13~~ of that Act.”

5

(2A) In the heading to section 13, replace “**Parliamentary proceedings**” with “**proceedings in Parliament**”.

(2B) In section 13(1) and (2), replace “the House of Representatives” with “Parliament”.

(2C) In section 13(3)(c), replace “record of the proceedings of the House of Representatives” with “report of proceedings in Parliament”.

10

(2D) After section 13(3), insert:

“(4) **Proceedings in Parliament**, in this section, has the same meaning as in **section 8B** of the Parliamentary Privilege Act **2013**.”

15

(3) In Schedule 1, Part 1, repeal clauses 1 to 3.

33A Epidemic Preparedness Act 2006 amended

(1) This section amends the Epidemic Preparedness Act 2006.

(2) In section 12(3)(c), replace “or the New Zealand Bill of Rights Act 1990,” with “the New Zealand Bill of Rights Act 1990, or the Parliamentary Privilege Act **2013**,”.

20

(3) In section 15(3)(c), replace “or the New Zealand Bill of Rights Act 1990,” with “the New Zealand Bill of Rights Act 1990, or the Parliamentary Privilege Act **2013**,”.

25

34 Intelligence and Security Committee Act 1996 amended

(1) This section amends the Intelligence and Security Committee Act 1996.

(2) In section 16(1), after “Article 9 of the Bill of Rights 1688”, insert “and the Parliamentary Privilege Act **2013**”.

30

(3) In section 16(2), replace “of the House of Representatives” with “in Parliament (as defined in **section 8(2)8B** of the Parliamentary Privilege Act **2013**)”.

Parliamentary Privilege Bill

Repeals

**35 Legislature Act 1908 and Legislature Amendment Act
1992 repealed**

- (1) The Legislature Act 1908 (1908 No 101) is repealed.
- (2) The Legislature Amendment Act 1992 (1992 No 106) is re- 5
pealed.

Legislative history

2 December 2013
11 December 2013

Introduction (Bill 179–1)
First reading and referral to Privileges Committee
