

*Standing Committee on Procedure and Privileges — Sixty-first Report — Progress report:
Supreme Court proceedings and matters of privilege arising in the 40th Parliament — Motion*

Resumed from an earlier stage of the sitting.

Hon COLIN de GRUSSA: Before the taking of questions, I was reflecting on the fact that the fundamental heart of this document is the concept of parliamentary privilege, which is so important for the work that we do here. I do not pretend for one minute to be an expert on parliamentary privilege at all, but as MPs we all need to have a good understanding of the rights that it affords us in this place. It is a fundamental underpinning of our democracy. More than that, it allows us to do what we do. The sixty-first report of the Standing Committee on Procedure and Privileges helpfully lays out some of the issues around parliamentary privilege in a terabyte age. Some of the data that we hold is privileged and some is not. The issue is how we determine which data is privileged and who should determine which of that data is privileged. Paragraph 3.11 on page 49 refers to the definition of parliamentary privilege, which comes from the New Zealand House of Representatives by the look of it, and the case *Attorney General and Gow v Leigh*. Paragraph 3.11 of the committee report states —

The purpose of parliamentary privilege at its most practical is to prevent retribution by the executive and others against Members of Parliament and those involved in parliamentary proceedings and to protect the free flow of information necessary in an effective deliberative democracy. An erosion of the immunity would likely have a ‘chilling’ effect on the information available to Members and the legislature.

I will repeat that last sentence —

An erosion of the immunity would likely have a ‘chilling’ effect on the information available to Members and the legislature.

That is critically important. An erosion of parliamentary privilege, a usurping of parliamentary privilege—any erosion of it—would have a chilling effect on our ability to do our job here and to represent our constituents. One of the great misnomers in the whole privilege debate is that privilege—maybe it is the wrong word—is not about us having more privileges than other people or being privileged; it is about protecting our democratic process. It is about protecting the information that we bring to this place for debate and that our constituents bring to us in order that we may raise their particular concerns in Parliament. It is fundamentally important—I cannot overstate that—to our democratic process, and it is not something that we should ever let be undermined for any purpose. That is not to say that our corruption watchdog should not be able to do its job—absolutely not. However, it is to say that the job of determining what is privileged is the job of the Parliament. In Parliament we have the Standing Committee on Procedure and Privileges, the members of which are our representatives on these matters, and it is their job to make that determination on behalf of Parliament.

I will refer to some other aspects in the report. I turn now to page 61 and the number of records, if you like, that have been reviewed. This is the important part. We are talking about many records having to be reviewed to determine whether they are privileged. We cannot just hand over a bunch of information and hope that the people at the other end will get it right, because this is about our democracy. Paragraph 3.43 states —

... 499,174 records have been reviewed for parliamentary privilege by staff of the PPC.

That is an extraordinary number and a heck of a lot of work. It is absolutely essential that the only information that we allow to be taken is information that is determined not to be subject to parliamentary privilege. The fact is that out of all those records, 10 079 were subject to parliamentary privilege. The vast bulk of those records could be given to the Corruption and Crime Commission, as necessary. This is not an attempt in any way to hold up investigations. This is about ensuring that the work of the Parliament can continue and that the protection of our democratic processes will continue under the incredibly important auspice of the Westminster system—parliamentary privilege. We cannot allow that to be usurped in order to satisfy any particular agenda.

Hon KATE DOUST: I rise tonight to make some comments on the sixty-first report of the Standing Committee on Procedure and Privileges. This report, of course, is a progress report. It was tabled on the final day of the fortieth Parliament. As I said on that day in my capacity as the then President, this report was to bring all members up to speed with where the privileges committee had arrived at that point. As members are aware, just over two years ago this process kicked off with a meeting with the Corruption and Crime Commissioner in relation to notices that were issued to obtain the data of three former members of this chamber and their staff.

First, I want to thank all members who participated on that committee and certainly the staff, because this has been probably one of the most onerous processes that I am aware of in my 20 years in Parliament and probably one of the most significant issues that we have had to deal with in this chamber. I know that all Parliaments across the country are looking at the outcome of this process because the decision that will be provided by the courts, hopefully in due course, will have an impact on how privilege is managed in all those places.

Right from the word go, the privileges committee certainly wanted to work with the Corruption and Crime Commission. Certainly during the first month, as members can see in the report, a lot of work was done with the

CCC to work out an agreement. I want to be really clear about where we wanted to go, because it is still reflected in recommendation 1 of this report that the privileges committee of this chamber firmly believes that there should be a permanent arrangement with the CCC and other agencies to deal with these issues of privilege, such as who gets to determine privilege and who manages that process, just as agreements are in place in other Parliaments around the country to that effect and have recently arisen and worked in other Parliaments. The committee was always of the view that an arrangement should be put in place and was working to that effect. It came as a surprise when suddenly that agreement seemed to have evaporated and nobody could articulate what had happened. The committee thought it was acting in good faith with the CCC to be able to work with it to sift through the documents and the data it wanted to go through and to provide it with the non-privileged material. I will not talk about what happened at that point because I think other members have canvassed those issues sufficiently today. I would imagine that over the next couple of years there will be opportunities to talk more when those issues arise. However, I do want to say that even though the committee had stalled and no longer had that arrangement, by other mechanisms it worked through the data—I think one of the previous speakers referred to the more than 450 000 items in the dataset—and the Legislative Council had made a range of determinations, as members will see in the report. On 10 separate occasions, the committee wrote to the CCC, commencing in December 2019, only a few months after the process commenced, and worked all the way through until 1 April this year. On 10 separate occasions, the PPC wrote to the CCC and said that all the CCC had to do was issue a fresh notice and it could have the non-privileged data. It was not an issue. We really wanted to give it to the CCC. We were prepared to give it to the CCC and wanted to cooperate with it.

I want to make it clear that the behaviour that instigated this initial inquiry should not be condoned. No-one on that committee condoned, supported or agreed with the actions of those former members. I do not think anyone in this chamber would take that view either. We wanted to do whatever we could as a committee to enable the CCC to do its job.

On one occasion, the Corruption and Crime Commission provided fresh notices to obtain 34 non-privileged documents, which we immediately handed over after discussion. All those things happened and we genuinely believed that we would be able to proceed and work with the CCC. Unfortunately, that did not happen and we now know the story. We ended up with two court proceedings. The hearings for court proceeding 2717, the President of the Legislative Council of Western Australia and the Corruption and Crime Commission and others, were held on 22 and 23 April. We still await the decisions of Justice Hall to find out where we will go with that. I note that the other action that was moved on behalf of the Attorney General, which is CIV 2716 of 2019, the Attorney General of Western Australia v the President of the Legislative Council of Western Australia and others, was adjourned on 22 April this year, so that is in abeyance. I have only a few more minutes but the volume of this report is substantial. I know that we could probably dip in and out of this report on an ongoing basis. It is mandatory reading material for all new members. If they really want to get their head around the issue of privilege—I think they will need to because it will come up again over the next couple of years—I encourage them to read through this document and to look at the earlier reports that set out the facts of what occurred at the time. Once members get past the first five chapters, the report will provide them with the best information about privilege and the relevant cases that have happened in various Parliaments around the world, and they will read a range of transcripts of hearings that were conducted during the process. This report is about giving members the culmination—the whole box and dice, if you like—up to that point so that they have the full story in front of them in anticipation of whatever decision is handed down in due course.

As I said, I am not going to comment on the actions of the Attorney General. Unfortunately, the media has done enough in that space. From my own personal perspective, it has been a very difficult two years because quite often we were not in the position of being able to make comment because of the nature of the material we were dealing with or the government agencies that we were dealing with on particular aspects of this issue. It was always quite distressing to read stories in the media that ran a particular line that was not always factual. In a couple of cases, sadly, journalists ran stories with information that they had gleaned from confidential documents, and I am still not sure how that information was obtained. It is quite disappointing that those things happened.

I do not know what is going to happen to those former members; that is up to the appropriate agencies to resolve. Who knows where that will go. However, the Standing Committee on Procedure and Privileges did its job, acted in good faith and played with a straight bat. It wanted to enter a proper and permanent arrangement with the CCC to ensure that it had access to non-privileged data, and I say “data” because the world has changed and it is not in the traditional sense of volumes of paper documents necessarily. Sadly, that has not occurred. In contrast, however, the committee entered into a number of arrangements with the Western Australia Police Force to assist it with the work that it was doing. We did not have to go through any legal proceedings. We had to incur costs, unfortunately, and I note that it has been an expensive process, but it was not always of our own choosing. More often than not, the committee was forced to seek extensive legal advice. Hopefully, that will put the committee in good stead for future direction. I hope that all members read this report, go through the details provided in the appendixes and read the story about what led up to the court action.

Hon PETER COLLIER: With only two minutes to go, I reiterate what everyone has been saying. There is a misguided notion that somehow privilege can be flippantly passed away, but it cannot. Doctors have privilege with their patients, lawyers have privilege with their clients, journalists have privilege with their sources and Parliament has privilege. It is not a word; it is a culture that determines the very fabric of Parliament. I say to every single member in this chamber that they will learn that the longer they are here, the more they will respect privilege. Members will be contacted by people and they will not want their information shared; that is called privilege. They will not contact members if they think that someone can come in and take that information from them. That is the very fabric of privilege. I urge members to please respect the privilege of Parliament. This thing has been turned overtly political and it did not need to be. As Hon Kate Doust just said, the committee was quite willing to hand over the non-privileged information. I will never in a million years protect anyone from the law, but I will protect their right to hold on to that privileged information. If anyone has done anything wrong, they will suffer the consequences of the law. It is a shame that the Standing Committee on Procedure and Privileges and the Corruption and Crime Commission were acting together cooperatively, collectively and effectively until the Attorney General became involved; that is a real shame. But the implications of ignoring privilege are profound for every single person in this chamber. This is a wonderful report, and I commend the members of the previous privileges committee.

Question put and passed.

Progress reported and leave granted to sit again, pursuant to standing orders.