



LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

PARLIAMENTARY PRIVILEGE

What is parliamentary privilege?

A statement or action is privileged when the person making it or doing it is protected from legal action. All words spoken and acts done in parliament are privileged.

Parliamentary privilege refers to the rights, powers and immunities that are essential to the Assembly operating effectively. It protects the ability of the Assembly and its committees to carry out their functions of inquiring, debating and legislating without interference, and to deal effectively with any attempted interference.

The principal immunity from the ordinary law is the freedom of parliamentary debates and proceedings from question and impeachment in civil or criminal courts. For example:

- Members cannot be sued or prosecuted for anything they say in debates
- witnesses before a committee cannot be sued or prosecuted for the evidence they give or the fact they have given it.

The principal powers of the Assembly are:

- to compel the attendance of witnesses, the giving of evidence and the production of documents
- to judge and punish contempts, which includes breaches of privilege.

What is contempt?

Any action which contravenes the rules of the Assembly or interferes with the working of the Assembly could be a contempt.

The Assembly is the judge of what is and what is not contempt. The power to punish contempts is one of the powers available to the Assembly to protect the integrity of its processes.

What is the legal framework?

Section 12 of the *Northern Territory (Self-Government) Act 1978 (Cth)* declares the powers, privileges and immunities of the Legislative Assembly to be the same as those of the House of Representatives. The Act also provides that the Legislative Assembly can declare its own privileges if it chooses to do so.

A significant declaration of the Assembly's privileges was made in the *Legislative Assembly (Powers and Privileges) Act 1992*.

Supplementary to this are the Standing Orders and Sessional Orders that deal with privilege, including:

- procedures to protect the rights of witnesses
- exercising freedom of speech
- criteria for determining matters relating to privilege
- recourse for persons who are referred to in the Assembly.

Who and what is protected?

Parliamentary privilege protects those who participate in proceedings in parliament from outside interference or legal action. The basic protection is provided by article 9 of the *Bill of Rights 1688 (UK)*:

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

This protection is incorporated into Northern Territory law by section 6 of the *Legislative Assembly (Power and Privileges) Act 1992*.

Proceedings in parliament defined

Section 6 of the Act defines proceedings in parliament to mean all words spoken and acts done, and includes:

- the giving of evidence before the Assembly or a committee, and the evidence given

SUMMARY

Parliamentary privilege protects those who participate in proceedings in parliament

Privilege protects the ability of the Assembly and its committees to carry out their functions of inquiring, debating and legislating without interference, and to deal effectively with any attempted interference

Section 12 of the *Northern Territory (Self-Government) Act 1978 (Cth)* declares the powers, privileges and immunities of the Legislative Assembly

- the presentation or submission of a document to the Assembly or a committee
- the preparation or publication of a document, including a report.

Contempts by Members

Examples of contempts that may be committed by Members include:

- unauthorised disclosure of draft committee reports, unpublished evidence or submissions, or committee deliberations
- asking for, obtaining or receiving a benefit in return for discharging the Member's duties
- disobeying a lawful order of the Assembly or a committee, for example, failing to appear before a committee.

Contempt against Members

Examples of contempts that may be committed by other persons in relation to Members include:

- obstruction of a Member in the exercise of their duties
- improper influence of a Member
- harassment of a Member.

These contempts may cover such actions as a threat of legal action against a Member to prevent them raising a particular matter in the Assembly.

Contempts involving witnesses

The other common contempts involve conduct by or in relation to witnesses appearing before committees, including:

- giving false or misleading evidence
- interference with a witness, for example, inducing a witness not to give evidence.

Penalties

In the worst cases, contempt may be punished by a term of imprisonment or the imposition of a fine. The Assembly has never imposed such a penalty.

A court can also prosecute in respect of an offence against an act establishing a committee.

Matter of privilege

A matter of privilege is any action which may constitute a contempt of the Assembly and which the Assembly may refer to its Committee of Privileges for investigation. The potential or actual improper interference caused by such conduct is a key factor in judging whether a contempt has been committed.

Raising matters of privilege

Standing Order 229 sets out the procedure for considering matters of privilege in the Assembly for investigation.

If a matter of privilege arises suddenly during a meeting of the Assembly, then all other business will be suspended until the matter is disposed of.

At all other times, the first step is for the Member who intends to raise the possible matter of privilege to write to the Speaker requesting them to grant precedence to the proposed privilege motion.

The Speaker must consider the matter against criteria in Standing Order 231 and determine as soon as possible whether to give precedence to the proposed motion. The Speaker's determination is not a recommendation that a matter be referred to the Committee of Privileges; that is a matter for the Assembly.

If the Speaker determines that a matter of privilege should not be given precedence, it does not prevent the Member giving notice of a motion on a subsequent meeting day in accordance with the adopted Routine of Business. If the Assembly then is not expected to meet within one week after the notice is given, the motion may be moved on the same day.

The Assembly may then refer the matter for investigation and report to the Committee of Privileges.

Committee of Privileges

The role of the Committee of Privileges is to inquire into and report on complaints of breaches of privilege which may be referred to it by the Assembly.

If the allegations are made out to the satisfaction of the Committee of Privileges, then the penalty (if any) is recommended to the Assembly which considers the recommendation and imposes the final penalty.

The Assembly may decide to take no further action on a matter, even where it is clear that an offence has occurred.

The right of reply

A Sessional Order sets out the procedures for the protection of persons referred to in the Assembly.

The right of reply is an opportunity for a person who claims to have been adversely affected through being named or otherwise identified in Assembly proceedings to have their response incorporated in the parliamentary record.

The person makes their submission to the Speaker in writing.

If the Speaker is satisfied that the subject of the submission is not obviously trivial, frivolous, vexatious or offensive, and it is practical for the Standing Orders Committee to consider it, the Speaker will refer the submission to the Standing Orders Committee for consideration.

The committee will then consider the submission in private and make recommendations to the Assembly.

Freedom of speech

As noted, the most significant immunity of any Member is parliamentary privilege. It is often referred to as freedom of speech in parliament – words uttered and acts done in parliament are protected from legal action.

For example, a person cannot take action for defamation against a Member on the basis of words spoken in the Assembly. However, the protection does not apply if a Member repeats those words outside of the Assembly.

For information about privilege see: parliament.nt.gov.au/committees/privilege