

1980-81

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
THE SENATE

(Presented pursuant to leave granted and read 1^o, 12 November 1981)

(SENATOR BUTTON)

No 241

A BILL

FOR

An Act relating to offences against the Parliament

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

Short title

1. This Act may be cited as the *Offences against the Parliament Act 1981*.

5 **Commencement**

2 This Act shall come into operation on the day on which it receives the Royal Assent.

Interpretation

3. In this Act, unless a contrary intention appears—

10 “committee” means committee of either House of the Parliament, or of both Houses of the Parliament, but does not include a committee of a whole House;

“House” means House of the Parliament;

“member” means member of either House of the Parliament; and

15 “the Court” means the High Court of Australia.

Powers of the Parliament, &c.

4. (1) Except as expressly provided in this Act, nothing in this Act derogates from any power, privilege or immunity of either House or of the members or committees of either House under section 49 of the Constitution.

(2) A House shall not impose any penalty for any act or omission which is an offence under this Act. 5

(3) A House shall not in any circumstances impose the penalty of imprisonment.

(4) For the purpose of making a determination in respect of proceedings for an offence under this Act, or in respect of an application under section 29, a court may, only so far as is necessary for making that determination, inquire into and examine proceedings in the Parliament, and may examine any document or record of proceedings of either House without the leave of that House. 10

Offences under other laws 15

5. Where an act or omission which is an offence under this Act is also an offence under a law of the Commonwealth or of a State or Territory, a person shall not be liable to conviction under this Act and under a law of the Commonwealth or of a State or Territory in respect of the same act or omission.

Civil remedies 20

6. Nothing in this Act shall prevent a court from granting any civil remedy in respect of an act which is an offence under this Act.

Interference with the Parliament

7 A person shall not improperly interfere with the free exercise by a House of its authority, or with the free performance by a member of his duties as a member. 25

Improper influence of members

8. A person shall not, by fraud, intimidation, force or threat of any kind, by the offer or promise of any inducement or benefit of any kind, or by other improper means, influence a member in his conduct as a member, or induce him to be absent from a House or a committee. 30

Molestation of members

9. A person shall not inflict any punishment, penalty or injury upon or deprive of any benefit a member on account of his conduct as a member.

Disturbance of Parliament 35

10. A person shall not wilfully disturb a House or a committee while it is sitting, or wilfully engage in any disorderly conduct in the precincts of a House or a committee tending to disturb its proceedings or impair the respect due to its authority.

Defamation of Parliament

11. (1) A person shall not publish any defamatory or scandalous matter tending to adversely affect the reputation of either House or of a member in his capacity as a member, or to impair the respect due to the authority of either House.

(2) It is a defence to a prosecution under sub-section (1) that—

- (a) the published matter was true or substantially true; or
- (b) the defendant, being the author or publisher of the published matter, believed on reasonable grounds that it was true or substantially true.

(3) It is a defence to a prosecution under sub-section (1) that—

- (a) the published matter was comment;
- (b) the comment expressed the genuine opinion of the defendant, being the author or publisher of the published matter;
- (c) the comment was based on facts expressly or impliedly referred to in the published matter; and
- (d) (i) those facts were true or substantially true, or
(ii) the defendant, being the author or publisher of the published matter, believed on reasonable grounds that those facts were true or substantially true.

(4) In considering whether an offence has been committed under this section, or in determining the penalty for such an offence, a court shall give due consideration to the principles of freedom of speech and freedom of the press.

Service of writs, &c.

12. A person shall not serve or execute any criminal or civil process in the precincts of either House on a day on which that House sits except with the consent of that House.

False reports of proceedings

13. A person shall not wilfully publish any false or misleading report of the proceedings of either House or of a committee.

Disobedience of orders

14. A person shall not, without reasonable excuse, disobey a lawful order of either House or of a committee.

Obstruction of orders

15. A person shall not interfere with or obstruct another person who is carrying out a lawful order of either House or of a committee.

Interference with witnesses

16. A person shall not, by fraud, intimidation, force or threat of any kind, by the offer or promise of any inducement or benefit of any kind, or by other improper means, influence another person in respect of any evidence given or

to be given before either House or a committee, or induce another person to refrain from giving such evidence.

Molestation of witnesses

17. A person shall not inflict any penalty or injury upon or deprive of any benefit another person on account of any evidence given or to be given before either House or a committee. 5

Offences by witnesses

18. A witness before either House or a committee shall not—

- (a) without reasonable excuse, refuse to make an oath or affirmation or give some similar undertaking to tell the truth when required to do so; 10
- (b) without reasonable excuse, refuse to answer any relevant question put to him when required to do so; or
- (c) give any evidence which he knows to be false or misleading in a material particular, or which he does not believe on reasonable grounds to be true or substantially true in every material particular. 15

19. A person shall not, without reasonable excuse—

- (a) refuse or fail to attend before either House or a committee when summoned to do so; or
- (b) refuse or fail to produce documents or records, or to allow the inspection of documents or records, in accordance with a requirement of either House or of a committee. 20

20. A person shall not wilfully avoid service of the summons of either House or of a committee.

21. A person shall not destroy, forge or falsify any document or record required to be produced by either House or by a committee. 25

Publication of *in camera* evidence

22 A person shall not publish any evidence taken *in camera* by either House or by a committee without the approval of that House or committee.

Proceedings

23. (1) An offence under this Act may be punished on indictment or, with the consent of the accused, summarily, but a person is not liable to be convicted more than once in respect of the same offence. 30

(2) Proceedings in respect of offences under this Act shall be instituted only in accordance with a resolution agreed to by a House requiring the Attorney-General to institute proceedings. 35

(3) Where a House agrees to a resolution in accordance with sub-section (2), the Attorney-General shall institute the proceedings required by the resolution.

(4) Subject to this section, the Attorney-General shall determine whether, in respect of an offence under this Act, proceedings required in accordance with 40

this section shall be instituted for the summary conviction of a person or for the trial on indictment of a person, and in making such determination shall have regard to the seriousness of the alleged offence.

Jurisdiction of courts

5 **24.** The courts which are invested with federal jurisdiction and on which jurisdiction is conferred in respect of offences under the *Crimes Act* 1914 have federal jurisdiction invested in them, or jurisdiction conferred on them, as the case may be, in respect of offences under this Act.

Penalties

10 **25. (1)** The penalty for an offence under this Act is—
 (a) if the offence is punished on indictment—imprisonment for a term not exceeding one year or a fine not exceeding \$10,000; and
 (b) if the offence is punished on summary conviction—imprisonment for a term not exceeding six months or a fine not exceeding \$1,000.

15 **(2)** Where a person is convicted of an offence under this Act and the court considers that, having regard to the nature of the offence, it is not appropriate to impose a penalty in accordance with sub-section (1), the court may impose a penalty of reprimand.

20 **(3)** A House may, in a resolution under sub-section 23 (2), vary the penalties contained in sub-section (1) so as to provide lesser maximum penalties for the purpose of the proceedings required by that resolution, and for the purpose of those proceedings sub-section (1) shall be deemed to be amended in accordance with that resolution.

Inquiries concerning offences

25 **26. (1)** Where a House conducts an inquiry for the purpose of assisting that House to determine whether a resolution under section 23 should be agreed to by that House, or whether a contempt of that House which is not an offence under this Act has been committed, no person shall be called to appear before that House in the course of that inquiry, but a committee of that House
 30 conducting that inquiry may summon witnesses subject to this section.

(2) A person who appears before a committee in the course of an inquiry referred to in sub-section (1)—

- (a) shall be given reasonable notice of the meeting of that committee at which he appears;
- 35 (b) shall be given reasonable notice of any matters concerning his conduct relevant to the inquiry which may be raised in the course of the inquiry;
- (c) shall be heard only in public session of that committee if he so requires;
- (d) shall be entitled to be accompanied by counsel and to have reasonable opportunity to consult counsel;
- 40 (e) shall not be required to answer any question his answer to which may incriminate him;

(f) shall be entitled to be acquainted with any evidence given in the course of the inquiry which may relate to his conduct relevant to the inquiry; and

(g) shall be entitled to reasonable opportunity to question before that committee, in person or by counsel, any person who, in the course of the inquiry, has raised matters relating to his conduct relevant to the inquiry. 5

27. Where, in the course of an inquiry referred to in section 26, a matter is raised concerning the conduct of a person which is relevant to that inquiry and which may be adverse to that person, that person shall be given reasonable opportunity to appear and to be heard on his own behalf before a committee conducting that inquiry in accordance with that section. 10

Interested members

28. (1) Where a member is personally interested in the subject of an inquiry referred to in section 26, or in a motion for a resolution under section 23 which has been proposed in either House, he shall not participate as a member of a committee in that inquiry or in any vote of that House in respect of that motion. 15

(2) For the purpose of sub-section (1), a member shall not be held to be personally interested in a subject if his interest is shared in common by four or more other members. 20

Orders for compliance with Act

29. (1) An application may be made to the Court for an order for compliance with a provision of this Act, other than a provision which creates an offence. 25

(2) The Court has jurisdiction to hear and determine applications under this section.

(3) The Court shall hear and determine applications under this section in such manner as it thinks fit.

(4) Where, upon an application under sub-section (1), the Court is satisfied that a provision of this Act, other than a provision which creates an offence, has not been complied with, the Court may make such order or declaration as it thinks fit to ensure compliance with that provision. 30

Costs in proceedings

30. A court before which any proceeding under this Act is heard may award costs to any party in that proceeding. 35

Regulations

31. (1) The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters which are required or permitted to be prescribed by this Act, or which are necessary or convenient to be prescribed, for carrying out or giving effect to this Act. 40

(2) A regulation made under sub-section (1) shall not come into effect until each House has agreed to a resolution approving that regulation.

(3) Sub-sections (4), (5), (5A) and (6) of section 48 and section 49 of the *Acts Interpretation Act* 1901 do not apply to regulations made under sub-section (1).

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