



HIGH COURT OF AUSTRALIA

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Details of Filing

File Number: H3/2023
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Important Information

This Notice has been inserted as the cover page of the document which has been accepted for filing electronically. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties and whenever the document is reproduced for use by the Court.

Part I: Internet Publication

1. This outline is in a form suitable for publication on the internet.

Part II: Outline of Oral Submissions

The PWC Act did not abrogate parliamentary privilege

2. For the reasons set out in **ACTS [12]-[33]** neither the text, context nor purpose of the PWC Act suggests the condition precedent in s 16(1) of the PWC Act is a public obligation which is enforceable under the general law by the courts. The Territory does not intend to elaborate on these submissions orally.

Any inquiry in relation to s 16(1) of the PWC Act would infringe Article 9 of the Bill of Rights

3. Parliamentary privilege lies at the heart of the separation of powers doctrine: see, for example, *Prebble v Television New Zealand Ltd* [1995] 1 AC 321 at 332 (Lord Browne-Wilkinson (for himself and Lords Keith of Kinkel, Goff of Chieveley, Mustill and Nolan)) (**JBA tab 69, 2414**); *Crime and Corporation Commission v Carne* (2023) 97 ALJR 737 at [106] (Gordon and Edelman JJ) (**JBA tab 52, 1765**). It therefore should be interpreted and applied broadly to avoid undermining the important public function it fulfills.
4. The Territory endorses the meaning of ‘impeached’ and ‘questioned’ in Article 9 contended for by Tasmania and South Australia: **ACTS [36]; TS [42]-[43], [52]-[57], [61]-[63]; SAS [23], [24]-[26]**.
5. Parliamentary privilege does not prevent parliamentary material being tendered merely to prove, the non-contentious fact that something was said or done in the course of Parliament: see, for example, *Leyonhjelm v Hanson-Young* (2021) 282 FCR 341 at [364]-[365] (Abraham J) (**JBA tab 60, 2079**) and the authorities cited therein.
6. However, anything going beyond this will infringe Article 9 - including:
 - a. Determining the meaning of what was said, what inferences could be drawn from it, or otherwise critically examining it: *Comalco Ltd v Australian Broadcasting Corporation* (1983) 78 FLR 449 at 454 (Blackburn CJ) (**JBA tab 49, 1532**); *Mees v Roads Corporation* (2003) 128 FCR 418 at [80] (Gray J) (**JBA tab 62, 2131**).
 - b. Determining, accepting or relying on the truthfulness of what was said: *Mees* at [81], [85]-[86] (**JBA tab 62, 2131-2132, 2133**); *Leyonhjelm* (2021) 282 FCR 341 at [359] (Abraham J) (**JBA tab 60, 2078**); *Rann v Olsen* (2000) 76 SASR 450 at [56]-[61] (Doyle CJ) (**JBA tab 74, 2642-2643**); *Church of Scientology v Johnson-Smith* [1972] 1 QB 522 at 529-530 (Browne J) (**JBA tab 48, 1523-1524**).

- c. Making comments or submissions on what was said in Parliament: *Comalco* at 453 (Blackburn CJ) (**JBA tab 49, 1531**); *Amann Aviation Pty Ltd v Commonwealth* (1988) 19 FCR 223 at 226 (Beaumont J) (**JBA tab 37, 1238**).
7. The Commonwealth adopts an unduly narrow view of the application of parliamentary privilege in the present matter (at **CS [29]-[38]**) for the following reasons.
8. To determine whether the First Respondent's allegation in [15] of their Amended Statement of Claim (that contrary to ss 15 and 16 of the *Public Works Committee Act 1914 (Tas)*, the Hazell's Public Works have not been referred to, considered, and reported upon by the Committee in accordance with s 16 of the PWC) was correct would necessarily require a comparison between what was referred to and reported upon by the Parliamentary Committee (including the plans, drawing and other documentation submitted to it)¹ and the 'Hazell's Public Works'.²
9. This comparison would necessarily involve 'questioning' the contents of the Committee's report of 4 December 2017, within the meaning of Article 9, because it would involve:
 - a. drawing an inference from the contents of the Committee's written report and the plans, drawings and other documentation submitted to it - namely the nature and scope of the public works it considered and reported on;
 - b. determining, accepting or relying on the truthfulness of the contents of the report – namely the accuracy of the descriptions of the public works the Committee considered;
 - c. drawing a conclusion from the Committee's report – namely that the public works it considered and reported on are the same or different from Hazell's Public Works: **ACTS [43]-[47]**; and
 - d. making comments or submissions on what is contained in the Committee's report.
10. This goes well beyond the use of parliamentary material to prove a simple fact that is non-contentious because the record is accepted as accurate - for example, using Hansard to prove that a person was present in Parliament on a particular date or simply said particular words.

Dated: 9 April 2024



A P Berger KC

P Bindon

¹ As alleged in [3]-[8] of the Amended Statement of Claim.

² As defined in [11C] of the Amended Statement of Claim.