HIGH COURT OF AUSTRALIA

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IN THE HIGH COURT OF AUSTRALIA No H3 of 2023

HOBART REGISTRY

BETWEEN: ATTORNEY-GENERAL FOR THE STATE OF TASMANIA

APPELLANT

and

GREGORY JOHN CASIMATY

FIRST RESPONDENT

and

HAZELL BROS GROUP PTY LTD (ACN 088 345 804)

SECOND RESPONDENT

SUBMISSIONS OF THE ATTORNEY-GENERAL FOR THE STATE OF SOUTH AUSTRALIA (INTERVENING)

Part I: CERTIFICATION

1. These submissions are in a form suitable for publication on the internet.

Part II: BASIS OF INTERVENTION

2. The Attorney-General for the State of South Australia (**South Australia**) seeks leave to intervene pursuant to rules 42.08A and 44.04 of the *High Court Rules 2004* in order to advance submissions that are generally in support of the Attorney-General for the State of Tasmania (**Tasmania**).

Part III: WHY LEAVE SHOULD BE GRANTED

3. South Australia has an interest in the way in which the present proceedings are resolved arising from both the similarity between ss 15 and 16 of the *Public Works Committee Act 1914* (Tas) (**PWC Act**) and ss 12C and 16A of the *Parliamentary Committees Act 1991* (SA) (**PC Act**) and, more generally, from the application of principles of parliamentary privilege to the work of the South Australian Parliament and its committees.

4. Like ss 15 and 16 of the PWC Act, ss 12C and 16A of the PC Act establish a Public Works Committee to which significant public works are referred. Although there are some important differences between the provisions of the PWC Act and the PC Act,[1] there is nonetheless the real prospect that the construction of ss 15 and 16 of the PWC Act adopted by this Court in the present proceedings will have a direct bearing on the work of the South Australian Public Works Committee pursuant to ss 12C and 16A of the PC Act.

5. Further, the manner in which this Court applies principles of parliamentary privilege to the work of the Tasmanian Public Works Committee may have broader implications for the operation of the doctrine of parliamentary privilege. Although the application of those principles does not involve a matter arising under the *Commonwealth*

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[1] Whereas s 16 of the PWC Act provides that references to the Tasmanian Public Works Committee may be made by the Governor, a resolution of the House of Assembly, or to itself of its own motion, s 16A of the PC Act provides that referrals to the South Australian Public Works Committee are made by force of the PC Act itself. Further, whereas s 16 of the PWC Act provides that works shall not be *commenced* unless referred to and reported upon by the Tasmanian Committee, s 16A of the PC Act provides that *payment* shall not be made for public works unless inquired into and reported upon by the South Australian Committee.

Constitution or involving its interpretation, such that South Australia has no right to intervene in these proceedings pursuant to s 78B of the *Judiciary Act 1903* (Cth),[2] the doctrine of parliamentary privilege is fundamental to the system of parliamentary democracy that operates under the *South Australian Constitution*.[3]

6. For these reasons, South Australia seeks leave to intervene in these proceedings.

Part IV: ARGUMENT

Overview

7. Parliamentary privilege is a conveniently succinct term for the sum of the powers, privileges and immunities held by Parliament and enjoyed by its constituent Houses, committees, and members, without which they could not discharge their functions.[4]

8. The privileges, powers and immunities of Parliament constitute a fundamental element in the functioning of representative and responsible government under the Westminster model of parliamentary democracy. Both principle and authority establish that the importance of parliamentary privilege for the functions and operations of Parliament requires that no narrow approach should be taken. Not the least of those privileges is that of the freedom of speech, debate and proceedings from being impeached or questioned. It is that aspect of the privilege with which the present proceedings are principally concerned.[5]

9. Parliament may, by legislation, abrogate or abridge its privileges. However, the constitutional significance of privilege to the business of Parliament grounds a strong presumption that Parliament has not intended to affect its privileges except by express words or unmistakeable language. Where legislation can be given a construction that permits it to operate without affecting parliamentary privilege, a conclusion that

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2 Leave was granted to South Australia to intervene in *Egan v Willis* prior to issues arising in argument that led to the issue of notices under s 78B of the *Judiciary Act 1903* (Cth): (1998) 195 CLR 424, 427, 431.

3 Section 38 of the *Constitution Act 1934* (SA) provides that the Parliament of South Australia, and its committees and members, have the same privileges, powers and immunities held by the House of Commons as at 24 October 1856. That was the date on which the *Constitution Act 1855-56* (SA) and responsible government in South Australia commenced. Section 38 includes article 9 of the Bill of Rights; *Ellis v The King* [2023] SASCA 28, [29] (the Court).

4 *Erskine May's Parliamentary Practice* (25th ed, 2019), 239 [12.1]; *Canada (House of Commons) v Vaid* [2005] 1 SCR 667, 685 [29.2] (Binnie J).

5 See paragraphs [11]-[15] below.

Parliament implicitly intended such an effect is not to be lightly reached unless the manifest purpose of the legislation would be defeated.[6]

10. Where parliamentary privilege is not abrogated, the relevant question becomes whether rights can be vindicated outside of Parliament without 'impeaching' or 'questioning' the debates and proceedings of Parliament. Again, no narrow approach should be taken to this question.[7]

Parliamentary privilege is a cornerstone of parliamentary democracy

11. The constitutional significance of parliamentary privilege is well established. The avowed basis for the privileges, powers and immunities of the House of Commons was their necessity for performing the high functions of Parliament, that is "the effective discharge of those duties which by the Constitution are cast upon the House of Commons".[8] They include, but are not limited to, "the ancient and essential privilege of freedom of speech".[9] As Coleridge J observed in *Stockdale v Hansard*:[10]

> [I]t needed not the authoritative declaration of the Bill of Rights to protect the freedom of speech, the debates or proceedings in Parliament, from impeachment or question in any place out of Parliament; and that the House should have exclusive jurisdiction to regulate the course of its own proceedings, and animadvert upon any conduct there in violation of its rules, or derogation from its dignity, stands upon the clearest grounds of necessity.

12. In *British Railways Board v Pickin*, Lord Simon of Glaisdale reiterated the ongoing significance of privilege, observing that privileges of Parliament are "vouchsafed so that Parliament can fulfil its key function in our system of democratic government".[11]

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6 See paragraphs [16]-[22] below.

7 See paragraphs [23]-[29] below.

8 *Stockdale v Hansard* (1839) 9 A & E 1, 218; 112 ER 1112, 1194 (Coleridge J); see also, 113- 115; 1155-1156 (Denman CJ). Of course, the House of Commons also holds privileges "by virtue of ancient usage and prescription; the *lex et consuetudo Parliamenti*, which forms a part of the Common Law of the land": *Kielley v Carson* (1842) 4 Moore PC 63, 89; 13 ER 225, 235 (Parke B).

9 *Re Parliamentary Privilege Act 1770* [1958] AC 331, 350 (Viscount Simonds).

10 *Stockdale v Hansard* (1839) 9 A & E 1, 232-233; 112 ER 1112, 1199 (Coleridge J). In *Canada (House of Commons) v Vaid*, the Supreme Court of Canada observed that "necessity" in this sense invokes a broader notion than that of the common law test of reasonable necessity applied to colonial legislatures: [2005] 1 SCR 667, 687 [29.7], 697 [41] (Binnie J).

11 [1974] AC 765, 799.

In *Pepper v Hart*, Lord Browne-Wilkinson observed that "Article 9 is a provision of the highest constitutional importance and should not be narrowly construed."[12]

13. In *Lange v Australian Broadcasting Corporation*, this Court observed the historical importance of the privilege to the House of Commons in maintaining its independence of action and speech, and its ongoing significance in "enforcing the responsibility of the Executive to the organs of representative government".[13] It is a "fundamental right at the centre of parliamentary democracy".[14]

14. Most recently, in *Criminal Justice Commission v Carne*, Justices Gordon and Edelman observed that:[15]

> Parliamentary privilege is a 'bulwark of representative government'. It has long antecedents. It allows Parliament to perform its functions without obstruction. Parliamentary privilege shields certain areas of legislative activity from judicial or executive review, thereby giving 'the legislative branch of government the autonomy it requires to perform its constitutional functions.' Parliamentary privilege operates to ensure that a person who participates in parliamentary proceedings can do so knowing, at the time of that participation, that what they say cannot 'later be held against them in the courts', thereby ensuring that such a person is not inhibited in providing information to the Parliament or in otherwise participating in parliamentary proceedings. This is the 'basic concept underlying article 9' of the Bill of Rights 1688.

15. The functions of Parliament include the raising of issues, debates, questions, and investigations of matters of relevance to the proper functioning of the polity and the wellbeing of the people forming part of it, concepts recognised in the historical description of the House of Commons as "the grand inquest of the nation", which "may enquire into all alleged abuses and misconduct in any quarter".[16] For that reason, subject to its internal rules and procedures, a House of a Parliament or its members is

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12 [1993] AC 593, 638.

13 *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520, 558-559 (Brennan CJ, Dawson, Toohey, Gaudron, McHugh, Gummow and Kirby JJ).

14 *BDR21 v Australian Broadcasting Corporation* [2023] FCAFC 101, [80] (Rangiah, Bromwich and Cheeseman JJ).

15 *Criminal Justice Commission v Carne* [2023] HCA 28, [106] (Gordon and Edelman JJ) (citations omitted).

16 *Stockdale v Hansard* (1839) 9 A & E 1, 193; 112 ER 1112, 1185 (Patteson J); see also 115; 1156 (Lord Denman CJ).

entitled to enquire into any matter within the relevant jurisdiction.[17] The immunity provided for freedom of speech and debate and proceedings in Parliament ensures that those high constitutional functions[18] are unable to be impeded, disrupted or otherwise called into question.

Parliamentary privilege may only be abrogated by express words or necessary implication

16. The great constitutional significance of parliamentary privilege to the functioning of parliamentary democracy, and the care historically shown by Parliament to safeguard it, serve to emphasise the improbability that Parliament intends to detract from it in its legislation: "Those rights and privileges have always in every colony, following the example of the mother country, been jealously maintained and guarded by the Legislative Assembly."[19]

17. Consistent with that reasoning, it is settled principle that "express words … [or] unmistakable and unambiguous language" are required before a statute will be held to limit or abrogate the powers, privileges or immunities of a House of Parliament or its members.[20] That presumption applies as strongly to the statutory representation of the rule in article 9 of the Bill of Rights 1689 as to the law and custom of Parliament generally.[21]

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17 *Australian Capital Television Pty Ltd v Commonwealth* (1992) 177 CLR 106, 142 (Mason CJ); *Aboriginal Legal Service (WA) v WA* (1993) 9 WAR 297, 315-317 (Nicholson J, Rowland and Walsh JJ agreeing).

18 *R v Boston* (1923) 33 CLR 386, 401-402 (Isaacs and Rich JJ).

19 *Theberge v Laudry* (1876) 2 App Cas 102, 107-108 (Lord Cairns LC).

20 *Duke of Newcastle v Morris* (1870) LR 4 HL 661, 668, 671-672, 674 (Lord Hatherley LC), 677 (Lord Westbury), 680 (Lord Colonsay); *Theberge v Laudry* (1876) 2 App Cas 102, 107-108 (Lord Cairns LC); *Hammond v Commonwealth* (1982) 152 CLR 188, 200 (Murphy J); *Aboriginal Legal Service (WA) v WA* (1993) 9 WAR 297, 304-305 (Rowland J); *Criminal Justice Commission v Parliamentary Commissioner for Criminal Justice* [2002] 2 Qd R 8, 22-23 [26] (McPherson JA).

21 *Re Parliamentary Privilege Act 1770* [1958] AC 331, 350 (Viscount Simonds); *BDR21 v Australian Broadcasting Corporation* [2023] FCAFC 101, [80] (Rangiah, Bromwich and Cheeseman JJ). In the United Kingdom, the Bill of Rights is regarded now as falling within a class of 'constitutional statutes' for which a greater stringency and scrutiny is required before it will be impliedly affected by later legislation. It must be so clear that an "inference of an actual determination to effect the result contended

18. Where Parliament has intended to abolish or abrogate a privilege, it would be expected to do so in terms that leave no room for debate. Parliaments have done so on a number of occasions, in particular instances.[22] Perhaps the most significant example is that of the exclusive right of the House of Commons to determine conclusively, as a matter of exclusive cognisance, questions concerning its membership. That included determining questions of alleged disqualification as well as of disputed elections. The latter jurisdiction is now statutorily conferred on the courts, but without conferring general jurisdiction encompassing disqualification generally.[23]

19. A related example, but again reflecting the limits of legislative intrusion, is that of statutory provision for common informers to sue members of Parliament on the basis that the member sat and voted while disqualified or failed to take an oath. By directly conferring rights on third parties exercisable out of Parliament, such provisions necessarily required courts to investigate and determine the question, and thereby enter into consideration of matters that occurred in Parliament.[24] Even there, however, the creation of a clear statutory right in a third party outside Parliament and enforceable in the courts was not reckoned to extend beyond what was absolutely necessary to give effect to the right. It was not regarded as altering the rule that members and officers were not compellable to give evidence as to what had occurred in Parliament without leave of the Parliament.[25]

20. Turning to the terms of the PWC Act, ss 15 and 16 do not address the question of parliamentary privilege at all. In the absence of any express abrogation, the Full Court

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for was irresistible", requiring "unambiguous words on the face of the later statute": *Thoburn v Sunderland City Council* [2003] QB 151, 186-187 [62]-[63] (Laws LJ).

22 Instances of express abrogation include the following: the legislation in *Arena v Nader* (1997) 42 NSWLR 427, abridging privilege in order to allow investigation of the truth of allegations made in the NSW Parliament (but without removing the immunity from liability of the member who made them); s 39 of the *Constitution Act 1934* (SA), abrogating the general immunity of members from being issued a subpoena to attend court during a parliamentary session; and, the discussion in *Re Parliamentary Privilege Act 1770* [1958] AC 331 of statutes that limited members' immunities from being sued.

23 *Theberge v Laudry* (1876) 2 App Cas 102, 107-108 (Lord Cairns LC). Cf *Alley v Gillespie* (2018) 264 CLR 328 concerning ss 46 and 47 of the *Commonwealth Constitution*.

24 *Bradlaugh v Gossett* (1884) 12 QBD 271, 281-282 (Stephen J).

25 *Erskine May's Parliamentary Practice* (25th ed, 2019), 274-277 [13.15]; *Chubb v Salomons* (1852) 3 Car & K 75; 175 ER 469 (Pollock CB); *Forbes v Samuel* [1913] 3 KB 706, 725, 730; (1913) 29 TLR 544, 548 (Scrutton J).

reasoned that an abrogation of privilege could be implied from the "critical aspect" that the prohibition contained in s 16 played in the scheme of the PWC Act. The significance of the prohibition appeared to the Full Court a sufficient basis to reason that it must be enforceable under the general law by the courts.[26] However, contrary to the approach adopted by the Full Court, the abridgement of parliamentary privilege is not to be discerned from the fact that the rights and obligations in question are of significance. Many of Parliament's powers, privileges and immunities may affect the rights or interests of members or third parties outside Parliament in important and significant ways. The inability to sue for allegedly defamatory statements made in Parliament may be the most prominent example.[27] Others include, the inability to enforce statutory secrecy provisions where disclosures take place in the proceedings of Parliament.[28] The importance of such laws does not warrant an implication that parliamentary privilege has been abridged.

21. A related strand of the Full Court's reasoning was that the scheme for scrutiny of public works could only have efficacy if it could be enforced on applicable persons outside Parliament.[29] However, as Tasmania notes in its submissions, Parliament has a number of means of holding Ministers to account and controlling public expenditure.[30] It is not correct, to say that the scrutiny function performed by the Public Works Committee must be subject to supervision by the courts, in circumstances where it is subject to the

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26 *Casimaty v Hazell Bros Group Pty Ltd* [2022] TASSC 9, [24] (Brett J), [1] (Pearce J agreeing).

27 *Prebble v Television New Zealand Ltd* [1995] 1 AC 321, 336 (Lord Browne-Wilkinson); *Hamilton v Al Fayed* [2001] 1 AC 395, 408 (Lord Browne-Wilkinson); *Mees v Roads Corporation* (2003) 128 FCR 418, 442 [76] (Gray J). Of course, it would ordinarily be open for a defendant to argue qualified privilege in responding to statements in Parliament: *Rann v Olsen* (2000) 76 SASR 450, 454 [22], 462-463 [60]-[67] (Doyle CJ); *Barilaro v Shanks-Markovina (No 2)* [2021] FCA 950, [38]-[40] (Rares J). Many Parliaments now provide for right of reply procedures for persons subject to criticism, and the relevant Houses retain powers to discipline members who abuse the protection of privilege: *Erskine May's Parliamentary Practice* (25th ed, 2019), 260 [13.2]; DR Elder (ed), *House of Representatives Practice* (7th ed, 2018), 737-738, 777-779.

28 See, for example, the Duncan Sandys case and the report of the Select Committee on the Official Secrets Act in 1938-39: *Erskine May's Parliamentary Practice* (25th ed, 2019), 270 [13.12]; *Re Thompson; Ex parte Nulyarimma* (1999) 148 FLR 285, 309 (Crispin J); *Re Clark et al. and Attorney-General of Canada* (1977) 81 DLR (3d) 33 (Evans CJ).

29 *Casimaty v Hazell Bros Group Pty Ltd* [2022] TASSC 9, [24] (Brett J), [1] (Pearce J agreeing), [25].

30 Appellant's Submissions, [24] and [35].

supervision of the Parliament itself. Moreover, although not in dispute in these proceedings,[31] it is possible that a failure by the Governor to refer a public work to the Committee may not enjoy the same standard of protection as the Committee would.

22. For the above reasons, South Australia submits that was no proper basis for the Full Court to conclude that parliamentary privilege had been impliedly abrogated by the PWC Act. If the Court accepts this submission, then the relevant question becomes whether the relief sought by the Respondent might have been available without infringing parliamentary privilege. That question turned on whether the issues to be ventilated at trial would necessarily have impeached parliamentary proceedings.

No narrow approach should be taken to 'impeaching parliamentary proceedings'

23. Consistently with its constitutional role and purpose, the statutory confirmation of parliamentary privilege found in article 9 should not be given a confined interpretation, but rather the words should be given the full meaning they are capable of bearing. Article 9 must be read in light of it being part of parliamentary privilege, not as a unique or standalone statute whose effect should be strictly construed so as to minimise its effect on rights or interests outside Parliament. To treat the meaning of impeaching or questioning narrowly would not give appropriate regard to the context of article 9 of the Bill of Rights 1689.[32]

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31 *Casimaty v Hazell Bros Group Pty Ltd* [2022] TASSC 9, [17], [22] (Brett J), [1] (Pearce J agreeing).

32 *Prebble v Television New Zealand Ltd* [1995] 1 AC 321, 332 (Lord Browne-Wilkinson); *R v Jackson* (1987) 8 NSWLR 116, 121, declining to follow *R v Murphy* (1986) 5 NSWLR 18; *Halden v Marks* (1995) 17 WAR 447, 461 (Rowland, Murray and Anderson JJ); *Re Bell Group NV (in liq) (No 2)* [2017] FCA 927, [38]-[39] (Jagot J). Those decisions are consistent with the fact that, at the time of enactment of the Bill of Rights in 1689, the meaning of "impeach" was not limited to challenge or censure; its common meaning included "to impede, hinder, prevent": *Rowley v O'Chee* [2000] 1 Qd R 207, 222 (McPherson JA), 227 (Moynihan J); *Television New Zealand Ltd v Prebble* [1993] 3 NZLR 513, 529 (Richardson J), quoting Lord Campion, former Clerk of the House of Commons, from Odgers' *Australian Senate Practice* (5th ed, 1976), 639. In *Makudi v Baron Triesman of Tottenham* [2014] QB 839, 850 [20], Laws LJ (Tomlinson and Rafferty LJJ agreeing) considered "hinder" was an appropriate meaning that reflected the approach in *Prebble*. A related error may occur where the notion of proceedings in Parliament are confined too narrowly. However, given that proceedings before the Public Works Committee are plainly parliamentary proceedings for the purposes of art 9, there is no need to address the scope of that notion, nor what incidental acts are sufficiently closely related to proceedings as to warrant protection.

24. The relevant principles were accurately captured by Justice Lowe of the Supreme Court of Victoria, sitting as a Royal Commission inquiring into allegations concerning the "Brisbane Line", in the following terms:[33]

> The words 'impeached or questioned' have always been given a very wide interpretation. When the purpose of the Article of the Bill of Rights is borne in mind, I think I should do nothing to narrow that wide interpretation. Little imagination is needed to realise that occasions may arise in which it is vital for a member of Parliament to speak without being completely sure of his facts and without disclosing his source of information, nor must the width of the power be restricted because of an allegation or fear that the occasion is being abused… For me so to act would in my judgment be taking a narrow legalistic view of Parliamentary privilege which would be quite wrong.

25. Adopting this approach, the orthodox understanding of the breadth of the notion of "impeach or question" was articulated by Lord Browne-Wilkinson on behalf of the House of Lords in the following terms:[34]

> The normal impact of parliamentary privilege is to prevent the court from entertaining any evidence, cross-examination or submissions which challenge the veracity or propriety of anything done in the course of parliamentary proceedings. Thus, it is not permissible to challenge by cross-examination in a later action the veracity of evidence given to a parliamentary committee.

26. Importantly, positive reliance on the propriety of what was done, or the truth or accuracy of what was said, in proceedings is precluded as much as seeking to impugn it. Where one party affirmatively relies on it for its truth or accuracy, it necessarily presents the likelihood of unfairness in circumstances where it is forbidden to seek to controvert it.[35]

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33 Ruling of Justice Lowe, "Privilege of Parliament" (1944) 18 ALJ 70, 75. This ruling was cited with apparent approval in *Halden v Marks* (1995) 17 WAR 447, 461 (Rowland, Murray and Anderson JJ).

34 *Hamilton v Al Fayed* [2001] 1 AC 395, 402-403, 406, 407. See the review of relevant authorities in *Amann Aviation Pty Ltd v Commonwealth* (1988) 19 FCR 223, 224-227 (Beaumont J).

35 *British Railways Board v Pickin* [1974] AC 765, 799 (Lord Simon of Glaisdale); *Comalco Ltd v ABC* (1985) 64 ACTR 1, 58 (Blackburn CJ); *Prebble v Television New Zealand* [1993] 3 NZLR 513, 519 (Lord Browne-Wilkinson); *Rann v Olsen* (2000) 76 SASR 450, [85]-[86] (Doyle CJ); *Mees v Roads Corporation* (2003) 128 FCR 418, 445 [85] (Gray J); *Office of Government Commerce v Information Commissioner* [2010] QB 98, 118 [58]-[59] (Stanley Burton J). Of course, if parties affirmatively agree as to the accuracy or truth of the content of a statement made in Parliament, then reference to those statements to establish those facts would be unnecessary in any event. However, where there is no such

27. Nevertheless, it is well-established that reference to speech or proceedings is not prohibited in a number of circumstances, including:[36] to establish that a member of Parliament was present in the House and voted on a particular day; to establish that a report of parliamentary debates accords with the debate itself and is fair and accurate and therefore attracts qualified privilege in the law of defamation; to identify the content of a statement in Parliament, where a person has by words or acts outside Parliament adopted that statement, incorporating it by reference into the statement outside Parliament; and, for the purpose of understanding the mischief and purpose at which the legislation was aimed to aid the construction of statutes. None of the above instances require reliance on the truth or accuracy of what was said in Parliament.[37]

28. Applying the above principles to the work of the scheme provided for by ss 15 and 16 of the PWC Act, in circumstances where no reference at all was made by the Governor to the Committee, and no report of the Committee was made, it is likely that such facts could be established without impugning or questioning the proceedings of the Public

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agreement, the court would invariably be in a position of having to make a finding of fact, and thereby rule upon the truth or accuracy of the content of the statement: *Kimathi v Foreign and Commonwealth Office* [2018] 4 WLR 48, [20] (Stewart J).

[36] The following examples were set out in *Television New Zealand Ltd v Prebble* [1993] 3 NZLR 513, 518 (Cooke P), 543 (McKay J), with supporting authority, and adopted in *Cornwall v Rowan* (2002) 82 SASR 152, 182-183 [109] (Debelle J).

[37] While it is not in issue or necessary to decide in this case, something should be said about another suggested permitted purpose as to use in judicial review proceedings of Ministerial statements in Parliament, referred to in the Appellant's Submissions, [59]. Reference to Ministerial statements in Parliament for the purpose of challenging administrative decisions presents a number of potential difficulties that are not reconcilable in all cases with the general position endorsed in *Prebble v Television New Zealand Ltd* [1995] 1 AC 321 and *Hamilton v Al Fayed* [2001] 1 AC 395. Historically, statements were not used in this manner: *R v Secretary of State for Trade; ex parte Anderson Strathclyde plc* [1983] 2 All ER 233, 239 (Dunn LJ). The departure from that approach may be traced to *R v Secretary of State for the Home Department; ex parte Brind* [1991] 1 AC 696; see also, *Pepper v Hart* [1993] AC 593, 638-639 (Lord Browne-Wilkinson). However, in the *Brind Case* it was the respondent Secretary of State who introduced the reasons, and did so by referring to the Parliamentary speech and affirmatively stating that they were the reasons for the challenged decision: [1991] 1 AC 696, 713-714 (Lord Donaldson MR). Doubt has been expressed about the extent of this development in the United Kingdom: *Erskine May's Parliamentary Practice* (25th ed, 2019), 275-276 [13.15], noting concern about the negative "chilling effect" on statements in Parliament. It does not represent the law in Australia: *Hamsher v Swift* (1992) 33 FCR 545, 563-564 (French J); *Mees v Roads Corpration* (2003) 128 FCR 418, 443-445 [80]-[86] (Gray J).

Works Committee. Such a scenario is, however, far removed from the facts of the present case. Where, on the other hand, there has been a referral in relation to the project, but a question arises as to the adequacy of the referral and report made by the Committee, it appears difficult to see how such questions can be ventilated without impeaching or questioning the work of the Committee.

29. It is clear that a court would be precluded from reviewing the conclusion of a report of the Public Works Committee as to whether it had misunderstood a public works proposal, had failed to take into account some relevant matter, or had not properly conducted a review on some other alleged basis. Such matters would go to the very heart of the area protected by parliamentary privilege. For the reasons advanced by Tasmania, the Respondent's case invites the Supreme Court to impermissibly trench upon that privilege.

Part V: ESTIMATED TIME FOR ORAL ARGUMENT

30. It is estimated that up to 20 minutes will be required for the presentation of South Australia's oral argument.

Dated: 18 December 2023

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IN THE HIGH COURT OF AUSTRALIA No H3 of 2023

HOBART REGISTRY

BETWEEN: ATTORNEY-GENERAL FOR THE STATE OF TASMANIA

APPELLANT

and

GREGORY JOHN CASIMATY

FIRST RESPONDENT

and

HAZELL BROS GROUP PTY LTD (ACN 088 345 804)

SECOND RESPONDENT

ANNEXURE TO THE ATTORNEY-GENERAL FOR THE STATE OF SOUTH AUSTRALIA'S SUBMISSIONS

Pursuant to paragraph 3 of *Practice Direction No 1 of 2019*, South Australia sets out below a list of the particular constitutional provisions and statutes referred to in submissions.

No.	Description	Provisions	Version
1.	*Public Works Committee Act 1914* (Tas)	ss 15 and 16	as at 12.12.2019
2.	*Parliamentary Committees Act 1991* (SA)	ss 12C and 16A	current
3.	*Constitution Act 1934* (SA)	s 38	current
4.	*Constitution Act 1855-56* (SA)		as at 24.10.1856
5.	*Bill of Rights 1689*	art 9	current
6.	*Commonwealth Constitution*	ss 46 and 47	current