

# Parliamentary Privilege

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AUSTRALIAN DEMOCRATS ACTION PLAN  
PARLIAMENTARY PRIVILEGE  
PRIME MINISTER & CABINET

## What is Parliamentary Privilege?

*“The Australian Democrats strongly support the sovereignty of Parliament, whilst ensuring Parliamentary privilege is not used to frustrate open and accountable government.”*

**Andrew Bartlett**  
Senator for Queensland

‘Parliamentary Privilege’ refers to the powers, rights and immunities held by the Parliament, Members of Parliament and Parliamentary Committees. Parliamentarians have to be able to do their job without fear or interference. Parliamentarians have to be able to expose corruption and misgovernment, and must be able to fully and fearlessly scrutinise the actions of government, the public service, the Judiciary and to inquire into matters of public concern.

It is necessary that the rights of citizens or the state to take legal action against Parliamentarians are circumscribed by parliamentary privilege, in order that the essential and larger freedoms of a democratic society can be preserved. In practice, this means that the power of government, or of wealthy elites, cannot be used to intimidate Parliamentarians because of parliamentary privilege. Indeed, the privilege itself dates back to 1689, resulting from the struggle of parliament against the power of the English Monarchy.

What rights and immunities are protected by Parliamentary Privilege?

- the right to free speech in Parliament without threat of action or censure;
- immunity from legal proceedings for anything said in parliamentary debates;
- immunity from molestation, arrest and imprisonment for civil causes whilst attending Parliament; and
- immunity of witnesses before Parliament from subsequent questioning or impeachment based upon evidence provided.

## What weaknesses exist with the use of Parliamentary Privilege?

- it has hindered inquiries (such as Royal Commissions) where important evidence given under parliamentary privilege cannot subsequently be used in any other inquisitorial proceedings;
- it has been used to slander individuals purely for political purposes.

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## What needs to be done?

The Australian Democrats strongly support the sovereignty of Parliament and retention of the existing rights, powers and immunities that attach to parliamentary privilege. This should not mean, however, that the wider purpose of open and accountable government should be frustrated by the abuse of privilege. In view of this, the Democrats recommend:

- Courts or Royal Commissions should not be able to question witnesses, officers or Members of Parliament on proceedings in Parliament unless the individual covered by the privilege volunteers to be questioned and the Parliament also gives its permission;
- Courts should be able to discuss and criticise matters arising in Parliament;
- the introduction of a Bill of Rights guaranteeing freedom of speech;
- the use of Privilege by the Executive in Parliament must be curtailed. The extent to which Members of the Executive can enjoy Parliamentary Privilege must be limited to preventing legal action for defamation against them. The Executive must not be able to employ Parliamentary Privilege to protect their dealings from scrutiny by appropriate bodies outside of Parliament;
- any vote in Parliament on matters of parliamentary privilege should be a conscience vote;
- persons named in proceedings in the House of Representatives should have the same right of reply mechanism as is currently available in the Senate.