

Defamation: Privileged Reports

Terms of Reference

In 1968, the Committee was asked to examine and make recommendations for amendment to the *Newspaper Libel and Registration Act 1884* (WA) ("the Act"), and consider the necessity of alterations to the law relating to civil defamation in Western Australia.

Background of Reference

The reference was in part initiated by West Australian Newspapers Ltd which made a representation to the then Minister for Justice requesting amendments to the Act to ensure that the privilege given to reports under the Act be enjoyed by all newspapers.

Section 2 of the Act conferred on any newspaper a privilege for the publication, without malice and for the public benefit, of a fair and accurate report of the proceedings of a public meeting provided the newspaper has not refused to publish a reasonable letter or statement of explanation or contradiction. Amendments to the Act in 1888 gave a registered newspaper¹ absolute privilege for a fair and accurate report of the proceedings in a court of justice, or any state or municipal ceremonial, or political, municipal or public meeting.² However, the registration provisions under the Act did not apply to "joint stock companies", thereby precluding the registration of most major daily newspapers in the state.

The Committee prepared a working paper in July 1969 which discussed the issues and considered the findings of the New South Wales Law Reform Commission's (NSWLRC) working paper on defamation.

Nature and Extent of Consultation

The working paper was forwarded for comment to the Chief Justice and judges of the Supreme Court, the Law Society of Western Australia, the Law School of the University of Western Australia, the editors of all Western Australian newspapers including those not registered under the Act, legal practitioners and law reform agencies.

After consideration of submissions received in response to the working paper and examination of the findings of the NSWLRC in its ultimate report on the issue, the Committee published its final report in August 1972.³

Recommendations

The Committee appended a draft Bill to its final report which set out its recommendations and adopted the general framework of the legislation proposed in the NSWLRC report.⁴ The Committee's primary recommendations were that:

- The *Newspaper Libel Act and Registrations Act 1884–1957* (with the exception of the provisions dealing with limitations) and the *Imperial Act Adopting Ordinance 1847* be repealed and that s 354 of the *Criminal Code* (which protected publication of parliamentary proceedings in the public interest) be replaced by provisions suggested in the draft Bill appended to the final report.
- The class of privileged reports be extended to include:

1 The register of newspaper proprietors under the Act was maintained at the Supreme Court of Western Australia.

2 Section 354 of the *Criminal Code 1913* (WA) protected the publication of parliamentary and other governmental proceedings if published in good faith and in the public interest.

3 Law Reform Committee of Western Australia, *Defamation: Privileged Reports*, Project No 8(I) (1972).

4 New South Wales Law Reform Commission, *Defamation*, Report No 11 (1971).

- (a) reports of legislative and judicial proceedings and official inquiries elsewhere in Australia and overseas;
 - (b) reports of international conferences;
 - (c) reports of proceedings of local bodies elsewhere in Australia;
 - (d) reports of general meetings of companies within Australia;
 - (e) reports of proceedings of certain voluntary associations within Australia or having effect in Australia;
and
 - (f) extracts from official records kept in Australia and statements published at the request of government officials elsewhere in Australia.
- The privilege attached to reports and documents referred to above would depend on the report being published in good faith for public information or education and, except for reports of legislative or judicial proceedings within Australia, on the publisher affording a person defamed a right of reply.

Legislative or Other Action Undertaken

Section 2 of the *Criminal Code Amendment Act 1977* partially implemented the recommendations of this report. The amending Act extended the defence of qualified privilege to reports of parliamentary proceedings and publications and to proceedings of Royal Commissions and statutory inquiries that have taken place elsewhere in Australia. The privilege was not extended to notices from government departments in other parts of the Commonwealth.⁵

⁵ Western Australia, *Parliamentary Debates*, Legislative Council, 4 August 1977, 213 (Mr GC MacKinnon, Leader of the House).