



**THE LAW REFORM COMMISSION  
OF WESTERN AUSTRALIA**

**Project No 8**

**Newspaper Libel and  
Registration Act 1884-1957**

**WORKING PAPER**

**JULY 1969**

## INTRODUCTION

As part of its first programme the Law Reform Committee has been asked to examine and make recommendations for the amendment of the *Newspaper Libel and Registration Act 1884-1957* and generally to consider whether any alterations should be made to the civil law of defamation.

The Committee has now completed the first consideration of the *Newspaper Libel and Registration Act 1884-1957* and issues this working paper for the consideration of persons and bodies interested. Comments and criticism are invited and the Committee requests that they be submitted by the 15th September 1969.

The Committee wishes to point out to recipients of this paper that any views expressed or suggestions made do not necessarily represent the final views of the Committee nor do they necessarily indicate the nature of the recommendations that it will make in its report. In addition, any such views or suggestions are not to be taken as in any way indicating what may be Government policy on the matters concerned.

Copies of this paper are being sent to -

The Chief Justice and the Judges of the Supreme Court

The Law Society

The Law School

The editors of *The West Australian*, the *Daily News*, *The Sunday Times*, *The Independent*

The proprietors of all newspapers registered under the *Newspaper Libel and Registration Act 1884-1957*

and

Other Law Reform Commissions and Committees with which this Committee is in correspondence.

The research material on which this paper is based is at the offices of the Committee and may be made available on request.



# THE NEWSPAPER LIBEL & REGISTRATION ACT 1884-1957

## TERMS OF REFERENCE

1. The Committee has been asked to –

"Examine and make recommendations for amendment of the *Newspaper Libel and Registration Act 1884* and amendments and generally to consider whether any alterations are necessary or desirable in the law relating to civil defamation in Western Australia".

2. In view of the magnitude of the topic the Committee has decided to divide this project into two parts, the first of which will relate to the question of amendment to the *Newspaper Libel and Registration Act* and the second to the law relating to civil defamation generally. This working paper which the Committee now issues is concerned with the first part of the reference only.

## LEGISLATIVE BACKGROUND

3. In 1881 the United Kingdom passed the *Newspaper Libel and Registration Act 1881* (44 & 45 Vic. c.60). This Act made two important innovations. Firstly, it established a register of newspaper proprietors and required the printers and publishers of all newspapers (defined as papers containing news etc. and published in England or Ireland periodically at intervals not exceeding 26 days) to make a return each year of the title of the newspaper and the names, addresses and occupations of all the proprietors thereof (s.9). The provisions relating to the registration of newspaper proprietors, however, did not apply to the case of any newspaper which belonged to a joint stock company duly incorporated under the *Companies Acts* (s.18).

4. Secondly, the Act extended a qualified privilege to a fair and accurate report of the proceedings of a public meeting published in any newspaper. The provision (s.2) reads as follows:-

2. Any report published in any newspaper of a public meeting shall be privileged, if such meeting was lawfully convened for a lawful purpose and open to the public, and if such report was fair and accurate, and published without malice, and if the publication of the matter complained of was for the public benefit;

provided always that the protection intended to be afforded by this section shall not be available as a defence in any proceeding, if the plaintiff or prosecutor can show that the defendant has refused to insert in the newspaper in which the report containing the matter complained of appeared a reasonable letter or statement of explanation or contradiction by or on behalf of such plaintiff or prosecutor.

5. Western Australia followed this English legislation in the *Newspaper Libel and Registration Act, 1884* (48 Vic. No. 12). Section 2 of the State Act reproduced exactly s.2 of the English Act (see Appendix I) and the registration provisions were also closely followed.

6. In 1888 the United Kingdom passed the *Law of Libel Amendment Act 1888* (51 & 52 Vic. c.64) which, inter alia, repealed s.2 of the 1881 Act and provided for a privilege in respect of an extended range of fair and accurate reports published in newspapers. This Act provided as follows:-

3. A fair and accurate report in any newspaper of proceedings publicly heard before any court exercising judicial authority shall, if published contemporaneously with such proceedings, be privileged: provided that nothing in this section shall authorise the publication of any blasphemous or indecent matter.
4. A fair and accurate report published in any newspaper of the proceedings of a public meeting, or (except where neither the public nor any newspaper reporter is admitted) of any meeting of a vestry, town council, school board, board of guardians, board or local authority formed or constituted under the provisions of any Act of Parliament, or of any committee appointed by any of the above-mentioned bodies or any meeting of any commissioners authorised to act by letters patent, Act of Parliament, warrant under the Royal Sign Manual, or other lawful warrant or authority, select committees of either House of Parliament, justices of the peace in quarter sessions assembled for administrative or deliberative purposes, and the publication at the request of any Government office or department, officer of state, commissioner of police, or chief constable of any notice or report issued by them for the information of the public, shall be privileged, unless it shall be proved that such report or publication was published or made maliciously: Provided that nothing in this section shall authorise the publication of any blasphemous or indecent matter; Provided also, that the protection intended to be afforded by this section shall not be available as a defence in any proceedings if it shall be proved that the defendant has been requested to insert in the newspaper in which the report or other publication complained of appeared a reasonable letter or statement by way of contradiction or explanation of such report or other publication, and has refused or neglected to insert the same; Provided further, that nothing in this section contained shall be deemed or construed to limit or abridge any privilege now by law existing, or to protect the publication of any matter not of public concern and the publication of which is not for the public benefit. For the purposes of this section "public meeting" shall mean any meeting bona fide and lawfully held for a lawful purpose, and for the furtherance or discussion of any matter of public concern, whether the admission thereto be general or restricted.

7. In the same year Western Australia amended its earlier legislation by the *Newspaper, Libel and Registration Act, 1884, Amendment Act, 1888* (52 Vic No.18). This Act did not follow the English Act of the same year but was a piece of legislation recommended by a Select Committee of the Legislative Council and appears to have been designed to protect newspapers in the Colony whose financial position was such that they were unable to stand many libel actions in respect of reports they published. The Act provided that a plaintiff would be non-suited unless he gave evidence on his own behalf (s.4) - a provision repealed in 1957 by s.3 of the *Newspaper Libel and Registration Act 1884, Amendment Act, 1957* (6.Eliz. II No.24). It provided for a four months' limitation period for libel actions against registered newspapers - the period being extended to 12 months in 1957 by s.4 of the *Amendment Act* of that year. It then provided for an *absolute* privilege in respect of the publication of a fair and accurate report in a registered newspaper of the proceedings in any court of justice, or at any state or municipal ceremonial, or any political or municipal meeting or at a public meeting (s.6 - See Appendix 2).

8. The next step in Western Australia with respect to privilege being accorded to published reports was the passage of the Criminal Code by the *Criminal Code Act, 1902* (1 & 2 Edwd. VII No.14). By s.352 of that Code - now s.354 of the present *Criminal Code* (1913) - a qualified privilege is accorded to the publication of fair reports of the proceedings of a number of occasions (some of which are identical with the occasions in the *Newspaper Libel and Registration Act, 1884, Amendment Act, 1888*) and other matters (see Appendix 3). The protection granted by this section of the *Criminal Code* extends to provide a defence in civil proceedings by virtue of s.5 of the *Criminal Code Act, 1913* (see *Logan v. West Australian Newspapers Ltd.*, [1968] W.A.R. 104 at 110; *Gobbart v. West Australian Newspapers*, [1968] W.A.R. 113, at 119).

9. In 1957 the *Newspaper Libel and Registration Act 1884-1888* was amended by the *Newspaper Libel and Registration Act, 1884, Amendment Act, 1957* (6 Eliz. II No.24).

10. In 1952 the United Kingdom passed the *Defamation Act 1952* (15 & 16 Geo.VI & 1 Eliz.II c.66) which broadly speaking gave effect to the recommendations contained in the report of the Porter Committee on the *Law of Defamation 1948* (Cmd 7536). This Act made extensive alterations to the privilege conferred on newspaper reports. It did not affect the

registration provisions of the 1881 Act which still remain in force. It restricted the operation of s.3 of the 1888 Act (which provided an absolute privilege for the publication of a contemporary fair and accurate report of the proceedings of a court) to courts within the United Kingdom. The main changes, however, were effected by s.7 and the Schedule. Firstly, the Act extends the protection of qualified privilege to a greater number of reports and statements than contained in the previous Acts, and secondly, divides these reports and statements into two categories (see Appendix 4). The second category does not enjoy this protection if the defendant having been requested by the plaintiff to publish in the newspaper in which the publication complained of was made a reasonable letter or statement by way of explanation or contradiction, refuses or neglects to do so (*droit de response*). The first category is not subject to any *droit de reponse*.

11. These provisions of the United Kingdom *Defamation Act 1952* have not been followed in Western Australia. Nor have they been followed in any other State of Australia as yet, but the New South Wales Law Reform Commission in its working paper issued in 1968 (see paragraph 137) inclines to the view that, with modifications, they should be followed in that State. New Zealand broadly followed the United Kingdom provisions in its *Defamation Act 1954*.

## THE PRESENT LAW

12. In Western Australia the statutory privilege presently accorded to certain reports and statements published by newspapers may be summarised as follows:-

- (i) By the *Newspaper Libel and Registration Act; 1884* **any** newspaper enjoys a *qualified* privilege for a fair and accurate report of the proceedings of a public meeting (see Appendix I).
- (ii) By the *Newspaper Libel and Registration Act, 1884, Amendment Act, 1888*, a **registered** newspaper enjoys an **absolute** privilege for a fair and accurate report of the proceedings of certain meeting and occasions (see Appendix 2). Two difficulties arise with this Act. Firstly, the meaning of "registered newspaper" is unclear as the register established under the 1888 Act is a register of newspaper proprietors and not newspapers. Accordingly, it is

uncertain who enjoys the absolute privilege. Secondly, if "registered newspaper" means a newspaper whose proprietors are registered under the 1884 Act the privilege is still not available to a newspaper owned by a company (see *Gobbart v West Australian Newspapers Ltd.* [1968] W.A.R., 113, at 119, and cf. *Hughes v West Australian Newspapers Ltd.* [1940] 43 W.A.L.R. at 12).

- (iii) By the *Criminal Code* fair reports of a number of proceedings and statements enjoy a qualified privilege (see Appendix 3). The protection given by the Code, however, although enjoyed by newspapers which may publish such reports is not confined to them. It is a protection enjoyed by anyone who may wish to publish such reports.

## **THE MOVEMENT FOR REFORM**

13. The movement for reform has arisen because of the inequality of the privilege enjoyed by newspapers whose proprietors can be registered and those whose proprietors cannot. Representations have been made by newspapers in the latter class to have the inequality removed by repelling the section which makes registration unavailable to newspapers owned by companies, thus enabling all newspapers to enjoy the absolute privilege given by the 1888 Act.

14. A search of the register maintained at the Supreme Court shows that in 1968 registration was effected in respect of 20 newspapers, but none of the major daily or weekly newspapers published in the State was included, presumably because they are owned by companies and are therefore ineligible.

## **BASIC CONSIDERATIONS**

15. In considering whether any amendments should be made to the *Newspaper Libel and Registration Act 1884-1957* the Committee has thought that the best way of dealing with the matter is to extract and discuss separately the basic principles embodied in the legislation. It is principally upon these issues that the Committee hopes to attract comment and suggestions; however it hastens to point out that comment and suggestions need not be restricted to these

matters alone. It will welcome any comment relating to the legislation but as explained in paragraph 2 it is not at this stage seeking comments on the law of defamation generally.

### **Should Newspapers Enjoy A Special Protection?**

16. The Committee considers that this is a fundamental question which arises at the outset of its enquiry because currently the legislation which extends protection for the publication of certain reports and statements is based on two different principles.

17. On the one hand the *Newspaper Libel and Registration Act 1884-1957* recognizes that in the publication of reports of certain proceedings and occasions an additional protection should be accorded to newspapers beyond the protection enjoyed by a private individual who may publish a report of the same occasions. This was the principle upon which the United Kingdom Act of 1881 was based (which Act was the model for the Western Australian legislation of 1884) and was explained in the debate on the Bill in this way:-

"...A newspaper was the record and expression of what took place in public of all political life and all municipal and social activity. In short it was the record of everything outside the domain of strictly domestic intercourse. Accordingly it was fair that a newspaper which met this increasing demand should have some protection if it performed its functions with accuracy."  
([1881], 261 *Parl. Deb.* [U.K.] 219).

18. On the other hand s.354, of the *Criminal Code* (see Appendix 3) is based on the principle that the protection for the publication of fair reports should be available to all who may desire to publish them and not be restricted to newspapers. This was the view of Sir Samuel Griffith the draftsman of the Queensland *Defamation Law of 1889* which in substance was the model for the *Criminal Code* provisions on defamation. In his second reading speech he expressed his view as follows: -

"The Press has no more right to publish a statement reflecting in any way on the conduct of any person than any private individual has. It is the right of every man to comment fairly on every matter of public importance, and that applies no more to the Press than to the individual."  
([1889] 57 *Parl. Deb.* [Qld] 734).

19. The question is whether the Griffith principle or the English principle should be followed - or perhaps whether we should retain the present position of extending a protection

in respect of some reports to all persons and a protection in respect of certain other reports to newspapers only. In these days when facilities for printing, and other methods of reproducing written matter at low cost and in large quantities, are so much more readily available to individuals than 90 years ago, the Committee can appreciate that there may be much to be said for making the privilege available to all who may wish to publish rather than restrict it to newspapers only.

20. In the United Kingdom the principle of restricting the privilege to reports published in newspapers has been retained in the *Defamation Act 1952* (see Appendix 4). Victoria (*Wrongs Act 1958*, s.51) and South Australia (*Wrongs Act 1936*, s.7) currently follow the English principle. The Griffith principle is currently followed in New South Wales (*Defamation Act 1958*, s.14) and the Law Reform Commission of that State in its working paper on Defamation (see paragraph 135) is inclined to the view that it should be continued in any proposed new defamation law. The Griffith principle is also followed in New Zealand (*Defamation Act 1954*, s.17 & 1st Schedule) and in Tasmania (*Defamation Act 1957*, s.13).

### **What Type of Privilege should be given to Reports?**

21. Irrespective of which of the principles in paragraph 19 is followed the question that arises is what type of privilege should be afforded to reports. Should the privilege be absolute as in the *Newspaper Libel and Registration Act, 1884, Amendment Act, 1888* (see Appendix 2) or should it be some form of qualified privilege as in the *Newspaper Libel and Registration Act, 1884* (see Appendix I) or the *Criminal Code* (see appendix 3)? Of the comparative legislation examined, Western Australia is alone in granting an absolute privilege. In all the other States of Australia, New Zealand and the United Kingdom the privilege is qualified in that it can be defeated by, for example, proof of malice or ill-will, or lack of good faith etc. or by failure to publish a letter of explanation or contradiction.

22. The explanation for the giving of an absolute privilege to newspapers in the Western Australia 1888 Act is to be found in the evidence given to the Select Committee upon whose report the 1888 Act was introduced. It was submitted to the Select Committee that there were special circumstances existing in Western Australia at the time that entitled a newspaper to special protection. In brief these reasons were as follows:-

- (a) The great poverty of the colony rendered local newspapers unable financially to stand the strain of libel actions.
- (b) The condition of party feeling in the small community made an action at law where juries were empanelled a peculiarly precarious matter.
- (c) The poverty of the colony at the time begat a class of speculators in libel actions.
- (d) The constitution of the Supreme Court at the time virtually meant that there was no appeal from a decision of a single judge.

(See minute of evidence of J.W. Hackett - (1888) *Votes & Proceedings of the Legislative Council*, Document A10, p.8).

23. The Committee believes that similar arguments would not be valid today and accordingly would suggest that there is no justification for departing from the principle adopted in the comparative legislation the Committee has examined, namely, that of giving only a qualified privilege to these reports. In addition, if the privilege is to be available to all persons who wish to publish reports there would appear to be all the more reason for making the privilege dependent upon the absence of ill-will, malice etc.

### **What Reports ought to be Privileged?**

24. Lord Porter's Committee (1948) considered that the list of matters, reports of which were entitled to privilege by the *Law of Libel Amendment Act 1888* (see paragraph 6), reflected the matters which were of interest to the public at the close of the nineteenth century. It agreed with the view put to it on behalf of the Press that changes in social and administrative conditions since that date, and the increasing interest in foreign affairs, rendered inadequate the categories of reports entitled to privilege and the time was ripe for a considerable extension (Report, paragraphs 106 & 107).

25. The Porter Committee recommended a wide extension of the reports which should enjoy a qualified privilege. It divided these reports into two categories: the first to enjoy a

privilege without requiring the publication of a statement in contradiction or explanation; the second to enjoy a privilege on the condition that such a statement was published. These recommendations were given effect to in the *Defamation Act 1952* (see Appendix 4). The Committee considered that the right to the insertion of a statement in reply was valuable and ought to be retained but was unsuitable in the case of reports of meetings of such bodies as the United Nations or foreign Parliaments and so ought to be restricted to meetings of a local or limited character (paragraph 107).

26. The Porter Committee would have liked to extend a privilege to foreign judicial proceedings but decided against recommending this. The Committee's reasons were:-

"We have found it impossible to put forward any criterion of general application which could be adopted to limit and define such foreign courts as maintain a standard of justice and a method of procedure which would justify our recommending that reports of their proceedings should be entitled to qualified privilege without any *droit de reponse* on the part of the person defamed. Equally, we feel that it would be objectionable to grant a *droit de reponse* in such cases since, in effect, this could lead to a "re-trial" of foreign legal proceedings in an English newspaper upon necessarily inadequate material and without any of the safeguards which legal proceedings should ensure." (Report, paragraph 108).

27. The Freedom of Publication Protection Bill introduced into the United Kingdom Parliament in 1966 attempted to extend the range of privileged reports to include reports of foreign courts and legislatures. The Bill proposed adding to Part I of the Schedule to the *Defamation Act 1952* the following paragraphs (see cl. 5):-

"7A. A fair and accurate report of any proceedings before a court exercising jurisdiction in any territory outside Her Majesty's dominions.

7B. A fair and accurate report of any proceedings in public of a central or local legislature in any territory, outside Her Majesty's dominions."

This Bill, however, does not appear to have become law.

28. This Committee feels that the range of privileged reports in Western Australia, ought to be enlarged from that now contained in the *Newspaper Libel and Registration Act, 1884*, *Amendment Act, 1888*, and s.354 of the *Criminal Code*. It currently considers most of the reports and matters referred to in the *Defamation Act 1952* (U.K.) and the Freedom of Publication Protection Bill 1966 (U.K.), to the extent that they are not now privileged in

Western Australia, and with appropriate adaptation to the situation here, should be afforded qualified privilege in this State. (The N.S.W. Law Reform Commission inclines to recommend a similar extension for that State - Working Paper paragraph 137).

29. However, the Committee doubts whether the reports contained in paragraph 8 of the Schedule to the *Defamation Act 1952* (U.K.) (see Appendix 4) should be accorded qualified privilege. The Committee feels that considerable harm could be done to an individual if a report of a decision and findings of a Club Committee e.g., to expel a member because of his misconduct, were privileged if in fact it were subsequently decided that such findings and decision were unjustified. The Committee feels in such circumstances that the existing defence of justification may be sufficient as the public interest in the domestic affairs of many of the associations covered by paragraph 8 is not sufficient to warrant a greater protection to the publication of the findings and decisions of their governing bodies.

30. The Committee notes that the privilege extended to reports of proceedings of local authorities, statutory boards, committees etc. by paragraph 10 of the Schedule to the *Defamation Act 1952* (U.K.) is dependent upon the meeting being one to which the public and the press are admitted. On the other hand the equivalent provision of the *Criminal Code* (s.354(6)) contains no such restriction. Because of the nature of the bodies concerned the public interest could well justify a protection to fair reports of the proceedings of such bodies even though the press and public were excluded from their meetings. It is noted that paragraph 11 of the Schedule which extends a privilege to fair and accurate reports of proceedings at a general meeting of a public company also does not contain the restriction and this Committee doubts whether a distinction ought to be drawn between the circumstances in which a privilege is given to reports of the proceedings of bodies referred to in paragraph 10 and paragraph 11 of the Schedule to the *Defamation Act 1952*.

31. In the *Newspaper Libel and Registration Act, 1884, Amendment Act, 1888*, there are three reports which enjoy privilege but which do not appear to have a counterpart in other States of the Commonwealth or in the United Kingdom. These reports of the proceedings –

"At any state or municipal ceremonial, at any political...meeting" (s.6).

The meaning of a "state of municipal ceremonial" is not clear but the Committee assumes, in the absence of judicial interpretation, that the reference is to a state or municipal function or occasion, for example a state banquet or a mayoral reception. The exact scope of a "political meeting" is also unclear, but, because a report of a public meeting is also given privilege, the intention must have been that a political meeting meant some form of meeting other than a public meeting as defined in the section. Some political meetings will also be public meetings and reports thereof may therefore enjoy a privilege only if the meetings are public meetings as defined in s.354 of the *Criminal Code* or in the latter part of s.6 of the *Newspaper Libel and Registration Act, 1884, Amendment Act, 1888*. To the extent that a political meeting is not a public meeting the Committee has considerable doubts whether it is appropriate to give a privilege to reports of such meetings. The Committee would particularly welcome comment on the matters raised in this paragraph.

### **Good Faith and the Right to Reply**

32. In the *Newspaper Libel and Registration Act 1884* the droit de reponse was a condition of enjoying the privilege there given (see Appendix 1). However, in the *Criminal Code* failure to publish a letter of explanation is evidence of want of good faith (see Appendix 3), it being the view of Sir Samuel Griffith that such a failure was not conclusive evidence of want of good faith and that this was a fairer rule than the English one ([1888] 57 *Parl Deb.* Qld. 736).

33. The New South Wales Law Reform Commission pointed out that there are difficulties with the Griffith approach when it said:-

"While, however, it may be conceded to Sir Samuel that if a refusal to publish a reply is followed automatically by withdrawal of the privilege the law may operate unfairly to the defendant, it does not seem that a refusal to publish a reply would necessarily be evidence of malice. If this question is to be dealt with realistically it seems that the judge would have to determine it in the individual case, and the general provisions of the section already provide for this without the need for any specific provision. If Sir Samuel was right that, in the circumstances specified, refusal to publish a reply is always evidence of bad faith there was no need for the provision he proposed, if it is not it would result in the jury being asked in some cases to consider the question of bad faith when there was nothing properly for them to consider. The result would be confusion over the conception of bad faith. ...We think any harshness to the defendant in the English rule will be avoided (and the unfairness to the plaintiff of distinguishing between cases where he was refused his right of reply because the defendant was wrongheaded and those where it was refused because the defendant was malicious,

will also be avoided) if the privilege in those cases where a right of reply is thought appropriate, is withdrawn on the plaintiff showing that the refusal was unreasonable in all the circumstances. It will, of course, be open to the plaintiff as in all cases within the present s.14, to demonstrate bad faith in the defendant's publication, and to make such use of the defendant's conduct in relation to the request for publication of a reply as evidence on that issue as can properly be made in the circumstances" (paragraph 144).

This Committee has some doubts whether in the end there is any distinction between the English approach and the approach adopted in the last paragraph of s.354 of the Code on the question of the effect of the failure to publish a letter in reply. It agrees that the confusion over the question of bad faith ought to be removed and would generally adopt the proposal of the New South Wales Commission but with one variation. The Committee feels that it would be placing too difficult a burden on the plaintiff to require him to show that the refusal to publish the reply was unreasonable in all the circumstances as the reasons for not replying may not necessarily be known to him. Instead the Committee would place this onus on the defendant and require him to show that his failure to publish the reply was reasonable in all the circumstances.

### **Purposes for Privileged Publications**

34. Although the New South Wales Law Reform Commission inclines to recommend that the reports mentioned in the United Kingdom *Defamation Act 1952* and the Bill of 1966 be given privilege in that State, it points out that the restrictive subsection in the English *Defamation Act 1952*, s.7(3), (which removes the protection granted if the matter is "not of public concern and the publication of which is not for the public benefit") would render tenuous the protection in respect of large bodies of information now being accumulated by libraries in Australia, such as foreign legal reports. The Commission considered it intolerable to think that persons involved in American or European litigation might take action here against libraries for publishing such materials on the ground that the subject matter of the particular case was not such as to make the publication of facts here on public importance. It considered that the protection to reporting legal and political matters should be given "because of the educational and cultural importance of openness about the workings of political society, the manner in which freedom of such reporting contributes to the ideal of an open society, as well as because of the importance which a particular item of news might have for the taking of future political election" (paragraph 137). Accordingly the Commission did not feel that this part of the subsection should be followed.

35. The Commission felt that for the reasons in paragraph 34 the general purposes for which the reports may be published should also be altered. Instead of “It is lawful to publish in good faith, for the information of the public...”(see *Criminal Code* s.354) the section should read “It is privileged to publish in good faith whether for public information or in connection with the objective of public enlightenment”. In its view this makes clear that it is not merely protection as news that is involved but protection as material for discussion even though as news it is stale (paragraph 138 and cf. the meaning of the term “in good faith for the information of the public” in s.354 of the *Criminal Code*). If the extended range of reports is adopted in Western Australia by adding them to s.354 of the *Criminal Code*, the opening words “It is lawful” must be retained to extend the protection to civil proceedings (see paragraph 8).

Such a change will also necessitate an alteration to the paragraph defining good faith in s.354 of the Code by changing the last two lines from "as is ordinarily and fairly used in the case of publication of news" to "as is ordinarily and fairly used in the case of matter published for public information or in connection with the objective of public enlightenment". The New South Wales Commission considered (paragraph 138) that under such a formula persons who may be the subject of defamatory statements will receive as much protection as is feasible consistent with the political and educational objectives which the law should further in this context.

### **"Fair" or "Fair and Accurate"**

36. The *Newspaper Libel and Registration Act 1884-1957* gives protection to “fair and accurate” reports whereas the Criminal code gives protection to “fair” reports. The New South Wales Commission inclines to the latter qualification as "the report will become unfair if materially inaccurate in such a way as may prejudice the plaintiff. If the inaccuracy is immaterial or not prejudicial to the plaintiff it would seem unjust to permit the plaintiff to take advantage of it in order to deprive the defendant of his privilege" (paragraph 139). It seems to this Committee that the essential requirement is that of "fairness" bearing in mind the explanation of a "fair report" given by Sir Lawrence Jackson in *Gobbart v. West Australian Newspapers* [1969] W.A.R. 113, at 120-121 - and that the words "and accurate" could be omitted.

## **Public Meeting**

37. The Committee notes the representations made to the New South Wales Commission that the definition of "public meeting" in that State's legislation - which is identical to the definition in s.354 of the Code - throws the onus of establishing the good faith of the organisers on the reporter, and accordingly were inclined to recommend that the bad faith of the organisers should not affect the privilege of the reporter if the meeting was apparently held in good faith (paragraph 143). In New South Wales, where special damage is not an essential element in slander the possibility of the speaker not incurring liability and the reporter also being privileged cannot arise. In Western Australia where, in general, only libel is actionable per se this possibility can still arise and so the Committee is reluctant to suggest a similar change which could leave a defamed person without a remedy.

## **Registration**

38. The registration provisions of the *Newspaper Libel and Registration Act* were originally enacted to facilitate the identification of the proprietors of a newspaper against whom action was proposed. As the Attorney General said when introducing the Bill:-

“There had been difficulties sometimes in the way of ascertaining who were the actual proprietors of newspapers... The present bill would remove these difficulties, as it required a public register to be kept of the names and addresses of the proprietors...”  
([1884] 9. *Parl. Deb.* [W.A.] 141)

The registration provisions, however, do not apply in the case of newspapers owned by companies presumably because the address of the newspaper can be obtained by a search of the register at the Companies Office.

39. The Committee is of the view that some system should be retained which will readily facilitate identifying those persons who would normally be the defendants in an action against a newspaper.

The alternatives appear to be either to retain the present registration provisions but extend them to include registration of company-owned newspapers and to include the name of the editor among the particulars required in the return; or to replace s.16 of the *Newspaper Libel and Registration Act* (which requires the printer of every newspaper to print on newspaper

printed by him his name and address and the name and address of the person who employed him to print the newspaper) with a new section requiring all newspapers to carry, on the last page, the particulars of the proprietor (whether or not a company), the editor, and the printer.

40. If the Griffith principle of according privilege to fair reports to anyone who may wish to publish, is adopted, then a further possibility would be to require all publications - not only newspapers - to contain the particulars of the publisher and editor if such publication contains a fair report in respect of which a privilege is claimed. The failure to comply with such a requirement could result in the imposition of a monetary penalty as is now the position under s.16 of the *Newspaper Libel and Registration Act*. If this approach is adopted the requirement could be limited to all publications produced by mechanical or photographic means.

### **Security for Costs**

41. Section 3 of the *Newspaper Libel and Registration Act* reads as follows:-

3. On an affidavit being filed by the defendant in any action for libel brought after the passing of the Act that the plaintiff in such action is an uncertificated bankrupt, or has within twelve months of the issue of the writ of summons in any action as aforesaid liquidated or compounded with his creditors, or is a person without fixed domicile, or is to the belief of the defendant and some other person of repute without visible means of paying the costs of such action if unsuccessful, the Court or a Judge thereof in chambers may order all proceedings in such action to be stayed until security for such costs shall be given to the Master of the Supreme Court as he shall think sufficient up to £100: Provided always, that either the plaintiff or defendant in any such action shall be at liberty to appeal to the Full Court to vary, reverse, or rescind any such order.

42. This provision was inserted in the Act in 1888 following representations made to the Select Committee that a provision of this sort was necessary to protect the newspapers of the day from speculative libel actions, and such protection was necessary to ensure the continued existence of such newspapers (see evidence of A. Lovekin (1888) *Votes and Proceedings of the Legislative Council*, Document A10, pp. 6-7). The circumstances in which security for costs may be ordered under the Act would appear to go beyond the circumstances when security would be ordered if the defendant were not a newspaper. For example, poverty, insolvency or undischarged bankruptcy may not necessarily result in security for costs being ordered (see Gatley on *Libel and Slander* 6th ed. 434-435; *Supreme Court Rules*, O.65, rr. 10-

16). The Committee feels that this is another occasion where unless circumstances can be shown which would warrant putting newspapers in a privileged position, then there should be no distinction between the occasions when a newspaper and any other defendant can obtain an order for security for costs.

In addition, if the privilege to reports is extended to all who may wish to publish there would seem to be further reason for not interfering with the normal rules relating to security for costs.

### **Limitation Period**

43. The Act of 1888 imposed a limitation period of four months from the date of the publication of the libel for the bringing of actions against newspapers (s.5), which period was extended to twelve months by the amending Act of 1957 (No.24 of 1957, s.4). The limitation periods for actions in defamation where the defendant is not a newspaper are:-

- (i) In actions for slander, when the words are actionable per se: Two years.
- (ii) In other cases (e.g. libel): Six years. (*Limitation Act 1935-1954* s.38(1)(a)(ii) and (c)(vi).

44. The Committee questions whether there is a case for a special limitation period in respect of defamation actions against newspapers and would welcome comment on this point. If no particular reasons can be advanced for departing from the general limitation periods specified in the *Limitation Act* the Committee is of the view that the creation of diverse limitation periods should be avoided. Accordingly, it is of the view that the limitation periods specified in s.38 of the *Limitation Act* should apply equally to defamation actions whoever may be the defendant. The Committee makes no comment as to the adequacy of the periods specified in the *Limitation Act*.

## **APPENDIX 1**

### **WESTERN AUSTRALIA**

#### **NEWSPAPER LIBEL AND REGISTRATION ACT 1884**

(48 VIC. NO. 12)

Newspaper reports of  
certain meetings  
privileged.

2. Any report published in any newspaper of the proceedings of a public meeting shall be privileged, if such meeting was lawfully convened for a lawful purpose, and open to the public, and if such report was fair and accurate and published without malice, and if the publication of the matter complained of was for the public benefit; Provided always that the protection intended to be afforded by this section shall not be available as a defence in any proceeding if the plaintiff or prosecutor can show that the defendant has refused to insert in the newspaper in which the report containing the matter complained of appeared, a reasonable letter or statement of explanation or contradiction by or on behalf of such plaintiff or prosecutor.

## APPENDIX 2

### WESTERN AUSTRALIA

#### NEWSPAPER LIBEL AND REGISTRATION ACT, 1884, AMENDMENT ACT, 1888

(52 VIC. NO. 18)

- Fair and accurate report of a public meeting privileged.
6. The publication in a registered newspaper of a fair and accurate report of the proceedings in any court of justice, or at any state or municipal ceremonial, or at any political or municipal meeting, or at a public meeting, shall be absolutely privileged, and it shall be a good and sufficient defence for any person sued or prosecuted for libel published in a registered newspaper in respect of a report of the proceedings on any of the occasions above mentioned to prove that the said report was fair and accurate. The expression "public meeting" shall include, inter alia, any meeting which shall have been announced by any convener or promoter thereof either by advertisements, placards, or otherwise to be a public meeting, and also any other meeting from which members of the public are not excluded, on the ground that they do not belong to any particular body, association, party or society. For the purposes of this section it shall be immaterial whether admission be free or on payment or by ticket or otherwise.

## APPENDIX 3

### WESTERN AUSTRALIA

#### THE CRIMINAL CODE

(Vol. 8 of Reprinted Acts, at p. 152)

Protection: Reports of matters of public interest.

354. It is lawful –
- (1) To publish in good faith, for the information of the public, a fair report of the proceedings of either House of Parliament, or of any committee of either House, or of any joint committee of both Houses;
  - (2) To publish in good faith, for the information of the public, a copy of, or an extract from or abstract of, any paper published by order or under the authority of either House of Parliament;
  - (3) To publish in good faith, for the information of the public, a fair report of the public proceedings of any Court of justice, whether such proceedings are preliminary or interlocutory or final, or of the result of any such proceedings, unless, in the case of proceedings which are not final, the publication has been prohibited by the Court, or unless the matter published is blasphemous or obscene;
  - (4) To publish in good faith, for the information of the public, a fair report of the proceedings of any inquiry held under the authority of a Statute, or by or under the authority of His Majesty, or of the Governor in Council, or a fair extract from or abstract of any such proceedings, or a copy of, or

an extract from or abstract of, an official report made by the person by whom the inquiry was held;

- (5) To publish in good faith, for the information of the public, at the request of any Government Department, officer of State, or police officer, any notice or report issued by such department or officer for the information of the public;
- (6) To publish in good faith, for the information of the public, a fair report of the proceedings of any local authority, board, or body of trustees or other persons duly constituted under the provisions of any statute, for the discharge of public functions, so far as the matter published relates to matters of public concern;
- (7) To publish in good faith, for the information of the public, a fair report of the proceedings of any public meeting, so far as the matter published relates to matters of public concern.

A publication is said to be made in good faith, for the information of the public, if the person by whom it is made is not actuated in making it by ill-will to the person defamed, or by any other improper motive, and if the manner of the publication is such as is ordinarily and fairly used in the case of the publication of news.

The term "public meeting" means and includes any meeting lawfully held for a lawful purpose, and for the furtherance or discussion in good faith of a matter of public concern, or for the advocacy of the candidature of any person for a public office, whether the admission to the meeting was open or restricted.

In the case of a publication of a report of the proceedings of a public meeting in a periodical, it is evidence of want of good faith if the proprietor, publisher, or editor, has been requested by the person defamed to publish in the periodical a reasonable letter or statement by way of contradiction or explanation of the defamatory matter and has refused or neglected to publish the same.

## APPENDIX 4

### UNITED KINGDOM

#### DEFAMATION ACT 1952

(15 & 16 Geo. VI & Eliz. II C.66)

Qualified privilege of  
newspapers

7. (1) Subject to the provisions of this section, the publication in a newspaper of any such report or other matter as is mentioned in the Schedule to this Act shall be privileged unless the publication is proved to be made with malice.
- (2) In an action for libel in respect of the publication of any such report or matter as is mentioned in Part II of the Schedule to this Act, the provisions of this section shall not be a defence if it is proved that the defendant has been requested by the plaintiff to publish in the newspaper in which the original publication was made a reasonable letter or statement by way of explanation or contradiction, and has refused or neglected to do so, or has done so in a manner not adequate or not reasonable having regard to all the circumstances.
- (3) Nothing in this section shall be construed as protecting the publication of any matter the publication of which is prohibited by law, or of any matter which is not of public concern and the publication of which is not for the public benefit.
- (4) Nothing in this section shall be construed as limiting or abridging any privilege subsisting (otherwise than

by virtue of section four of the law of *Libel Amendment Act 1888*) immediately before the commencement: of this Act.

- (5) In this section the expression "newspaper" means any paper containing public news or observations thereon, or consisting wholly or mainly of advertisements, which is printed for sale and is published in the United Kingdom either periodically or in parts or numbers at intervals not exceeding thirty six days.

Extent of Law of Libel Amendment Act, 1888,s.3. 8. Section three of the *Law of Libel Amendment Act 1888* (which relates to contemporary reports of proceedings before courts exercising judicial authority) shall apply and apply only to courts exercising judicial authority within the United Kingdom.

## **SCHEDULE**

### **NEWSPAPER STATEMENTS HAVING QUALIFIED PRIVILEGE**

#### **PART I**

##### **Statements Privileged Without Explanation or Contradiction**

1. A fair and accurate report of any proceedings in public of the legislature of any part of Her Majesty's dominions outside Great Britain.
2. A fair and accurate report of any proceedings in public of an international organisation of which the United Kingdom or Her Majesty's Government in the united Kingdom is a member or of any international conference to which that government sends a representative.

3. A fair and accurate report of any proceedings in public of an international court.
4. A fair and accurate report of any proceedings before a court exercising jurisdiction throughout any part of Her Majesty's dominions outside the United Kingdom, or of any proceedings before a court-martial held outside the United Kingdom under the *Naval Discipline Act 1957*, the *Army Act 1955*, or the *Air force Act 1955*.
5. A fair and accurate report of any proceeding in public of a body or person appointed to hold a public inquiry by the government or legislature of any part of Her Majesty's dominions outside the United Kingdom.
6. A fair and accurate copy of or extract from any register kept in pursuance of any Act of Parliament which is open to inspection by the public, or of any other document which is required by the law of any part of the United Kingdom to be open to inspection by the public.
7. A notice or advertisement published by or on the authority of any court within the United Kingdom or any judge or officer of such a court.

## **PART II**

### **Statements Privileged Subject to Explanation or Contradiction**

8. A fair and accurate report of the findings or decision of any of the following associations, or of any committee or governing body thereof, that is to say –
  - (a) an association formed in the United Kingdom for the purpose of promoting or encouraging the exercise of or interest in any art, science, religion or learning, and empowered by its constitution to exercise control over or adjudicate upon matters of interest or concern to the association, or the actions or conduct of any persons subject to such control or adjudication;
  - (b) an association formed in the United Kingdom for the purpose of promoting or safeguarding the interests of any trade, business, industry or profession, or of

the persons carrying on or engaged in any trade, business, industry or profession, and empowered by its constitution to exercise control over or adjudicate upon matters connected with the trade, business, industry or profession, or the actions or conduct of those persons;

- (c) an association formed in the United Kingdom for the purpose of promoting or safeguarding the interests of any game, sport or pastime to the playing or exercise of which members of the public are invited or admitted, and empowered by its constitution to exercise control over or adjudicate upon persons connected with or taking part in the game, sport or pastime,

being a finding or decision relating to a person who is a member of or is subject by virtue of any contract to the control of the association.

- 9. A fair and accurate report of the proceedings at any public meeting held in the United Kingdom, that is to say, a meeting bona fide and lawfully held for a lawful purpose and for the furtherance or discussion of any matter of public concern, whether the admission to the meeting is general or restricted.
- 10. A fair and accurate report of the proceedings at any meeting or sitting in any part of the United Kingdom of –
  - (a) any local authority or committee of a local authority or local authorities;
  - (b) any justice or justices of the peace acting otherwise than as a court exercising judicial authority;
  - (c) any commission, tribunal, committee or person appointed for the purposes of any inquiry by Act of Parliament, by Her Majesty or by a Minister of the Crown;
  - (d) any person appointed by a local authority to hold a local inquiry in pursuance of any Act of Parliament;

- (e) any other tribunal, board, committee or body constituted by or under, and exercising functions under, an Act of Parliament,

not being a meeting or sitting admission to which is denied to representatives of newspapers and other members of the public.

11. A fair and accurate report of the proceedings at a general meeting of any company or association constituted, registered or certified by or under any Act of Parliament or incorporated by Royal Charter, not being a private company within the meaning of the *Companies Act 1948*.
12. A copy or fair and accurate report or summary of any notice or other matter issued for the information of the public by or on behalf of any government department, officer of state, local authority or chief officer of police.

### **PART III**

#### **Interpretation**

13. In this Schedule the following expressions have the meanings hereby respectively assigned to them, that is to say:-

"Act of Parliament" includes an Act of the Parliament of Northern Ireland, and the reference to the *Companies Act 1948* includes a reference to any corresponding enactment of the Parliament of Northern Ireland;

"government department" includes a department of the Government of Northern Ireland;

"international court" means the International Court of Justice and any other judicial or arbitral tribunal deciding matters in dispute between states;

"legislature" in relation to any territory comprised in Her Majesty's dominions which is subject to a central and a local legislature, means either of those legislatures;

"local authority" means any authority or body to which the *Public Bodies (Admission to Meetings) Act 1960*, or the *Local Government (Ireland) Act 1902*, as amended by any enactment of the Parliament of Northern Ireland, applies;

"part of Her Majesty's dominions" means the whole of any territory within those dominions which is subject to a separate legislature.

14. In relation to the following countries and territories, that is to say, India, the Republic of Ireland, any protectorate, protected state or trust territory within the meaning of the *British Nationality Act 1948*, any territory administered under the authority of a country mentioned in subsection (3) of section one of that Act, the Sudan, and the New Hebrides, the provisions of this Schedule shall have effect as they have effect in relation to Her Majesty's dominions, and references therein to Her Majesty's dominions shall be construed accordingly.

## SUMMARY OF SUGGESTIONS

1. Repeal the *Newspaper Libel and Registration Acts 1884-1957*.
2. Repeal s.354 of the *Criminal Code*.
3. Replace s.354 of the *Criminal Code* with the following new section.

s.354

(1) It is lawful to publish in good faith for the information of the public or for the purpose of public enlightenment –

- (a) A fair report of the proceedings of either House of the Parliament of Western Australia or of any other State of the Commonwealth or of the Commonwealth of Australia or of the United Kingdom or of the proceedings of the legislature of any territory of the Commonwealth of Australia or of the proceedings in public of any part of a central or local legislature in any territory inside or outside Her Majesty's Dominions;
- (b) a fair report of the proceedings of any Committee of any such House or such legislature or part of a legislature as is referred to in paragraph (a) of this subsection or of any joint committee of both Houses of the Parliaments or of any such legislature as is referred to in paragraph (a) of this subsection;
- (c) a copy of or an extract from or a fair abstract of any report, paper, notes, or proceedings published by order or under the authority of any such House or Legislature or part of a legislature as is referred to in paragraph (a) of this subsection;
- (d) a fair report of any proceedings in public of any international organisation of which countries or their governments recognised by Her Majesty's Government of the Commonwealth of Australia are members or of any international conference to which such countries or their governments send representatives;

- (e) a fair report of the proceedings in public of an international court;
- (f) a fair report of the proceedings in public of any court of Justice exercising jurisdiction whether in Australia or any state or territory thereof or in any country, or sub-division thereof, inside or outside Her Majesty's Dominions, whether the proceedings are preliminary or interlocutory or final, or of the result of any such proceedings, unless, in the case of proceedings which are not final, the publication has been prohibited by the court, but for the purposes of this paragraph defamatory matter ruled to be inadmissible by a court is not part of the public proceedings of the Court;
- (g) a fair report of the proceedings in public of any court martial or court sitting extraterritorially, established under the law of the Commonwealth of Australia or a State or Territory thereof or of any country recognised by Her Majesty's Government of the Commonwealth of Australia;
- (h) a copy or a fair abstract of any entries open to inspection by the public that are recorded in any books kept in the office of any Court of Justice of Australia or elsewhere inside or outside Her Majesty's Dominions including such courts as are referred to in paragraphs (e) and (g) of this subsection, and a notice or advertisement published by or on the authority of any such court or any Judge or Officer of such court;
- (i) a fair report of the proceedings in public of any held under the authority of any statute or Minister of the Crown of the Commonwealth of Australia or any state or territory thereof, or by or under the authority of Her Majesty, or of the Governor-General-in-Council, or the Governor of any State or the Administrator of any territory, or under the authority of an Act of Parliament of the United Kingdom, or of a Minister of the Crown of the United Kingdom, or under like authority of the governments of other countries recognised by the Commonwealth of Australia inside or outside Her Majesty's Dominions, or a copy of, or a fair extract from or abstract of, an official report made by the person by whom such enquiry was held;

- (j) a fair copy of or extract from any register kept in pursuance of any Act of Parliament or Ordinance of the Commonwealth of Australia or any State or Territory of the Commonwealth of Australia which is open to inspection by the public, or any other document which is required by the Law of the Commonwealth of Australia or any State or Territory thereof to be open to, inspection by the public;
- (k) at the request or with the consent of a government office or department, officer of State, or officer of police, of the Commonwealth of Australia or any State or Territory of the Commonwealth of Australia, a notice or report issued by the office, department, or officer, for the information of the public;
- (l) a fair report of the proceedings within Australia or its territories of any local authority, board, or body of trustees, or other person duly constituted under the provisions of any statute, or ordinance of the Commonwealth of Australia or any of its states or territories, for the discharge of public functions, so far as the matter published relates to matters of public interest;
- (m) a fair report of the proceedings at a general meeting within Australia of any corporation wherever incorporated, not being an "exempt proprietary company" within the meaning of the *Companies Act, 1961-1966*, or a corporation incorporated outside Western Australia to which similar provisions to those which under the law of Western Australia apply to "exempt proprietary companies" apply under the law of the place of its incorporation;
- (n) a fair report of the proceedings of any public meeting in Australia or its territories, so far as the matter published relates to matters of public interest. "Public Meeting" in this paragraph means a meeting which reasonably appeared to those who are responsible for the report at the time of its publication to be a meeting lawfully held for a lawful purpose, and to be for the furtherance or discussion in good faith of a matter of public interest, or for the advocacy or candidature of any person for a public office, whether the admission to the meeting was open or restricted;

- (o) a fair report of the proceedings at any State or municipal ceremonial in Australia or its territories, so far as the matter published relates to matters of public interest;
- (p) fair republications of the reports or matter referred to in paragraphs (a) to (o) of this subsection or of parts thereof or of abstracts of the reports or matter or part thereof or of the substance of the reports or matter or part thereof so that however the person republishing the report or matter or part or abstract or substance shall not be affected by unfairness in the original unless he had notice at the time of republication of facts which should have made him aware of such unfairness.

(2) A publication is said to be made in good faith for information of the public or for the purpose of public enlightenment if the person by whom it is made is not actuated in making it by ill-will to the person defamed, or by any other improper motive, and if the manner of the publication is such as is ordinarily and fairly used in the case of matter published for public information or for the purpose of public enlightenment.

(3) Nothing in the foregoing provisions of this section shall be construed as protecting the publication of any matter the publication of which is prohibited by law.

(4) In the case of the publication whether in writing, or as part of a programme or service provided by means of a broadcasting or television station and intended for reception by the general public, of any reports of proceedings or findings or decisions or notices referred to in paragraphs (b), (i), (k), (l), (m), (n), (o), and (p) of subsection (1) of this section the protection given under this section will be defeated if it is proved that the defendant or his agent was requested by or on behalf of the plaintiff to publish in the manner in which the original publication was made a reasonable letter or statement by way of contradiction or explanation of the defamatory matter and has refused or neglected to do so, or has done so in a manner inadequate or not reasonable having regard to all the circumstances, unless the defendant can show that his failure to publish was in all the circumstances reasonable.

(5) Legislation to give effect to the suggestions in either paragraph 39 or 40.