SUPREME COURT OF QUEENSLAND

CITATION:	*Flegg v Hallet* [2014] QSC 278
PARTIES:	**BRUCE STEPHEN FLEGG** (plaintiff) **v** **GRAEME NORMAN HALLETT** (defendant) **SPEAKER OF THE LEGISLATIVE ASSEMBLY** (amicus curiae)
FILE NO/S:	BS 11629 of 2012
DIVISION:	Trial
PROCEEDING:	Trial
DELIVERED ON:	7 November 2014
DELIVERED AT:	Brisbane
HEARING DATE:	15 – 17 October 2014; 20 October 2014; 22 October 2014
JUDGE:	Peter Lyons J
ORDER:	**1. I rule that s 36 of the *Parliament of Queensland Act* 2001 (Qld) is of no relevance to the questions which have thus far been raised in this case.** **2. I rule that s 8(1) of the *Parliament of Queensland Act* 2001 (Qld) does not prevent the defendant from challenging the accuracy of the lobbyist register tabled on 18 October 2012 before the Transport, Housing and Local Government Committee of the Legislative Assembly.**
CATCHWORDS:	CONSTITUTIONAL LAW – THE NON-JUDICIAL ORGANS OF GOVERNMENT – THE LEGISLATURE – GENERAL MATTERS – PRIVILEGES – PRIVILEGE OF PARLIAMENTARY DEBATES AND PROCEEDINGS – STATES – where the plaintiff tabled a lobbyist register at a hearing of a committee of the Legislative Assembly – where at the same hearing the plaintiff made a statement that the lobbyist register was "very accurate" – where the defendant subsequently published matter relating to the plaintiff including statements disputing the accuracy of the lobbyist register – where the plaintiff has sued the defendant in defamation as a consequence of these publications – where the defendant pleads that he did not believe the imputations arising from the publications to be untrue – where the defendant does not challenge the plaintiff's statement about the lobbyist register but challenges the accuracy of the

lobbyist register – whether s 8 of the *Parliament of Queensland Act* 2001 (Qld) precludes a challenge to the accuracy of the lobbyist register – whether s 9(3) of the Act excludes the application of s 8 to the lobbyist register

CONSTITUTIONAL LAW – THE NON-JUDICIAL ORGANS OF GOVERNMENT – THE LEGISLATURE – GENERAL MATTERS – power to compel answers and production of documents – where s 36(1) of the *Parliament of Queensland Act* 2001 (Qld) provides that no evidence can be given in any proceeding of an answer given before the Legislative Assembly or a parliamentary committee, or of the fact a document was produced to the Legislative Assembly or a parliamentary committee – where a literal reading of s 36(1) would represent a major alteration to what would otherwise be the state of the law, significantly reduce the field of operation of s 8(1), and negate the effect of s 9(3) – where the plaintiff, defendant, and Speaker of the Legislative Assembly submit that s 36(1) only comes into effect when a person is compelled to answer a question or produce a document to the Legislative Assembly or a parliamentary committee despite objection on a ground identified in s 34 of the Act – whether that intention should be imputed to the legislature – whether s 36 of the *Parliament of Queensland Act* 2001 (Qld) applies to these proceedings

Bill of Rights 1688, art 9
Parliament of Queensland Act 2001 (Qld), s 8, s 9, s 36
Public Records Act 2002 (Qld), s 6, s 7

Bermingham v Corrective Services Commission of NSW (1988) 15 NSWLR 292, cited
Church of Scientology of California v Johnson-Smith [1972] 1 QB 522, cited
Criminal Justice Commission v Nationwide News Pty Ltd [1996] 2 Qd R 444, cited
Daniels Corporation International Pty Ltd v Australian Competition and Consumer Commission (2002) 213 CLR 543; [2002] HCA 9, cited
Erglis v Buckley [2004] 2 Qd R 599; [2004] QCA 223, cited
Hamilton v Al Fayed [2001] 1 AC 395; [2000] UKHL 18, cited
Hanna v Sibbons (2010) 108 SASR 182; [2010] SASC 291, cited
Laurance v Katter [2000] 1 Qd R 147, cited
Mees v Rhodes Corporation (2003) 128 FCR 418; [2003] FCA 306, cited
Newcastle City Council v GIO General Ltd (1997) 191 CLR 85; [1997] HCA 53, cited
O'Shane v Harbour Radio Pty Ltd (2013) 281 FLR 1; [2013] NSWCA 315, cited

Prebble v Television New Zealand Ltd [1995] 1 AC 321, followed
R v Young (1999) 46 NSWLR 681; [1999] NSWCCA 166, cited
Rann v Olsen (2000) 76 SASR 450; [2000] SASC 83, considered
Victorian Workcover Authority v Vitoratos (2005) 12 VR 437; [2005] VSCA 261, cited
Wright and Advertiser Newspapers Limited v Lewis (1990) 53 SASR 416, not followed

COUNSEL: N Ferrett, with M May, for the plaintiff
S Keim SC, with R Gordon, for the defendant
M Hinson QC, for the Speaker of the Legislative Assembly as amicus curiae

SOLICITORS: Cooper Grace Ward for the plaintiff
Guest Lawyers for the defendant

[1] On 18 October 2012 the plaintiff tabled at an estimates hearing of the Transport, Housing and Local Government Committee of the Legislative Assembly, a document which has been referred to as the lobbyist register. In the course of the same hearing the plaintiff stated his belief that the lobbyist register was "very accurate" (*accuracy statement*). Subsequently, on three occasions on 12 and 13 November 2012, the defendant published matter relating to the plaintiff including statements disputing the accuracy of the lobbyist register. The plaintiff has sued the defendant in defamation as a consequence of these publications.

[2] At the conclusion of the opening of the defendant's case, Mr Ferrett of Counsel, who appeared with Mr May of Counsel for the plaintiff, indicated that he wished to seek a ruling about the admissibility of much of the evidence which had then been opened. Their subsequent written submissions included a submission that the defence involved impeaching the truth of a statement made in the course of Parliamentary proceedings, namely, the accuracy statement.

[3] It is also apparent from the defence and the way that the defendant's case has been conducted, that the defendant wishes to challenge the accuracy of the lobbyist register. The way in which the issue arises on the pleading is a little unusual. The statement of claim alleged that the imputations arising from the second of the defendant's publications included an imputation that the plaintiff had provided an important document to a committee of Parliament that was (amongst other things) grossly inaccurate[1]. A similar imputation was attributed to another statement published by the defendant[2]. The defendant has not pleaded, as a defence, that the publications were justified because they were true. However, in support of his claim for aggravated damages, the plaintiff alleged that the defendant published the statements, when he knew or ought to have known that each of the imputations was untrue[3]. The defendant denied this allegation, on the ground that he did not believe the imputations to be untrue[4]. In this state of the pleadings, both parties have

1 Statement of Claim para 18(g).
2 Statement of Claim para 26(a).
3 Statement of Claim para 35(b).
4 Amended Defence para 21(b).

adduced evidence which appears to be directed to the question whether the lobbyist register was accurate[5].

[4] After hearing oral submissions, it seemed to me appropriate to provide an opportunity to the Speaker of the Legislative Assembly to make submissions as to whether either course would contravene Parliamentary privilege. Consequently, Mr Hinson QC, instructed by the Clerk of the Parliament, provided written submissions, and appeared on 22 October 2014 to make oral submissions in support of them. His submissions were based on provisions of the *Parliament of Queensland Act* 2001 (Qld) (*Act*). His written submissions were that s 8 of the Act, when read with s 9(3), did not prevent the defendant from seeking to establish that the lobbyist register was inaccurate; but that s 8 prevented the defendant from seeking to establish that the accuracy statement was untrue.

[5] Mr Hinson also made reference to s 36 of the Act. He contended in his original written submissions that this section excluded evidence of an answer given by the plaintiff before the committee. The making of the accuracy statement had both been pleaded by the plaintiff and admitted by the defendant. It was also the subject of oral evidence[6]. A question arose as to the effect of s 36 in those circumstances. Moreover, the terms of s 36 gave rise to a question about evidence of what was described as the tabling of the lobbyist register before the committee. In subsequent written submissions[7], Mr Hinson contended that s 36(1) applied only to answers given, or the production of a document, under compulsion and despite objection on a ground mentioned in s 34 of the Act.

[6] Mr Ferrett and Mr May submitted that s 8 of the Act precluded any challenge to the accuracy statement, but did not prevent the defendant from establishing that he believed the accuracy statement to be untrue, and the lobbyist register to be inaccurate. They supported the construction of s 36 advanced by Mr Hinson.

[7] Mr Keim SC, who with Mr Gordon of Counsel appeared for the defendant, also provided submissions supporting the approach of Mr Hinson to the construction of s 36 of the Act. They submitted that the defendant does not challenge the accuracy statement. However, they submitted that the defendant was permitted to challenge the accuracy of the lobbyist register. Two bases were identified for that submission, namely, that the law of Parliamentary privilege, including s 8 of the Act, would not preclude a challenge to the accuracy of the lobbyist register. The second was that s 9(3) of the Act would exclude the application of s 8 to the lobbyist register. It might also be observed that no party relied on any provision other than s 8, such as s 9 of the *Constitution of Queensland Act* 2001 (Qld)[8], or any (if there be any) yet wider doctrine, for the proposition that the accuracy of the lobbyist register might not be challenged. It is therefore convenient to deal with each of the defendant's propositions in turn, before considering the effect of s 36 of the Act.

Does s 8 of the Act (if applicable) preclude a challenge to the accuracy of the lobbyist register?

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5 See Transcript (*T*) 1-24, line 40-41; see also T 1-26, lines 31-45; and see much of the cross-examination relating to exhibits 3, 4, and 5.

6 See T 1-26, line 39.

7 Mr Hinson provided additional written submissions dated 23 October 2014, and 5 November 2014.

8 Referred to in *Erglis v Buckley* [2004] 2 Qd R 599 (*Erglis*) at [16]-[17].

[8] The statutory provisions of primary importance for the determination of this question are as follows:

> "**8 Assembly proceedings can not be impeached or questioned**
>
> (1) The freedom of speech and debates or proceedings in the Assembly can not be impeached or questioned in any court or place out of the Assembly.
>
> (2) To remove doubt, it is declared that subsection (1) is intended to have the same effect as article 9 of the Bill of Rights (1688) had in relation to the Assembly immediately before the commencement of the subsection.
>
> **9 Meaning of *proceedings in the Assembly***
>
> (1) ***Proceedings in the Assembly*** include all words spoken and acts done in the course of, or for the purposes of or incidental to, transacting business of the Assembly or a committee.
>
> (2) Without limiting subsection (1), ***proceedings in the Assembly*** include—
>
> (a) giving evidence before the Assembly, a committee or an inquiry; and
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> (b) evidence given before the Assembly, a committee or an inquiry; and
>
> (c) presenting or submitting a document to the Assembly, a committee or an inquiry; and
>
> (d) a document tabled in, or presented or submitted to, the Assembly, a committee or an inquiry."

[9] There was a time when Parliament insisted that no one was entitled to publish reports of its proceedings[9]. However (subject to the effect of s 36 of the Act), it appears to be well established that it is permissible to prove, as a fact, that a statement was made in Parliament[10]. There is no obvious difficulty in reconciling this conclusion with the language of s 8.

[10] The syntax of s 8(1) makes it difficult to state with confidence a series of propositions reproducing the literal effect of the subsection. However, it seems to me to be clear that, when read with s 9(1) and (2), it has the effect that a document tabled in, or presented or submitted to, a committee cannot be impeached or questioned in any court. Nevertheless, it was submitted for the defendant that authority demonstrates that this proposition does not apply in a case where a Member of the Assembly has instituted defamation proceedings; and to make out a defence, the defendant must prove that evidence given before the Assembly or a committee, or a document tabled in or presented to the Assembly or a committee, is untrue.

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9 See *Erglis* at [16]; see also [14] and see *Church of Scientology of California v Johnson-Smith* [1972] 1 QB 522, 531, citing *Dingle v Associated Newspapers Ltd* [1960] 2 QB 405, 412.

10 See for example *Wright and Advertiser Newspapers Limited v Lewis* (1990) 53 SASR 416, 424; *Mees v Rhodes Corporation* (2003) 128 FCR 418 at [80]; LexisNexis Butterworths, *Australian Defamation Law and Practice*, vol 1 (at service 69) [12, 100]; *Erglis*.

[11] The authority principally relied upon for that submission is *Wright and Advertiser Newspapers Limited v Lewis*[11]. There, a defendant had written a letter accusing the plaintiff, a Member of the South Australian House of Assembly, of making unfounded and defamatory statements in Parliament. The defence alleged that statements of fact forming part of the publication were true. That inevitably meant that the defendants would seek to prove that it was true that the plaintiff had made statements in the House of Assembly which were unfounded and defamatory[12]. King CJ held that the defendants were not precluded by Parliamentary privilege from alleging and proving the truth of the imputations in respect of which they were sued[13]. His Honour said:[14]

> "I do not think that a defendant, so defending himself, can be regarded in any real sense as impeaching or questioning the freedom of speech, debates or proceedings in Parliament as forbidden by Art 9; nor can the courts be fairly regarded as doing so if they permit a defendant to so defend himself".

[12] White J agreed with the reasons of King CJ[15]. Olsson J came to a similar conclusion[16].

[13] *Wright* was referred to with apparent approval by Pincus JA in *Laurance v Katter*[17]. His Honour had earlier referred to it with approval in *Criminal Justice Commission v Nationwide News Pty Ltd*[18]. Its correctness was accepted in *Hanna v Sibbons*[19] by Vanstone J; and it would appear by Beazley P (with whom McColl JA and Tobias AJA agreed) in *O'Shane v Harbour Radio Pty Ltd*[20].

[14] However, in *Prebble v Television New Zealand Ltd*[21], the Privy Council rejected the reasoning in *Wright*. The judgment was delivered by Lord Browne-Wilkinson, who said[22]:

> "Although their Lordships are sympathetic with the concern felt by the South Australian Supreme Court, they cannot accept that the fact that the maker of the statement is the initiator of the court proceedings can affect the question whether article 9 is infringed. The privilege protected by article 9 is the privilege of Parliament itself. The actions of any individual Member of Parliament, even if he has an individual privilege of his own, cannot determine whether or not the privilege of Parliament is to apply."

[15] In *Rann v Olsen*[23] Doyle CJ considered that the correctness of the decision in *Wright* did not fall for consideration[24]. The case fell to be determined under s 16 of

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11 (1990) 53 SASR 416 (*Wright*).
12 *Wright* at 425.
13 *Wright* at 427.
14 At 426.
15 *Wright* at 427.
16 *Wright* at 447-448.
17 [2000] 1 Qd R 147, 197-198.
18 [1996] 2 Qd R 444, 456.
19 (2010) 108 SASR 182 at [68].
20 (2013) 281 FLR 1 at [82].
21 [1995] 1 AC 321 (*Prebble*).
22 At 335.
23 (2000) 76 SASR 450 (*Rann*).
24 At [193].

the *Parliamentary Privileges Act* 1987 (Cth), and not Article 9 of the *Bill of Rights* 1688; and his Honour considered that these provisions differed. Nevertheless, his Honour observed[25],

> "If s 16 of the (Parliamentary) Privileges Act does no more than declare the effect of Art 9, then, on my approach to s 16, *Wright v Lewis* was wrongly decided."

[16] Mullighan J agreed with Doyle CJ[26]. Prior J[27] and Perry J[28] considered that *Wright* was wrongly decided. Lander J expressed no view on this question.

[17] Section 8 of the Act makes it clear that its operative provision is intended to have the same effect as Article 9 of the *Bill of Rights* 1688. In those circumstances, a decision of an appellate court of another State would ordinarily be highly influential in determining the effect of the section, though not decisive[29]. In light of what appeared in *Prebble* and in *Rann*, it seems to me necessary to reach my own conclusion about the effect of s 8 in the present case.

[18] The language of s 8(1) provides no support for the conclusion reached by King CJ in *Wright*. The significance of that consideration might be affected by the fact that s 8(2) makes plain that the law as enacted by Article 9, as understood immediately before the commencement of s 8, remains in force (no doubt subject to the effect of s 9). However, in Queensland, the privilege is the privilege of the Legislative Assembly. It is for the Assembly to determine the occasion and manner of its exercise[30]. Consistent with *Prebble*, I find it difficult to see how the privilege can be affected by the fact that a member of the Assembly commences court proceedings. The legislature modified the operation of the privilege in s 9(3). The fact that it did so, but did not make a modification consistent with *Wright*, it seems to me, also suggests that the privilege was not intended to be restricted in accordance with that decision.

[19] It is at this point convenient to make an observation about the language used to describe the events which occurred on 18 October 2012 involving the lobbyist register. Hansard records the Chair as saying, with respect to the lobbyist register, "Are you happy to table it? Leave granted"[31]. I was informed by Mr Hinson, on instructions from the Clerk of Parliament, that the word "tabling" relates to the acceptance by a committee of a document. That does not appear to be consistent with the way in which the expression was used in the extract from Hansard; nor is it consistent with the definition of "tabled" in the schedule to the Act. However, nothing in the present case turns upon this matter. There is no reason to think that

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25 At [194].

26 *Rann* at [283].

27 *Rann* at [225].

28 *Rann* at [250]-[251].

29 *Australian Securities Commission v Marlborough Gold Mines Ltd* (1993) 177 CLR 485, 492; *Farah Constructions Pty Ltd v Say-dee Pty Ltd* (2007) 230 CLR 89 at [135]; *Marshall v Director-General, Department of Transport* (2000) 205 CLR 603 at [62] per McHugh J; *Walker Corporation Pty Ltd v Sydney Harbour Foreshore Authority* (2008) 233 CLR 259 at [31]. See the discussion of the effect of decisions of appellate courts in other states by Justice Steven Rares in 'The role of the intermediate appellate court after Farah Constructions' (Speech delivered at the 4th Appellate Judges Conference of the Australasian Institute of Judicial Administration, Melbourne, 7 November 2008) <http://www.fedcourt.gov.au/publications/judges-speeches/justice-rares/Rares-J-20081107.rtf>.

30 *R v Richards; Ex parte Fitzpatrick and Browne* (1955) 92 CLR 157, 162; cited in *Wright* at 423.

31 See exhibit 11, Hansard p 48.

the lobbyist register is not a document of the kind identified in s 9(2)(d) of the Act; with the consequence that it constitutes "proceedings in the Assembly" and thus, subject to s 9(3), is protected from impeachment or questioning in a court by s 8(1).

[20] It was not suggested that an attack upon the accuracy of the lobbyist register would not amount to impeaching or questioning it. That approach is consistent with the following statement from *Prebble*[32]:

> "… parties to litigation, by whomsoever commenced, cannot bring into question anything said or done in the House by suggesting (whether by direct evidence, cross-examination, inference or submission) that the actions or words were inspired by improper motives or were *untrue or misleading*". (emphasis added)

[21] Accordingly I would conclude the scope of the privilege enacted in s 8(1) is unaffected by the fact that proceedings in which a defendant wishes to challenge the accuracy of a statement made or a document tabled in the Assembly or a committee of the Assembly were commenced by a member of the Assembly. Such a challenge is inconsistent with that privilege.

Does s 9(3) exclude the lobbyist register from the scope of s 8?

[22] Section 9(3) of the Act provides as follows:

> "**(3)** Despite subsection (2)(d), section 8 does not apply to a document mentioned in subsection (2)(d)—
>
> (a) in relation to a purpose for which it was brought into existence other than for the purpose of being tabled in, or presented or submitted to, the Assembly or a committee or an inquiry; and
>
> (b) if the document has been authorised by the Assembly or the committee to be published."

[23] The lobbyist register which was tabled at the committee hearing on 18 October 2012 is a document of the kind mentioned in s 9(2)(d) of the Act. Accordingly s 8 does not apply to it if the conditions mentioned in s 9(3) have been satisfied. Satisfaction of second condition mentioned in s 9(3), authorisation of publication, is demonstrated by the certificate that became exhibit 25 in these proceedings.

[24] For the remaining condition to be satisfied, one matter that must be established is that the lobbyist register was brought into existence for a purpose other than for the purpose of being tabled in, or presented or submitted to, the committee. The lobbyist register was obviously brought into existence for some other purpose. It will be necessary to consider this question further.

[25] Section 9(3) would then exclude the operation of s 8 "in relation to" such a purpose. As I read the subsection, it is necessary to identify any potentially relevant purpose for which the lobbyist register was brought into existence; and to consider whether its use in the present proceedings, or at least the challenge to its accuracy, is "in relation to" such a purpose, so that the operation of s 8 is in those circumstances excluded.

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[32] See at 337; see also *Hamilton v Al Fayed* [2001] 1 AC 395, 407.

[26] I was referred to the Explanatory Note for the Parliament of Queensland Bill 2001, where there was specific discussion of subclause 9(3)[33]. The subclause was intended to overcome difficulties which might arise in relation to documents brought into existence "for some purpose other than specifically for the business of the Assembly". The provision was said to make it clear that such documents "can, if their publication has been authorised by … the relevant committee, be questioned or impeached in respect of that other purpose". It seems to me the Explanatory Note does not add to a consideration of the statutory language, when seeking to determine the nature of the connection required under s 9(3).

[27] The expression "in relation to" is used to identify some form of connection between two subject matters. Potentially the range of connections which may come within the scope of this phrase is very wide; though it will be limited by the statutory context (including the purpose of the statutory provision) in which the phrase occurs. It is generally undesirable to attempt to formulate a comprehensive statement of the scope of the phrase in a particular statutory setting[34].

[28] I was referred to s 7 of the *Public Records Act* 2002 (Qld), which requires a public authority to make and keep full and accurate records of its activities. The term "public authority" is defined in Schedule 2 of this Act to include a Minister. Section 7 also requires the public authority to have regard to any policy, standards and guidelines made by the State Archivist about the making and keeping of public records. Both the heading to s 7, and the reference to public records in s 7(1)(b), would indicate that the records which it requires a Minister to keep are, for the purposes of this Act, public records. Section 6 of the same Act defines a public record to include a Ministerial record, defined[35] to mean a record created by a Minister in the course of carrying out the Minister's portfolio responsibilities, with exclusions that do not appear to be of present relevance. It therefore seems to me that the lobbyist register is, for the purposes of the *Public Records Act*, a public record.

[29] The stated purposes of the *Public Records Act* include to ensure that the public records of Queensland are "in a useable form for the benefit of present and future generations" and that public access to these records is consistent with the principles of the *Right to Information Act* 2009 (Qld), as well as the *Information Privacy Act* 2009 (Qld)[36]. The primary object of the *Right to Information Act* is to give a right of access to information in the government's possession or under the government's control unless, on balance, it is contrary to the public interest to give the access[37]. By implication, this object recognises a general public interest in such a right of access. The primary object of the *Information Privacy Act* deals similarly with a right of access to personal information in the government's possession or under its control[38]; similarly recognising a public interest in such a right of access.

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33 See p 9.

34 See *Australian Competition and Consumer Commission v Maritime Union of Australia* (2001) 187 ALR 487 [68]-[69]; and *R v Khazaal* (2012) 246 CLR 601 at [31].

35 In Schedule 2.

36 Section 3 of the *Public Records Act*.

37 See s 3 of the *Right to Information Act.*

38 See s 3 of the *Information Privacy Act*.

[30] The State Archivist has produced a Public Records Brief[39], said to "outline the recordkeeping requirements for documenting contact between government representatives and lobbyists". This appears to be a document of the kind described in s 7(1)(b) of the *Public Records Act*. The Public Records Brief identifies a relevant public record as "information in any format that provides evidence of contact that has occurred between a government representative and a lobbyist". Records, said to be of decisions and actions, no doubt relating to such contact, "must be created and maintained … and additional contextual information may also need to be captured to ensure the completeness of the record". It is said that this will allow "information about lobbyist interactions, and decisions made by the government that are directly or indirectly influenced by such interactions, to be easily retrieved, understood, and reported as required." Such records are to be retained for 10 years; and before disposal, they should be reviewed "to ensure they are no longer required for business, legal or other purposes".

[31] I was also referred to another document apparently originating with the State Archivist, being the General Retention and Disposal Schedule for Administrative Records[40]. Part of this document is referred to in the Public Records Brief. That part confirms that records documenting contact between a public authority and registered lobbyists are to be retained for 10 years.

[32] Finally, reference should be made to the lobbyist register itself. The matters to be recorded include the name of the relevant Ministerial Officer, the name of the lobbyist, the lobbyist's clients, the purpose of the contact, and the outcome resulting from the contact.

[33] It seems to me that in attempting to identify a relevant purpose for the application of s 9(3) of the Act, I can have regard not only to the provisions and purposes of the *Public Records Act*, but also to the lobbyist register itself, and the other documents to which I have referred. Taken together, they lead me to conclude that a purpose for which the lobbyist register was brought into existence was the creation and maintenance of a reliable record of contacts between lobbyists (as defined in the *Integrity Act* 2009 (Qld)) and a Minster or Ministerial Officer, to enable public scrutiny of such contacts and their outcome.

[34] In general terms, the purpose of s 9(3) might be said to be to ensure that a document, created for other purposes, might remain subject to challenge, notwithstanding that it was tabled in the Assembly or a committee. Some qualification on this purpose is provided by the requirement that there be a connection between the purpose for which the document was created, and the challenge to its accuracy. However, the legislative context does not suggest that the subsection should be read narrowly.

[35] In the present case, as has been mentioned, the truth of the imputation that the plaintiff had provided an important document to a Parliamentary committee, which was grossly inaccurate, was not relied upon as a defence. Nevertheless, it is relied upon in response to a claim for aggravated damages. It therefore seems to me that the challenge to the accuracy of the lobbyist register is made to avoid the constraining effect of aggravated damages on the making of a statement about the

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39 See exhibit 1, tab 2.

40 See exhibit 26.

inaccuracy of the lobbyist register. This may in turn be said to be related to the maintenance of the reliability of such a register. It is also related to the facilitation of public scrutiny of contacts between lobbyists and a Minister or Ministerial Officer and their outcomes. It seems to me that this is a sufficient connection between the purpose for which the lobbyist register was brought into existence, and the circumstances in which the proposed challenge would arise. I therefore conclude that, in this case, s 9(3) applies, to exclude the operation of s 8, and accordingly to permit the defendant to challenge the accuracy of the lobbyist register.

Does s 36 of the Act affect these proceedings?

[36] Section 36 is in the following terms:

> "**36 Inadmissibility of particular events before the Assembly or a committee**
>
> (1) Without limiting sections 8 and 9, evidence may not be given in any proceeding of an answer given by a person before the Assembly or a committee, or of the fact the person produced a document or other thing to the Assembly or a committee.
>
> (2) However, subsection (1) does not apply to—
>
> (a) a proceeding before the Assembly or a committee of the Assembly; or
>
> (b) a criminal proceeding brought against the person about the falsity, or the misleading, threatening or offensive nature, of the answer, document, or other thing; or
>
> (c) a criminal proceeding brought against the person about the person's failure to produce a document or thing to, or refusal to answer a question before, the Assembly or a committee.
>
> (3) Subsection (2) applies despite sections 8 and 9."

[37] Section 36 occurs in Chapter 3 (entitled "Powers rights and immunities"), Part 1 (entitled "Powers to require attendance and production") of the Act.

[38] The Explanatory Note for the Bill includes the following[41]

> "*Clause 36* provides that evidence may not be given in any proceeding of an answer given by a person before a committee, or of the fact the person produced a document or other thing to a committee. Clause 36(1) is a faithful reproduction of section 26(9) of the *Parliamentary Committees Act 1995*."

[39] Section 26 of the (now repealed) *Parliamentary Committees Act* 1995 (Qld) appeared in Part 6 (entitled "General Powers of Committees"). Section 25, the first provision in Part 6, authorised certain committees "to call for persons, documents and other things". Section 26 (entitled "Privilege against self-incrimination") then applied. It dealt with a range of matters in a manner analogous to Chapter 3, Part 1

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41 At p 19.

of the Act (though it did not provide for objection on the ground of privacy and irrelevance). Section 26(9) was as follows:

> "**(9)** Evidence may not be given in any proceeding of an answer given by a person before a committee or the fact that a person produced a document or other thing to a committee."

[40] Section 4 of the Act, dealing with its object, provides that it "generally consolidates existing laws incidental to the operation of the Assembly". For the Speaker of the Legislative Assembly it was submitted that there is an initial presumption that a consolidating Act does not intend to change the existing law, though this may be displaced by the terms of the Act. It was submitted that s 26(9) of the *Parliamentary Committees Act* applied to a committee authorised "to call for persons, documents and other things" (by reference to s 26(1)); and, in view of the intervening subsections of s 26, s 26(9) provided protection with respect to answers given and documents or things produced under compulsion and despite objection on the ground of self-incrimination. It was therefore submitted that s 36(1) also provided protection, limited to those circumstances.

[41] For the plaintiff, it was submitted that the apparent purpose of Chapter 3, Part 1 of the Act is to strike a balance between the privilege against self-incrimination, and the policy objective of ensuring the effectiveness of enquiries by Parliamentary committees. A literal reading of s 36(1) would go well beyond redressing the invasion of rights that Chapter 3, Part 1 involves. It was submitted that this does not accord with the legislative intention, revealed by the Explanatory Note. It was also submitted that a literal reading of s 36(1) of the Act would amount to a major extension of Parliamentary privilege and, as a corollary, a major intrusion upon the legal rights of citizens. By reference to *Daniels Corporation International Pty Ltd v Australian Competition and Consumer Commission*[42] it was submitted that a court would generally be slow to adopt such an interpretation.

[42] A literal reading of s 36(1) would have far reaching consequences. It would represent a major alteration to what would otherwise be the state of the law, referred to earlier.

[43] Against the background of the other provisions of Chapter 3, Part 1, a broad reading of s 36(1) is open. Part 1 envisages a number of circumstances in which a committee might receive documents and other evidence. This might occur when the evidence is "voluntarily" given[43], which in the context of Part 1, may perhaps mean "volunteered". There is then a reference to the summonsing of a person to attend before a committee. The committee might require the person to answer questions under oath or affirmation[44]; and if such a person does not answer a question or produce a document which the person has been ordered to produce, the Chairperson may require the person to do so[45]. The person must then comply, unless the person makes an objection under ss 33(3) and (4)[46] (the grounds of objection are that the answer or document "is of a private nature and does not affect the subject of the enquiry"; and self-incrimination[47]). If the person does not comply, the committee

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42 (2002) 213 CLR 543 at [11].
43 See s 25(3).
44 See s 31.
45 See s 32(1).
46 See s 32(2).
47 See s 34.

may report the matter to the Assembly, and the Assembly may order the person to do so, and the person is required to comply with such an order[48]. Thus Part 1 identifies a number of occasions on which a person might give evidence or produce a document to a committee other than pursuant to an order of the Assembly after objection; and s 36(1) is not, in terms, limited to the last-mentioned occasion.

[44] Section 26 of the *Parliamentary Committees Act* is similarly structured. Subsection (9) is not, in terms, limited to cases where evidence was given or a document was produced as a consequence of an order of the Assembly, after objection. Reference to it is of limited assistance. Perhaps the most significant feature of s 26 is the heading, referring to privilege against self-incrimination. This tends to suggest that a purpose of the section was to maintain privilege against self-incrimination; rather than to prevent the giving of evidence in other proceedings of any answer given or the production of any document before a committee. This would favour the construction of s 26(9) for which Mr Hinson contends.

[45] It is apparent from its terms that s 36(1) is intended to operate in conjunction with s 8(1). A literal reading of s 36(1) would significantly reduce the field of operation of s 8(1). For example, it is difficult to see how the accuracy of evidence given or documents produced in the Assembly, including in a committee, could be questioned without evidence to demonstrate what was then said or produced. The same is true of any attempt to attack the motives of a person giving such evidence or producing such a document. It seems unlikely that s 36(1) was intended to have such an effect. This conclusion is reinforced by the fact that it appears in Chapter 3, Part 1, which is concerned with the powers of the Assembly and committees; whereas Chapter 2, Part 1 deals with the protection of their proceedings. In particular, a literal reading of s 36(1) would generally negate the effect of s 9(3); and would be contrary to the purpose of that provision identified in the Explanatory Note.

[46] The argument based on the proposition that the Act was intended to consolidate previous statutes is somewhat weakened by the fact that Chapter 3, Part 1 introduces a ground of objection not found in s 26 of the *Parliamentary Committees Act.* Nevertheless, the similarity of language used in s 36, and the reference to s 26(9) in the Explanatory Note, suggest that the later provision was intended to have a similar field of operation as the earlier, though perhaps expanded to a case where objection was taken on the basis of privacy and irrelevance.

[47] In summary, there are a number of considerations which seem to me to favour a narrow reading of s 36(1) of the Act. They include inconsistency with s 9(3); that the apparent purpose of its predecessor was to preserve the privilege against self-incrimination, which was overridden by other provisions of the *Parliamentary Committees Act*; the *Parliament of Queensland Act* was primarily an Act consolidating provisions previously in force, rather than altering their effect (though some alteration is clearly present in Chapter 3, Part 1 of the Act); a literal reading, whether of s 26(9) of the *Parliamentary Committees Act* or of s 36(1) of the *Parliament of Queensland Act*, would represent a substantial change to what would otherwise have been the law, without any apparent reason or explanation; appropriate protection for the giving of evidence and the production of a document in the Assembly or a committee is provided for in s 8(1) of the Act; and a narrower

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[48] See ss 33(5)-(8).

reading of each of these provisions would give each an appropriate and readily understandable field of operation. It seems to me, therefore, that the intent which should be imputed to the legislature is that s 36(1) should be read as operating only in respect of an answer given, or the production of a document, as the result of compulsion notwithstanding objection, either under ss 33(5)-(8), or ss 32(5) and (6) of the Act. I am conscious that it would be possible to characterise this result as reading words into s 36(1), without satisfying the tests formulated by McHugh JA in *Bermingham v Corrective Services Commission of NSW*[49]. However, as pointed out in the submissions of Mr Hinson, and Mr Keim and Mr Gordon, if the statutory text and context warrant a restricted reading of a provision, then, although the result might be expressed by the use of words in addition to those in the provision, all that the court has done is identify the effect of the words used, rather than to add to them[50].

[48] The answers given and the document produced to the committee which are relevant for the present case were not the result of any exercise of an order of the Assembly, made after objection. In my view, s 36 of the Act therefore is of no relevance in the present case.

Conclusion

[49] So far as questions have arisen about evidence that might be given in the present case, s 36 of the *Parliament of Queensland Act* is of no relevance. Section 8(1) of that Act does not prevent the defendant from challenging the accuracy of the lobbyist register tabled before the committee on 18 October 2012.

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49 (1988) 15 NSWLR 292, 302; see also *Newcastle City Council v GIO General Ltd* (1997) 191 CLR 85, 113-116, and the discussion in D C Pearce and R S Geddes, *Statutory Interpretation in Australia* (LexisNexis Butterworths, 7th ed, 2011) at [2.33].

50 See *R v Young* (1999) 46 NSWLR 681 [14]-[16] per Spigelman CJ; *Victorian Workcover Authority v Vitoratos* (2005) 12 VR 437 at [21] per Buchanan JA.