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Parliamentary precincts and the exercise of authority

Parliamentary precincts and the exercise of authority

The parliamentary precincts

The question of the extent of the precincts of the permanent Parliament House was resolved definitively with the passage of the *Parliamentary Precincts Act 1988*^[95] which provides as follows:

- The boundary of the parliamentary precincts is the approximately circular line comprising the arcs formed by the outer edge of the top of the retaining wall near the inner kerb of Capital Circle, and in places where there is no retaining wall, arcs completing the circle. [Where there is no retaining wall, the circle is indicated by markers—see map at Schedule 1 of the Act.]
- The parliamentary precincts consist of the land on the inner side of the boundary, and all buildings, structures and works, and parts of buildings, structures and works, on, above or under that land.
- If the Presiding Officers certify in writing that specified property is required for purposes of the Parliament, regulations may declare that the property shall be treated as part of the parliamentary precincts for the purposes of the Act.^[96]
- The precincts are under the control and management of the Presiding Officers who may, subject to any order of either House, take any action they consider necessary for the control and management of the precincts.
- In respect of the ministerial wing in Parliament House, the powers and functions given to the Presiding Officers are subject to any limitations and conditions agreed between the Presiding Officers and the responsible Minister.

The parliamentary zone

A parliamentary zone was declared by the Parliament when it passed the *Parliament Act 1974*, which not only determined Capital Hill as the site for the permanent Parliament House but also defined the parliamentary zone within which no building or other work could be erected without the approval of both Houses of Parliament.^[97] The zone comprises the area bounded by State Circle, Commonwealth and Kings Avenues and the southern edge of Lake Burley Griffin.^[98] The parliamentary zone is also a designated area for which land use planning, development and construction

proposals must be approved by the National Capital Authority.^[99] The Authority briefs the Joint Standing Committee on the National Capital and External Territories on work which needs parliamentary approval.^[100]

The Parliament does not claim authority over the streets surrounding the parliamentary precincts although it does claim the right of access for its Members to attend the Parliament. In 1975 a judgment in the Supreme Court of the Australian Capital Territory on an appeal against a conviction for a parking offence held that:

Parliament enjoys certain privileges designed to ensure that it can effectively perform its function and there are some aspects of conduct concerning the operation of Parliament into which the courts will not inquire. Certain courtesies are customarily observed. Parliament, through the President of the Senate and the Speaker of the House of Representatives, and the officers of the Parliament, controls the use of the buildings which it has for its purposes. Doubtless, it can also control the use of the immediate precincts of those buildings, but arrangements about such matters are made in a sensible and practical way, bearing in mind the reasonable requirements of Parliament. The fact is that there is no general abrogation of the ordinary law. It is not necessary for the effective performance by Parliament of its functions that there be any such abrogation. On the contrary, it must be very much in the interests of members, in their corporate and individual capacities, that the ordinary law should operate.

... The fact is that the law respecting the privileges of Parliament is itself part of the ordinary law. Part of that law is found in the *Bill of Rights 1688*. In a well-known passage, Stephen J. said (in *Bradlaugh v. Gossett* (1884) 12 QBD271 at 283): 'I know of no authority for the proposition that an ordinary crime committed in the House of Commons would be withdrawn from the ordinary course of criminal justice'.^[101]

Within the building, the Presiding Officers determine matters in relation to the overall allocation and use of space.^[102] The Speaker alone has the authority to determine such matters as the allocation of seats in the Chamber and office suites to Members and the order of priority for the acceptance of bookings for House of Representatives committee rooms.



The security of the parliamentary precincts

Responsibility for security in the parliamentary precincts is vested by the Parliamentary Precincts Act in the Presiding Officers. Before the passage of the Act this jurisdiction was based on custom and practice and the inherent powers of the Presiding Officers to maintain proper arrangements for the functioning of Parliament.

Security brings into conflict two principles basic to Parliament's traditions and usage. On the one hand, there is the undeniable right of people in a parliamentary democracy to observe their Parliament at work and to have reasonable access to their representatives. On the other hand, Members and Senators must be provided with conditions which will enable them to perform their duties in safety and without interference. This is basic to the operation of Parliament and a balance must be struck between these two important principles.

In 1978 some Members and Senators expressed concern that the security arrangements might become excessively elaborate and that the rights of Members, Senators and the public to gain access to, and to move freely within, Parliament House might be unnecessarily restricted. In a report later that year the Senate Committee of Privileges emphasised the view that an effective protection system was necessary for Parliament House and its occupants. It stressed that security measures implemented earlier in 1978 provided the basis for an effective system and were not, in the committee's opinion, in any way inconsistent with the privileges of Members of the Senate.[\[103\]](#)

The safety of people who work in Parliament House, or who visit it on legitimate business or simply to see it in operation, is an important consideration. Some Members and Senators are prepared to accept that public office brings with it increased personal risk and perhaps are not easily convinced of the need for special arrangements for their own security. However, the need to ensure the safety of others in the parliamentary precincts is recognised and this consideration has been important to successive Presiding Officers.

A Security Management Board, consisting of the Serjeant-at-Arms, the Usher of the Black Rod, the Secretary of the Department of Parliamentary Services, and a Deputy Commissioner of the Australian Federal Police (AFP),[\[104\]](#) is the high level advisory and oversight body responsible for the security of the precincts. In 2014 the Presiding Officers authorised the AFP to be the lead agency for operational security at Parliament House. A consequential Memorandum of Understanding (MOU) was



signed between the AFP and the Department of Parliamentary Services in that year which established the operational security and response arrangements for Parliament House.

The AFP Manager, Parliament House is responsible for overall operational security and, in accordance with the MOU, day to day security is overseen by the AFP Security Controller. The AFP Security Controller also has command, control and coordination of all operational security and response activity within the precincts. The MOU gives the AFP Security Controller responsibility for the control and coordination of Department of Parliamentary Services security staff and AFP personnel during both day to day security and security response operations.

The parliamentary security staff are responsible primarily for security within the building—that is, the operation of electronic security screening devices, the physical checking of people entering the building and general corridor surveillance. The AFP has exclusive responsibility for physical security of the external precincts. The Serjeant-at-Arms and the Usher of the Black Rod are involved in operational matters if they impact on the House wing and Members or the Senate wing and Senators respectively.

A pass system controls entry into the non-public areas of Parliament House. Members and Senators are not required to wear a pass. Other persons are not permitted to enter the non-public areas without a pass. People permanently employed in the building and others who need to enter Parliament House regularly are issued with photographic identity passes. Visitors granted entry to the non-public areas must be accompanied and must present photo identification to be issued with day passes, or passes covering specified periods, as the need arises. Passes must be worn by the pass holders. At times the main doors, or parts of the building that are normally open to the public, may be closed for security reasons.

Entry to Parliament House and galleries

Goods, mail and baggage brought into the building are checked by electronic means. On entering Parliament House all persons, including Members and Senators, must pass through electronic detection equipment similar to that used at airports and further screening is carried out of people seeking to enter the public galleries of the two chambers. It is a condition of entry to the building and the public galleries that any person desiring to enter shall submit to a search of his or her person or effects if so required.



Visitors displaying political slogans on their clothing may be denied entry to the galleries on the basis that the galleries should not be used as a place for protest action^[105]—there are other areas set aside for such activities (see page 131).

Disorder and disturbances

To perform its functions the House must be protected from physical disruption, disturbance and obstruction and there is no doubt that the House has the power to protect itself from such actions. However, such actions, although they may technically constitute contempt, are in practice usually dealt with either through administrative action under the authority of the Presiding Officers or by remitting the matter to the authorities for criminal proceedings.

Visitors who misconduct themselves in that part of Parliament House controlled by the Speaker may be taken into custody by the Serjeant-at-Arms.^[106] In the Chamber visitors are under the control of the Serjeant-at-Arms. If a visitor or person other than a Member disturbs the operation of the Chamber or the Federation Chamber, the Serjeant-at-Arms can remove the person or take the person into custody.^[107] Such disturbances have included persons standing up, interjecting, applauding, holding up signs or placards, dropping or throwing objects into the Chamber, chaining or gluing themselves to railings and jumping onto the floor of the Chamber.^[108]

On the authority of the Serjeant-at-Arms, Usher of the Black Rod or authorised persons, persons creating a disturbance may be detained and interviewed, or ejected from Parliament House. Persons considered to pose a threat to the Parliament, for example, because of a history of attempts to disrupt proceedings, have been barred from entry to the Chamber or the building for a period of time by order of the Speaker or both Presiding Officers.

Application of the law in Parliament House

Although the ordinary criminal law applies within Parliament House, the actual charging of people creating a disturbance inside the building has in the past been difficult. For example, doubt had existed as to whether the Chambers were Commonwealth premises for the purposes of the *Public Order (Protection of Persons and Property) Act 1971* and therefore protected against disturbances that caused no damage or injury. In 1965 a police constable arrested a person in King's Hall (of the provisional Parliament House) and a conviction was recorded against the person for using insulting words in a public place. Although it seemed doubtful that King's Hall was in fact a public place for the purposes of the Police Offences Ordinance, the Speaker stated that 'the constable acted properly, and with authority, in protection of

the Parliament and its members'.^[109] A person who jumped from the main public gallery onto the floor of the Chamber in September 1987 was not charged. In 2004 a person who jumped from the first floor northern gallery onto the floor of the Chamber was subsequently charged and convicted of related offences.

The *Parliamentary Privileges Act 1987* made the legal position clearer by declaring 'for the avoidance of doubt' that a law in force in the Australian Capital Territory applies, subject to section 49 of the Constitution, 'according to its tenor in and in relation to any building in the Territory in which a House meets, except as otherwise provided by that law or by any other law'.

The *Parliamentary Precincts Act 1988* further clarified the situation by providing that the Public Order (Protection of Persons and Property) Act applies to the precincts as if they were Commonwealth premises within the meaning of that Act. The Parliamentary Precincts Act also provides that the functions of the Director of Public Prosecutions in respect of offences committed in the precincts shall be performed in accordance with general arrangements agreed between the Presiding Officers and the Director of Public Prosecutions.

The *Australian Capital Territory (Self Government) Act 1988* provides that either House may declare by resolution that an ACT law enacted following self government does not apply to that House or its members, or in the parliamentary precincts.

Powers of police in Parliament

For most practical purposes, Parliament House is regarded as the only place of its kind and one in which the two Houses through their Presiding Officers have exclusive jurisdiction. Thus in Parliament House the police are subject to the authority of the Speaker and President and their powers are limited by the powers and privileges of the respective Houses.^[110] Such limitations are not based on any presumed sanctity attached to the building as such, but on the principle that the Parliament should be able to conduct its business without interference or pressure from any outside source.^[111] At the same time, the public interest in the administration of justice is given due weight.

It is established practice that police do not conduct investigations, make arrests, or execute any process in the precincts without consultation with and the consent of the Presiding Officers, which is in practice conveyed through the Serjeant-at-Arms or the Usher of the Black Rod to the Australian Federal Police Security Controller. An exemption to this is the standing approval for the police to perform traffic operations in the precincts which may result in arrest or investigation or, more usually, issuance of infringement notices.

There are a number of precedents of consent being granted in the case of police wishing to interview Members. In commenting on one such incident the Speaker stated:

To avoid any misunderstanding as to the powers of the police in this building, I draw to the attention of the House that it is accepted as part of the Parliament's privileges and immunities that the police do not have a right to enter the Parliament building without the prior knowledge and consent of the President and/or the Speaker. The police officers who visited the honourable member yesterday sought my permission to do so before coming to the building. I gave that approval on two bases: First, yesterday was not a sitting day; and second, the honourable member ... had indicated agreement to receiving the police officers.[\[112\]](#)

The Parliament House offices of a Member and a Senator have been searched under the authority of a warrant.[\[113\]](#) In 2005 a Memorandum of Understanding between the Presiding Officers and the Attorney-General and Minister for Justice set out guidelines to be followed in the execution of search warrants in relation to premises used or occupied by Members and Senators, including their offices in Parliament House. In the cases of offices in Parliament House the agreement requires that the relevant Presiding Officer be contacted before the search is executed. Material has been seized under a search warrant executed on the Department of Parliamentary Services at Parliament House.[\[114\]](#)

Police officers with protection duties at Parliament House carry arms.

The Parliamentary Precincts Act provides that where, under an order of either House relating to the powers, privileges and immunities of that House, a person is required to be arrested or held in custody, the person may be arrested or held by a member or special member of the Australian Federal Police in accordance with general arrangements agreed between the Presiding Officers and the Minister administering the *Australian Federal Police Act 1979*.

Demonstrations

In 1988 the Presiding Officers approved guidelines to be observed by the Australian Federal Police in managing demonstrations. The guidelines, incorporated in Hansard, include the provision that demonstrations by groups and persons shall not be permitted within the area of the parliamentary precincts bounded by and including Parliament Drive, provisions circumscribing the behaviour of demonstrators, the provision that any breach of the guidelines may be subject to police intervention and a map showing the 'authorised protest area'.[\[115\]](#) The guidelines have since been

amended to cover the use of sound amplification by participants in any gathering within the precincts and to limit further the area where demonstrations may be held within the precincts to the area bounded by Parliament Drive and Federation Mall. The Parliament Act empowers the Australian Federal Police to remove structures erected by demonstrators without a permit in the parliamentary zone, including the area in front of Parliament House outside the precincts.

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