



Parliament of New South Wales

1988-89-90
(Council Paper Only)

REPORT

OF THE

STANDING COMMITTEE

UPON

PARLIAMENTARY PRIVILEGE

TOGETHER WITH

THE PROCEEDINGS OF THE COMMITTEE

DOCUMENTS ISSUED BY
THE REVEREND THE HONOURABLE
F. J. NILE, M.L.C.

Ordered to be printed 7 December 1989

MEMBERS OF THE COMMITTEE

The Honourable Max Frederick Willis, R.F.D., E.D., LL.B. M.L.C. (Chairman)

The Honourable Richard Thomas Marshall Bull, M.L.C.

The Honourable Ronald David Dyer, Dip.Law, Dip.Crim., M.L.C.

The Honourable John Planta Hannaford, LL.B., M.L.C.

The Honourable Elisabeth Kirkby, M.L.C.

The Honourable John Cyril James Matthews, M.L.C.

The Honourable Bryan Henry Vaughan, LL.B., M.L.C.

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EXTRACTS FROM THE MINUTES OF THE PROCEEDINGS OF THE LEGISLATIVE COUNCIL

Minutes of Proceedings No. 14, Entry 16, Thursday, 13 October 1988

STANDING COMMITTEE UPON PARLIAMENTARY PRIVILEGE

Mr Vaughan moved, pursuant to Notice:

That—

- (1) A Standing Committee upon Parliamentary Privilege be appointed to consider and report upon any matters relating to privilege which may be referred to it by the House.
- (2) Such Committee have leave to sit during the sittings or any adjournment of the House, and have power to take evidence and send for persons and papers.
- (3) Such Committee have power to confer with any Committee appointed for similar purposes by the Legislative Assembly.
- (4) Such Committee consist of the following Members: Mr Bull, Mr Dyer, Mr Hannaford, Miss Kirkby, Mr Matthews, Mr Willis and the mover.

Debate ensued.

Motion made (Mr Willis speaking) and question: That this debate be now adjourned until Thursday next— put and passed.

Minutes of Proceedings No. 17, Entry 14, Thursday, 20 October 1988

STANDING COMMITTEE UPON PARLIAMENTARY PRIVILEGE

Upon the Order of the Day being read the adjourned debate of the question on the motion of Mr Vaughan:

That—

- (1) A Standing Committee upon Parliamentary Privilege be appointed to consider and report upon any matters relating to privilege which may be referred to it by the House.
- (2) Such Committee have leave to sit during the sittings or any adjournment of the House, and have power to take evidence and send for persons and papers.
- (3) Such Committee have power to confer with any Committee appointed for similar purposes by the Legislative Assembly.
- (4) Such Committee consist of the following Members: Mr Bull, Mr Dyer, Mr Hannaford, Miss Kirkby, Mr Matthews, Mr Willis and the mover—
resumed.

Question put and passed.

Minutes of Proceedings No. 19, Entry 7, Wednesday, 9 November 1988

**POLICE REGULATION (ALLEGATIONS OF MISCONDUCT)
AMENDMENT BILL— SELECT COMMITTEE**

Mrs Bignold moved, pursuant to Notice: That the Special Report of the Select Committee on the Police Regulation (Allegations of Misconduct) Amendment Bill, on a possible contempt of the Committee be referred to the Standing Committee upon Parliamentary Privilege for consideration and report.

Debate ensued.

Minutes of Proceedings No. 19, Entry 9, Wednesday, 9 November 1989

**POLICE REGULATION (ALLEGATIONS OF MISCONDUCT)
AMENDMENT BILL— SELECT COMMITTEE**

Upon the Order of the Day being read, the interrupted debate of the question on the motion of Mrs Bignold: That the Special Report of the Select Committee on the Police Regulation (Allegations of Misconduct) Amendment Bill, on a possible contempt of the Committee be referred to the Standing Committee upon Parliamentary Privilege for consideration and report—
resumed.

Question put.

The House divided.

Ayes 22

Mrs Arena	Mr Hankinson	Mr O'Grady
Mrs Bignold	Mr Ibbett	Mr Reed
Mr Brenner	Mr Jones	Mrs Symonds
Mr Dyer	Mr Kaldis	Mr Vaughan
Mr Egan	Miss Kirkby	
Mr French	Mrs Kite	Tellers
Mrs Grusovin	Mr Macdonald	Mr Enderbury
Mr Hallam	Mr Manson	Mr Garland

Noes 20

Mrs Chadwick	Mr Killen	Mrs Sham-Ho
Mr Doohan	Mr Matthews	Mr Smith
Mrs Evans	Mrs Nile	Sir Adrian Solomons
Mr Gay	The Revd Mr Nile	Mr Willis
Dr Goldsmith	Dr Pezzutti	Tellers
Mrs Jakins	Mr Pickering	Mr Hannaford
Mr Jobling	Mr Samios	Mr Mutch

Pairs

Mr Bull

Mrs Walker

And so it was resolved in the affirmative.

REPORT

1. The Standing Committee upon Parliamentary Privilege, to whom was referred the matter of the Special Report from the Select Committee on the Police Regulation (Allegations of Misconduct) Amendment Bill 1988 (referred to as "the Select Committee"), concerning documents issued by the Reverend the Honourable F.J.Nile, Ed., L.Th., M.L.C., in relation to that Select Committee's establishment and inquiries, have agreed to the following report:

Origins and nature of the complaint

2. In order that the House may be in a position to decide on the issue of contempt, Your Committee will refer at length to the background of matters leading to the complaint and subsequent Special Report from the Select Committee.

3. In about the first week of October 1988 the Honourable Marie Bignold, M.L.C., (referred to as "Mrs Bignold"), Chairman of the Select Committee, became aware of a letter, dated 27 September 1988, addressed to "All Co-ordinators" of the Call to Australia Citizens' Movement, under the signature of the Reverend the Honourable F.J. Nile, M.L.C., (referred to as "Reverend Nile") National President of Call to Australia. In his letter to co-ordinators — referring to Mrs Bignold and the Select Committee — Reverend Nile stated she was:

"; cooperating with the ALP to form a Select Committee against the strong opposition of the Government. This Select Committee, which only has ONE Liberal M.P. on it, is now conducting a witch-hunt under Mrs Bignold's chairmanship, with the guidance of the ALP, to discredit the Leader of the Government in the Upper House, Hon Ted Pickering, who is also Minister for Police, and finally try to force him to resign, so that the Greiner Government will be seriously damaged, and so help the ALP to win the next Election."¹

¹ This passage from the letter to Co-ordinators of the Call to Australia Citizens' Movement is the basis of the complaint from the Select Committee. The full text of the letter appears in Appendix A.

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4. After considering the contents of Reverend Nile's letter Mrs Bignold wrote a six foolscap page letter to Reverend Nile on 10 October 1988. In her letter she states:

"Your letter, dated 27th September, 1988, apparently sent to all 'Call to Australia' Co-ordinators, has recently been brought to my attention by a number of the Co-ordinators.

I am deeply concerned that, having failed in your public campaign against me, you now resort to underhand tactics in your communications with the Party's Co-ordinators.

Despite my letter to you, dated 21st September, 1988, and my Personal Explanation given on the same day in the Legislative Council, when I made my position concerning my seat in the Parliament absolutely plain to you, I note that both publicly and now in your letter to Co-ordinators you continue to express the opinion (for which there is absolutely no foundation):

'I believe this reply from Mrs. Bignold was in haste, and without serious prayer and waiting on the Lord'.

Your persistent and contumelious refusal to accept my decision is extremely vexing and frustrating. Your wilful conduct is of course calculated only to cause mischief and damage to me as a Christian, and to my Christian work in the Parliament. Whereas I have hitherto deliberately forborne entering into public controversy by fuelling what in fact is the false issue you have created, and sought to sustain, I apprehend that you have mistakenly interpreted my Christian forbearance as some form of pacifism and non-opposition.

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Accordingly, the time has now arrived to call a halt to your blatant misconduct, and I must advise you that if you are unable or unwilling to curb your irresponsible [sic] excesses then I shall have no alternative but to invoke the remedies available under the law to secure this result. Such action would, I hope, prove necessary only as a last resort. However, for your own sake and the sake of the Party's standing in the community you must be made to realise that you are not a law unto yourself."

5. Referring to the Police Regulation (Allegations of Misconduct) Amendment Bill, Mrs Bignold continued:

"Likewise with the Police Regulation (Allegations of Misconduct) Amendment Bill, you fail to say that in my speech, having noted the fundamental conflict in the opinion of the N.S.W. Ombudsman and the Commissioner for Police, and the fact that the Government had not satisfactorily resolved or explained that conflict, I suggested that the Bill should be referred to a Select Committee for investigation. I was part of a majority of Members in the House who supported the Motion that the Bill be referred to a Select Committee of the House for investigation. It has been my privilege to serve on that Committee as its elected Chairman. The Committee is made up of two Liberal/National Party Members, two Labor Members, and two Independent Members. Your allegation that the Select Committee is 'now conducting a witch-hunt under Mrs. Bignold's Chairmanship, with the guidance of the A.L.P., to discredit the Leader of the Government in the Upper House' is an outrageous defamation, not only of me personally, but of other Members of the Select Committee. Moreover, this outrageous allegation is a contempt of the Select Committee and hence of the Parliament itself. Contempt of the Parliament is an offence carrying most serious consequences for the contemnor (the person committing the contempt)."

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6. In concluding her letter to Reverend Nile, Mrs Bignold stated:

"Finally, I must return to the matter of the defamation of me and other Members of the Select Committee, and contempt of the Parliament contained in your letter to the Co-ordinators. These matters are far too serious to be lightly passed over. As I have earlier mentioned already, I have considered the legal redress available to me by obtaining Queen's Counsel's opinion. Whether I avail myself of that redress is, at this stage, principally dependent upon your response to this letter. Accordingly, I call upon you within 48 hours to notify me in writing whether you are prepared to undertake the following action-

- (i) Forthwith withdraw your said letter to the Co-ordinators;
- (ii) Inform all recipients of that letter, at the time of its withdrawal, that all allegations of impropriety made against me personally, and in my capacity as Chairman of the Select Committee, and against other Members of the Select Committee, are unreservedly withdrawn;
- (iii) Express your unqualified apology to me (both personally and in my capacity as Chairman of the Select Committee), and to other Members of the Select Committee for the defamatory allegations made against us; and
- (iv) Express your unqualified apology to the Select Committee for your contempt of the Committee;
- (v) Desist from publishing any further defamations against me personally, or in my capacity as Chairman of the Select Committee, and against other Members of the Select Committee."

7. In response to the letter from Mrs Bignold, Reverend Nile wrote to Mrs Bignold in the following terms on 12 October 1988:

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"Dear Marie,

Further to the requests in your letter dated 10th October, 1988, I wish to apologise for any unnecessary hurt or embarrassment you have experienced as a result of my private letter to C.T.A. Coordinators dated 27th September, 1988.

My only objective is to protect the good name and future effectiveness of the Call to Australia Citizens Movement, which is my duty and obligation as both Founder and National/N.S.W. President.

Yours sincerely,

(Rev) Fred Nile M.L.C.
(National President)"

8. On 13 October 1988 Reverend Nile made a personal explanation in the Legislative Council in which he stated:

"It has come to my notice that a private and confidential letter of mine to Call to Australia co-ordinators, dated 27th September, 1988, has mischievously fallen into the hands of the media. The letter contains my confidential report on the business of the House during 1988. I wish to apologize and withdraw any possible imputations of improper motives and all personal reflections on members of this House or on this House or any select committee which may be stated or implied in my confidential letter of 27th September, 1988, which was not for public consumption.

I am a strong supporter of the conventions of his (sic) House and have no desire to do anything, intentionally or unintentionally, that may harm the standing and reputation of this House in the community. My only desire is that all the business of this House

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be conducted in accordance with the standing orders, motions and conventions of this House."²

9. At a meeting of the Select Committee on 14 October 1988, Mrs Bignold tabled a three page "strictly confidential" Chairman's Report she had compiled which concerned a possible contempt of the Committee by the Reverend Nile arising from his letter dated 27 September 1988. The following are relevant extracts from that report:

"1. I must bring to the attention of all Members of the Select Committee the commission by the Hon. Fred Nile, M.L.C., of what appears to be scandalous contempt of the Select Committee. In his letter, dated 22nd [sic] September, 1988, addressed to 'Call to Australia' Co-ordinators (and apparently sent to at least 109 Co-ordinators responsible for each parliamentary electorate), the Hon. Fred Nile states (then follows the extract in paragraph 3 above).

"4. At the risk of repetition I emphasise that it is, in my opinion, essential that the Select Committee, if it is to uphold the integrity, standing, and authority of the Select Committee, and by extension, the Legislative Council, to consider the question of contempt committed against the Select Committee by totally ignoring all aspects of the Hon. Fred Nile's letter that give rise to private rights of legal action (e.g. for defamation) by individual Members, including obviously myself."

"8. Any consideration of what, if any, action the Select Committee perceives to be necessary in relation to the Hon. Fred Nile's scandalous allegations made against the Select Committee, raises the difficult question of what precisely are the privileges of the N.S.W. Parliament, and of the Legislative Council in particular. That opinions on this question may differ is clear from a

² L.C. Debates 13/10/88 p. 2201.

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consideration of the Report, dated 18th September, 1985, of the JOINT PARLIAMENTARY SELECT COMMITTEE ON PARLIAMENTARY PRIVILEGE IN NEW SOUTH WALES."

10. After referring to the conclusions of the Joint Select Committee on Parliamentary Privilege and powers conferred by common law - a question which Your Committee will refer to in detail later - the report continued:

"11. In *Armstrong v Budd* the Court recognised that in a proper case a power of expulsion for reasonable cause may be exercised 'by the Legislative Council' provided that its exercise is solely defensive i.e. 'a power to preserve and safeguard the dignity and honour of the Council and the proper conduct and exercise of its duties' and is not exercised as 'a cloak for the punishment of the offender'. As Mr. Justice Sugerman states at page 406, 'necessity stops short where punishment begins'.

12. Another important principle recognised in *Armstrong v Budd* is that although it is for the Court to determine the extent of the powers conferred upon the Legislative Council, it is for the Council and not for the Court, to determine the manner and occasion for the exercise of such powers.

13. In my opinion it is clear from the decision in *Armstrong v Budd* that the scandalous contempt and defamation of the Select Committee committed by the Hon. Fred Nile is conduct that falls within the ambit of the self-defensive and self-protective powers available to the Legislative Council by virtue of the doctrine of necessity to suspend or expel a Member and that power is available to the Legislative Council in the circumstances of this case.

14. Accordingly, the question is what, if any, action the Select Committee desires to take against the Hon. Fred Nile in respect of his said contempt of the Select Committee. As I see it the

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more particular question is whether the Select Committee desires to sponsor any appropriate Motion in the Legislative Council against the Hon. Fred Nile in the exercise of the Council's undoubted constitutional power to defend and protect itself against actions which directly attack its integrity, standing and authority."

11. The consideration of any possible action by the Select Committee arising out of the Chairman's report was deferred for discussion at the next meeting of the Select Committee.

12. On 19 October 1988, Mrs Bignold circulated to members of the Select Committee (not at a meeting of the Committee) a "strictly confidential" Chairman's Supplementary Report to the Select Committee. Relevant extracts from that report are as follows:

"(2) In the course of discussion consideration was given to whether the alleged contempt of the Select Committee by the Honourable Fred Nile had been sufficiently and satisfactorily excused by his letter of apology, addressed to me . . . and his personal explanation given to the House

(3) Upon reflection I do not think it reasonable for the Committee to regard either of those actions by the Honourable Fred Nile as sufficiently excusing his contempt of the Select Committee.

(4) Referring to his 'letter of apology', it is clear that that is directed to me alone. In any event, it does not even purport to deal with the question of contempt. Instead it refers to 'hurt or embarrassment' to me. Accordingly, it can have no bearing on the contempt committed against the Select Committee.

(5) Referring to his personal explanation, the following points should be noted:—

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- (a) The claim that the letter was 'private and confidential' is misleading in that the letter was not so described to its recipients, and in that the letter appeared to have been written to at least 109 persons (one Co-ordinator for each State electorate), and possibly more if it was also written to Co-ordinators in other States of Australia.
- (b) The apology and withdrawal of 'any possible imputations of improper motives and all personal reflections' on Members of the House or any Select Committee is entirely generalised and takes the form of a Member of the House in the course of debate withdrawing a personal reflection against another Member. It neither reveals to the House the specific content of the written contempt, nor does it adequately deal with the contempt, e.g. by seeking to explain or justify or confess the contempt.
- (6) In any event, even if the Select Committee was itself of the opinion that the Honourable Fred Nile's personal explanation sufficiently excused the contempt, that would not be an end of the matter, because the contempt is also, and more importantly, a contempt committed against the House itself.

Accordingly, if the personal explanation is to be judged as a possible excuse for the contempt, it is for the House to make that judgement for itself. This is particularly necessary once it is appreciated that the Honourable Fred Nile has chosen the initiative of giving his personal explanation to the House. This is significant since he deliberately chose not to express his unqualified apology to the Select Committee (as I had required in my letter to him, dated 10th October, 1988, . . .). Instead, by choosing the method of Personal Explanation to the House he achieved the considerable personal/tactical advantage of avoiding—

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- (i) A direct apology to the Select Committee;
- (ii) the necessity to reveal to the House the nature of the contempt (even in a generalised fashion, let alone in its specific terms); and
- (iii) debate on the matter in view of Standing Order 70.

Accordingly, for the foregoing reasons, I do not think it reasonable for the Select Committee either to regard the Honourable Fred Nile's response as constituting a sufficient excuse for his contempt, or to pre-empt consideration by the House of the question of the contempt on the basis of a full and proper disclosure to the House of the precise nature of the Honourable Fred Nile's contempt.

In this respect I have obtained the advice of the Clerk, and the Secretary to the Committee, as to the appropriate procedures for the referral to the House of a Special Report of the Select Committee. A copy of the advice is annexed hereto.

Finally, in relation to the Select Committee's continuing consideration of the contempt committed by the Honourable Fred Nile, I think it relevant for the Committee to also consider the Honourable Member's submission to the Select Committee (copy attached), and his recent attack in the House on the establishment of a Committee to report pursuant to Standing Order 197 of the House's reasons for insisting upon amendments it moved to the Arantz Re-instatement Bill.

These additional corroborative materials indicate that the Honourable Fred Nile's contempt of the Select Committee was deliberate and knowing, and cannot be lightly passed over as if it were committed in a flourish of keen Parliamentary debate. Nor can it be regarded as an ignorant or innocent misdemeanour.

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Accordingly, I recommend that the Select Committee authorise the making of a Special Report referring the case to the House for its consideration of the contempt committed by the Honourable Fred Nile."

13. At its next meeting on 20 October 1988 the Select Committee deliberated on the Chairman's Report and resolved on division (Ayes 3, Noes 2) to request the Chairman to submit a draft Special Report on a possible contempt of the Select Committee by the Reverend Nile for consideration at the next meeting of the Committee. Mrs Bignold prepared and presented a draft Special Report to the Select Committee at its meeting on 31 October 1988, when the Select Committee resolved on division (Ayes 3, Noes 2) that the Report be presented to the House. The Committee also resolved on division (Ayes 3, Noes 2) that the Chairman give notice of a motion in the House for referral of the Special Report to the Standing Committee upon Parliamentary Privilege.

14. In its report to the House the Select Committee reported that it had "resolved on 31 October 1988 that a Special Report be presented to the House in order that the House might decide whether certain actions of the Revd the Hon. F.J.Nile, M.L.C. are a reflection on the Committee as a whole and/or its Members and as such constitute a contempt of the House." The Committee's report and certain documents accompanying it appear as Appendix A.

15. On 8th November 1988 Mrs Bignold presented the Special Report to the House and gave notice of motion for the Special Report to be referred to the Standing Committee upon Parliamentary Privilege for consideration and report. On 9th November 1988 the House, after a lengthy debate, resolved on division (Ayes 22, Noes 20) to refer the report to Your Committee for consideration and report.

16. The inquiry by Your Committee has been made difficult because all that the Committee has been able to obtain is a series of letters and documents. Your Committee sought to obtain evidence from members of the Select Committee, but some members of the Select Committee declined to give evidence. The Honourable R.D. Dyer, The Honourable E. Kirkby and the Honourable B.H. Vaughan indicated

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that they were not prepared to give evidence to Your Committee, and the Honourable M.M. Bignold, who made available relevant background material leading to the reference of the complaint to Your Committee, indicated that there was no testimony that she could give which would be relevant to the task being undertaken by Your Committee.

17. Your Committee was able to obtain evidence from two Members of the Select Committee - the Honourable B.A. Evans and the Honourable R. Killen. In evidence before Your Committee both members of the Select Committee indicated that they could not identify any action of Reverend Nile which has obstructed, hindered or impeded them in the discharge of their duty as a member of the Select Committee or of the House. Both members were also of the view that there was nothing in the document issued by Reverend Nile which could be construed in any way as being in contempt of the Select Committee or of the House.

18. Reverend Nile gave lengthy evidence before Your Committee on the documents issued by him. In evidence before Your Committee he expressed his regret for the language used in his letter to Co-ordinators of 27 September 1988 in describing the Select Committee as being engaged in a "witch-hunt". He acknowledged that the word could be misconstrued or be seen to have stronger meaning than he meant to imply. Reverend Nile did not believe that the publication of the document reflected adversely on the honour, character or integrity of members of the House or of the Select Committee.

Basis of Contempt

19. Erskine May refers to contempt as follows:

"It would be vain to attempt an enumeration of every act which might be construed into a contempt, the power to punish for contempt being in its nature discretionary. Certain principles may, however, be collected from the Journals which will serve as general declarations of the law of Parliament. It may be stated generally that any act or omission which obstructs or impedes

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either House of Parliament in the performance of its functions, or which obstructs or impedes any member or officer of such House in the discharge of his duty, or which has a tendency, directly or indirectly, to produce such results may be treated as a contempt even though there is no precedent of the offence.³

20. The test from this definition of contempt is "obstructs or impedes". To constitute a contempt, an act or omission must obstruct or impede the House (or a Committee of the House), a Member or an officer in the discharge of a duty.

21. The House of Commons has on many occasions treated as contempt speeches and writings reflecting upon Members in their capacity as Members.

22. It might be useful to look at the precedents in May to see what types of acts have been held to constitute contempt. Among the more obvious acts held to be contempts are: speeches or writings reflecting on the House, publication or disclosure of a committee's proceedings or evidence; arrest of members, molestation of members in the execution of their duties, attempts to influence members in their parliamentary conduct, attempted intimidation of members, private solicitation of members, molestation of members on account of their conduct in parliament, and reflections upon members.⁴

23. The present complaint would fall into the category of speeches or writings reflecting on the House and reflections upon members.

24. May, referring to "Speeches or writings reflecting on either House", states:

"In 1701 the House of Commons resolved that to print or publish any books or libels reflecting on the proceedings of the House is a high violation of the rights and privileges of the House. Indignities offered to their House by words

³ May's Parliamentary Practice, 20th ed., Butterworth's, London, 1983, p. 143.

⁴ May, pp 152-160.

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spoken or writings published reflecting on its character or proceedings have been constantly punished by both the Lords and the Commons upon the principle that such acts tend to obstruct the Houses in the performance of their functions by diminishing the respect due to them.

Reflections upon Members, the particular individuals not being named or otherwise indicated, are equivalent to reflections on the House."⁵

25. Referring to "Reflections upon Members", May states:

"Analogous to molestation of Members on account of their behaviour in Parliament are speeches and writings reflecting upon their conduct as Members. On 26 February 1701 the House of Commons resolved that to print or publish any libels reflecting upon any Member of the House for or relating to his service therein, was a high violation of the rights and privileges of the House.

'Written imputations, as affecting a Member of Parliament, may amount to a breach of privilege, without, perhaps, being libels at common law but to constitute a breach of privilege a libel upon a Member must concern the character or conduct of the Member in that capacity."⁶

26. May gives the following examples of speeches and writings which have been held to constitute breaches of privilege or contempts:

⁵ May, p. 152.

⁶ May, p. 159.

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- Reflections on the character of the Speaker and accusations of partiality in the discharge of his duty (1937-38)
- Reflections upon the conduct of the Lord Chancellor in the discharge of his judicial duties in the House of Lords (1834)
- Reflections upon the conduct of the Chairman of Committees (1867)
- Reflections upon the impartiality of the Chairman of Ways and Means (1950-51)
- Reflections upon the conduct of the Chairman of a Standing Committee (1924)
- Imputing unfair conduct to the Chairman of a Select Committee (1874)
- Grossly libelling the Chairman of a Select Committee (1950-51)
- Imputations against Members serving on private bill committees (1932-33)
- Imputations against Members of corruption in the execution of their duties (1893-94)
- Asserting that he could control the decision of a committee on a private bill and offering to do so for a corrupt consideration (1879)

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- Publishing placards reflecting on the conduct of certain Members as 'inhuman' and 'degrading' (1880)
- Sending a letter to Members complaining that a Member who had been nominated a member of a select committee would be unable to act impartially upon it (1900)
- Reflections on the motives of a Member or a group of Members (1974-75).⁷

27. Your Committee notes that although these cases constituted a contempt of the Imperial Parliament, they may not necessarily constitute a contempt of a Parliament which derives its authority by Statute.⁸

Reception of privilege in New South Wales

28. It was assumed from the inception of responsible government that the New South Wales Parliament had powers analogous to the British Parliament. This is evident from cases that came before the courts. However, the lex et consuetudo Parliamenti by which each House of the United Kingdom Parliament has the power of defining its privileges, is not automatically applied to colonial legislatures, since the privileges of colonial legislatures are not co-extensive with those of the British Parliament. In the absence of any statutory provision, the privilege of such a legislature is regulated by the common law, the limits of which in this context were defined in the judgment of Kielley v. Carson.⁹

⁷ May p. 159. The dates shown are the latest references to cases reported.

⁸ See para. 28 et seq.

⁹ (1842) 4 Moore PC 63.

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29. In that case the judicial committee of the House of Lords denied to the House of Assembly of Newfoundland the right of the Speaker (Carson) to arrest a stranger and bring him before the House to be punished for using gross and threatening language to a member of the House. The following passage from the judgment of Parke B., commenting on the power of contempt, is important:

"The whole question then is reduced to this,—whether by law, the power of committing for a contempt, not in the presence of the Assembly, is incident to every local Legislature.

The Statute Law on this subject being silent, the Common Law is to govern it; and what is the Common Law, depends upon principle and precedent.

Their Lordships see no reason to think, that in the principle of the Common Law, any other powers are given them than such as are necessary to the existence of such a body, and the proper exercise of the functions which it is intended to execute. These powers are granted by the very act of its establishment, an act which on both sides, it is admitted, it was competent for the Crown to perform. This is the principle which governs all legal incidents . . . In conformity to this principle we feel no doubt that such an Assembly has the right of protecting itself from all impediments to the due course of its proceeding. To the full extent of every measure which it may be really necessary to adopt, to secure the free exercise of their Legislative functions, they are justified in acting by the principle of the Common Law. But the power of punishing any one for past misconduct as a contempt of its authority, and adjudicating upon the fact of such contempt, and the measure of punishment as a judicial body, irresponsible to the party accused, whatever the real facts may be, is of a very different character, and by no means essentially necessary for the exercise of its functions by a

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local Legislature, whether representative or not. All these functions may be well performed without this extraordinary power, and with the aid of the ordinary tribunals to investigate and punish contemptuous insults and interruptions.

.....

It is said, however, that this power belongs to the House of Commons in England; and this, it is contended, affords an authority for holding that it belongs as a legal incident, by the Common Law, to an Assembly with analogous functions. But the reason why the House of Commons has this power, is not because it is a representative body with legislative functions, but by virtue of ancient usage and prescription; the *lex et consuetudo Parliamenti*, which forms a part of the Common Law of the Land, and according to which the High Court of Parliament, before its division, and the Houses of Lords and Commons since, are invested with many peculiar privileges, that of punishing for contempt being one. And, besides, this argument from analogy would prove too much, since it would be equally available in favour of the assumption by the Council of the Island, of the power of commitment exercised by the House of Lords, as well as in support of the right of impeachment by the Assembly—a claim for which there is not any colour of foundation.

.....

Their Lordships, therefore, are of opinion, that the principle of the Common Law, that things necessary, pass as incident, does not give the power contended for by the Respondents as an incident to, and included in, the grant of a subordinate Legislature."¹⁰

¹⁰ Ibid. p. 88-89.

30. It results from this authority that no analogy can be derived from the powers of the House of Commons, as it is not a representative body by legislative functions but derives its power by virtue of ancient usage and prescription, the lex et consuetudo Parliamenti, part of the common law of England.

31. In Fenton v. Hampton,¹¹ for the same reasons, the Judicial Committee denied to the Parliament of Tasmania, which derived its legislative authority from an Imperial Statute, the power to arrest for contempt a person who failed to obey an order of the House to appear at the bar of the House to answer a charge of disobedience to a summons to appear before a select committee of the House.

32. Again in Doyle v. Falconer¹² it was held that the Dominican House of Assembly did not have power to punish a contempt though committed in its face and by one of its Members. The Privy Council, referred to its earlier decisions in Kielley v. Carson and Fenton v. Hampton where it was decided conclusively that, in the absence express grant, there is no implied power to adjudicate upon or punish for contempts committed outside Parliament. However, the Privy Council distinguished between a power to punish for a contempt and power to remove any obstruction to the deliberations, or proper action of a Legislative body during its sitting, saying:

"If a Member of a Colonial House of Assembly is guilty of disorderly conduct in the House whilst sitting, he may be removed or excluded for a time, or even expelled; but there is a great difference between such powers and the judicial power of inflicting a penal sentence for the offence. The right to remove for self-security is one thing, the right to inflict punishment is another. . . . If the good sense and conduct of the members of Colonial Legislatures prove, as in the present case, insufficient to secure order and decency

¹¹ (1858) 11 Moore PCC 347.

¹² (1866) LR 1 PC 328.

STANDING COMMITTEE UPON PARLIAMENTARY PRIVILEGE

of debate, the law would sanction the use of that degree of force which might be necessary to remove the person offending from the place of meeting, and to keep him excluded."¹³

33. It follows from these cases that the source of any particular power, privilege or immunity claimed to be possessed by a House of the New South Wales Legislature or its members has to be found in the application of the principle of implied grant as a matter of necessity.

34. It is also clear from the decision of the House of Lords in Chenard & Co. v. Arissol,¹⁴ that the legislature of a colonial territory does not strictly require an express grant of authority to enact privileges legislation so long as the Constitution empowers it to make laws "for the peace, order and good government" of the Colony.

35. In these instances, until such times as a legislature confers powers and privileges upon itself by legislation, it does not enjoy any such inherited powers beyond those recognised under the common law.

36. The New South Wales Parliament is the only one in Australia which lacks any general legislative provision declaring its privileges by statute, except in relation to witnesses before committees.¹⁵ The scope of the powers of the two Houses of Parliament in New South Wales to deal with contempt depends, in the main, upon the common law.

¹³ Ibid. p. 340.

¹⁴ [1949] AC 127.

¹⁵ Parliamentary Evidence Act 1901.

STANDING COMMITTEE UPON PARLIAMENTARY PRIVILEGE

37. The Bill of Rights 1688 (Imp.)¹⁶ which lays down that "freedom of speech and debate or proceedings in Parliament ought not to be impeached or questioned in a court or place outside Parliament" applies in New South Wales by express enactment.¹⁷

38. There is an affinity between parliamentary privilege and practices as they apply in the United Kingdom and New South Wales which has been considered in a long lines of cases.

39. In Barton v. Taylor,¹⁸ a case concerning the power of the New South Wales Legislative Assembly to protect itself against obstruction, interruption or disturbance of its proceedings by suspension of a member, the Privy Council said a Colonial Assembly possesses "protective and self-defensive powers only, and not punitive" in the exercise of the functions which it is intended to execute. The following extract from the judgment of the Earl of Selbourne outlines the position:

"In the second plea their Lordships find no averment, either of any standing order of the Legislative Assembly itself, or of any rule, form, or usage of the Imperial Parliament, authorising or justifying the trespass complained of by the plaintiff. The intention of that plea seems to have been to justify the trespass on the ground of an inherent power in every Colonial Legislative Assembly to protect itself against obstruction, interruption, or disturbance of its proceedings by the misconduct of any of its members in the course of those proceedings. The nature, grounds and limits of that power (which undoubtedly exists) have been several times considered at this Board, especially in the case of Kielley v. Carson and Doyle v. Falconer. It results from those authorities that no powers of that kind are incidental to or

¹⁶ 1 William & Mary, sess. 2 c. 2.

¹⁷ Imperial Acts Application Act 1969, s.6.

¹⁸ (1886) 11 AC 197.

STANDING COMMITTEE UPON PARLIAMENTARY PRIVILEGE

inherent in a Colonial Legislative Assembly (without express grant), except 'such as are necessary to the existence of such a body, and the proper exercise of the functions which it is intended to execute'. Whatever, in a reasonable sense, is necessary for these purposes, is impliedly granted whenever any such legislative body is established by competent authority. For these purposes, protective and self-defensive powers only, and not punitive, are necessary. If the question is to be elucidated by analogy, that analogy is rather to be derived from other assemblies (not legislative), whose incidental powers of self-protection are implied by the common law (although of inferior importance and dignity to bodies constituted for purposes of public legislation), than from the British Parliament, which has its own peculiar law and custom, or from Courts of Record, which have also their special authorities and privileges, recognised by law. 'If a member of a Colonial House of Assembly is guilty of disorderly conduct in the House while sitting, he may be removed or excluded for a time, or even expelled The right to remove for self-security is one thing, the right to inflict punishment is another If the good sense and conduct of the members of Colonial Legislatures prove insufficient to secure order and decency of debate, the law would sanction the use of that degree of force which might be necessary to remove the person excluded from the place of meeting, and to keep him excluded'.¹⁹

40. Their Lordships considered that a power to suspend "during the continuance of any current sitting" was reasonably necessary and added that:

" . . . it may very well be, that the same doctrine of reasonable necessity would authorise a suspension until submission or apology by the offending member;"²⁰

¹⁹ Ibid. p. 197.

²⁰ Ibid. p. 204.

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41. However, their Lordships also observed that:

"A power of unconditional suspension for an indefinite time, or for a definite time depending only on the irresponsible discretion of the Assembly itself, is more than the necessity of self-defence seems to require, and is dangerously liable, in possible cases, to excess or abuse."²¹

42. In Willis and Christie v. Perry²² the High Court decided that the New South Wales Legislative Assembly had no power to arrest a member who had left the Chamber, this being punitive and not protective or self-defensive power. The distinction is clearly seen in that case, for the object of the direction of the Speaker was to arrest a member who was outside the Chamber and bring him back into it by way of punishment.

43. A further decision of the Judicial Committee which relates to the New South Wales Parliament, Harnett v. Crick,²³ is important, for it illustrates that the power of the House to defend the regularity of its proceedings—by suspension—is not confined within any narrow limits such as misconduct committed in the face of the House, but may extend in special circumstances for the protection of the House where bribery and corruption have been charged against a member. That case turned upon the validity of a Standing Order of the Legislative Assembly empowering the House to suspend a member. The Judicial Committee pointed out that the House has the power of determining for itself the circumstances giving rise to the necessity for such a Standing Order so that provided it relates to the orderly conduct of the House its validity cannot be called into question in a court of law.²⁴

²¹ (1886) 11 AC 197.

²² (1912) CLR 592.

²³ (1908) 8 NSW LR 451.

²⁴ Per Lord Macnaghten at p. 455.

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44. In Armstrong v. Budd²⁵ the Supreme Court of New South Wales held that the House had power to expel a Member for conduct unworthy of a member of the Legislative Council, provided that special circumstances exist and the expulsion is by way of self protection and not punishment. In reaching this decision the Court relied on the Privy Council decision in Harnett v. Crick upholding the power of the Legislative Assembly of New South Wales to suspend a Minister charged with bribery until a verdict was given in criminal proceedings or until the House sooner determined.

45. Herron C.J., said that the exercise of the power of expulsion (by the Council) "is necessary to its existence or to the orderly exercise of its important legislative functions".²⁶ He further stated, "The requirements of necessity must be measured by the need to protect the high standing of Parliament and to ensure that it may discharge, with the confidence of the community and the members in each other, the great responsibilities which it bears."²⁷

46. Wallace P., thought that the power of expulsion "is solely defensive - a power to preserve and safeguard the dignity and honour of the Council and the proper conduct and exercise of its duties. The power extends outside the Council provided the exercise of the power is solely and genuinely inspired by . . . defensive objectives. The manner and the occasion of the exercise of the power are for the decision of the Council."²⁸

47. Sugerman J.A., stated that "Necessity stops short where punishment begins. It has uniformly been held unnecessary to the existence of a local legislature and the proper exercise of its functions, within the principle under discussion that it should have power to punish for contempts committed beyond its walls or even within them, by strangers or by members - Doyle v. Falconer, Barton v. Taylor. As distinct from punishment, the doctrine of necessity has been

²⁵ (1969) 71 SR (NSW) 386.

²⁶ Ibid. p. 395

²⁷ Ibid. p. 397.

²⁸ Ibid. p. 403.

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described in various terms - whatever is necessary as a matter of self-protection, or self-defence, or self-security, or self-preservation or for the proper conduct of business or exercise of functions."²⁹

48. Privilege powers are not static in the sense of being confined to what was necessary at the time of the establishment of the Parliament, but:

" . . . what is 'reasonable' under present-day conditions and modern habits of thought to preserve the existence and proper exercise of the functions of the Legislative Council as it now exists."³⁰

49. A number of other cases in New South Wales have also raised the question whether the Houses of Parliament enjoy particular powers inherently as an incident of their legislative function.³¹ Although these cases concern the power to deal with contempts committed by Members rather than strangers, they illustrate the application of the two principles referred to above to particular conduct - in each case the issue was whether the exercise of the contempt power was protective and self-defensive and not punitive.

50. The cases referred to above suggest that in dealing with contempt matters Parliament must consider two matters of principle: first, the exercise of the contempt power must be necessary to the House and the proper exercise of its functions; and secondly, such powers must be protective and self-defensive only, and not punitive.

²⁹ Ibid. p. 406.

³⁰ Per Wallace P in Armstrong v. Budd supra at 402.

³¹ See Toohy v. Melville (1892) 13 LR (NSW) 132; Taylor v. Harnett; Taylor v. Cameron (1886) 7 LR (NSW) 37; Willis and Christie v. Perry (1912) 13 CLR 592.

Conclusions and findings

51. As there are no guidelines laid down by the House, Your Committee controls its own procedure and, as there is no analogous case in New South Wales, it is therefore open to Your Committee to be guided by principles and recommendations in other Parliaments, consistent with principles of the common law, in coming to its conclusions and findings.

52. The First Report from the House of Commons Committee of Privileges in 1976-77³² dealt with a case of contempt concerning documents issued by a member of the House of Commons. In a memorandum to the Committee, the Clerk of the House of Commons drew attention to previous analogous cases and the attitude taken to them by the Committee of Privileges and by the House of Commons. In some of those cases either the House or the Committee found the speech or writing to be a contempt, but that it would be inconsistent with the dignity of the House to pursue it. In other cases they refrained from inquiring into the matter, although it had been raised as a matter of privilege.³³

53. The House of Commons Committee was of the opinion that the cases before them do not call for inquiry by them, since although some of the language used might be held to reflect on Members of the House, neither document can properly be considered to damage or obstruct the work of the House and so to amount to a contempt of the House.³⁴ In their Report the Committee referred to the Report of the Committee of Privileges of 16 June 1964 which contains the following paragraph:

"7. Your Committee recognise that it is the duty of the House to deal with such reflections upon Members as tend,

³² H.C. 1976-77 341 — Complaint of documents issued by Mr Iain Sproat, M.P., and by the Social Democratic Alliance.

³³ H.C. (1976-77) 341, annex.

³⁴ Ibid. para. 3.

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or may tend, to undermine public respect for and confidence in the House itself as an institution. But they think that when the effect of particular imputations is under consideration, regard must be had to the importance of preserving freedom of speech in matters of political controversy and also, in cases of ambiguity, to the intention of the speaker. It seems to them particularly important that the law of parliamentary privilege should not, except in the clearest case, be invoked so as to inhibit or discourage the formation and free expression of opinion outside the House by Members equally with other citizens in relation to the conduct of the affairs of the nation."

54. It is the opinion of Your Committee that these considerations apply to the case before them concerning the Reverend Nile.

55. On examining the documents published by the Reverend Nile there were certainly some strong opinions published which Your Committee well understands could offend the sensibilities of members. However, that may not necessarily be a contempt of Parliament.

56. An analogy with parliamentary proceedings might be drawn with persons who choose to comment on the judiciary. As Lord Atkin said in Ambard v. Attorney General for Trinidad and Tobago that the path of criticism is a public way. "The wrong headed are permitted to err therein; provided that members of the public abstain from imputing improper motives to those taking part in the administration of justice, and are genuinely exercising a right of criticism, and not acting in malice or attempting to impair the administration of justice, they are immune."³⁵

³⁵ [1936] AC 322.

57. Your Committee endorses the view of the House of Commons Select Committee on Parliamentary Privilege 1967-68, paragraph 48, (see Appendix B attached) which suggests that the House, in the interests of freedom of expression, should exercise its jurisdiction as sparingly as possible and only when it is satisfied that to do so is essential to provide reasonable protection for the House, its Members or Officers from such improper obstruction or attempt at or threat of obstruction as is causing, or is likely to cause, substantial interference with the performance of their respective functions; that complaints which appear to be of a trivial character or unworthy of the attention of the House should be summarily dismissed without the benefit of investigation by the House or its Committee and cases where a remedy might lie in a court of law.

58. Indeed, the investigation by a Committee of Privileges of all complaints of contempt would involve costly, protracted and possibly inconclusive inquiries, leading to no useful result. In some cases the summoning of persons as witnesses to give evidence would merely afford such persons an opportunity of making defamatory statements in circumstances which protected them from liability to action. In other cases, to canvass them before a Committee of Privileges would merely give added publicity to statements of political controversy.

59. It is clear from the modern interpretation of the law of contempt, that the nature of the contempt power is to preserve and safeguard the dignity and honour of the House and the proper conduct and exercise of its powers and duties, and that is not to be used to protect the sensitivity of members.

60. Whilst recognising it is the duty of the House to intervene in cases which tend, or may tend to undermine public confidence in and respect for the House itself and of the institution of Parliament, Your Committee believe that the law of parliamentary privilege should not, except in the clearest case, be invoked in such a way as to inhibit or discourage the free expression of opinion or criticism, outside

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the House by Members equally with other persons, however prejudiced, uninformed or exaggerated it may be.³⁶

61. The evidence given to Your Committee by the Reverend Nile and Co-ordinators of the Call to Australia Citizens' Movement suggests that the letter of 27 September 1988 would appear to have been, or was intended to have been, a confidential communication between the Reverend Nile and his Co-ordinators. The extent of circulation of the letter by the Reverend Nile was to approximately 109 Co-ordinators.

62. The evidence indicates that until the letter was publicised by the Special Report of the Select Committee to the House its circulation was limited. Your Committee therefore regards the Reverend Nile's publication of the letter to have been confidential and limited.

63. Your Committee notes the following comments of the Third Report from the House of Commons Committee of Privileges 1976-77:

"6. The Clerk of the House drew Your Committee's attention (Memorandum paragraph 11) to the fact that the mode and extent of publication of a contempt were not in terms included in the 1967 Report among the criteria to be used in deciding whether action is called for. Your Committee agree that, while not conclusive, such considerations are relevant since it is not necessary for the House to react to every contempt of limited circulation. They recommend that the mode and extent of publication should be taken into account when complaints are considered by Mr Speaker and by the House."³⁷

³⁶ Report of House of Commons Committee of Privileges 1963-64, para. 7.

³⁷ Third Report from the House of Commons Committee of Privileges 1976-77 - Recommendations of the Select Committee on Parliamentary Privilege.

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64. Your Committee is unanimously of the opinion that the language used by the Reverend Nile in his letter of 27 September 1988 could not reasonably be understood as obstructing or impeding the Select Committee (or its Members) in the discharge of their duty. Although the Reverend Nile may have been intemperate and unwise in his actions and may have reflected on the motives of Members of the Select Committee, Your Committee believes that this does not meet the test of contempt so as to constitute a basis for contempt of the House.

65. Your Committee believes that contempt of Parliament should not be used to restrict criticism of Parliament in such a way that the ability of citizens to be informed of the proceedings of Parliament can be jeopardised. It would be wrong for Your Committee to assert that the documents, the subject of the complaint, constitute a contempt of Parliament. To do so would limit the freedom of persons (including Members) to publicly comment on parliamentary proceedings.

66. Your Committee is unanimously of the opinion that this complaint of contempt falls into the category of incidents for which it would be inconsistent with the dignity of the House to take any further action. Your Committee accordingly recommends that no further action should be taken in the matter.

67. Your Committee also supports the view of the House of Commons Select Committee 1967-68, that Members should not be able to invoke the contempt power, in lieu of or in addition to the exercise of a legal remedy, when it is open to them, as it is to any citizen, to take proceedings for defamation in the courts. It is only in cases of substantial interference with the performance of the functions of Parliament that the contempt power should be invoked in such cases.

68. A modern reflection of the progression of the law of contempt, as it concerns reflections on members, is found in section 6 of the Parliamentary Privilege Act 1987 of the Commonwealth, which states:

STANDING COMMITTEE UPON PARLIAMENTARY PRIVILEGE

"Contempts by defamation abolished

6. (1) Words or acts shall not be taken to be an offence against a House by reason only that those words or acts are defamatory or critical of the Parliament, a House, a committee or a member."

69. Although it is not within the terms of reference of Your Committee, in the light of recent experiences of the House, Your Committee believe it would be both useful and appropriate for procedures to be adopted by the House for raising matters of privilege similar to that which applies in the Senate or the House of Commons.

M.F. WILLIS
Chairman



A handwritten signature in cursive script, appearing to read 'M.F. Willis', is written over a horizontal line.

STANDING COMMITTEE UPON PARLIAMENTARY PRIVILEGE

APPENDIX A

SELECT COMMITTEE ON THE POLICE REGULATION (ALLEGATIONS OF MISCONDUCT) AMENDMENT BILL



SPECIAL REPORT
ON
A POSSIBLE CONTEMPT OF THE COMMITTEE

STANDING COMMITTEE UPON PARLIAMENTARY PRIVILEGE

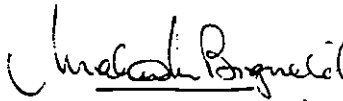
SPECIAL REPORT

The Select Committee of the Legislative Council to whom was referred, on 16 June 1988, the Police Regulation (Allegations of Misconduct) Amendment Bill, resolved on 31 October 1988 that a Special Report be presented to the House in order that the House might decide whether certain actions of the Revd the Hon. F.J. Nile, M.L.C are a reflection on the Committee as a whole and/or its members and as such constitute a contempt of the House.

So that the House may be placed in a position to decide the above question the Committee submits the following documents:

1. A copy of Revd Nile's submission to the Committee.
2. An extract from the minutes of the meeting of the Committee dated 28 July 1988 relating to Revd Nile's submission.
3. A copy of a letter dated 2 August 1988 from the Chairman of the Committee to Revd Nile.
4. A copy of a letter dated 27 September 1988 from Revd Nile to Co-ordinators of the Call to Australia.
5. An extract from Hansard of 13 October 1988.

Legislative Council
31 October 1988


(M. M. BIGNOLD)
Chairman

STANDING COMMITTEE UPON PARLIAMENTARY PRIVILEGE

Attachment 1

Recd 19/7/88

S 15

Telephones: (02) 230 2111 Parliament House
 (02) 807 1179 Residence
 (02) 807 6221 Office
 FAX: (02) 807 1173



The Revd The Hon. F. J. Nile,
 E.D., L.Th., M.L.C.,
 Legislative Council,
 Parliament House,
 SYDNEY, N.S.W. 2000
 July 18th, 1988

Mr. Mark Swinson,
 Clerk of the Select Committee on
 Police Regulation (Allegations of
 Misconduct) Amendment Bill.

Dear Mr. Swinson,

Further to the advertisement concerning submissions to the Select Committee on the Police Regulation (Allegations of Misconduct) Amendment Bill, 1988

As you are aware I strongly opposed the setting up of this select Committee in the Legislative Council.

- It was mainly set up by the initiative of the Opposition which then prevented the adoption of this important Bill, for which the Government has a clear mandate.
- 2 Media reports concerning this Select Committee have regrettably brought the Legislative Council system of Select Committees into disrepute in the eyes of the public, when only three members were present with an Opposition majority.
 - 3 I also strongly support the principle that Select Committees to study legislation should normally only be set up after consultation with the Government of the day and with its agreement.
 - 4 I strongly support the principle as previously stated by the Opposition that Select Committees, which examine Government Legislation should normally have a majority of Government members and a Government member as Chairman for the good and efficient conduct of Government, unless otherwise agreed to by the Government.

In spite of these reservations I wish to have my speech on the Bill of 1st June, 1988, as enclosed herewith, included in your submissions for consideration by your Committee.

I therefore urge the Select Committee to support the rapid passage of this important Legislation on Tuesday 2nd August, 1988.

The operations of this Bill can then be monitored by Parliament and if necessary amended at another session of Parliament.

Yours sincerely,

(Rev.) Fred Nile M.L.C.

enc. Speech by the Rev. Fred Nile, Police Regulation (Allegations of Misconduct) Amendment.

STANDING COMMITTEE UPON PARLIAMENTARY PRIVILEGE

Attachment 2

Extract from the minutes of the meeting of the Select Committee held on 28 July 1988

"The Committee discussed the submission received from Revd Nile (S 15).

Mr Killen moved: That the submission be received.

Debate ensued.

Mr Dyer moved: That the question be amended by the addition at the end thereof, the words 'and that the Chairman write to Revd Nile reminding him that, contrary to the inference in his submission, the Select Committee was established by resolution of the House in accordance with the Standing Orders and procedure.'

Question: That the words proposed to be added be so added--put and passed.

Original question, as amended--put and passed."

STANDING COMMITTEE UPON PARLIAMENTARY PRIVILEGE

Attachment 3



Legislative Council Office,
Parliament House,
Sydney

2 August 1988

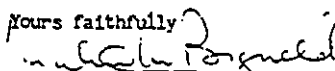
The Revd the Hon. F. Nile, M.L.C.
Legislative Council
Parliament House
SYDNEY

Dear Revd Nile

At its meeting of 28 July 1988, the Select Committee on the Police Regulation (Allegations of Misconduct) Amendment Bill 1988 resolved that I write to you concerning an important matter which has arisen in connection with your submission to the Committee.

In your submission you outline four reasons why you opposed the establishment of the Committee. The Committee has considered that part of your submission and is of the opinion you have erred in your analysis of the situation. The Legislative Council is a sovereign House of Parliament which has an obligation to the people of New South Wales to take whatever steps it considers necessary for the good government of the State. If the Legislative Council resolves to establish a Select Committee to consider a Bill and that decision has been fairly reached by a majority of members, the Committee believes that it is improper that that decision should be canvassed in the manner in which you have done so in your submission. The Committee is particularly concerned that you feel that an independent House of Review should first seek Government approval to establish its own committee and further that such committee should consist of a majority of government members. Surely the composition of a committee is a matter for the House itself and not the Government.

In answer to another point raised by you, the Committee feels that it must remind you that it has operated at all times with a quorum or more of members in accordance with the Standing Orders.

Yours faithfully

(M.M. BIGNOLD, M.L.C.)
Chairman



CALL TO AUSTRALIA

Attachment 4
CITIZENS' MOVEMENT [C.T.A.]

A COALITION OF CONCERNED CHRISTIAN CITIZENS, CHURCHES, COMMUNITY GROUPS
UNITED IN THEIR DESIRE TO BUILD A BETTER AUSTRALIA WITH
GODLY FEDERAL AND STATE GOVERNMENTS

"CIVIL GOVERNMENT IS GOD'S SERVANT TO PROMOTE GOOD AND PREVENT EVIL" — Romans 13:4

TO ALL COORDINATORS:

27th September, 1988.

Dear

We invite you to our October Coordinators Meeting on Saturday, 29th October, 1988 at 2 p.m. at 9 Beazley Street, Ryde. Please advise your R.S.V.E. for the meeting and /or Buffet Tea by ringing 807-6221 or 293-152.

NATIONAL OFFICE:

PO Box 240,
GLADESVILLE
NSW 2111

9 Beazley Street,
RYDE, NSW 2112
(02) 807 6221

NSW OFFICE

GPO Box 141
SYDNEY, NSW 2001
1 Jamison Street,
Sydney, NSW, 2000
29 3152

NATIONAL OFFICERS:

Rev. Non Fred Nile *ED. MLC*
(Founder and
National President)

Mrs Jane de Jong
(Secretary)

Mr David Morson
(Finance Chairman)

Mr Arie Sasbergen
(Treasurer)

Mrs Sheila Callaghan
(Fund Raising Officer)

STATE CO-ORDINATORS

N.S.W. Mr. Wal Wendle
VIC. Pastor Al Watson
S.A. Rev. Bob Brown
QLD. Mr. Glen Burton

1988 BICENTENNIAL CITIZEN'S DINNER:

We also invite you to our 1988 Bicentennial Citizen's Dinner at the Hilton Hotel on Saturday, 22nd October, 1988. The Invitation enclosed herewith has the full details as well as a Reply Slip and envelope. Please reply immediately for catering purposes and bring your family, neighbours and Church friends.

1988 PRO-LIFE CRUSADE:

We will be following our launching march and rally with the next big mobilisation on Sunday, 30th October, 1988, with a "March for Life" from Belmore Park, near Central Railway Station down George Street, to Hyde Park. The marchers will assemble at 1 p.m. and move off at 1:30 p.m. The march will conclude with a short rally in Hyde Park at 2:30 p.m. and conclude about 3:15 p.m. Publicity leaflets will be sent under separate cover for your local Churches and supporters. Please arrange buses and car convoys from your town and suburbs.

1988 ANNUAL C.T.A. CONFERENCE AND RALLY:

Our Annual Conference and Rally will be held as previously advised on Saturday, 12th November, 1988 from 9 a.m. to 5 p.m. at St Anne's Anglican Church, Church Street, Ryde, followed by the Annual Rally at 7:30 p.m. Special publicity leaflets will be sent under separate cover for your local churches, and C.T.A. workers, supporters and voters, etc.

UPPER HOUSE SITUATION:

Following our unanimous Resolutions at our September Coordinators Meeting I have received a letter from Mrs Marie Bignold advising she will not

"For God and the Family"

Registered Federal and State Electoral Name: CALL TO AUSTRALIA (FRED NILE) GROUP

PRO-GOD · PRO-FAMILY · PRO-LIFE · PRO-CHILD · PRO-MORAL · PRO-AUSTRALIA

STANDING COMMITTEE UPON PARLIAMENTARY PRIVILEGE

resign so that Jim Cameron can resume his seat, from which he was forced to resign because of his massive heart attack and imminent death.

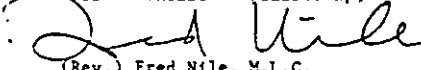
I believe this reply from Mrs Bignold was in haste and without serious prayer and waiting on the Lord. Please continue to pray that Mrs Bignold will sincerely seek the mind of God on this very serious matter and that she will obey the guidance of God, so that we will be all of one mind and Spirit in the Lord.. "They were all of one accord." Acts 2:1.

Please continue to pray concerning the growing controversy over Mrs Bignold's attitude and opposition to the Liberal-National Parties legislation in the Upper House, which is seriously disturbing our C.T.A. workers, voters and supporters. Please pray that this whole matter will be resolved to God's Glory and not do any harm to our C.T.A. Movement. Issues that our supporters have complained about include: Mrs Bignold's attitude to the Independent Commission against Corruption, which was on the brink of failure when Richard Jones changed his mind; her opposition to a key Government Bill dealing with the Police Regulations and the power of the Ombudsman; opposing the Education Bill even before it was debated in the Upper House; cooperating with the ALP to form a Select Committee against the strong opposition of the Government. This Select Committee, which only has ONE Liberal M.P. on it, is now conducting a witch-hunt under Mrs Bignold's chairmanship, with the guidance of the ALP, to discredit the Leader of the Government in the Upper House, Hon Ted Pickering, who is also Minister for Police, and finally try to force him to resign, so that the Greiner Government will be seriously damaged, and so help the ALP to win the next Election.

We also face another serious threat because of Mrs Bignold's lack of cooperation with the Government, she will not even attend the special briefings, which have been arranged by the Government for us, so that we can fully understand the proposed legislation concerns the whole future of the Upper House. The anger of the Liberal Party was demonstrated by a motion being moved at the recent N.S.W. Liberal Party Conference to abolish the Upper House! The motion was rejected. However if Mr Greiner becomes sufficiently frustrated he may agree with the ALP on a method of reforming the Upper House to get rid of the CTA members. As over 60% to 70% of our C.T.A. voters are Liberal-National Party supporters, you will readily understand the growing sense of frustration they are experiencing.

So it is obvious we are facing a moment of crisis in the life and future of the CTA movement, like the disciples in a boat in the centre of a storm, which has been created by the spirit of Satan to undermine our great victories. The Lord is saying to me and each of you, "Peace, be still." "Why are you fearful, O ye of little faith?" Mt 9:24-26. Let us keep our eyes on Jesus at this time - He will still the storm!

Yours in Christian Fellowship,



(Rev.) Fred Nile, M.L.C.

National President

STANDING COMMITTEE UPON PARLIAMENTARY PRIVILEGE

2/8/33

OMBUDSMAN LEGISLATION, LC28

The Hon. M. R. EGAN: My question is directed to the Minister for Police and Emergency Services and Vice-President of the Executive Council. Is the Minister aware of claims by Mr Eddie Azzopardi that he, Mr Azzopardi, visited the Minister in his Parliament House office last year following the release of the Liberal Party policy to restrict the powers of the Ombudsman to investigate complaints made against police? Is the Minister also aware of Mr Azzopardi's claim that the Minister said to him:

"Hang on a minute Eddie. I just came from the Ombudsman's office and I explained to him . . . we said that only to get the police on side for the election."

Does the Minister deny Mr Azzopardi's claim?

The Hon. E. P. PICKERING: I am certainly aware of Mr Azzopardi's claim, made before the select committee in the Parliament investigating a piece of legislation before the Parliament, seeking to achieve the very aim of the complaint. If this is a question of credibility then I suggest to the honourable member that actions will always speak louder than words.

The Hon. M. R. Egan: Did you say it or did you not?

The Hon. E. P. PICKERING: Let me deal with the question. Actions will always speak louder than words. The reality is that as soon as I could humanly possibly do it, I brought before this Parliament a bill to satisfy a promise I had made—

The Hon. M. R. Egan: A bill you do not believe in. You do not believe in it.

The Hon. E. P. PICKERING: Anyone in this Chamber who heard my speech to this House on the second reading of the bill could not say that. It is a simple fact of life that not one honourable member opposite supports the honourable member in that sort of outrageous statement because no one in this House could deny my whole-hearted support and integrity in that matter. It is a disgraceful assertion, an absolutely disgraceful assertion. What the honourable member should also try to understand—

[Interruption]

The Hon. E. P. PICKERING: Do you want to listen to the answer?

The Hon. M. R. Egan: Why do you not answer it?

The Hon. E. P. PICKERING: What the honourable member also needs to work out is why I would attend the Ombudsman's office for something of the order of three hours to speak with the Ombudsman about the detail of that bill, when I was planning the matter as shadow minister, to convince him of my proper and correct approach, if I was in fact involved in no more than a cynical exercise to hoodwink the New South Wales Police Force. The reality is, I was not. The reality is, I have brought before this House a bill which I have supported whole-heartedly. Anyone in this House who knows what I have done to try to get this bill through the House could not suggest that I am not a man of integrity in the matter.

OMBUDSMAN

The Hon. M. R. EGAN: My supplementary question is directed to the Minister for Police and Emergency Services and Vice-President of the Executive Council. Is the Minister saying that both Mr Masterman and Mr Azzopardi are lying?

The Hon. E. P. PICKERING: I will not have words put in my mouth. The honourable member well knows, and I have had to explain to this House on more than one occasion, with regard to the comments that Mr Masterman made, that because he has sought to defame me publicly and now has a writ issued against him the matter is *sub judice* and I do not intend to discuss it. With regard to Mr Azzopardi's statement, I am correctly reported in the media as denying it.

what he has already said. He has already withdrawn his remarks once. I ask him to do so again.

The DEPUTY-PRESIDENT: Order! There is no point of order. The Minister has been dealing quite clearly and properly, and in accordance with the usages of this House, with matters raised in this debate.

The Hon. E. P. PICKERING: I shall not labour the point, because after days and days of discussion I am unlikely to change minds at the last minute. Let me make my final point as clearly as I can. The Hon. R. D. Dyer is a man of integrity, and would be the first to admit that the thing that most lowers the morale of members of the New South Wales Police Force is the perception that investigations of minor complaints by the Ombudsman can have an adverse effect on their careers. I have been honest with the Parliament, the police force, and the community on this matter. Tonight I should have been able to announce to the world that this Parliament has lifted a heavy burden from every serving police officer in New South Wales.

The Hon. B. H. Vaughan: Hyperbole!

The Hon. Marie Bignold: Balderdash!

The Hon. E. P. PICKERING: If honourable members are not prepared to do that this evening, they make my job as Minister for Police so much more difficult, when it comes to my—

The Hon. Marie Bignold: Rubbish!

The Hon. E. P. PICKERING: The honourable member should not say rubbish to me.

The Hon. Deirdre Gruson: Balderdash!

The Hon. E. P. PICKERING: The honourable member may say balderdash as long as she likes, and I hope her interjection is on the record. What I am putting is a fact of life.

The Hon. Deirdre Gruson: I am happy to have it on the record.

The Hon. E. P. PICKERING: It is a fact of life.

The Hon. M. R. Egan: Piffle!

The Hon. E. P. PICKERING: That comment should also be on the record too. Members of the New South Wales Police Force will read what was said in this debate with a great deal of concern. As I said at the beginning of my second reading speech, as the Minister for Police I have responsibility for protecting the community of New South Wales. I am responsible for law and order, security on the streets, and in people's homes. The best I can do to protect the community is to ensure a high morale in the police force. If honourable members were to pass this bill tonight, they would raise the morale of the police force overnight. Honourable members may not be willing to pass the bill, but they eventually will—because I will keep bringing this legislation back until it is passed. I assure members of that. Eventually I shall succeed in raising the morale of the police force, despite the attitude adopted by some members of this Parliament who are not willing to pass this bill. I commend the bill.

Question—That the words stand—put.

The House divided.

Ayes, 15

Mrs Evans	} LIB	Mrs Nile	} CTA	Mr Willis	LI
Dr Goldsmith		Rev. F. J. Nile			
Mr Hannaford	} NP	Mr Pickering	} LIB	Tellers,	
Mr Jobling		Mr Samios			Mr Bull
Mr Killen	} LIB	Mrs Sham-Ho	} NP	Dr Pezzutti	LI
Mr Mutch		Sir Adrian Solomons			

Noes, 17

Mrs Arena	} ALP	Mr Ibbett	} ALP	Mr O'Grady	} LI
Mrs Bignold		Mr Jones			
Mr Egan	} CTA	Miss Kirkby	} AD.	Mrs Walker	} LI
Mr Enderbury		Mr Kite			
Mr French	} ALP	Mr Macdonald	} ALP	Mr Garland	} LI
Mr Hallam		Mr Manson			

Pairs

Mrs Chadwick	Mr Dyer
Mr Doohan	Mr Hankinson
Mr Gay	Mr Brenner
Mrs Jakins	Mr Symonds
Mr Matthews	Mr Kaldis
Mr Rowland Smith	Mrs Gruson

Question so resolved in the negative.

Question—That the words be inserted—put.

The House divided.

Ayes, 17

Mrs Arena	Mr Hallam	Mr Reed
Mrs Bignold	Mr Ibbett	Mr Vaughan
Mr Egan	Mr Jones	Mrs Walker
Mr Enderbury	Miss Kirkby	Tellers,
Mr French	Mrs Kite	Mr Macdonald
Mr Garland	Mr Manson	Mr O'Grady

Noes, 15

Mr Bull	Rev. F. J. Nile	Mr Willis
Mrs Evans	Dr Pezzutti	
Dr Goldsmith	Mr Pickering	
Mr Hannaford	Mr Samios	Tellers,
Mr Jobling	Mrs Sham-Ho	Mr Killen
Mrs Nile	Sir Adrian Solomons	Mr Mutch

Pairs

Mrs Chadwick	Mr Dyer
Mr Doohan	Mr Hankinson
Mr Gay	Mr Brenner
Mrs Jakins	Mr Symonds
Mr Matthews	Mr Kaldis
Mr Rowland Smith	Mrs Gruson

to postpone the evil day and overturn what has already been decided by moving, through the Hon. Sir Adrian Solomons, that further debate on the matter be adjourned to a later hour. This is a transparent manoeuvre to defeat the decision already taken by the House and, as such, the House ought to vote against the motion moved by the Hon. Sir Adrian Solomons.

The Hon. E. P. PICKERING (Minister for Police and Emergency Services and Vice-President of the Executive Council) [5.53]: In the time that this House has been sitting under my stewardship, so far as I recall I have acceded to every request made of me to facilitate access by honourable members to the forms of the House. Only this evening—

The Hon. J. R. Hallam: What is the Minister talking about?

The Hon. E. P. PICKERING: I am just a little fed up with the honourable member's telling me not to talk in this House. I do not try to prevent any other honourable member speaking in the House, and I am fed up with the honourable member's trying to prevent me from doing so. Only a matter of minutes ago, as Leader of the Government, I indicated to the Hon. Elisabeth Kirkby that I would lose a tactical advantage in this matter, as the Hon. R. D. Dyer well knows, because she was not up to speed in the debate. I recognized that, and I stood aside in order not to embarrass her. Technical matters do arise in relation to this matter, and they have only just been brought to my attention. The Leader of the Opposition should read the standing orders. I refer him to one of the technical problems which is concerned with the composition of the committee and the impact of Standing Order 236.

As leader of the Government I want time to consider my position. If this Parliament is determined to create such a select committee, clearly I, as Leader of the Government, ought to address some of the practical matters. For example, does the Hon. Beryl Evans want to serve on the committee? We have just been told that its deliberations will be completed in a few weeks. Will the Hon. Beryl Evans be available for the next few weeks? Is she the most suitable person on the Government benches to deal with the matter? For example, should I not appoint to the committee the Hon. R. T. M. Bull, who is chairman of my backbench standing committee on police? They are the sorts of matters that I need a few minutes to sort out. The matter will be dealt with tonight. If the Hon. R. D. Dyer is so determined, he will get his select committee. All I ask is that, if Opposition members are so determined, we deal with the matter as a House of review, logically and well. There are no tactics involved in this.

The Hon. R. D. Dyer: We did not come down in the last shower.

The Hon. E. P. PICKERING: I would not have thought that the Hon. R. D. Dyer would say that of me.

The Hon. R. D. Dyer: Why did the Minister call on the Parliamentary Committees Enabling Bill before this one?

The Hon. E. P. PICKERING: In order to establish that the Government was not willing to facilitate the Opposition's efforts to create a select committee. The Opposition knew it had the numbers to do exactly what it did. I did not forgo the issue. The Hon. Elisabeth Kirkby said that she was out of touch with what was happening. I was willing to force my tactical position in that regard, as the honourable member well knows.

The Hon. R. D. Dyer: The Minister did not think that I would be smart enough to try to put the title of this committee in the Parliamentary Committees Enabling Bill.

The Hon. E. P. PICKERING: The honourable member raised the matter with me long before it came before the House. I knew exactly what the honourable member was about. There were no ambushes involved. I know the honourable member is an honourable man. I knew exactly what was going on. I treated the honourable member as an honourable man, as he well knows. I have been honourable right along the line. All I am saying, quite properly, is that I am not satisfied with the composition of the committee. I do not mean the balance of political parties on the committee but the entities, the people who are to be on it. At the Committee stage of this bill I might wish to move an amendment that seeks to have as members of that committee people other than those mentioned in the honourable member's amendment. There are ways in which that can be done, and I want to examine the matter. The matter goes partly to the impact of Standing Order 236. I need time to talk to the Clerks. I have raised it with the Clerks but they are not in a position to advise me fully at present. I am simply seeking the concurrence of the House to deal with the matter at a later hour of the sitting when I am in a position to deal with it properly.

The Hon. MARIE BIGNOLD [5.36]: I oppose the motion moved by the Hon. Sir Adrian Solomons. It is another lame tactic. I support everything that the Hon. R. D. Dyer said and especially what the Hon. Elisabeth Kirkby said. We should get on with dealing with the business of the House so that we can finish it.

Reverend the Hon. F. J. NILE [5.37]: I have a couple of questions that I hope someone can answer. Is it possible for a committee that is not supported by the Government to be set up? If the setting up of that committee is not supported by the Government, how will it function? Will it have a minute secretary? Who will provide that minute secretary? Who will provide the finances for the committee, if the setting up of the committee is not supported by the Government, which controls the budget for the Parliament, according to our Constitution? Who will meet other expenses that are incurred by the committee? I would appreciate an answer to those questions from the Leader of the Government or the President. I support the motion moved by the Hon. Sir Adrian Solomons.

Question—That this debate be now adjourned—put.

The House divided.

Ayes, 15			
Mr Bull	NP	Mr Willis	LP
Mrs Evans	LP	Mr Mutch	LP
Dr Goldsmith	LP	Dr Pezzutti	LP
Mr Hannaford	LP	Mr Pickering	LP
Mr Jobling	LP	Mrs Samios	LP
Mr Killen	NP	Mrs Sham-Ito	LP
		Sir Adrian Solomons	NP
		Tellers,	
		Mrs Nile	
		Revd F. J. Nile] C
Noes, 17			
Mrs Arena	ALP	Mr Jones	} A.D.
Mrs Bignold	C.T.A.	Miss Kirkby	
Mr French		Mrs Kite	} A.C.
Mr Garland	} ALP	Mr Macdonald	
Mr Hallam			Mr Manson
Mr Ibbett		Mr O'Grady	
		Mr Reed	} A.C.
		Mr Vaughan	
		Mrs Walker	
		Tellers,	
		Mr Egan	
		Mr Enderbury	

STANDING COMMITTEE UPON PARLIAMENTARY PRIVILEGE

Attachment 5

13 October, 1988 COUNCIL 2201

That no birth control method is absolutely reliable, that repressive abortion laws lead women to backyard abortions, that backyard abortions lead to higher maternal death rates and ill-health, and that an unwanted pregnancy leads to psychological, economic and social disadvantage to the woman and child.

Your petitioners therefore humbly pray that the honourable members of the House will not support the Bignold motion and will allow the current legal position on abortion to continue, giving the women of New South Wales access to safe abortions.

And your petitioners, as in duty bound, will ever pray.

I move:

That the petition be received.

The PRESIDENT: Order! The Bignold motion has been disposed of already by the Parliament; a decision has been made.

The Hon. G. R. IBETT: This petition was posted to me and I considered it my duty to bring the petition before the House, even though I was aware that the Bignold motion had been already dealt with.

The PRESIDENT: I rule the petition out of order. It does not conform with standing orders.

CONFIDENTIAL CORRESPONDENCE OF REVEREND THE HON. F. J. NILE

Personal Explanation

Reverend the Hon. F. J. Nile: I wish to make a personal explanation. It has come to my notice that a private and confidential letter of mine to Call to Australia co-ordinators, dated 27th September, 1988, has mischievously fallen into the hands of the media. The letter contains my confidential report on the business of this House during 1988. I wish to apologize and withdraw any possible imputations of improper motives and all personal reflections on members of this House or on this House or any select committee which may be stated or implied in my confidential letter of 27th September, 1988, which was not for public consumption.

I am a strong supporter of the conventions of this House and have no desire to do anything, intentionally or unintentionally, that may harm the standing and reputation of this House in the community. My only desire is that all the business of this House be conducted in accordance with the standing orders, motions and conventions of this House.

CHILDREN (CARE AND PROTECTION) FURTHER AMENDMENT BILL

Bill introduced and read a first time.

Second Reading

The Hon. VIRGINIA CHADWICK (Minister for Family and Community Services) [10.45]: I move:

That this bill be now read a second time.

STANDING COMMITTEE UPON PARLIAMENTARY PRIVILEGE

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APPENDIX B**REPORT
FROM THE
HOUSE OF COMMONS SELECT COMMITTEE
ON
PARLIAMENTARY PRIVILEGE
H.C. (1967-68) 34, paragraphs 41, 42, 43 and 48**

41. Your Committee are strongly of the opinion that the House could and should give effect to the basic principle embodied in the general proposition which they accepted in paragraph 15 by adopting by resolution a set of rules as guidance for the future exercise of its penal jurisdiction. They believe that much of the uncertainty and confusion which exist today could and should be removed by a declaration by the House by resolution defining how it expects in future to interpret the basic principle which it has long professed to follow.

42. Your Committee think it essential that the proposed rules should follow the basic principle to its logical conclusion. An illustration of this is the case of publications which defame a Member or an identifiable group of Members in respect of their Parliamentary duties. This has in recent times been one of the more publicised occasions for the exercise by Members of their right to invoke Parliament's penal jurisdiction. Your Committee cannot, however, accept that in the normal case it is an essential protection for the House or its Members that they should be able to invoke this jurisdiction when it is open to them, as it is to any other citizen, to take proceedings for defamation in the courts of law. Libels of the character described are, it is true, often couched in intemperate language. But the grosser the libel, the heavier the damages which the courts are likely to award; and if the libel is likely to be repeated, the courts have ample power to prevent the repetition by injunction and, if need be, by committal. Your Committee recommend that in the ordinary case where a Member has a remedy in the courts, he should not be permitted to invoke the penal jurisdiction of the House in lieu of or in addition to the exercise of that remedy. This recommendation has no bearing upon

STANDING COMMITTEE UPON PARLIAMENTARY PRIVILEGE

a libel upon an unidentifiable group of Members, since in that case no action would lie in the courts.

43. The proposal made in paragraph 42 is fully consistent with the principle, which Your Committee believe to be right, that the House should be slow and reluctant to use its penal powers to stifle criticism or even abuse, whether of the machinery of the House, of a Member or of an identifiable group of Members, however strongly the criticism may be expressed and however unjustifiable it may appear to be. Your Committee regard such criticism as the life-blood of democracy. In their view the sensible politician expects and even welcomes criticism of this nature. Nonetheless, a point may be reached at which conduct ceases to be merely intemperate criticism and abuse and becomes or is liable to become an improper obstruction of the functions of Parliament. For such cases, however rare, the penal powers must be preserved and the House must be prepared to exercise them.

48. Your Committee accordingly propose the following rules for the guidance of the House in dealing hereafter with complaints of contemptuous conduct:—

- (i) The House should exercise its penal jurisdiction (a) in any event as sparingly as possible, and (b) only when it is satisfied that to do so is essential in order to provide reasonable protection for the House, its Members or its Officers from such improper obstruction or attempt at or threat of obstruction as is causing, or is likely to cause, substantial interference with the performance of their respective functions.
- (ii) It follows from sub-paragraph (i) of this paragraph that the penal jurisdiction should never be exercised in respect of complaints which appear to be of a trivial character or unworthy of the attention of the House; such complaints should be summarily dismissed without the benefit of investigation by the House or its Committee.
- (iii) In general, the power to commit for contempt should not be used as a deterrent against a person exercising a legal right, whether well-founded or not, to bring legal proceedings against a Member or an Officer.

STANDING COMMITTEE UPON PARLIAMENTARY PRIVILEGE

- (iv) In general, where a Member's complaint is of such a nature that if justified it could give rise to an action in the courts, whether or not the defendant would be able to rely on any defence available in the courts, it ought not to be the subject of a request to the House to invoke its penal powers. In particular, those powers should not, in general, be invoked in respect of statements alleged to be defamatory, whether or not a defence of justification, fair comment, etc., would lie.
- (v) The general rules stated in subsections (iii) and (iv) of this paragraph should remain subject to the ultimate right of the House to exercise its penal powers where it is essential for the reasonable protection of Parliament as set out in subsection (i) of this paragraph. Accordingly, those powers could properly be exercised where remedies by way of action or defence at law are shown to be inadequate to give such reasonable protection, e.g. against improper obstruction or threat of improper obstruction of a Member in the performance of his Parliamentary functions.
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PROCEEDINGS OF THE COMMITTEE

No. 1

TUESDAY 6 DECEMBER 1988

At Parliament House, Sydney, at 3.00 p.m.

MEMBERS PRESENT

Mr Bull
Mr Dyer
Mr Hannaford

Mr Matthews
Mr Vaughan
Mr Willis

The Clerk declared the meeting open and called for nominations for the Chair. On motion of Mr Bull, Mr Willis was called to the Chair.

Apologies: Miss Kirkby.

The Chairman made a statement regarding the appointment of the Committee on 20 October and the reference to the Committee by the House on 9 November 1988, of a Special Report from the Select Committee on the Police Regulation (Allegations of Misconduct) Amendment Bill.

Mr Dyer and Mr Vaughan intimated that, in view of their past and continuing membership of the Select Committee on the Police Regulation (Allegations of Misconduct) Amendment Bill, they ought not to vote on recommendations which might emerge from the Privilege Committee on the matter referred for its consideration.

The Committee deliberated.

Resolved (motion Mr Bull): That the Chairman be empowered to cause research to be undertaken by the Clerk and such other sources as the Chairman deems appropriate in order to determine the practice and precedents relating to contempt and other matters referred to by members of the Committee and that when such research is completed the Committee be re-convened to consider it and to consider the matter further.

The Committee adjourned at 3.25 p.m. sine die.

No. 2

MONDAY 3 APRIL 1989

At Parliament House, Sydney, at 4.30 p.m.

MEMBERS PRESENT

Mr Willis (in the Chair)

Mr Bull
Mr Dyer
Mr Hannaford

Miss Kirkby
Mr Matthews
Mr Vaughan

Minutes of previous meeting held 6 December 1988, confirmed (motion Mr Vaughan).

The Chairman made a statement regarding research undertaken into practice and precedents relating to contempt. The Chairman tabled the following documents—

- (i) Statement by Chairman relating to contempt.
- (ii) Copy of speech made by Mr Willis in Legislative Council on 2 March 1989, on matter of contempt referred to the Legislative Council by the Hon. Marie Bignold in relation to a pamphlet by Prof. Cooray of Macquarie University.
- (iii) Copy of paper, "Contempt of Parliament and the Media" by Sally Walker, Lecturer in Law, University of Melbourne.

Mr Bull moved: That the Chairman submit a draft Interim Report requesting that the House:

- (a) Instruct the Committee as to whether it should proceed to the further consideration of the matter referred to it in the face of an apparent inability on the part of two of its members to effectively exercise the

STANDING COMMITTEE UPON PARLIAMENTARY PRIVILEGE

obligations and responsibilities imposed upon them by the House in their appointment to the Standing Committee; or

- (b) Replace Mr Dyer and Mr Vaughan as members of the Standing Committee, should the House deem such a course desirable, with a view to the Members thereby appointed participating fully in the highly important task entrusted to the Committee.

Debate ensued.

Miss Kirkby moved: That the question be amended by omission of the word "two" with a view to inserting instead the word "three".

Question put and passed.

Mr Vaughan moved: That the question be amended by omitting the words, "effectively exercise" with a view to inserting instead "exercise effectively".

Question put and passed.

Miss Kirkby moved: That the question be amended by omitting the words, "and Mr Vaughan" with a view to inserting instead, ", Mr Vaughan and Miss Kirkby".

Question put and passed.

Original Question, as amended, put and passed.

The Chairman presented a draft Interim Report.

The Committee deliberated.

Paragraphs 1 to 3 agreed to.

Paragraph 4: Miss Kirkby moved: That the paragraph be amended by inserting after the word "Committee," where secondly occurring, the following words "and by Miss Kirkby at the first meeting attended on 3 April 1989".

Question put and passed.

Paragraph 4, as amended, agreed to.

Paragraphs 5 and 6 agreed to.

STANDING COMMITTEE UPON PARLIAMENTARY PRIVILEGE

Interim Report, as amended, agreed to.

The Committee adjourned at 5.00 p.m., sine die.

No. 3

MONDAY 1 MAY 1989

At Parliament House, Sydney, at 4.00 p.m.

MEMBERS PRESENT

Mr Willis (in the Chair)

Mr Bull
Mr Dyer
Miss Kirkby

Mr Matthews
Mr Vaughan

Minutes of meeting held 3 April 1989, circulated.

The Chairman read a statement relating to events which had taken place in the Council on 6 April, 1989, following presentation of the Committee's Interim Report, and proposed that the Committee now take further action in regard to the matter under reference.

The Committee deliberated.

The Committee adjourned at 4.47 p.m. until Monday, 15 May 1989, at 4.00 p.m.

STANDING COMMITTEE UPON PARLIAMENTARY PRIVILEGE

No. 4

MONDAY 15 MAY 1989

At Parliament House, Sydney, at 4.00 p.m.

MEMBERS PRESENT

Mr Willis (in the Chair)

Mr Bull

Mr Dyer

Mr Hannaford

Miss Kirkby

Mr Matthews

Mr Vaughan

Consideration resumed of the statement presented by the Chairman to the Committee at its meeting on 1 May 1989.

Resolved (motion Mr Matthews)—

1. That a request be issued under the hand of the Chairman to the Revd Mr Nile and each Member of the Select Committee on the Police Regulation (Allegations of Misconduct) Amendment Bill to appear before this Committee to give evidence in relation to the matter now before this Committee.
2. That the Chairman be empowered to determine the order of appearance of the Members who accede to the request to attend this Committee, and to fix the date and time for the taking of evidence.

The Committee adjourned at 4.50 p.m. until Wednesday, 28 June 1989, at 9.45 a.m.

STANDING COMMITTEE UPON PARLIAMENTARY PRIVILEGE

No. 5

WEDNESDAY 28 JUNE 1989

At Parliament House, Sydney, at 9.45 a.m.

MEMBERS PRESENT

Mr Willis (in the Chair)

Mr Bull
Mr Dyer
Mr HannafordMiss Kirkby
Mr Matthews

An apology was received from Mr Vaughan.

The Chairman made a statement indicating that he had received advice from Mr Dyer, Miss Kirkby and Mr Vaughan, indicating that they were not prepared to attend and give evidence before the Committee. Also he had received advice from Mrs Evans, Mr Killen and Reverend Nile indicating that they were prepared to attend and give evidence, and from Mrs Bignold asking the Committee to receive into evidence an affidavit and excuse her attendance before the Committee.

Resolved on motion of Mr Willis: That the Chairman write to Mrs Bignold, Mrs Evans and Mr Killen, asking that they advise the Clerk to the Committee when they will be available to give evidence, and the Clerk arrange a mutually agreeable date for them to give evidence.

Resolved on motion of Mr Willis: That Reverend Nile be admitted to give evidence.

The Chairman made a statement indicating that the affidavit supplied by Mrs Bignold cannot be accepted as formal evidence by the Committee in view of the terms of section 10 of the Parliamentary Evidence Act 1901.

The Chairman tabled the affidavit for the Committee's information.

The press and public were admitted.

STANDING COMMITTEE UPON PARLIAMENTARY PRIVILEGE

The Reverend the Honourable Frederick John Nile, M.L.C., sworn and examined.

Evidence concluded, the witness withdrew.

The Committee adjourned at 3.00 p.m. sine die.

No. 6

WEDNESDAY 13 SEPTEMBER 1989

At Parliament House, Sydney, at 2.30 p.m.

MEMBERS PRESENT

Mr Willis (in the Chair)

Mr Bull
Mr Dyer

Miss Kirkby
Mr Hannaford

Apologies were received from Mr Matthews and Mr Vaughan.

The Honourable Richard Weir Killen, M.L.C., sworn and examined.

Evidence concluded, the witness withdrew.

The Honourable Beryl Alice Evans, B.Ec., M.L.C., sworn and examined.

Evidence concluded, the witness withdrew.

The Committee deliberated.

Mr Dyer moved: That the following persons appearing on the list of District Co-ordinators of the Call to Australia Group presented by the Revd Nile in his evidence to the Committee be called to give evidence before the Committee:

Bev Varidel (Camden)
Jan Batchelor (Ku-ring-gai).

Debate ensued.

STANDING COMMITTEE UPON PARLIAMENTARY PRIVILEGE

Mr Bull moved: That the question be amended by the addition at the end thereof of the names "Wal Wardle (Campbelltown) and Mrs Marge Mason (Ryde)."

Debate ensued.

Question, as amended, put and passed.

The Committee agreed that the Chairman and Clerk determine a suitable date to hear the above witnesses.

Mr Dyer made a statement in which he referred to a letter published under the hand of the Revd Nile in the North Western Magazine. He said that the reference in the letter to three members of the Standing Committee Upon Parliamentary Privilege who had given certain assurances to Revd Nile, on the outcome of the Committee's inquiry, was not a reference to himself.

Miss Kirkby also made a statement refuting any imputation that she might have given the Revd Nile certain assurances about the outcome of the Committee's inquiry.

The Committee adjourned at 3.55 p.m., sine die.

No. 7

FRIDAY 1 DECEMBER 1989

At Parliament House, Sydney, at 2.30 p.m.

MEMBERS PRESENT

Mr Willis (in the Chair)

Mr Bull
Mr Dyer
Miss Kirkby

Mr Hannaford
Mr Matthews

An apology was received from Mr Vaughan.

STANDING COMMITTEE UPON PARLIAMENTARY PRIVILEGE

The Committee deliberated.

Mr Matthews moved: That the letter from Mr Dyer, dated 6 October 1989 be noted and that an entry be recorded in the Minutes of Proceedings that Mr Dyer had not given Reverend Nile any assurance about the outcome of the Committee's inquiry.

Put and passed.

Mrs Majorie Elizabeth Mason, District Co-ordinator (Ryde), Call to Australia Citizens' Movement, sworn and examined.

Evidence concluded, the witness withdrew.

Mr Beville Reginald Varidel, District Co-ordinator (Camden), Call to Australia Citizens' Movement, sworn and examined.

Evidence concluded, the witness withdrew.

Mr Walter Wardle, District Co-ordinator (Campbelltown), Call to Australia Citizens' Movement, sworn and examined.

Evidence concluded, the witness withdrew.

The Committee deliberated.

Mr Hannaford moved: That the Chairman prepare and submit a Draft Report for circulation amongst the Committee and that Tuesday, 5 December 1989, be the day fixed for its consideration.

Put and passed.

The Committee noted the inability of the Clerk to contact Ms Jan Batchelor, District Co-ordinator (Ku-ring-gai), Call to Australia Citizens' Movement, to appear as a witness before the Committee.

The Committee adjourned at 4.45 p.m., until Tuesday, 5 December 1989, at 5.45 p.m.

No. 8

TUESDAY 5 DECEMBER 1989

At Parliament House, Sydney, at 5.45 p.m.

MEMBERS PRESENT

Mr Willis (in the Chair)

Mr Bull
Mr Dyer
Mr Hannaford

Miss Kirkby
Mr Matthews
Mr Vaughan

The Committee proceeded to consider the Chairman's Draft Report.

Paragraphs 1 and 2 read and agreed to.

Paragraph 3 read, amended and agreed to.

Paragraph 4 read, debated and agreed to.

Paragraphs 5 to 13 read and agreed to.

Paragraph 14 read, amended and agreed to.

Paragraph 15 read and agreed to.

Paragraph 16 read, amended and agreed to.

Paragraphs 17 to 25 read and agreed to.

Paragraph 26 read, amended and agreed to.

Resolved on motion of Mr Hannaford: That the following paragraph be inserted after paragraph 26:

27. Your Committee notes that although these cases constituted a contempt of the Imperial Parliament, they may not necessarily constitute a contempt of a Parliament which derives its authority by Statute.

STANDING COMMITTEE UPON PARLIAMENTARY PRIVILEGE

Paragraphs 27 to 34 deleted.

New paragraphs 27 to 50 brought up, read and inserted.

Paragraph 51 read, amended and agreed to.

Paragraphs 52 and 53 read and agreed to.

Paragraph 54 read, amended and agreed to.

Paragraph 55 read, amended and agreed to.

Paragraph 56 read, and agreed to.

Paragraph 57 read, amended and agreed to.

Paragraph 58 read and agreed to.

Paragraph 59 read, amended and agreed to.

The Chairman left the Chair at 6.35 p.m. until tomorrow at 11.00 a.m.

WEDNESDAY 6 DECEMBER 1989

The Committee resumed.

Paragraph 60 read, amended and agreed to.

Resolved on motion of Mr Willis: That the following paragraphs be inserted after paragraph 60.

61. The evidence given to Your Committee by the Reverend Nile and Co-ordinators of the Call to Australia Citizens' Movement suggests that the letter of 27 September 1988 would appear to have been, or was intended to have been, a confidential communication between the Reverend Nile and his Co-ordinators. The extent of circulation of the letter by the Reverend Nile was to approximately 109 Co-ordinators.

STANDING COMMITTEE UPON PARLIAMENTARY PRIVILEGE

62. The evidence indicates that until the letter was publicised by the Special Report of the Select Committee to the House its circulation was limited. Your Committee therefore regards the Reverend Nile's publication of the letter to have been confidential and limited.

63. Your Committee notes the following comments of the Third Report from the House of Commons Committee of Privileges 1976-77:

"6. The Clerk of the House drew Your Committee's attention (Memorandum paragraph 11) to the fact that the mode and extent of publication of a contempt were not in terms included in the 1967 Report among the criteria to be used in deciding whether action is called for. Your Committee agree that, while not conclusive, such considerations are relevant since it is not necessary for the House to react to every contempt of limited circulation. They recommend that the mode and extent of publication should be taken into account when complaints are considered by Mr Speaker and by the House."

Paragraph 63 read and agreed to.

Paragraph 64 read, amended and agreed to.

Paragraph 65 and 66 read and agreed to.

Mr Dyer moved: That the following paragraph be inserted after paragraph 66.

67. In view of the findings of Your Committee, it is recommended that the Reverend Nile transmit a copy of his personal explanation of 13 October 1988 to Co-ordinators of the Call to Australia Citizens' Movement, together with his unqualified regret and apology that the language used in his letter could have offended Members of the House or the Select Committee in any way.

Debate ensued.

Proposed new paragraph, by leave, withdrawn.

Paragraphs 67 and 68 read and agreed to.

Paragraph 69 read, debated and agreed to.

Resolved on motion of Mr Matthews: That the Report, as amended, be adopted.

STANDING COMMITTEE UPON PARLIAMENTARY PRIVILEGE

Resolved on motion of Mr Dyer: That the Report be signed by the Chairman and presented to the House.

Resolved on motion of Mr Hannaford: That, under section 4 (2) of the Parliamentary Papers (Supplementary Provisions) Act 1975, the Committee authorises the Clerk to the Committee to publish the evidence given before the Committee, after correction by witnesses.

The Committee adjourned at 12.10 p.m. sine die.

LIST OF WITNESSES

Wednesday, 28 June 1989

The Reverend the Honourable Frederick John Nile, E.D., L.Th, M.L.C.

Wednesday, 13 September 1989

The Honourable Richard Weir Killen, M.L.C.

The Honourable Beryl Alice Evans, B.Ec., M.L.C.

Friday, 1 December 1989

Margorie Elizabeth Mason

Beville Reginald Varidel

Walter Wardle