

PARLIAMENT OF NEW SOUTH WALES

LEGISLATIVE COUNCIL

STANDING COMMITTEE ON
PARLIAMENTARY PRIVILEGE AND ETHICS

REPORT

ON

INQUIRY INTO STATEMENTS MADE BY
MR GALLACHER AND MR HANNAFORD

Ordered to be printed 30 November 1999

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Foreword by the Chair

The current inquiry arose from statements made by the Hon. John Hannaford and the Hon. Michael Gallacher in the Legislative Council on 8 September 1999, three days before the New South Wales Local Government elections. These statements alleged impropriety against the Lord Mayor of Sydney, Mr. Frank Sartor, and were generally regarded as an attempt to influence the council elections for the City of Sydney.

Public reaction to the statements was hostile and Mr. Sartor was successful at the election, increasing his majority, and confirming his position as one of Sydney's longest serving Lord Mayors. A few days after the election, the Members' conduct in making the statements about the Lord Mayor under parliamentary privilege was referred to this Committee by the Legislative Council. The Committee was asked to investigate and report on whether the conduct of Mr. Hannaford and Mr. Gallacher constituted an abuse of privilege, and if so, what sanctions should be enforced in relation their conduct.

From the first meeting of the Committee, it was apparent that the absence of guidelines on what constitutes an abuse of privilege would be a serious impediment to a finding against the two Members. While Parliament does limit freedom of speech within the rules of debate to prevent offensive conduct, Members are not required to justify what they say in Parliament.

Parliamentary privilege is an absolute defence under New South Wales defamation laws and the Parliament has seen fit to limit that privilege only on two occasions, one involving a royal commission and the other a Special Commission of Inquiry. No such limitations were imposed by Parliament in the present case, and in those circumstances the only possible determination is that the Committee does not find an abuse of privilege by the Members.

The report is divided into three sections: an outline of the inquiry (Chapter 1); an explanation of parliamentary privilege (Chapter 2); and issues arising from the Members' statements (Chapter 3). The resolutions of the Committee are to be found at page 20.

May I take this opportunity to thank all members of the Committee for their contributions to what turned out to be unanimous resolutions. I would also like to express my gratitude for the work undertaken by the Clerk to the Committee and Deputy Clerk of the Legislative Council, Ms Lynn Lovelock, the Senior Project Officer, Ms Velia Mignacca and the Committee Officer, Ms Janet Williams.

**HON PETER BREEN MLC
CHAIR
STANDING COMMITTEE ON PARLIAMENTARY PRIVILEGE AND ETHICS**

Background to the Committee

The Committee was first established as the Standing Committee Upon Parliamentary Privilege by resolution of the Legislative Council on 9 November 1988. It was re-established under the 50th Parliament on 16 October 1991. On 24 May 1995, at the commencement of the 51st Parliament, the Committee was reconstituted as the Standing Committee on Parliamentary Privilege and Ethics. The Committee was re-appointed in the 52nd Parliament on 25 May 1999.

The Committee has two main roles:

- (1) to consider and report on any matters relating to parliamentary privilege which may be referred to it by the House or the President; and
- (2) to carry out certain functions relating to ethical standards for Members of the Legislative Council under Part 7A of the *Independent Commission Against Corruption Act 1988 (NSW)*.

Terms of Reference

The terms of reference for this inquiry are contained in the following resolution of the Legislative Council, passed on Tuesday 14 September 1999.

1. That the statements made by Mr Gallacher and Mr Hannaford in the Legislative Council on 8 September 1999 concerning the Lord Mayor of Sydney, Mr Frank Sartor, be referred to the Standing Committee on Parliamentary Privilege and Ethics for inquiry and report.
2. That the Committee investigate and report on:
 - (a) whether the conduct of Mr Gallacher and Mr Hannaford in relation to this matter constitutes an abuse of privilege; and
 - (b) what, if any, sanctions should be enforced in relation to their conduct in this matter.
3. That leave be given to Members of the Legislative Council to appear and give evidence to the Committee in relation to the inquiry.
4.
 - (a) That the Committee be directed that if any witness summoned by or seeking to give evidence to the Committee, other than a Member of the Parliament, requests that their identity be protected or their evidence be given in camera, then the Committee will agree to that request.
 - (b) The Committee may publish evidence given by any witness who has requested that their name be suppressed provided that all information which might identify that witness has been removed.
5. The House notes that it would be a contempt of Parliament to intimidate, harass or seek to deter a person from giving evidence and that it would be a contempt of Parliament to reveal the identity of the witness where a suppression order made under paragraph 4 has been made.

(Minutes No. 4, Tuesday 14 September 1999, Entry No. 8)

Committee Membership

| | |
|---|----------------------------|
| The Hon Peter Breen, MLC* Chair | Reform the Legal System |
| The Hon Jenny Gardiner, MLC | National Party |
| The Hon John Hatzistergos, MLC* | Australian Labor Party |
| The Hon John Jobling, MLC* Deputy Chair | Liberal Party |
| The Hon Tony Kelly, MLC | Australian Labor Party |
| Revd the Hon Fred Nile, MLC | Christian Democratic Party |
| The Hon Peter Primrose, MLC | Australian Labor Party |
| The Hon Janelle Saffin, MLC | Australian Labor Party |

* *Appointed to the Committee for the purpose of this inquiry*

SECRETARIAT

| | |
|-------------------|------------------------|
| Ms Lynn Lovelock | Clerk to the Committee |
| Ms Velia Mignacca | Senior Project Officer |
| Ms Janet Williams | Committee Officer |

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Chapter One

1. OUTLINE OF THE INQUIRY

1.1 Background to the Inquiry

Statements in the House 8 September 1999

- 1.1.1 On 8 September 1999, during the course of proceedings in the Legislative Council, the Leader of the Opposition in the Legislative Council, the Hon. Michael Gallacher MLC, and the Hon John Hannaford MLC, made a number of statements concerning alleged claims of sexual harassment against the Lord Mayor of Sydney, Mr Frank Sartor. The statements were made during the following proceedings:

Mr Gallacher

- Question without notice (*Hansard*, pp.65 – 66).
- Dissent from President's ruling (*Hansard*, pp.66 –70).
- Question without notice (*Hansard*, p. 70).

Mr Hannaford

- Dissent from President's ruling (*Hansard*, pp. 66 –70).
- Adjournment debate (*Hansard*, pp. 86 –87).

- 1.1.2 The full *Hansard* text of each item of business, including the statements made by the Members concerned, is reproduced at Appendix 1 to this Report.

- 1.1.3 During proceedings in the Council on 8 September 1999, the Attorney General tabled a letter dated 8 September 1999 from the President of the Anti-Discrimination Board to the Lord Mayor. The letter stated that records of the Anti-Discrimination Board , which had been checked since 1 January 1995, did not indicate that any complaint had been lodged against the Lord Mayor personally, nor had the Board received any form of complaint alleging sexual harassment listing the Sydney City Council as a respondent.

Referral of this inquiry to the Committee

- 1.1.4 On Tuesday 14 September 1999 the Treasurer and Leader of the Government in the Legislative Council, the Hon. Michael Egan MLC, moved a motion in the House to refer the statements made by Mr Gallacher and Mr Hannaford on 8 September 1999 to this Committee for inquiry and report. The motion required the Committee to investigate and report on whether the conduct of the Members in this matter constitutes an abuse of privilege, and what, if any, sanctions should be enforced in relation to that conduct.

1.1.5 The motion proposed by Mr Egan granted leave to Members of the Council to appear and give evidence to the Committee in relation to the inquiry. During the ensuing debate, Mr Hannaford moved an amendment to the motion which:

- directed the Committee to agree to any request by a witness, other than a Member, that their identity be protected or that their evidence be given in camera;
- authorised the Committee to publish evidence by any witness who requests that their name be suppressed provided that all information which might identify the witness has been removed; and
- noted that it would be a contempt of Parliament to intimidate, harass or seek to deter a person from giving evidence, or to reveal the identity of a witness where a suppression order had been made.

1.1.6 The motion, as amended, was agreed to by the House.¹ The full text of the terms of reference for this inquiry is set out on p. (iii) of this Report.

Change of Committee membership

1.1.7 During debate on the motion to refer this matter to the Committee, the Chair of the Committee, the Hon. Helen Sham-Ho MLC, informed the House that due to her personal involvement in the City of Sydney Council elections she wished to step aside as Chair and requested the Leader of the House to replace her on the Committee for the inquiry.² On 15 September 1999, on the motion of Mr Egan, the House resolved that the Hon. Peter Breen MLC be appointed as a Member of the Committee in place of Mrs Sham-Ho for the purpose of the inquiry.³ Later that day, the President informed the House that Mr Breen had been nominated as Chair of the Committee for the inquiry.⁴

1.1.8 In addition to the change of Chair, the following changes to the membership of the Committee were made by the House for this inquiry:

- Mr Hatzistergos was appointed in place of Mr Johnson;⁵

¹ *Minutes of the Proceedings of the Legislative Council*, No. 4, Tuesday 14 September 1999, p. 53.

² *Hansard*, pp. 357-58. Mrs Sham-Ho's husband was standing as a candidate in the forthcoming City of Sydney Council elections.

³ *Minutes*, No. 5, Wednesday 15 September 1999, p. 56.

⁴ *ibid.*

⁵ *ibid.*

- Mr Jobling was appointed in place of Mr Hannaford, and nominated as Deputy Chair.⁶
- 1.1.9 On 22 September 1999 the House appointed Revd the Hon Fred Nile as an additional Member to the Committee.⁷ Unlike the other changes, this appointment is not confined to the present inquiry.

1.2 CONDUCT OF THE INQUIRY

- 1.2.1 The Committee held six deliberative meetings in the course of this inquiry. The Minutes of these meetings are reproduced at Appendix 2 to this Report.
- 1.2.2 At various stages, the Committee considered calling both Mr Gallacher and Mr Hannaford to give evidence. However, in view of the resolutions agreed to by the Committee concerning abuse of privilege and the Committee's Resolution No. 1, the Committee ultimately resolved that it was not necessary to hear evidence from the two Members.

⁶ *ibid.*

⁷ *ibid.*, No. 8, Wednesday 22 September 1999, p. 80.

Chapter Two

2. PARLIAMENTARY PRIVILEGE

2.1 What constitutes privilege

2.1.1 Under the terms of reference for this inquiry, the Committee is charged with investigating and reporting on whether the conduct of the Members concerned constitutes an abuse of privilege, and if so, what sanctions should be imposed. However, before proceeding to consider whether an abuse of privilege had occurred, the Committee first had to establish what constitutes parliamentary privilege.

2.1.2 Parliamentary privilege is defined by *Erskine May* as:

the sum of the peculiar rights enjoyed by each House collectively as a constituent part of the High Court of Parliament, and by Members of each House individually, without which they could not discharge their functions, and which exceed those possessed by other bodies or individuals. Thus privilege, though part of the law of the land, is to a certain extent an exemption from the general law.⁸

2.1.3 The purpose of parliamentary privilege, according to *May*, is to enable the House to discharge its functions effectively. This is the case whether a particular immunity belongs to the House in its corporate capacity, or primarily to an individual Member:

Certain rights and immunities such as freedom from arrest or freedom of speech belong primarily to individual Members of each House and exist because the House cannot perform its functions without unimpeded use of the services of its Members. Other such rights and immunities such as the power to punish for contempt and the power to regulate its own constitution belong primarily to each House as a collective body, for the protection of its Members and the vindication of its own authority and dignity (...) Fundamentally, however, it is only as a means to the effective discharge of the collective functions of the House that the individual privileges are enjoyed by Members.⁹

2.1.4 The aspects of privilege relevant to the current inquiry are:

- the immunity of statements made during parliamentary proceedings from legal liability or question (ie. “freedom of speech”); and

⁸ *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament*, 22nd ed., Butterworths, London 1997, p. 65.

⁹ *ibid.*

- the power of the House, within the limits of its authority, to regulate the conduct of its Members (ie. limitations on “freedom of speech”).

2.2 Freedom of Speech and Article 9

Nature of the immunity

2.2.1 Article 9 of the Bill of Rights confers absolute immunity on parliamentary debates and proceedings. Article 9 states:

That freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament.

2.2.2 The most important aspects of the immunity conferred by Article 9 are:

- (a) immunity from civil or criminal action and from examination in legal proceedings of Members, witnesses, and others taking part in parliamentary proceedings; and
- (b) immunity of parliamentary proceedings (including Hansard, parliamentary committee reports and transcripts) from question or impeachment in the courts.¹⁰

2.2.3 The first immunity mentioned is usually referred to as freedom of speech. In relation to this aspect *Erskine May* states:

[s]ubject to the rules of order in debate, a Member may state whatever he thinks fit in debate, however offensive it may be to the feelings, or injurious to the character, of individuals; and he is protected by his privilege from any action for libel, as well as from any other question or molestation.¹¹

2.2.4 The importance of freedom of speech has been described by Professor Enid Campbell in the following terms:

Freedom of speech and debate in parliament is one of the most cherished of all parliamentary privileges, without which parliaments probably would degenerate into polite but ineffectual debating societies. Freedom of speech and the associated powers of the Houses to determine their own order and subjects of debate, the English parliamentarians of the sixteenth and seventeenth century

¹⁰ These two aspects are highlighted in *Odgers' Australian Senate Practice*, 8th ed., AGPS, Canberra, 1997, at p. 31.

¹¹ *Erskine May*, op. cit., p. 83.

believed was the key to parliamentary supremacy - supremacy over the Crown and its ministers.¹²

Limitations on freedom of speech

2.2.5 While Article 9 provides absolute protection from outside interference, debate and conduct in the House is still subject to control by the House itself. The most important examples of such internal control are:

(a) Rules of debate

2.2.6 In the Legislative Council, the rules of order in debate preclude the use of offensive language (SO 80), irreverent reference to the Queen or her representative (SO 79), reflection upon votes of the House (SO 78), and the imputation of improper motives and personal reflections upon Members of either House (SO 81). Rulings from the Chair have also precluded irreverent reference and personal reflections upon judges, and have limited debate on matters deemed sub judice.

2.2.7 When a Member does breach the rules of debate the House is able to take action to protect itself. Standing Orders 258 to 263 govern contempt and punishment in the Legislative Council.

(b) Offensive Conduct

2.2.8 Conduct which obstructs or impedes the House in the performance of its duties may in certain circumstances constitute a contempt of Parliament. In the context of discussing the nature of contempt, the House of Commons Select Committee on Parliamentary Privilege in 1967 contemplated that a gross abuse of a Member's freedom of speech could amount to a contempt of the House:

... contempt may (and has been held to) include the conduct of a Member or Officer, whether within or outside the Chamber or the precincts, which is so improper or disorderly as to amount to an abuse of the Member's or Officer's position. An example of such misconduct would be gross abuse by a Member of his rights and immunities, for example by maliciously making under cover of the absolute privilege afforded by the Bill of Rights a gross defamatory attack upon a stranger or upon another Member of the House.¹³

2.2.9 Further, when a Member does breach the rules of debate or engages in "unworthy" conduct the House is able to take action to protect itself. As *May* states "article IX preserves the authority of both Houses [of the British Parliament] to restrain and even

¹² Campbell, E, *Parliamentary Privilege in Australia*, MUP, Melbourne:1966, p. 28.

¹³ *Report from the Select Committee on Parliamentary Privilege*, HC 34, 1967, p. XX, para 60.

punish their Members who, by their conduct, offend the House,"¹⁴ and there are numerous examples where Members of the Commons have been called to account and punished by the House.

- 2.2.10 There have been two cases in the NSW Parliament where action has been taken by a House against one of its Members in respect of statements made under parliamentary privilege. In both cases, the action taken by the House followed findings by an external inquiry¹⁵ that the Member's statements were unfounded.
- 2.2.11 The first case arose in the Legislative Assembly in 1916/17. The Member was expelled under Assembly Standing Order 391 for 'conduct unworthy of a Member of Parliament and seriously reflecting upon the dignity of this House'.¹⁶ Although there is no equivalent Standing Order in the Legislative Council, the right of the Council in appropriate circumstances to expel a Member judged guilty of conduct unworthy of a Member of the House was recognised in *Armstrong v Budd* (1969) 71 SR (NSW) 386.
- 2.2.12 The second case, in 1997/8, concerned a Member of the Legislative Council, Mrs Arena. In that case, the Council resolved that Mrs Arena's conduct in making the relevant statements fell below the standard the House is entitled to expect of a Member and brought the House into disrepute. It required that Mrs Arena submit an apology in respect of the statements, and that failing this, she be suspended from the service of the House.¹⁷

2.3 Abuse of Privilege

- 2.3.1 Conduct which would constitute an abuse of privilege has not previously been determined by either the House or its Committees. As indicated above, while in certain cases the House has taken action against a Member for statements made under privilege, this has followed findings by an external inquiry that the Member's statements were unfounded. There has been no such external inquiry in this instance.
- 2.3.2 Furthermore, the Committee is mindful of the importance of a Member's freedom of speech, and is conscious of the very great danger to the public interest should that freedom be unduly limited. The Committee believes that in the present circumstances it would be unreasonable to find a Member guilty of an abuse of privilege unless such an abuse was outside of or offended against clearly stated and understood guidelines

¹⁴ *Erskine May*, op. cit., p. 83

¹⁵ A royal commission in the first case, and a Special Commission of Inquiry in the second.

¹⁶ *NSW Parliamentary Debates*, Vol. 176, 17 October 1917, p. 1785.

¹⁷ *Minutes of the Proceedings of the Legislative Council*, No. 54, Wednesday 1 July 1998, pp. 634-5. However, subsequently, the House agreed to accept a 'statement of regret' from the Member in place of the apology.

governing the exercise of the privilege of freedom of speech and/or following examination of findings of a properly constituted external inquiry.

- 2.3.3 The Council currently has no guidelines governing the exercise of the privilege of freedom of speech. While there are precedents and procedures providing guidance on matters such as what constitutes contempt or a breach of the rules of debate, they do not provide recognised guidelines or rules as to the appropriate way for Members to raise matters in the House.
- 2.3.4 This is not the case in all other jurisdictions. The Australian Senate, for example, in its Privilege Resolutions agreed to on 25 February 1988, sets out the manner in which Senators are to exercise their freedom of speech. Specifically the Senate resolved:

9. Exercise of Freedom of Speech

(1) That the Senate considers that, in speaking in the Senate or in a committee, Senators should take the following matters into account:

(a) the need to exercise their valuable right of freedom of speech in a responsible manner;

(b) the damage that may be done by allegations made in Parliament to those who are the subject of such allegations and to the standing of Parliament;

(c) the limited opportunities for persons other than members of Parliament to respond to allegations made in Parliament;

(d) the need for Senators, while fearlessly performing their duties, to have regard to the rights of others; and

(e) the desirability of ensuring that statements reflecting adversely are soundly based.

That the President, whenever the President considers that it is desirable to do so, may draw the attention of the Senate to the spirit and the letter of this resolution.

- 2.3.5 The Senate however does acknowledge the danger of undue limitation on freedom of speech. As the Clerk of the Senate has indicated:

In any proposals for new forms of ... internal regulation there is a danger of a majority using procedures designed to prevent defamation of individuals as a means of suppressing embarrassing or inconvenient debate. The remedy which has been favoured, therefore, is giving aggrieved individuals a right of reply.¹⁸

- 2.3.6 In the House of Commons, Speaker's rulings and committees of the House have emphasised that Members have a duty to exercise their freedom of speech responsibly, and that it is the responsibility of individual Members to uphold that duty. However, it

¹⁸

Odgers, op. cit., p. 66

has been recognised that the House will take action against a Member in cases of flagrant or extreme abuse.

- 2.3.7 This Committee has also considered the need for guidelines to be put in place governing the exercise of Members' freedom of speech. In 1996 the Committee recommended a draft code of conduct for Members of the House which included the following clause relating to the exercise of freedom of speech:

12 Freedom of speech

12.1 Members should be mindful of the privileges conferred when speaking in the House and should seek to avoid causing undeserved harm to any individual who does not enjoy the same privileges.¹⁹

- 2.3.8 However, this draft code was not adopted by the Legislative Council, and the code eventually adopted by the House does not address this issue.
- 2.3.9 The Committee acknowledges that it would be possible in this inquiry for it to consider what is desirable or appropriate by way of principles governing Members' conduct in this area. For example, it might be considered appropriate that the right to freedom of speech should be subject to a requirement that Members act in good faith, or that Members be encouraged to consider possible damage to individual reputations before raising a matter in the House. However, the Committee does not believe it would be proper for it to formulate principles on such matters and to apply them retrospectively. The Committee is conscious that any finding of abuse of privilege under present circumstances could be perceived as an unwarranted restriction on Members' freedom of speech.
- 2.3.10 For this reason the Committee finds that, bearing in mind the reference of the House and in the absence of published guidelines on the exercise of Members' freedom of speech, no abuse of privilege has occurred. While some members of the Committee expressed concern that neither Mr Gallacher nor Mr Hannaford was called to give evidence before the Committee, it was generally agreed that this was unnecessary, given that no finding of abuse of privilege was found in the circumstances.

¹⁹ Standing Committee on Parliamentary Privilege and Ethics, *Report on inquiry into the establishment of a draft code of conduct for Members*, Report No. 3, Legislative Council, NSW Parliament, October 1996, Appendix 1, p. 6.

Resolution No. 1

That in relation to the conduct of the Honourable Michael Gallacher and the Honourable John Hannaford in the Legislative Council on 8 September 1999, bearing in mind the reference of the House and noting that no guidelines on the exercise of Members' freedom of speech have been published, the Committee does not find an abuse of privilege in these circumstances.

Chapter Three

3. ISSUES ARISING FROM THE STATEMENTS CONCERNING THE LORD MAYOR

3.1 Allegations of misconduct

- 3.1.1 Although the Committee did not seek to investigate or assess the accuracy of the statements, it recognises that those statements give rise to issues of public importance. In particular, the Committee acknowledges that, where allegations of misconduct by holders of high public office are made as in this case, all relevant information relating to those allegations should be referred to the appropriate investigating authorities. The Committee therefore resolves:

Resolution No. 2

That any information held by the Honourable Michael Gallacher and the Honourable John Hannaford relating to the Lord Mayor in this matter be referred by those Members to the appropriate authorities for investigation.

3.2 Citizen's Right of Reply

- 3.2.1 The Committee further considered that an appropriate mechanism exists under the procedures of the House for addressing at least some of the concerns raised by this case. In 1997 the Legislative Council adopted a procedure which permits citizens aggrieved by statements made about them under parliamentary privilege to request the incorporation of a response in the parliamentary record.²⁰ The response, if agreed to by the House and published in the record, attracts parliamentary privilege. The Standing Committee on Parliamentary Privilege and Ethics is responsible for considering submissions referred to it by the President under the procedure. In doing so, the Committee is specifically prohibited by the House's resolution from considering the truth of the statements made by the citizen in the response, or of the statements made by the Member to which the citizen's response relates. The aim of the procedure is simply to provide a mechanism for the citizen to respond to statements made about them, under conditions similar to those enjoyed by the Member.
- 3.2.2 The Committee considers that use of this procedure would be appropriate in this case, and therefore resolves:

²⁰ *Minutes of the Proceedings of the Legislative Council*, No. 16, Thursday 13 November 1997, pp. 176-78.

Resolution No. 3

That the Lord Mayor be informed of his citizen's right of reply with respect to the statements made by the Honourable Michael Gallacher and the Honourable John Hannaford in the Legislative Council on 8 September 1999, in accordance with the resolution of the House dated 13 November 1997 (3rd Session, Minutes No. 16, pp. 176-8).

3.3 The need for guidelines

- 3.3.1 Without reflecting on the conduct of the Members in this case, the Committee considers that the current matter demonstrates the desirability of the House adopting guidelines which would encourage Members to raise matters in the House in a balanced and appropriate way and at the same time preserve the dignity and standing of the House. Such guidelines could, for example, give due recognition to the overriding right to freedom of speech, while at the same time encouraging Members to have regard to factors such as the possible impact which unfounded allegations can have against named individuals.
- 3.3.2 The Committee believes that all Members of the House may find guidelines of this nature helpful. The referral of this issue to a committee for investigation would, if the committee saw fit, permit contributions to be sought from all Members of the House on what guidelines would be appropriate.
- 3.3.3 The Committee notes that it has recommended in two previous reports that the powers and privileges of the Parliament be placed on a statutory basis,²¹ as is the case with all other Australian Parliaments, but that no action has been taken in this regard. As the current inquiry concerns the standards governing Members' use of parliamentary privilege, the Committee considers that it is relevant to raise the matter of legislation in this area once again. Since the earlier recommendations by the Committee, various court decisions have clarified to some extent the nature of the inherent powers and privileges of the Council.²² However, in the Committee's view there remain many areas where clarification by comprehensive legislation would be of benefit both to Members and to citizens. The Committee considers that it is preferable that any question as to the exercise of freedom of speech in Parliament be examined in a context where there is a clear understanding of the nature and boundaries of the House's powers. Accordingly, the Committee resolves:

²¹ Standing Committee Upon Parliamentary Privilege, *Report concerning the publication of an article appearing in the Sun Herald newspaper containing details of in camera evidence*, October 1993, p. 20; Standing Committee on Parliamentary Privilege and Ethics, *Report on Inquiry into Sanctions where a Minister Fails to Table Documents*, Report No. 1, May 1996, p. 22.

²² *Egan v Willis & Cahill* (1996) 40 NSWLR 650; *Egan v Willis* (1998) 158 ALR 52; *Egan v Chadwick* [1999] NSWCA 176.

Resolution No. 4

That the House's attention be again drawn to the fact that the Parliament of New South Wales has not given its privileges a statutory form or provided guidelines on their scope and operation.

Resolutions

Resolution No. 1

That in relation to the conduct of the Honourable Michael Gallacher and the Honourable John Hannaford in the Legislative Council on 8 September 1999, bearing in mind the reference of the House and noting that no guidelines on the exercise of Members' freedom of speech have been published, the Committee does not find an abuse of privilege in these circumstances.

Resolution No. 2

That any information held by the Honourable Michael Gallacher and the Honourable John Hannaford relating to the Lord Mayor in this matter be referred by those Members to the appropriate authorities for investigation.

Resolution No. 3

That the Lord Mayor be informed of his citizen's right of reply with respect to the statements made by the Honourable Michael Gallacher and the Honourable John Hannaford in the Legislative Council on 8 September 1999, in accordance with the resolution of the House dated 13 November 1997 (3rd Session, Minutes No. 16, pp. 176-8).

Resolution No. 4

That the House's attention be again drawn to the fact that the Parliament of New South Wales has not given its privileges a statutory form or provided guidelines on their scope and operation.

APPENDIX 1

**EXTRACTS FROM *HANSARD*,
8 SEPTEMBER 1999,
CONTAINING STATEMENTS BY
MR GALLACHER AND
MR HANNAFORD
CONCERNING THE LORD MAYOR**

(1) QUESTION WITHOUT NOTICE (pp. 65-66)

LORD MAYOR OF SYDNEY SEXUAL HARASSMENT ALLEGATIONS

The Hon. M. J. Gallacher: My question without notice is to the Attorney General, and Minister for Industrial Relations. Attorney, were you informed that at least four serious allegations of sexual harassment have been made against the Lord Mayor, Frank Sartor, some as recent as this year, before the Labor Party agreed to give him preferences to ensure his re-election? Attorney, were you informed of the large number of complaints lodged before the Anti-Discrimination Board involving cases of sexual harassment by the Lord Mayor by members of the staff of the Sydney Town Hall?

The Hon. M. R. Egan: Point of order: This is clearly an attempt by the Liberal Party to bolster the lord mayoral prospects of Kathryn Greiner. It is nothing less than a smear, and the Leader of the Opposition should be absolutely ashamed of himself. If this is the way the Liberal Party is trying to win the lord mayoralty of Sydney, heaven help the residents and citizens of Sydney and heaven help the Liberal Party. It is an absolute disgrace that a few days before the very important local government elections we have the Leader of the Liberal Party in this House smearing one of the opponents of the Liberal Party's candidate for Lord Mayor.

[Page 66]

The Hon. J. P. Hannaford: Further to the point of order: It is clear that Standing Order 29 provides that Ministers may be asked questions relating to public affairs of the State. The Attorney General is the Minister responsible for the Anti-Discrimination Board. The question referred to complaints that have been lodged with the Anti-Discrimination Board, a matter that is within the Attorney's ministerial portfolio and responsibilities. It is, therefore, a question to which he should be able to respond and to give advice about matters that have been lodged with his agency.

The PRESIDENT: Order! I rule in favour of the point of order on the grounds of a previous ruling by President Johnson: "Questions may not contain inferences or imputations, epithets, ironical or offensive expressions."

The Hon. D. J. Gay: A question, Madam President?

The PRESIDENT: Are you raising a point of order or asking a question?

The Hon. D. J. Gay: A question, Madam President. What standing order did the Leader of the Government move as a point of order that you actually supported?

The PRESIDENT: He was -

The Hon. D. J. Gay: Madam President, if you would bear with me. My understanding was that the Leader of the Government indicated -

The PRESIDENT: Order! Will the member sit down. You are canvassing my ruling.

The Hon. D. J. Gay: Madam President, I do not have to sit down.

The PRESIDENT: Order! The member will sit down or I will name him.

The Hon. D. J. Gay: Name me.

The PRESIDENT: Order! I name the member. Would the member please resume his seat.

The Hon. D. J. Gay: Name me again because you are about to lose your seat. You have already disgraced yourself this week and you are about to do it again.

The PRESIDENT: Order! Would the member please sit down. The standing order under which I upheld the point of order was Standing Order 80. Are there any further questions?

(2) DISSENT FROM PRESIDENT'S RULING (pp. 66-70)

[Questions without notice interrupted.]

DISSENT

Ruling of the President

The Hon. M. J. GALLACHER (Leader of the Opposition) [4.20 p.m.]: I move:

That this House dissent from the ruling of Madam President.

This is an extremely important matter. It is quite obvious that the Opposition believes you made a totally incorrect and improper decision in relation to the question I asked the Attorney General. There can be absolutely no doubt that what the Opposition wishes to put to honourable members, in particular to this Minister, are the most serious of allegations to come before this Chamber for some considerable time. Contrary to the comments that have been made by members sitting on the other side of the House, the allegations have been substantiated. We have documentation, and the matters have been substantiated. Madam President, you are denying the people of New South Wales an opportunity to know exactly what is going on in the

Town Hall of Sydney. There is a serial sexual harasser in the Town Hall of Sydney, and you are allowing the matter to be swept under the carpet.

The Hon. M. R. Egan: Point of order: The Leader of the Opposition, under the guise of

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speaking to the dissent motion, has again used this House to defame and smear a very prominent citizen.

The Hon. M. J. GALLACHER: What is the standing order to which you refer?

The Hon. M. R. Egan: It is quite clear that the Leader of the Opposition and the Liberal Party want to abuse this House, and their position in it, to defame and smear a political opponent.

The Hon. M. J. GALLACHER: I ask the Treasurer to show me where that is in the standing orders.

The Hon. M. R. Egan: I have taken a point of order.

The Hon. M. J. GALLACHER: Under which standing order?

The Hon. M. R. Egan: I have taken a point of order. If you want to speak to it, you can.

The Hon. M. J. GALLACHER: No. What is the relevant standing order? There is not one. Thank you very much; you may sit back down. Madam President, it is quite obvious that the Government is trying everything it can -

The PRESIDENT: Order! Is the Leader of the Opposition speaking further to the point of order?

The Hon. M. J. GALLACHER: There was no point of order, he did not refer to a standing order.

The PRESIDENT: Order! It is not necessary to refer to an actual number of a standing order for there to be a point of order.

The Hon. M. J. GALLACHER: With respect, during the last session you made a habit of requiring members to refer to the standing orders. I commend to you your own rulings of last session. I ask you to be consistent in your rulings and require the Treasurer also to refer to the relevant standing order.

The PRESIDENT: Order! Which standing order are you referring to?

The Hon. M. J. GALLACHER: I am not referring to a standing order, I am continuing to speak to my motion because the Leader of the House did not refer to a standing order. He simply got to his feet in an attempt to break the continuity of my speech. Madam President, I ask you to be consistent in the application of your rulings and ask the Leader of the Government to state precisely the point that he seeks to take against me so that we may be in a position to debate the point of order, rather than allow him to rise to speak about nothing for a few minutes and then sit down in the hope that you will rule in his favour.

The PRESIDENT: Order! Will the Leader of the Government identify the standing order to which he is referring?

The Hon. M. R. Egan: Madam President, I am not referring to a standing order; I am referring to the right and duty of a Presiding Officer to uphold the dignity and reputation of this House.

The Hon. M. J. GALLACHER: When the Leader of the Government rose he said "Point of order".

The Hon. M. R. Egan: That is right. But I am not referring to a standing order. There is a difference between a point of order and a standing order.

The Hon. M. J. GALLACHER: Does this mean that he can interrupt debate whenever he wants, whenever he does not like the sound of the conversation?

The Hon. M. R. Egan: The Leader of the Opposition, who has disgraced himself today, should realise that a point of order can be based on the precedents of this House. One does not need to quote a standing order, and as I have just pointed out the right and duty of the Presiding Officer is to uphold the reputation and dignity of this House, which the Opposition today is attempting to destroy by smearing a prominent citizen of this State for its own political motives. It is a sad day when Kathryn Greiner's campaign needs to be bolstered by a Liberal Party smear against her opponent.

The Hon. D. J. Gay: Point of order: Madam President, you allowed the Treasurer, without reference to a specific standing order, to canvass the subject before the House. I plead with you to be even-handed and treat members on the Government side of the House the same way as you treat us.

The Hon. J. H. Jobling: Further to the point of order: The dignity and decorum of this House is protected by the standing and sessional orders and by the rulings of our President, who is required to apply those standing and sessional orders. The

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Treasurer has taken a spurious point of order. In his diatribe he himself has blackened the names of citizens in an attempt to confuse and muddy the water. He was not required, as other members are, to refer to a specific sessional or standing order to substantiate his point of order. He has merely made a full frontal attack to divert the attention of members of this House in the hope that, by his obfuscation, he can confuse the issue. The Leader of the House knows full well

the rules by which this House operates. He understands the standing and sessional orders, but at no stage has he referred to them.

I remind the Leader of the Government of the recently introduced provision relating to the procedure that should be followed by any member of this House who feels aggrieved to put before the House a particular point of view. Its specific purpose was to overcome this very problem. The Treasurer, however, has sought to disregard that provision; he wants to run things his way. I contend there is no point of order and there never was.

The PRESIDENT: Order! Members are aware that points of order can be taken on the procedures in the House, and those procedures are based on the standing orders, Presidents' rulings, current practice and May's *Parliamentary Practice*. The Treasurer was obviously referring to previous Presidents' rulings about questions containing offensive material. I therefore ruled in favour of his first point of order and the second point of order. The member should keep his question -

The Hon. M. J. GALLACHER: I am speaking to a dissent motion, Madam President, not asking a question.

The PRESIDENT: Order! I am dealing with the two points of order. Questions should not be argumentative, interpretive or contain inferences or imputations. That is why I ruled in favour of the points of order. The Leader of the Opposition should not continue to offend in that way while he is speaking to the dissent motion.

The Hon. M. J. GALLACHER: In concluding my contribution to this dissent motion I raise the following interesting matter: What position did you take, Madam President, a few years ago when the Minister for Police at the time was in the very same position. I did not hear you at that time saying that the questions asked and the comments made in the Parliament were out of order. These are very serious, grave allegations. The Opposition will not rest and will not allow these matters to be swept aside, under the carpet. They are extremely serious matters and I call upon you, Madam President, to be fair in your rulings, because I assure you that the Opposition will continue to draw attention to these matters and other similar matters. I ask you to be fair in the application of your rulings to ensure that there is a proper examination of these allegations, which the Opposition is prepared to make in this Chamber. They are substantive allegations. They are not fiction or fantasy, they are fact, and you are denying the opportunity to properly examine what is going on at Town Hall. For those reasons I move dissent from your ruling.

The Hon. J. P. HANNAFORD [4.30 p.m.]: I speak to the motion of dissent so that the House will be clear about the matter that is the subject of dissent. The Leader of the Opposition asked a question which I will repeat so that the House is clear as to what the President ruled out of order. The question that was asked of the Attorney General was:

Were you informed that at least four serious allegations of sexual harassment have been made against the Lord Mayor, Frank Sartor, some as recent as this year, before the Labor Party agreed to give him preferences to ensure Mr Sartor's re-election? Were you informed of the large number of complaints lodged before the Anti-Discrimination Board involving cases of sexual harassment by the Lord Mayor against members of the staff in the Sydney Town Hall? What actions have you taken to investigate these serious matters?

I argued that those matters were appropriate questions to be answered by the Attorney General because they related to information held by agencies within his portfolio. We asked the Attorney General whether he had been informed about the material held by his agencies and what action he had taken on it. A point of order was then taken. I do not have to repeat the words spoken by the Leader of the Government. Madam President, you then ruled, using Standing Order 80. I quote Standing Order 80, which states:

No Member shall digress from the subject matter of any Question under discussion -

Standing Order 80 then continues -

and all imputations of improper motives, and all personal reflections on Members shall be deemed disorderly.

[*Interruption*]

Madam President, you used Standing Order 80 as a basis to rule the question out of order. Standing Order 80 states:

No Member shall use offensive words against either House of the Legislature, or any Member thereof, nor against any Statute, unless when moving for its repeal.

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Standing Order 80 directly relates to members of Parliament and to the two Houses. The question which was asked of the Attorney General does not relate to any member of the Parliament or to either House of the Parliament; it relates to another public official properly the subject of matters before the department for which the Minister has responsibility. Madam President, it is for that reason that we moved dissent from your ruling. Your ruling referred to imputations against members. There are no imputations against members. Your ruling referred to imputations against either House. There is no such imputation. For that reason the Opposition asks the House to support its position that, on this occasion, you have inappropriately ruled a question out of order.

Finally, Madam President, as you consider this matter further - or honourable members might wish to debate it - there can be no more serious allegation than the abuse of public office for one's personal advantage. It is appropriate for Ministers to be asked questions about their knowledge of the abuse of public office to satisfy oneself or to seek personal advantage. The allegations that have been made are that the Lord Mayor, as a holder of public office, took advantage of his position as Lord Mayor to seek gratification, that is, through sexual harassment. It is appropriate for Ministers in this House to reveal their knowledge of these matters. I ask members on the crossbenches to support the dissent motion moved by the Opposition.

The Hon. M. R. EGAN (Treasurer, Minister for State Development, and Vice-President of the Executive Council) [4.35 p.m.]: Madam President, in speaking to the motion of dissent on your ruling I indicate to the House that I strongly oppose the motion moved by the Leader of the Opposition. It was quite clear from the comments that were made by the Hon. J. P. Hannaford that the purpose of the question asked, to which objection was taken, was to make

allegations against the Lord Mayor of Sydney. That was quite apparent and quite clear. The Hon. J. P. Hannaford said as much in the closing stages of his remarks.

The purpose of the question was not to elicit information from the Attorney General on a matter for which he is responsible; the purpose of the question was to defame a prominent citizen of this State, who happens to be the Lord Mayor of Sydney, and who happens to be contesting an election which will be held on Saturday. I do not know where the Hon. J. P. Hannaford or the Hon. M. J. Gallacher were when "Guidelines for asking Questions" was circulated by the Legislative Council office to all honourable members. I have a copy of it in my House folder every day. For the benefit of honourable members I will read some of that document which is about the asking of questions:

Questions addressed to Ministers should relate to public affairs with which the Minister is officially connected, or to any matter of administration for which the Minister is responsible.

It goes on to state:

Questions should not contain . . . statements of facts or names of persons unless they are strictly necessary to render the question intelligible and can be authenticated.

Questions should not contain arguments or opinions . . . imputations, inferences.

That comes from all the rulings given by Presiding Officers in this House over 175 years. The purpose of those Presidents' rulings over 175 years is to ensure that the privileges of this House and question time are not abused. The purpose of question time is to elicit facts from Ministers on matters with which they are officially connected. The purpose of question time is not to allow members of this House to defame citizens of this State - to defame ordinary citizens of this State or important citizens of this State. The question asked today by the Opposition was nothing more than an appalling abuse of parliamentary privilege, not only to defame a man of excellent repute, but also to further the election prospects of one of their own number, namely Alderman Kathryn Greiner.

It is an absolute disgrace that question time should be abused in this way, contrary to all the precedents and rules. I invite every honourable member of his House to study "Guidelines for asking Questions" - a document that has been circulated by the Legislative Council office to every member of this House. Madam President, the ruling which you gave was the proper one. It upholds the dignity and reputation of this House, and it will certainly ensure that this House cannot be used to enable members of the Opposition to abuse their privilege in this House simply to defame the citizens of this State.

Question - That the motion be agreed to - put.

The House divided.

Ayes, 16

| | |
|-----------------------|-----------|
| Mr Bull | Mr Lynn |
| Dr Chesterfield-Evans | Mrs Nile |
| Mrs Forsythe | Rev. Nile |

| | |
|----------------|-----------------|
| Mr Gallacher | Mr Oldfield |
| Miss Gardiner | Dr Pezzutti |
| Mr Gay | |
| Mr Hannaford | <i>Tellers,</i> |
| Mr Harwin | Mr Jobling |
| Mr M. I. Jones | Mr Moppett |

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Noes, 15

| | |
|-----------------|-----------------|
| Mr Breen | Mr Macdonald |
| Mr Corbett | Mr Obeid |
| Mr Della Bosca | Ms Saffin |
| Mr Dyer | Mr Shaw |
| Mr Egan | Ms Tebbutt |
| Mr Hatzistergos | <i>Tellers,</i> |
| Mr Johnson | Mr Manson |
| Mr Kelly | Mr Primrose |

Pairs

| | |
|-----------|---------------|
| Mr Ryan | Ms Burnswoods |
| Mr Samios | Mr Tsang |

Question resolved in the affirmative.

Motion agreed to.

(3) QUESTION WITHOUT NOTICE (p. 70)

[*Questions without notice resumed.*]

LORD MAYOR OF SYDNEY SEXUAL HARASSMENT ALLEGATIONS

The Hon. M. J. GALLACHER: My question without notice is directed to the Attorney General. Was the Attorney General informed that at least four serious allegations of sexual harassment have been made against Lord Mayor Frank Sartor, some as recent as this year, before the Labor Party agreed to give him preferences to ensure Mr Sartor's re-election? Was the Attorney informed of the large number of complaints lodged before the Anti-Discrimination board involving cases of sexual harassment by the Lord Mayor against members of staff in the Sydney Town Hall? What action has the Attorney General taken to investigate these serious matters?

The Hon. J. W. SHAW: The answers to questions one and two are, no. Question three does not arise.

(4) ADJOURNMENT (pp. 86-87)

LORD MAYOR OF SYDNEY SEXUAL HARASSMENT ALLEGATIONS

The Hon J. P. HANNAFORD [10.01 p.m.]: Today the Attorney General tabled in the House a letter which was directed to the Lord Mayor of Sydney Frank Sartor. The question that has to be asked in relation to that letter is: Why is the date cited in a request for a report from the Anti-Discrimination Board [ADB] related only to 1995 when Lord Mayor Sartor became mayor in September 1991? The reason for that is clearly that the Lord Mayor was not prepared to have the ADB reveal that there were a number of complaints lodged with the ADB before 1995. I have in my possession a letter directed to the president of the ADB, which states:

I wish to register a complaint of sexual harassment and discrimination that was directed at me physically by . . . Frank Sartor.

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The incident occurred at approximately 9:45 p.m. on Monday June 29 1992 after . . . Frank Sartor asked me into his office on the pretext of discussing professional matters . . .

After commencing discussions over these matters alone with Mr Sartor for five minutes, he sat down next to me and suddenly grabbed my hand and arm in a firm, locked position and proceeded to lean across and started kissing me, saying he had wanted to do this for three years.

He told me details about the loneliness of his personal life and his need to be close to me.

I was completely taken aback by such obnoxious and demeaning behaviour and pushed him away immediately, and I made it clear in no uncertain manner that this repugnant behaviour was not acceptable in any manner or form . . .

Mr Sartor must have realised I was distressed by his actions towards my physical being and offered to walk me to the basement carpark . . .

On the walk back he asked me not to reveal this incident to anyone for my own good. I detected a directive turn by this statement.

I reported this incident to my supervisor, Mr Vic Smith, the manager of community services, the next day . . . who made no attempt to take any action.

I regard this behaviour . . . as a serious breach of professional and ethical trust by an elected public official, and morally reprehensible.

It was a dehumanising experience for me, particularly being a professional female working in such a male dominated, chauvinistic and sexist environment.

I am registering the complaint now as I have been recently made aware of another unwarranted advance by Mr Sartor on one of my female staff members . . .

She was physically and emotionally surprised and affected by this unsolicited sexual advance . . .

This is but the tip of the iceberg. As late as this year I have been made aware of two approaches made by the Lord Mayor to an unmarried woman on his staff, seeking personal contact with her and asking her out, despite her obvious discomfort. These are not isolated events.

The Lord Mayor's staff turnover is extraordinarily high. Several senior staff have quit during this current term rather than be exposed to intimidating and unwarranted situations, including having to work late at night and on weekends at the personal request of Frank Sartor. What makes the Lord Mayor's behaviour even more unacceptable is the fact that he intends to cover up the complaints against him by bullying and intimidation, coupled with conciliation and confidentiality agreements in the Anti-Discrimination Board.

I accepted the Attorney's good intentions in regard to tabling the letter, but the question must be asked: Why has the council limited the request? I challenge the Lord Mayor to release full details of all other complaints held by the council in respect of which payments have been made by the council since 1995. I also challenge honourable members who are aware of these incidents - and I know that some members of this House are aware of these incidents - to publicly acknowledge that they have received complaints of the type I have described. Honourable members will recall that Terry Griffith lost his ministry and eventually his seat as a result of disturbingly similar complaints. Terry Griffith's demotion was fully supported by the then Leader of the Opposition, Bob Carr, in 1994. At that time Mr Carr stated:

That is what sexual harassment is all about - the exploitation of the power enjoyed by some to the disadvantage of those who have no power.

That is exactly the nature of Frank Sartor's repeated abuses of his power. In the Griffith case, the Labor Party voted to censure the former Minister for his behaviour; yet in this instance the Australian Labor Party is fully endorsing Frank Sartor in the forthcoming council and mayoral elections. Labor and, indeed, the Premier are fully endorsing someone who is still in office and who is seeking a new term. *[Time expired.]*

APPENDIX 2

MINUTES OF THE PROCEEDINGS

Meeting No. 1

Tuesday, 21 September 1999

at Parliament House, Sydney at 1.00 pm

MEMBERS PRESENT

Mr Breen (in the Chair)

Miss Gardiner

Mr Jobling

Mr Primrose

Mr Hatzistergos

Mr Kelly

Ms Saffin

The Chair tabled correspondence dated 21 September 1999, from Mr Michael Gallacher to the Clerk, requesting that he and Mr John Hannaford be informed of meetings of the Committee and that they, or their representatives, be present at deliberations of the committee.

The Committee deliberated.

The Clerk circulated the terms of reference of the inquiry, together with a copy of the statements made by Mr Gallacher and Mr Hannaford in relation to this matter.

Resolved, on motion of Mr Kelly: That representatives of the media be permitted, for a maximum of 5 minutes, to take still photos and record "file" footage, without sound, of the Committee inquiry.

The Committee considered the correspondence dated 21 September 1999 from Mr Gallacher.

Resolved, on motion of Mr Hatzistergos: That, in accordance with Standing Order 251, no Member of the Legislative Council, not being a member of the Committee, may be present during deliberative meetings of the Committee in relation to this inquiry.

The Committee continued to deliberate.

Resolved, on motion of Ms Gardiner: That the Clerk inform Mr Gallacher and Mr Hannaford, of the dates of any proposed meetings of the Committee.

The Committee continued to deliberate.

Resolved, on motion of Mr Hatzistergos: That arrangements for the calling of witnesses, for the purpose of procedural arrangements, be left in the hands of the Chair and the Clerk, subject to any direction of the Committee.

Resolved, on motion of Mr Hatzistergos: That, unless otherwise ordered, the press and public (including witnesses after examination) be admitted to the hearings of the Committee, subject to the resolution of the Legislative Council concerning in camera and suppressed evidence.

Mr Hatzistergos moved: That, when in camera evidence is taken by the Committee, the original transcript is to be kept locked in a safe in the office of the Clerk of the House. The material must not be copied, but the witness providing the in camera evidence and members of the Committee may read it in the Clerk's office and make corrections of inaccuracies in reporting. The Clerk of the House is to keep a register of persons allowed access to the evidence. In accordance with the rules of natural justice, any evidence which makes adverse allegations against an individual shall be disclosed to that person and/or their legal representative so as to enable a response.

Debate ensued.

Ms Gardiner moved: That the question be amended by omitting all words after "Clerk of the House" where first occurring, and inserting instead: That, when in-camera evidence is taken by the Committee, arrangements for the management and publication of any resultant transcripts be the same as those adopted by the Committee during the Arena inquiry in order that the Committee may publish evidence as envisaged by the Legislative Council in its terms of reference number 4(b) for this inquiry, viz: that identifying material may be deleted by the Committee and then the remainder of the transcript may be published.

Debate continued.

Question: That the amendment of Ms Gardiner be agreed to—put and negatived.

Original question: That, when in-camera evidence is taken by the Committee, the original transcript is to be kept locked in a safe in the office of the Clerk of the House. The material must not be copied, but the witness providing the in-camera evidence and members of the Committee may read it in the Clerk's office and make corrections of inaccuracies in reporting. The Clerk of the House is to keep a register of persons allowed access to the evidence. In accordance with the rules of natural justice, any evidence which makes adverse allegations against an individual shall be disclosed to that person and/or their legal representative so as to enable a response—put and passed.

The Committee noted that according to Standing Order 251 Mr Gallacher and Mr Hannaford may attend all hearings, including in camera hearings, of the Committee.

Resolved, on motion of Mr Hatzistergos: That media statements concerning the deliberations of the Committee be made only by the Chair on behalf of the Committee, after consultation with the Committee.

Ms Saffin moved: That any person, other than those invited by the Committee, wishing to appear and give evidence before the Committee in relation to this inquiry, must first provide a written outline to the Committee setting out the substance of the information he or she intends to put before the Committee. If protection is sought under the terms of item 4(a) of the reference, a person may make a written submission through a representative. The Committee is then to decide, on the basis of such a written submission, whether to summon that person to attend a hearing of the Committee.

Debate ensued.

Mr Jobling moved: That the question be amended as follows:

1. Omit “must first provide a written outline to the Committee setting out the substance of the information he or she intends to put before the Committee” and insert instead “should provide a written outline of the information he or she intends to put before the Committee. If necessary, the Clerk to the Committee will assist that person prepare the written submission.”
2. Omit all words after “That” and insert instead “if protection is sought under the terms of paragraph 4, then any person wishing that protection should advise the Clerk of the Committee. The Clerk will convey that request to the Committee and the Committee will agree to that request. If a person wishes to make a submission through a legal representative or another person then that may occur.”

Debate continued.

Mr Jobling, by leave, withdrew his amendments.

Question: That the motion of Ms Saffin be agreed to—put and passed.

Resolved, on the motion of Ms Saffin: That unless otherwise ordered, parties appearing before the Committee will not be represented by members of the legal profession.

Mr Jobling moved: That advertisements for the inquiry be placed in the *Sydney Morning Herald*, *The Australian* and the *Daily Telegraph* on Saturday 25 September 1999.

Debate ensued.

Question put.

The Committee divided.

Ayes: 2

Ms Gardiner

Mr Jobling

Noes: 4

Mr Hatzistergos

Mr Kelly

Mr Primrose

Ms Saffin

Question resolved in the negative.

The Committee continued to deliberate.

Mr Jobling submitted the following proposals regarding the conduct of this inquiry for consideration at the next meeting of the Committee:

1. The Committee must identify which part of the statements it intends to inquire into.
2. What standard it intends to apply in relation to privilege of members to raise matters in Parliament without being questioned (see Bill of Rights 1688)?
3. What standard it intends to apply in determining what constitutes an abuse of privilege?
4. How each identified part of a statement could be an abuse of privilege?
5. What information would be required to support or rebuff a potential finding of abuse of privilege?
6. What, if any, justification does a Member require to raise an issue in the House?
7. Draft responses should be forwarded to Mr Gallacher and Mr Hannaford for comment prior to adoption by the Committee.

The Chair circulated an article by Harry Evans, Clerk of the Senate, entitled “Franca Arena and parliamentary privilege” published in the Constitutional Law and Policy Review, dated 11 May 1998.

The Committee continued to deliberate.

Ms Gardiner moved: That Mr Gallacher and Mr Hannaford have the right to personally question witnesses.

Debate ensued.

Mr Hatzistergos moved: That the question be amended by omitting “personally question witnesses” and inserting instead “submit requests to ask questions of witnesses, in writing, to the Chair”.

Debate continued.

Question: That the amendment be agreed to—put and passed.

Question then, as amended: That Mr Gallacher and Mr Hannaford have the right to submit requests to ask questions of witnesses, in writing, to the Chair—put and passed.

Mr Primrose moved: That the names of any proposed witnesses be submitted to the Clerk prior to the meeting of the Committee on 18 October 1999.

Question put and passed.

The Committee adjourned at 2.10 pm, until 2.30 pm on Monday, 18 October 1999.

Meeting No. 2

Thursday, 23 September 1999

at Parliament House, Sydney at 1.00 pm

MEMBERS PRESENT

Mr Breen (in the Chair)

Miss Gardiner
Mr Jobling
Revd Mr Nile
Ms Saffin

Mr Hatzistergos
Mr Kelly
Mr Primrose

Resolved, on the motion of Mr Kelly: That the Minutes of the previous meeting of 21 September 1999 be agreed to.

The Chair tabled the following correspondence:

Correspondence sent:

- (i) Letter to Mr Gallacher dated 22 September 1999 informing him of the time and place of the next meeting of the Committee.
- (ii) Letter to Mr Hannaford dated 22 September 1999 informing him of the time and place of the next meeting of the Committee.

The Committee deliberated.

The Clerk circulated draft resolutions concerning the proposals submitted by Mr Jobling at the previous meeting on 21 September 1999.

The Committee considered the draft resolutions and proposals.

The Committee considered the issue of privilege and its application in the New South Wales Parliament.

Resolved, on the motion of Mr Primrose: That the Clerk prepare an issues paper for consideration by the Committee on parliamentary privilege in the NSW Parliament.

The Committee continued to deliberate.

Resolved, on the motion of Mr Jobling: That the date for the submission of the names of proposed witnesses to the Clerk be extended from 18 October 1999 until after consideration of the issues raised in Mr Jobling's proposals.

The Committee agreed that the Chair may advise the media of the proposals raised at the meeting today.

Mr Jobling advised the Committee that he intended to review the Committee's resolution concerning media statements on behalf of the Committee at the next meeting.

The Committee adjourned at 1.50 pm, until 2.30 pm Monday 18 October 1999.

Meeting No. 3

Monday 18 October 1999

at Parliament House, Sydney at 2.30 pm

MEMBERS PRESENT

Mr Breen (in the Chair)

Miss Gardiner
Mr Jobling
Revd Mr Nile

Mr Hatzistergos
Mr Kelly
Mr Primrose

Apologies were received from Ms Saffin.

Resolved, on motion of Revd Mr Nile: That the Minutes of the previous meeting of 23 September 1999 be agreed to.

The Chair tabled the following correspondence:

Correspondence received:

- (i) Facsimile dated 1 October 1999 from Mr Bruce Burke (Bush Burke and Company, Solicitors for Mr Frank Sartor) requesting certain information in relation to the Inquiry of the Committee related to his client. *Correspondence sent:*
- (i) Facsimile dated 30 September 1999 to Mr Frank Sartor, in response to a request by phone related to Citizen's Right of Reply.
- (ii) Letter dated 5 October 1999 from the Clerk to Mr Bruce Burke (Bush Burke and Company, Solicitors for Mr Frank Sartor) in response to the letter dated 1 October 1999 and forwarding a copy of the terms of reference for the Inquiry.
- (iii) Letter to Mr Gallacher dated 14 October 1999 informing him of the time and place of next meeting of the Committee.
- (iv) Letter to Mr Hannaford dated 14 October 1999 informing him of the time and place of next meeting of the Committee.

The Committee deliberated.

The Committee agreed to consider the following topics at the meeting today:

- (i) Issues paper prepared by the Clerk

- (ii) Terms of Reference
- (iii) Outstanding questions raised by Mr Jobling
- (iv) Advertising committee reference
- (v) Reply to correspondence from Bush Bourke Solicitors
- (vi) Timetabling of inquiry

(i) Issues paper prepared by the Clerk

Resolved on the motion of Ms Gardiner: That the Chair write to the Clerk of the Parliaments requesting advice on the question of parliamentary privilege so far as it concerns the Committee in the current inquiry.

The Committee continued to deliberate.

(ii) Terms of Reference

The Committee considered the wording of the terms of reference for this inquiry.

Resolved, on motion of Mr Primrose: That the following draft resolutions proposed by the Chair be considered at the Committee's next meeting:

- (1) That on the information available to the Committee it cannot confirm or deny the accuracy of the statements made by the Honourable Michael Gallacher and the Honourable John Hannaford, and the Committee recommends to these Members that any information they have be referred to the appropriate investigating authorities.
 - (2) That the Lord Mayor of Sydney, Councillor Frank Sartor, be reminded of the provisions of Citizen's Right of Reply, and that he be invited to exercise this right in relation to the statements made about him.
 - (3) That the conduct of the Members in relation to the information before the Committee could not constitute an abuse of privilege given that no guidelines on the exercise of Members' freedom of speech have been published.
 - (4) That the Committee recommend to the Parliament that the issue of Members' conduct in the House be referred to the Committee for the purposes of drawing up the appropriate guidelines.
- (iii) Outstanding questions raised by Mr Jobling

Mr Jobling advised that he was satisfied that the outstanding questions would be covered by the draft resolutions.

(iv) Advertising committee reference

The Committee agreed not to advertise the inquiry at this stage.

(v) Reply to correspondence from Bush Burke Solicitors

The Committee considered correspondence from Mr Bruce Burke, Bush Burke and Company, Solicitors. It was agreed that the Clerk advise him that no copies of the Committee's resolutions will be available except to the extent that they form part of the final report, but that he would be advised of any proposed public meetings as well as any statements or allegations made before the Committee concerning his client or the City of Sydney Council.

(vi) Timetabling of inquiry

The Committee agreed to meet again on Thursday 21 October 1999 at 1.00 pm.

The Committee adjourned at 3.46 pm, until 1.00 pm Thursday 21 October 1999.

Meeting No. 4

Thursday 21 October 1999

at Parliament House, Sydney at 1.40 pm

MEMBERS PRESENT

Mr Breen (in the Chair)

| | |
|---------------|-----------------|
| Miss Gardiner | Mr Hatzistergos |
| Mr Jobling | Mr Kelly |
| Revd Mr Nile | Mr Primrose |
| Ms Saffin | |

Resolved, on motion of Mr Kelly: That the Minutes of the previous meeting of 18 October 1999 be agreed to.

The Chair tabled the following correspondence:

Correspondence sent:

- (i) Letter to Mr Gallacher dated 21 October 1999 informing him of the time and place of next meeting of the Committee.
- (ii) Letter to Mr Hannaford dated 21 October 1999 informing him of the time and place of next meeting of the Committee.

The Committee deliberated.

The Committee considered the following proposed draft resolutions:

1. That the conduct of the Honourable Michael Gallacher and the Honourable John Hannaford in the Legislative Council on 8 September 1999 concerning the Lord Mayor of Sydney, Mr Frank Sartor, could not constitute an abuse of privilege.
2. Further the Committee notes that no guidelines on the exercise of Members' freedom of speech have been published.
3. That the Committee recommends that any information held by the Honourable Michael Gallacher and the Honourable John Hannaford relating to the Lord Mayor in this matter be referred by those Members to the appropriate authorities for investigation.

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4. That the Lord Mayor be informed of his citizen's right of reply with respect to the statements made by the Honourable Michael Gallacher and the Honourable John Hannaford in the Legislative Council on 8 September 1999, in accordance with the resolution of the House dated 13 November 1997 (3rd Session, Minutes No. 16, pp. 176-8).
5. That the Committee recommends that the Parliament's attention be again drawn to the fact that the Parliament of New South Wales has not given its privileges a statutory form or provided guidelines on their scope and operation.

The Committee noted general agreement on draft resolutions nos 3,4 and 5.

The Committee continued to deliberate.

The Committee agreed to further consider the proposed draft resolutions at its next meeting.

The Committee adjourned at 2.28 pm, *sine die*.

[Note: Meeting No. 5 of the Committee did not relate to the current inquiry]

Meeting No. 6

Wednesday 24 November 1999

at Parliament House, Sydney at 1.00 pm

MEMBERS PRESENT

Mr Breen (in the Chair)

| | |
|---------------|-----------------|
| Miss Gardiner | Mr Hatzistergos |
| Mr Jobling | Mr Kelly |
| Revd Mr Nile | Mr Primrose |
| Ms Saffin | |

Resolved, on motion of Mr Kelly: That the Minutes of the previous meeting of 21 October 1999 be agreed to.

The Chair tabled the following correspondence:

Correspondence sent:

- (i) Letter to Mr Gallacher dated 9 November 1999 informing him of the time and place of next meeting of the Committee.
- (ii) Letter to Mr Hannaford dated 9 November 1999 informing him of the time and place of next meeting of the Committee.
- (iii) Letter to Mr Gallacher dated 9 November 1999 advising him of the proposed hearing in relation to the inquiry on Thursday 25 November 1999.
- (iv) Letter to Mr Hannaford dated 9 November 1999 advising him of the proposed hearing in relation to the inquiry on Thursday 25 November 1999.
- (v) Letter to Mr Bruce Burke dated 9 November 1999 advising him that no copies of the Committee's resolutions will be available and further advising him of the proposed hearing.

The Committee deliberated.

The Committee considered the following proposed draft resolutions:

- That in relation to the conduct of the Honourable Michael Gallacher and the Honourable John Hannaford in the Legislative Council on 8 September 1999, bearing in mind the reference of the House and noting that no guidelines on the exercise of Members' freedom of speech have been published, the Committee does not find an abuse of privilege in these circumstances.
- That any information held by the Honourable Michael Gallacher and the Honourable John Hannaford relating to the Lord Mayor in this matter be referred by those Members to the appropriate authorities for investigation.
- That the Lord Mayor be informed of his citizen's right of reply with respect to the statements made by the Honourable Michael Gallacher and the Honourable John Hannaford in the Legislative Council on 8 September 1999, in accordance with the resolution of the House dated 13 November 1997 (3rd Session, Minutes No. 16, pp. 176-8).
- That the House's attention be again drawn to the fact that the Parliament of New South Wales has not given its privileges a statutory form or provided guidelines on their scope and operation.

Resolved, on motion Mr Hatzistergos: That the proposed resolutions be agreed to.

The Committee continued to deliberate.

Resolved, on motion of Revd Mr Nile: That, in view of the resolutions having been agreed to, the Committee not proceed to call Mr Gallacher and Mr Hannaford to give evidence on Thursday 25 November 1999.

Resolved, on motion of Mr Kelly: That the Chair prepare and submit a draft report on the statements made by Mr Gallacher and Mr Hannaford for consideration by the Committee.

The Committee adjourned at 1.50 pm, *sine die*.

Meeting No. 7

Tuesday 30 November 1999

at Parliament House, Sydney at 1.30 pm

MEMBERS PRESENT

Mr Breen (in the Chair)

| | |
|---------------|-----------------|
| Miss Gardiner | Mr Hatzistergos |
| Mr Jobling | Mr Kelly |
| Revd Mr Nile | Mr Primrose |

Apologies were received from Ms Saffin.

Resolved, on motion of Revd Mr Nile: That the Minutes of the previous meeting of 24 November 1999 be agreed to.

The Chair tabled the following correspondence:

Correspondence sent:

- (i) Letter to Mr Gallacher dated 24 November 1999 advising that the Committee would not be holding a hearing on 25 November 1999.
- (ii) Letter to Mr Hannaford dated 24 November 1999 advising that the Committee would not be holding a hearing on 25 November 1999.

The Committee deliberated.

The Committee considered the draft report.

Chapter 1 read.

Resolved, on motion of Revd Mr Nile: That after paragraph 1.1.2 the following paragraph be inserted:

- 1.1.3 During proceedings in the Council on 8 September 1999, the Attorney General tabled a letter dated 8 September 1999 from the President of the Anti-Discrimination Board to the Lord Mayor. The letter stated that records of the Anti-Discrimination Board, which had been checked since 1 January 1995, did not indicate that any complaint had been

lodge against the Lord Mayor personally, nor had the Board received any form of complaint alleging sexual harassment listing the Sydney City Council as a respondent.

Resolved, on motion of Ms Gardiner: That paragraph 1.2.2 be amended by omitting “and the Members were scheduled to appear before the Committee” and inserting after “privilege” the words “and the Committee’s Resolution No. 1”.

Resolved, on motion of Revd Mr Nile: That Chapter 1, as amended, be agreed to.

Chapter 2 read.

Resolved, on motion of Mr Hatzistergos: That paragraph 2.3.2 be amended by inserting after “The Committee believes that” the words “in the present circumstances”.

Resolved, on motion of Ms Gardiner: That paragraph 2.3.2 be further amended by inserting at the end “and/or following examination of findings of a properly constituted external inquiry”.

Resolved, on motion of Mr Hatzistergos: That paragraph 2.3.10 be amended by inserting after “the Committee finds that” the words “bearing in mind the reference of the House and”.

Resolved, on motion of Mr Primrose: That Chapter 2, as amended, be agreed to.

Chapter 3 read.

Resolved, on motion of Ms Gardiner: That paragraph 3.2.1 be amended by omitting from the first sentence the words “while it was unable to reach a determination on this matter in the terms required by the House’s resolution”.

Resolved, on motion of Mr Primrose: That Chapter 3, as amended, be agreed to.

Resolved, on motion of Mr Jobling: That the Report be signed by the Chair and presented to the House.

Resolved, on motion of Mr Primrose: That 200 copies of the report be printed.

Resolved, on motion of Mr Primrose: That the Committee records its appreciation of the efforts of the Chair and Secretariat in the conduct of this inquiry.

The Committee adjourned at 2.24 pm, *sine die*.