No. 94

1983

PARLIAMENT OF NEW SOUTH WALES

PROGRESS REPORT

FROM THE

JOINT COMMITTEE

OF THE

LEGISLATIVE COUNCIL AND LEGISLATIVE ASSEMBLY

UPON

PARLIAMENTARY PRIVILEGE

TOGETHER WITH

MINUTES OF PROCEEDINGS

Ordered to be printed, 1 *December*, 1983

BY AUTHORITY
D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1984

G 33056F—1 1983—55 [$2.40]

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†The Honourable Max Frederick Willis, E.D., LL.B., M.L.C.

Legislative Assembly

Mr D. J. Bowman, B.A., Dip.Ed., M.P.

Mr J. H. Brown, M.P.

Mr G. D. McIlwaine, LL.B., M.P.

Mr T. J. Moore, LL.B., M.P.

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* Discharged 31st March, 1983, a.m.

† Appointed 31st March, 1983, a.m.

FOREWORD

It is just over a year since the two Houses of our Parliament resolved to authorize another investigation of our privileges. The Terms of Reference presumed no outcome from that inquiry: Members appointed to the Joint Select Committee undertook their work with an open mind about all questions that might come before us.

Over many meetings we have absorbed hours of evidence and then read it carefully in its transcribed form. We decided early to see with our own eyes how the various State Parliaments define their privileges and what procedures they have adopted to protect them.

The Committee decided that the Parliament was entitled to a Report setting out the nature of our inquiries and the conflicting values intrinsic to so many privilege matters. At this stage the Committee has not come down for or against any particular outlook. That remains ahead in a series of Discussion Papers that will, in setting out all sides of an argument, provide a course of action for the Parliament, the Presiding Officers and the Executive Government. When all the Discussion Papers have been prepared and circulated to Honourable Members and interested observers, the Committee will prepare its final Report.

A year of meetings and travels has meant that members of the Committee have had to spend a good deal of time together. It is a tribute to all that fractiousness has been at a minimum. Whatever our divisions on matters of principle, they have not been motivated by any partisan considerations.

The Clerk to the Committee, Mr Grahame Cooksley, has needed to maintain his attention throughout all our proceedings. His work as the Clerk Assistant of the Legislative Assembly did not stop for the demands of our Committee. The quality of his labours has been remarkable.

The Committee trusts that a report on privilege, matters which affect all Honourable Members directly, will gain a more than cursory attention.

RODNEY CAVALIER, M.P., *Chairman.*

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INTRODUCTION

1. On 3rd November, 1982, on a Notice of Motion by the Premier, the Honourable N. K. Wran, Q.C., M.P., the Legislative Assembly resolved:

(1) That a Joint Select Committee be appointed to review and report whether any changes are desirable in respect of:

(a) The law and practice of parliamentary privilege as they affect the Legislative Council and the Legislative Assembly, the Members and Committees of either or both Houses and other persons;

(b) The powers and procedures by which cases of alleged breaches of parliamentary privilege may be raised, investigated and determined.

(2) That such Committee consist of three Members of the Legislative Council and 5 Members of the Legislative Assembly.

(3) That at any meeting of the Committee any three Members shall constitute a quorum, provided that the Committee shall meet as a Joint Committee at all times.

(4) That Mr Cavalier, Mr McIlwaine, Mr Bowman, Mr Moore and Mr Brown be appointed to serve on such Committee as Members of the Legislative Assembly.

(5) That the Committee have leave to sit during the sittings or any adjournment of either or both Houses; to adjourn from place to place; to make visits of inspection within the State of New South Wales and other States and Territories of the Commonwealth; and have power to take evidence and send for persons and papers; and to report from time to time.

2. Following agreement to this resolution in the Legislative Council on 9th November, 1982, the Committee was established with the following membership:

The Honourable D. M. Grusovin

The Honourable B. H. Vaughan

The Honourable D. D. Freeman.*

Mr D. J. Bowman, M.P.

Mr J. H. Brown, M.P.

Mr R. M. Cavalier, M.P.

Mr G. D. McIlwaine, M.P.

Mr T. J. Moore, M.P.

The Honourable M. F. Willis.†

3. The Committee held its first meeting on Tuesday, 9th November, 1982 and elected Mr R. M. Cavalier, M.P., as Chairman.

4. The Committee resolved to advertise for written submissions from all interested persons and organizations. Advertisements were placed in the major dailies and wecklies circulating in New South Wales. In addition, specific invitations for a written submission and/or oral testimony were sent to organizations and individuals believed to possess a special interest in or knowledge of parliamentary privilege.

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* Discharged 31st March, 1983, a.m.

† Appointed 31st March, 1983, a.m.

5. These invitations were sent to:

The Members of the Legislative Council of New South Wales;

The Members of the Legislative Assembly of New South Wales;

The Government Whip in the Legislative Council;

The Secretary of the Caucus of the State Parliamentary Labor Party;

The Opposition Whip;

The National Party Whip;

The General Secretaries of the five political parties represented in the Parliament of New South Wales;

The Law Society of New South Wales;

The New South Wales Bar Association;

The Faculties of Law of the University of Sydney, the University of New South Wales and Macquarie University;

The media and media holding companies;

The Local Government Association of New South Wales;

The Shires Association of New South Wales;

The Australasian Study of Parliaments Group;

The Australian Institute of Political Science;

The departments of political science (however entitled) of the University of Sydney, the University of New South Wales, the University of New England and the Macquarie University.

6. Submissions closed on 31st March, 1983.

7. Evidence was taken for the first time on 18th April, 1983, when the Committee set aside a full day to hear the views of Professor Enid Campbell.

8. Professor Campbell is the author of the standard work, *Parliamentary Privilege in Australia* (Melbourne, 1966), as well as many articles on this and related subjects.

9. The Committee was anxious to receive as much evidence as possible from persons who are Members of our Parliament, work in it, or provide support services. With a wealth of learned commentaries available, the Committee sought a balance of views that would assist us to establish the effects on the ground to any changes in the definition of Parliamentary Privilege.

10. The next witnesses were the Clerk of the Legislative Assembly, Mr D. L. Wheeler, and the Clerk of the Parliaments, Mr L. A. Jeckeln. These two permanent officers of the Parliament have a first-class knowledge of the practical workings of the Parliament of New South Wales and have been able to combine that knowledge with a perception of the broader Westminster world. Making the Parliament work is their business: witnessing their reaction to what new complications might arise from a codification of privilege was valuable for the Committee.

11. The Committee learned a great deal from the then Acting Editor of Debates, Mr T. Cooper, and the New South Wales Government Printer, Mr D. West.

12. In the realm of law, witnesses have included the New South Wales Solicitor-General, Ms Mary Gaudron, Professor Geoffrey Sawyer (who is also Chairman of the Australian Press Council), Dr Alan Ransom (Macquarie University) who testified at length on the immunities enjoyed by members of the U.S. Congress and Mr Justice Michael Kirby, Chairman of the New South Wales Law Reform Commission.

13. The Committee has set aside full days for the hearing of evidence from these persons and organizations who had requested such a hearing.

14. This oral evidence and the written submissions have been augmented by a wealth of material on legal precedent, statute law in new Commonwealth countries, academic papers and the accumulated writings of generations of parliamentary practitioners. The volume of reading for members of the Committee is quite formidable.

15. As well as its sedentary deliberations, the Committee has recognized the need to gain first-hand evidence of the practice and protection of parliamentary privilege in other parts of Australia.

16. The Committee authorized the attendance of its members at a seminar in Canberra on Friday and Saturday, 6th and 7th May, 1983, on "Parliament and the Media" organized by the Australasian Study of Parliament Group. One segment was "The Media and Parliamentary Privilege" in which Mr David Solomon (High Court Correspondent for *The Australian Financial Review*) presented the discussion paper and major contributions were offered by members of our Committee. The Members of the Committee participated extensively throughout the seminar.

17. With the development of distinct political systems at national and State levels, it is not surprising that the local character of a State Parliament should influence its perception of what its privileges are and how best they should be protected. The Australian Parliament is only now contemplating a codification of its privileges, after some eight decades in which it has created precedents which occasioned international interest.

18. The Committee considered these local variations on the Westminster model to warrant first-hand examination. Accordingly, the Committee travelled to the Parliament Houses of Tasmania, Victoria, South Australia and West Australia during July and to the Northern Territory and Queensland during November. We discussed the various aspects of privilege with parliamentary officers, Hansard reporters, Government Printers, press gallery representatives and other interested persons.

19. Developments in emerging Commonwealth nations—all using the Westminster model—as their new legislatures come to grips with privilege are of direct relevance to a legislature that is again considering whether statutory definition of its privileges is desirable.

20. No work, however, is more important than the meticulous attention to matters of privilege by the House of Commons. The Committee has kept *Erskine May* handy and devoured hundreds of pages of evidence of various House of Commons Privilege Committee hearings. In 1966–67, the House of Commons established a Select Committee on Privilege: it traversed much of the ground our own Committee wishes to cover.

21. All the testimony and learned writings regard a close knowledge of Westminster practices as critical to a grasp of the subject.

22. The Committee intends to continue its study of the Wesminster Parliament and familiarize itself, for comparative purposes, with the law and practice of privilege in the Dominion Parliament of Canada and the Provincial Parliament of Ontario. The non-Westminster legislature under study is that of West Germany.

PART A—WORK IN PROGRESS

I. THE LINES OF INQUIRY

23. A degree of cynicism greeted the announcement of the Government in late 1982 that it intended to establish a Joint Select Committee to inquire into all aspects of Parliamentary Privilege. Some observers had convinced themselves that the inquiry would be little less than a front or a means of limiting freedom of speech in the Parliament. Others expected a quick sprint that would serve to codify all the known privileges available to a Westminster Parliament and applicable to New South Wales. The Terms of Reference, however, and the attitude of Committee Members have vitiated that cynicism.

24. At the time that he moved for the establishment of a Select Committee, the then Attorney-General, Mr Frank Walker, spelled out some of "the significant issues that may emerge in the Committee's deliberations":

- whether the powers, privileges and immunities of the House should be spelt out or codified in legislative form;
- should limits be imposed on a Member's freedom of speech to protect persons from an offensive or injurious statement;
- should privileges committees be established in the Houses;
- should the Parliament obtain a contempt power, and if so, what safeguards would be necessary for this exercise;
- should the courts have a role in hearing prosecutions for breach of parliamentary privilege, and the application of the law of defamation to the publication of extracts from Hansard;
- the adequacy of the provisions of the Parliamentary Evidence Act.

25. This was a most prescient forecast of the broadlines of inquiry the Committee is undertaking. Nonetheless, no one could have anticipated that in raising privilege the Committee would raise inevitably related matters that go to the roots of parliamentary practice in New South Wales today. In addition to all the matters listed above, the Committee has inquired into:

- the value of a legal definition of Parliament House and its precincts;
- the operations of the Australian Security and Intelligence Organization and its effects upon the accustomed rights and privileges of Members;
- the alleged supremacy of the Commonwealth law and its consequent potential to over-ride freedom of speech within a State Parliament;
- the need for codes of behaviour for media working within the precincts of Parliament;
- the degree of privilege that might attach to correspondence between a Member and a Minister of the Crown and the right of a Member to express himself freely in such correspondence without the inhibiting effect of a defamation suit.

26. The first port of call in the inquiry was the most obvious but by no means the least difficult. The Committee has sought to establish what Parliamentary Privilege is and the privileges enjoyed by the State Parliament of New South Wales.

27. The standard reference is, of course, Erskine May's *Treatise on the Law, Privileges, Proceedings and Usage of Parliament*. A work that is now in its 20th edition, *May* binds the Westminster world because so many parliaments have specifically adopted the usages of the House of Commons and even without that specific adoption *May* provides highly persuasive guidelines for any legislature attempting to integrate the expression of popular democracy with the deliberations of an Assembly.

*M*ay has offered a straightforward definition of privilege:

> Parliamentary Privilege is 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 those functions, and which exceed those possessed by other bodies or individuals. Thus privilege, a part of the law of the land, is to a certain degree exempted from the ordinary law.

28. The House of Commons has not sought to define its privileges exhaustively by statute or by resolution. Indeed, the House of Lords—in its judicial capacity—has ruled that Parliament cannot create new privileges: a legal fiction that provides a useful restraint on temporary majorities in the Commons that might otherwise seek to invest their own codes of behaviour with all the solemnity that the phrase "Parliamentary Privilege" undoubtedly conveys. The legal fiction has forced each new generation of parliamentary practitioners to research thoroughly the vast weight of precedent and adapt an existing privilege to a contemporary circumstance not envisaged in the precise terms of its original enunciation. This restrictiveness of definition has preserved both the term "privilege", and its practice, from abuse.

29. Although obviously derivative, Parliaments in Australia have developed their own sense of what constitutes parliamentary privilege and, in the development of that sense, have spawned a considerable body of indigenous literature. At the forefront of learned writing is a now seminal work by Professor Enid Campbell, *Parliamentary Privilege in Australia*. In offering her own definition of Parliamentary Privilege, Professor Campbell has taken account of the fundamental distinction between the House of Commons and all other legislatures—the distinction between an ancient assembly that has evolved from the High Court of Parliament and other assemblies that gain their charter and sovereignty from a specific statute at a specific point of time. Professor Campbell defines privilege as follows:

> "The privileges of Parliament refer to those rights, powers and immunities which in law belong to the individual Members and Officers of a Parliament and to the Houses of Parliament acting in a collective capacity. Broadly speaking, they exist to enable parliaments to proceed with the business of legislation and review of the activities of the administration without molestation, and to protect them against unwarranted attacks upon their authority. For convenience, these privileges may be divided into two classes, those enjoyed by individuals, and those which can be exercised only by the Houses of Parliament as a whole."

30. These definitions are more than useful but need considerable expansion to embrace the day to day impact of privilege in the intensely political environment that is the Parliament of New South Wales. In the absence of a statute declaring its privileges, the search for a definition of the privileges of the Parliament of New South Wales is fraught with confusion and uncertainty.

31. In a preliminary essay that sought to establish the principal powers, privileges and immunities of the House of Commons as at 1894 (the date of approval by the Governor of the Standing Rules and Orders of the New South Wales Legislative Assembly) the Clerk-Assistant of the Assembly, Mr Grahame Cooksley (who is also the Clerk to this Committee), set out 15 general categories. They were as follows:

- the power to order the attendance at the Bar of the House of persons whose conduct has been brought before the House on a matter of privilege;
- the power to order the arrest and imprisonment of persons guilty of contempt or breach of privilege;
- the power to arrest for breach of privilege by warrant of the Speaker;
- the power to issue such a warrant for arrest, and imprisonment for contempt or breach of privilege, without showing any particular grounds or causes thereof;
- the power to regulate its proceedings by standing rules and orders having the force of law;
- the power to suspend disorderly Members;
- the power to expel Members guilty of disgraceful and infamous conduct;
- the right of free speech in Parliament, without liability to action or impeachment for anything spoken therein established by Article 9 of the Bill of Rights, 1688;
- the right of each House as a body to freedom of access to the Sovereign for the purpose of presenting and defending its views;

- immunity of Members from legal proceedings for anything said by them in the course of parliamentary debates;
- immunity of Members from arrest and imprisonment for civil causes whilst attending Parliament, and for 40 days after every prorogation, and for 40 days before the next appointed meeting;
- immunity of Members from the obligation to serve on juries;
- immunity of witnesses, summoned to attend either House of Parliament, from arrest for civil causes;
- immunity of parliamentary witnesses from being questioned or impeached for evidence given before either House or its committees; and
- immunity of officers of either House, in immediate attendance and service of the House, from arrest for civil causes.

32. The privileges of the House of Commons are not necessarily the privileges enjoyed by the Parliament of New South Wales. Unlike the Commonwealth Parliament and most of the other State Parliaments, the New South Wales Parliament has not asserted what its privileges are by express enactment. The privileges then of the New South Wales Parliament are to be found in the whole body of the common law and a few relevant statutes. The exhaustive historical inquiry required to establish just what our privileges are has been a particularly fascinating exercise for the Members of the Committee. The historical method was the one recommended by Professor Campbell in her testimony to the Committee:

> Some form of historical inquiry would be unavoidable. The starting point must be the history of privilege in the United Kingdom. That is important because, often, the rationale is lost sight of if one does not understand why it was, for example, that the House of Commons secured the enactment of article 9 of the Bill of Rights of 1689. One should seek to find out what was the mischief they were driving at when they sought to include article 9 in the celebrated Bill of Rights of 1689 . . .
>
> One would need to examine carefully the justification, if any, for the kinds of privileges that are asserted by the House of Commons and by legislative institutions that have adopted common privileges *in toto*. Likewise one would have to examine carefully the justification for the kinds of privileges set out in the statutes that have been enacted in some other jurisdictions within the Commonwealth of Nations.
>
> In other words, I am suggesting there is a basic philosophical question that one cannot avoid; that is, why does one need absolute immunity from defamation in respect of words that are published during the course of parliamentary proceedings. One's answer to that, on consideration, may be that there are very good reasons for conferring that absolute privilege. If those participating in judicial proceedings enjoy such a privilege, parliamentarians have an equal claim to enjoy the privilege in relation to the conduct of their business.

33. A good part of that historical inquiry has been undertaken by the Office of the New South Wales Solicitor-General. In an opinion provided to the Committee, the Solicitor-General, M/s Mary Gaudron, said that the New South Wales Parliament enjoyed privileges under four headings:

(1) Such powers and privileges as are implied by reason of necessity.

(2) Such privileges as were imported by the adoption of the Bill of Rights 1689.

(3) Such privilege as is conferred by the Defamation Act, 1974.

(4) Such privilege as is conferred by other legislation, e.g., Parliamentary Evidence Act, 1901 and the Public Works Act, 1912.

34. It is within the first heading—the privileges implied by the doctrine of necessity—that the principal problems have arisen in our State in determining what privileges the Parliament enjoys. This limitation upon the inherent rights of the New South Wales Parliament enjoys no less an authority than the Judicial Committee of the Privy Council which, in 1841, ruled in *Kielley* v. *Carson,* a case involving the Newfoundland Legislature, that a colonial parliament did not enjoy the power to try and punish those who offended against parliamentary law. The powers of a colonial or dominion legislature were limited to those privileges as were reasonably necessary for them to carry out their legislative functions, until and unless they asserted otherwise by express enactment.

35. In the 140 years since, the Parliament of New South Wales has operated under that handicap—if handicap it be—without being able to reach accord on a statute that would have reversed the situation. As long ago as October 1878, a Bill passed through the Legislative Assembly that attempted to invest the Parliament with powers and privileges identical to those then in existence in the House of Commons. The penal jurisdiction, however, was to be transferred to the Supreme Court of New South Wales and the House would have been able to direct to Attorney-General to prosecute. That first attempt failed in the Legislative Council. In 1901 another attempt to define privilege passed through the Assembly but it lapsed when the Parliament was prorogued. In fact, over the past century there have been five major attempts at legislation that sought to define parliamentary privilege. All five attempts have failed.

36. Those lost opportunities took place in a constitutional framework where the New South Wales Parliament was untrammelled in its capacity to alter its own modes of Government and the constituent powers of its Houses. In 1929, however, after a decade of strife involving the Legislative Council, the Parliament established certain matter and form requirements that were binding on all future parliaments that might attempt to alter the powers of the Legislative Council. This question will be considered at length later by the Committee. It is worth noting, however, that an assertion by statute that the New South Wales Parliament enjoys all of the privileges of the House of Commons may fail—according to the advice of some learned counsel —because the Legislative Council did not enjoy those powers prior to the enactment of Section 7A of the Constitution Act and may not now be conferred with those powers, except by reference to the people in a referendum.

37. The decision of the Privy Council in *Kielley* v. *Carson* is of dubious propriety (the Court was stacked on that occasion by interests sympathetic to the Colonial Office in order to slap down the pretensions of certain uppity colonialists). Whatever its propriety, however, this decision is undoubtedly binding law in New South Wales today. Only a challenge in the High Court can upset the continuing application of the doctrine in *Kielley* v. *Carson*. Such a challenge follows an obscure strand of law depending upon the notion that a colonial legislature of the 1840's is in a qualtitatively different status to a sovereign state in the 1980's. In the years since the colony has become a State—itself part of a federated nation—with its own constitution. Though the maturity argument is attractive politically, its strength in law is doubtful. The Solicitor-General advised the Committee that arguments along those lines have already been rejected by the Privy Council in respect of a number of cases, including the application of the Imperial Merchant Shipping Act to ships in Australian waters. Any strength in these arguments will depend very much on the breaking of the residual constitutional links with Great Britain.

II. THE VALUE OF EXPRESS ENACTMENT

38. Whether or not privileges should be defined and codified represents a fundamental conflict. Men and women of goodwill—Members of Parliament, Officers of Parliament and learned commentators—are able to adduce convincing arguments for both sides of the case. Your Committee has heard both sides in its travels around Australia. If there is any common thread to the themes offered, it is that a contemporary Clerk or Presiding Officer will invariably argue for the doctrine that he or she has inherited as the best and only means of defining and protecting privilege. That a Parliament has been able to assert its privileges without recourse to an exhaustive statute is presented as proof-positive that no such statute is necessary; conversely, where an exhaustive statute, or even a general enabling statute exists, then the administrators of it are unable to conceptualize how their legislature could function without the benefit of its existence. Your Committee has sought to assess those arguments with an open mind.

In Favour of Codification

39. Professor Enid Campbell set out this side of the case concisely.

40. The Professor believes that the privileges should be defined as exhaustively as possible because, without definition, there is a high degree of uncertainty. Secondly, as a breach of privilege can be visited with sanctions of a penal nature, not only on

Members of the Legislature but on strangers, it is a sound general principle that such laws should be spelled out as far as possible. Her third reason is:

> The mere exercise of considering what should go into legislation of that type forces reconsideration of the whys and wherefores of Parliamentary Privilege. It is a salutary exercise. It may be that nowadays some of the privileges that have long been claimed by the House of Commons and parliaments that have followed the Westminster model would no longer be regarded as necessary but would be privileges that should be qualified in some way.

41. The Professor does not favour the catch-all clause that embraces all the powers and privileges enjoyed by the House of Commons, such as is provided by section 49 of the Commonwealth Constitution.

42. The Professor believes that legislation can be drafted that allows for progressive interpretation—Article 9 of the Bill of Rights being a classic example. Catch-all provisions contain their own uncertainties, whether the privileges of the House of Commons are embraced at a certain date or for the time being. Even professional practitioners experience uncertainty in applying the principles of *May* to a particular situation.

43. The New South Wales Solicitor-General agrees that catch-all clauses remain a mystery to all but the initiated. The Solicitor-General favours "the ambit of such privilege expressed on the record for all to see". She believes that while there may be problems in drafting a law sufficiently comprehensive the problem is really only technical. The Solicitor-General added the cautionary note that many of the abstract problems encountered in inquiries of the kind our Committee was undertaking had a habit of actualy arriving in periods of crisis that Governments and Constitutions do enter from time to time. The Solicitor-General, in avoiding offering advice on a matter of policy, said that it was a question of whether critical situations should be resolved in the courts or through the authority of Parliament. The Solicitor-General cited as an example the determination of the power of the Legislative Council to expel a Member: in the absence of an express provision, the courts had to decide that the Council in fact enjoyed a power by reason of necessity that every legislature believes is intrinsic to it. The expulsion of that Member at that time did not involve grave constitutional questions and the delay did not occasion any dislocation. It may be otherwise in the future.

44. Justice Michael Kirby considers that doubts should be removed so that ordinary citizens affected by the laws of privilege do not require the services of lawyers to find out what those laws are.

The Arguments Against Codification:

45. Neither of the two Clerks of the New South Wales Parliament are in the least impressed by arguments for codification. The Clerk of the Assembly, Mr Wheeler, believes that not only would it be difficult to codify what has been a practice for many years but that matters "that have successfully stood the test of time would cause problems if an attempt were made to codify them". Mr Wheeler also expressed the fear that any attempt at codification would reduce the privileges presently enjoyed—a fear that is shared by many generations of the House of Commons Committee of Privilege. The Clerk of the Parliaments, Mr Jeckeln, considered it was difficult to predict circumstances and experience had revealed little need for any code.

46. Two academics, Professor Geoffrey Sawer of the Australian National University and Professor Gordon Reid of the University of Western Australia, have each adopted the Commons outlook. Professor Sawer agreed with the views of our two Clerks that no legislation of any kind was necessary. The Professor was against adopting a catch-all phrase because the House would then become "the sole authoritative definer of what constitutes a breach of privilege. That is the first thing that no individual authority in a constitutional system should possess". Professor Sawer believes that interpretation of a statute can lead to its own uncertainty.

47. The other principle lobby against codification was from the Fourth Estate. Organizations as august as John Fairfax and Sons believe that the reputation, dignity and high esteem of the New South Wales Parliament have been built upon its responsible conduct rather than an all-embracing statute. Like the Clerks serving our Parliament, the media believe that the general principles that have served the Parliament since the foundation of responsible Government, for all their faults, are better than the alternative of an exhaustive statute or the adoption of the privileges of the House of Commons in Westminster.

III. THE PROBLEMS OF SECTION 7A ADDRESSED

48. Presuming that the Parliament opted to assert its privileges through express enactment what practical difficulties stand in its way? Should the Parliament take heed of the advice of learned counsel and specifically omit conferring a penal power upon the Legislative Council, and thus establish a distinct doctrine of privileges for the two Houses? What power exists now to deal with contempts of Parliament if *Kielley* v. *Carson* prevents the Legislative Council (and the Legislative Assembly in the absence of express provision) from punishing offenders against it?

49. The view that a referendum is required under section 7A of the New South Wales Constitution Act to confer the Legislative Council with the privilege of punishing offenders for contempt is not a view held with any tenacity by legal commentators. The view was persuasive enough for the New South Wales Government in 1980–81 when it resolved to put the question of the disclosure of the pecuniary interests of Members of the Legislative Council to the people in a referendum held concurrently with the general election.

50. On that occasion two learned counsel, Mr L. J. Priestley, Q.C. and Mr J. P. Bryson offered the Opinion that "legislation which conferred powers on the Legislative Council to punish breaches of legislation relating to registration of pecuniary interests would be invalid unless enacted in the manner provided by section 7A". Although the Government was persuaded by that Opinion and the New South Wales Solicitor-General endorsed it in her own advising of 25th March, 1983, your Committee is not convinced that the Opinion is unassailable.

51. Under cross-examination the Solicitor-General was more than prepared to see another side to the argument. The Solicitor-General conceded that her advising was the "perfectly safe line"; respectable arguments do exist that enable section 7A to be read down in an historical context. The Solicitor-General herself would be prepared to argue that case in the appropriate court.

52. The critical test that a court is likely to apply is the legal meaning of the word "powers" in the terms of section 7A and the intention of the legislature when it attempted to establish rigid manner and form requirements to protect the "powers" of the Legislative Council from alterations by any means other than referendum.

53. Professor Campbell does not believe that section 7A created a new set of restrictions that would prevent the conferment of any privileges function:

> I think the word "powers" in that context refers primarily to the powers of the Council as a constituent part of the Legislature and one whose assent is absolutely essential before any proposed legislation can become an Act of Parliament. The powers of the Legislative Council would not, to my mind, be affected at all by an Act of the New South Wales Parliament that codified the offences against the institutions of Parliament and conferred that jurisdiction to determine whether those offences had been committed in particular cases to the courts of law.

54. Professor Geoffrey Sawer largely concurred wih the view that the verbal history of the term "powers" was all important. In a letter written to the Committee after he had given evidence Professor Sawer observed:

> From an abstract point of view, legislation which enabled the Council to summon, try and punish a person for conduct outside Parliament such as defamation of the institution or members would "alter" its powers. However, it is arguable that it is a matter of verbal history, such provisions relate not to "powers" but "privileges", and that one would have expected the section to include that word if the provision was intended to cover it.
>
> It is also arguable that the word "powers" in section 7A, having regard to context, means "powers *vis à vis* the Legislative Assembly", not self protecting "privilege-powers".

55. The Solicitor-General in essence agreed with these observations and conceded that an argument that section 7A related only to legislative power and not quasi-judicial power would have "good prospects of success". The Solicitor-General observed that "it is really only a question of how safe you want to be". An anomaly of the most curious kind exists with the power of punishment enjoyed by both Houses. While the doctrine of *Kielly* v. *Carson* prohibits either House from punishing an individual or organization for contempt (a prohibition affirmed in the more recent case of *Armstrong* v. *Budd*) the Parliament has legislated to confer a right to initiate punishment upon its own committees.

56. Under the terms of the Parliamentary Evidence Act, 1901, any witness who refuses to answer "any lawful question" will be deemed guilty of contempt of Parliament and may be placed in the custody of the Usher of the Black Rod or the Serjeant-at-Arms and, if the House orders, be sent to gaol for a period not exceeding one month, upon the warrant of the President or Speaker. This warrant is not examinable by any outside authority. The Committee deals with the meaning of the phrase "lawful question" in a separate part of the report and notes that, while the Parliament has never exercised these provisions of the Parliamentary Evidence Act, it is surely unsatisfactory for penal power of this magnitude to be vested in a committee of the Parliament for the refusal to answer a question when the Parliament itself and its constituent Houses do not enjoy any certain sanction against a person who commits a gross contempt of the parliamentary institution.

57. The potential limitations of section 7A pose an interesting intellectual problem. The Parliament can feel either constrained by those limitations or choose to ignore them on the fairly certain assumption that its legislative competence in this area will not be challenged. Alternatively, the Parliament can legislate either broadly for comprehensive privilege powers in which punishment for breaches of privilege is excluded specifically from exercise by the Legislative Council; or the Parliament can codify its powers by way of enumeration of specifics and omit to mention a punitive power for the Legislative Council.

IV. THE VALUE OF A PRIVILEGES COMMITTEE

58. Whether or not the Parliament should determine to define its privileges by one means or another, it will need to consider as well whether a standing committee of privileges would be of value in the protection of the privileges of Members. Since 1856 both Houses have relied upon provisions in the standing orders that enable Members to rise in their places and raise matters of privilege that have suddenly arisen. Mr Speaker or Mr President are required to make rulings on whether a prima facie case of privilege has been established and the House as a whole is expected to enter a debate forthwith and make a deliberative decision without necessarily having the benefit of both sides of the case or supporting documentation.

59. Recent events in the Legislative Assembly have shown how unfair it is upon Mr Speaker to expect him to make rulings on incidents where privilege is claimed. Mr Speaker has not been able to contemplate the merits of the issues raised nor reflect carefully before issuing a ruling which enables him to compose his thoughts carefully. As those rulings become part of the precedents of the House, it is important that they reflect the considered views of Mr Speaker rather than the best response he is able to give in the time available.

60. The two Clerks of our Parliament oppose the establishment of a Privileges Committee. Mr Wheeler believes that a kind of Parkinson's Law operates for privileges committees which ensures, once they are established, members have a greater propensity to raise matters of privilege:

> It is a peculiar quirk of fate that most of the Parliaments in Australia which have a Committee of Privilege have had trouble with breaches of privilege: those that do not have those committees have not had trouble. So it seems to me that we would be better to stay as we are with our acceptance of a right of privilege rather than to try and lay the privileges down.

61. Mr Wheeler says that a privileges committee would take on general investigative functions in cases beyond the bounds of privilege and would inevitably be bogged down in trivia. The views of Mr Wheeler should not be discounted: in the time that this Committee's inquiries have taken place, the mere awareness of our existence has tended to heighten sensitivities about Members' rights and potential privilege aspects involved in any invasion of them.

62. The coincidental raising of privilege matters in four Australian Parliaments has added to that awareness. While privilege was once regarded as an arcane subject it is now not so unusual for it to intrude into the staple of Members' conversations. The creation of a specialist privileges committee may have the effect in the short term that Mr Wheeler fears—not necessarily a bad thing if it helps to define the parameters of privilege—though there are strong grounds for believing that in the fullness of time the raising of privilege will find its own level.

63. All the other witnesses, acting on the assumption that the Parliament might choose to assert its privileges, favour the establishment of a privileges committee. (Not for them the practical difficulties of providing resources on a day-to-day basis for the workings of such a committee.) They addressed their minds to the composition of the committee and its internal procedures, two aspects that will reflect whether the operations of such a committee reflect credit upon the Parliament or bring it into disrepute.

64. No witness sought to argue against the establishment of a committee according to the political affiliations of Members. Mr Wheeler hoped that a committee (if established) would reflect in its composition the state of the parties in the Parliament but not operate on a party basis. Justice Kirby recognized that there was no avoiding the political realities of the balance of numbers in the Legislature but expressed his hope that "the statute and the feeling of loyality to the institution of Parliament would override those problems". All important is the attitude of the Members who might serve that committee from time to time: they should perceive their roles as servants of the Parliament rather than party interests or the executive government of the day. No statute or resolutions of the Houses can compel that attitude upon any Member but your Committee believes those expressions serve as a sound guiding principle for those who might undertake membership of a privileges committee.

65. The critical question that faces the Parliament is whether, if it decides to establish a privileges committee, it should compel that committee to adopt the rules of natural justice. In the House of Commons and the two Houses of the Commonwealth Parliament there are no rules of natural justice applying in the various privileges committees. Even in the most recent affirmation of the procedures of its Privileges Committee the House of Commons deliberately resolved not to follow the modern principles of natural justice. While the Commonwealth is inquiring into those questions at present, it remains still unbound. As a consequence none of the modern checks and balances that exists in the administration of justice are necessarily present in an inquiry before a privileges committee.

66. In practical terms there is no requirement for an alleged offender to be given notice of any hearing; there is no requirement that he be charged or be given the specifics of the charge against him; there is no requirement that he know the evidence against him; he cannot cross-examine his accusers; there are no guide lines within which the House is constrained to operate in coming to a finding; the accused has no right to legal counsel; there is no right to silence and no right of a witness to refuse to answer questions which might be incriminating both before the Committee in possible proceedings in other jurisdictions; the Chamber trying him can act inquisitorially or aggressively.

67. Against these compelling arguments one should consider the force of the argument usually offered in defence of the existing situation: Parliaments do not operate in a vacuum and its members are aware of the public consequences and political ramifications of their actions. No Parliament and no Member of Parliament can afford to be seen to be acting without fairness. If a House of Parliament is to visit an offender with the most serious of penalties, or even if it is to be an admonition, it is unlikely in practice that the privileges committee will act in blatant disregard of the evidence or the rights of the alleged offender. Short of giving him legal counsel, it is the practice of privileges committees in Australia to give the alleged offender every opportunity to answer a specific charge against him and make a finding that is defensible in terms of public reaction. The proof of the care with which these matters are approached is found in the open-and-shut nature of the few privileges matters that have been dealt with in recent times.

68. Quite apart from the fundamental questions of natural justice, your committee believes that, if the Parliament should decide to establish a privileges committee, it should provide that committee with expert assistance from within the parliamentary establishment. The committee should have its own charter and written guidelines on its procedures. The preparation of the report on any inquiry should be given precedence over any any other work that the Legislature might have and the presentation of that report to the Parliament should enjoy precedence over all other business.

VI. PUNISHING CONTEMPT: WHO SHOULD ADJUDICATE?

69. Another area of fundamental conflict is whether invesigations into alleged breaches of privilege and subsequent punishment should be discharged by the Parliament or by the courts. It is a question about which experienced people hold strong views and in which the different perspectives of what is involved in parliamentary democracy are brought into graphic relief. Again, the two Clerks believe that the prosecution and adjudication should remain with the Houses. Mr Wheeler believes that the House should wear any odium arising from a decision that it takes. They are not alone in their views.

70. Justice Kirby perhaps best expressed the case in favour of leaving these powers with the Parliament when he conceded that the notion of using the courts was undoubtedly gaining in popularity:

> But I must confess that it perhaps is my philosophy as a democrat rather than as a judge or law reformer that the High Court of Parliament is the supreme tribunal of a State and that it is for each Parliament to get its own system organized to provide redress without access to the courts.

71. Later his Honour observed with equal force why he was opposed to handing over the problems occasioned by privilege to the courts:

> That is undesirable in constitutional theory, for it means that the courts become the guardians of the housekeeping of Parliament. That would be embarrassing to the courts and diminish all the authority, integrity and independence of the Parliament.

72. The Solicitor-General raised fundamental doubts about the wisdom of giving this power to the courts because of its consequences for the separation of powers between the Legislature and the Judiciary:

> It is inconsistent and inappropriate and it would be unfortunate to have the judiciary determining how Parliament should behave or what are the limits of its powers in this area.

73. The House of Commons Select Committee on Privilege faced this question squarely in its inquiry of 1966–67. The select committee summarized the six basic grounds that are offered in criticism of the House exercising a penal power:

(i) Members are too sensitive to criticism and invoke too readily the penal jurisdiction of the House; they do so not merely in respect of matters which are too trivial to be worthy of that jurisdiction, but also on occasions when other remedies (e.g., in the courts or by way of complaint to the Press Council) are available to them as citizens;

(ii) the procedure for invoking the penal jurisdiction encourages its use for the purposes of publicity, is inequitable to persons whose conduct is under scrutiny and fails to accord with the ordinary principles of natural justice;

(iii) the scope of Parliament's penal jurisdiction is too wide, too uncertain and too dependent upon precedent; the Press and the public are wrongly inhibited from legitimate criticism of Parliamentary institutions and of Members' conduct by fear that the penal jurisdiction may be invoked against them;

(iv) there is too great uncertainty about the defences which may legitimately be raised by those who are subjected to the penal jurisdiction; in particular it is a matter of doubt whether a person who has made truthful criticisms should be allowed to testify to their truth; this should be an undoubted right;

(v) it is contrary to principle that Parliament should be "both prosecutor and judge"; its penal powers should be transferred to some other tribunal;

(vi) the rules which govern the reporting of debates in the House and Standing Committees are obsolete and disregarded; those which govern the reporting of proceedings in Select Committees are obsolete, anomalous, uncertain and contrary to the public interest.

74. The members of the Commons committee practising politicians all, looked at what was happening rather than at potential dangers on the far shores of politics. Apart from the ever present dangers of Members trivializing privilege and using it as a device for publicity, the track record of the Commons in making sober decisions on matters referred to its Privileges Committee speaks for itself. Sir Barnett Cocks, a former Clerk of the House, observed:

> As a matter of interest, the punishments administered by the House in this century have been far sharper on its own members than on strangers. In the whole of this century two strangers only have been admonished at the Bar by the Speaker, two newspaper editors: and no fine has been imposed because the House of Commons has not the power to impose fines. There has been no imprisonment except overnight in the custody of the Serjeant-at-Arms since 1880. So that the House has been a very lenient judge in its own cause.

75. Notwithstanding the criticisms of the House's penal power and whatever the claims about public opinion, the Select Committee recommended to the Commons that it preserve its penal power intact. The Committee brought down five rules for the guidance of the House in dealing with complaints of contemptuous conduct. They were:

(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 subparagraph (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.

(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.

76. In Australia in those Parliaments where there is no doubt about the right to exercise a penal power, the use has again been sparing. In the hundred years since 1882 Professor Campbell has discovered only ten cases where a House of an Australian Parliament has punished a person held in contempt by placing them in custody. The more usual practice has been for the Parliament to make its findings and then issue a reprimand, admonition, demand an apology or carry a resolution that "the Parliament would best consult its own dignity by taking no further action in the matter". A request for an apology has never been refused and, in the great majority of cases, is likely to be offered before being asked.

77. Professor Campbell has argued in her work, *Parliamentary Privilege in Australia,* that the Parliaments should, if not persuaded to forego their powers of punishment, compile a list of offences considered punishable. Precisely delineating the offences is the path adopted in Queensland, Tasmania and Western Australia.

78. In her evidence to the Committee, Professor Campbell offered a possible compromise: the Committee of Privileges of the House could investigate a complaint to determine if a prima facie case of breach of privilege does exist. The Committee would then recommend to the House and the House as a whole would decide on prosecution. The Professor suggests that a special prosecutor from the executive government, a person responsible to the House, would take charge of the prosecution in the ordinary courts. The Professor has no objection to the House ultimately deciding on the sentence or penalty (if any) once the guilt has been established by the court.

79. Professor Sawer has studied the historical reasons for the contempt power and accepts that it was necessary in its time but that time is now in the past. (The Professor is also opposed to the courts dealing with contempt of court, preferring to leave that to another independent tribunal.) Professor Sawer does not believe that forsaking this power in any way infringes upon a Parliament's sovereignty because the Parliament's proper function is to legislate so as to make proposed rules of law. Its sole role in punishment is to declare that a particular course of conduct will without reference to any specific person constitute an offence; it should not in this day be employing the codes of the criminal law to prescribe penalties for individuals.

80. The Legislative Assembly of the Northern Territory is the only Australian Parliament to have forsaken by statute its power to punish for contempt. The Legislative Assembly (Powers and Privileges) Act, 1977, transfers the entire adjudicative function to the courts. The man who drafted this Act, Mr R. J. Withnall, was the Crown Law Officer of the Territory and served as a member ex officio of the Legislative Council from 1954 to 1966. He was an elected member until 1977. Today he is the chairman of the Planning Authority. In evidence before the Committee—amongst the most impressive the Committee received—Mr Withnall was definite in his views:

> Parliament is sovereign, but it does not need the power of punishment as an expression of its sovereignty. A modern Parliament exhibits its sovereignty through its legislative functions, its Acts . . . I see no reason why in a place like Australia these days we should import that sort of power merely because the Commons had it. The Commons have whittled down the function of the Parliament as a court.

81. Earlier, another emerging legislature, the House of Assembly in Papua-New Guinea, brought down a parliamentary ordinance in 1964 that limited the penal powers of the House to conducting a preliminary investigation. Depending upon its finding, the House would authorize its Speaker to order the commencement of a prosecution in the District Court.

82. A decision on whether to recommend the power of punishment is a vexed one for the Committee. Even its connotation requires the disposal of other equally basic questions about the assertion of parliamentary privilege in New South Wales in the 1980's.

VII. SHOULD THERE BE ANY LIMITATIONS ON FREE SPEECH?

83. The proposition is put in the form of a question because of a prevailing belief that Members of Parliament can say what they like within the four walls of the Chamber with absolute impunity. This is not the case and it has *not ever* been the case. All Members are ultimately subject to the authority of the House of which they are a Member. It is one of the undoubted privileges of a House of Parliament to act to protect its own standing.

84. Professor Campbell in her essay "Expulsion of Members of Parliament" has written: "if other Members either ignore what has occurred or failed to apply sanctions, they may be taken to have condoned the misconduct. The protection of the institution's reputation may therefore require the strongest censure and unequivocal demonstration that the majority of Members regard the delinquent member as a person who is not conducting himself as legislators should."

85. Undoubtedly, there is an intrinsic conflict between the right of a Member speaking with absolute freedom in the House and the right of the House to uphold its own reputation and dignity. What is misunderstood about the rights of an individual Member and his privilege of freedom of speech is that the privilege exists so that he is not answerable to any external authority or proceedings at law. It is quite another matter to assert that a Member is immune from the ultimate authority of the House.

86. Under the standing orders of the New South Wales Parliament the Speaker can intervene at any point in a Member's speech and draw attention to unparliamentary language. The standing orders enable all Members to object to the terms of any speech and there is always that intangible inhibition best described as the "Sense of the House". The House may exercise severe disciplinary powers to censure or reprimand a Member, suspend him from one or more days of sitting and, if the offence is grave enough, expel an offender from his membership of Parliament.

87. None of these restrictions is employed lightly or, indeed, very often. In one hundred and twenty-seven years the New South Wales Legislative Assembly has debated four censure motions against Members who are not Ministers of the Crown. One motion lapsed, one motion was adjourned and two have been passed. One passed was earlier this year.

88. The test for the House to apply is whether there has been a pattern of wilful misconduct in which a Member has no regard to the veracity of his statements or the damage done by what he has said. The Clerk of the Assembly, Mr Wheeler, believed that only a few Members in his many years of service have so persistently transgressed the accepted forms that the House might have been motivated to act. As he told the Committee: "If a Member habitually carries on this sort of conduct, there is a redress in the hands of the House".

89. The responsibilities for exercising any sanction must reside with the House alone. It will do so in a collective capacity well cognizant of the public perception of the action it is contemplating. Your Committee has not discovered any support for the proposition that a Member should be liable for what he says to any external authority. Unless privilege can be abused, it is not privilege. Unless privilege can be wantonly and flagrantly breached, it is not privilege. The only authority to which a Member who abuses or breaches that privilege is answerable is the House itself.

90. The classic dictum for the rights of Members to abuse their privileges remains that of the Chief Justice of New South Wales in the case of *Gipps* v. *McElhone* of 1881 when his Honour said:

> Doubtless there may be members of strong energy, easy credulity, and impulsive temperament who, in discussing a question of public interest, may injure an individual by reckless and injudicious statements. But it is of greater importance to the community that its legislators should not speak in fear of actions for defamation. It is most important there should be perfect liberty of speech in Parliament, even though it may sometimes degenerate into licence.

91. The real damage occasioned by a speech in Parliament is its effects beyond the audience listening in the Chamber and the gallery. The media have a right and duty to report all aspects of the proceedings of Parliament considered in the public interest. The media enjoy a qualified privilege in their reporting of proceedings, as long as it is a "fair and accurate account of proceedings". The criteria of qualified privilege has its own safeguards because a fair and accurate account will demand that the media give commensurate space or time to subsequent speeches answering claims made by one Member and the ordinary ethics of journalism will require the reporter to check the other side of the case with the citizen or institution damaged by allegations in the House.

92. The Australian Law Reform Commission calls for the citizen to be granted a right of reply. Other well motivated people have made a similar claim. Your Committee is not, however, convinced at this stage that a right of reply should be instituted and have grave doubts about the practicality of allowing a person calumniated in the House to occupy the time of the House in the course of reply. A far more practical mechanism for ensuring the citizen's reply is heard has been provided by Mr J. R. Odgers, the former Clerk of the Commonwealth Senate. Mr Odgers has set out step by step the lengths to which an aggrieved citizen can go if he is determined that a House of Parliament should hear his side of the case. It is set out in full because your Committee can see no practical objection to any aspect of it:

> A difficult question is what to do about the abuse of the privilege of freedom of speech. I refer to the vilification of a citizen by a member of Parliament on the floor of Parliament. While a strong supporter of the principle of freedom of speech, I have never come to terms with the practice which allows a member of Parliament to say whatever he likes about a citizen but cannot make personal reflections on a fellow member of Parliament (excepting substantive motions). And that position is all the more odd when it is remembered that a fellow member of Parliament has the opportunity of reply and rebuttal—but not so the citizen.

So a member of Parliament has protection against offensive words, personal reflections, etc., but not so the citizen. Is that altogether true? I do not think it is. I suggest that the procedures of Parliament already provide avenues for a maligned citizen to defend himself or herself. Let me explain that statement. Suppose, for example, that I considered myself unjustly attacked by a member of Parliament on the floor of the House. If I wished to reply, how would I go about it? First, I could see or write to the member who made the accusation, state my case, and ask for a withdrawal or correction on the floor of the House. But what if the member refuses so to do? The next step would be to approach another member of Parliament and ask that member to raise the matter in the House and present my case.

But, you may say, perhaps no member might take up my case, for whatever reason. So what would be the next step? I would prepare a petition to the House concerned, signed by myself and perhaps by others, stating the facts and praying the House to have my petition read and, if the circumstances warranted, praying that my petition be referred to the Privileges Committee for consideration, inquiry and report, at which inquiry I would pray to be called as a witness.

I might even suggest to the member presenting my petition that he not only move for the petition to be read and referred to the Privileges Committee but also move that the petition be printed. I well know that one needs the numbers for motions, but not for the presentation of a petition (in the Senate).

So what I am saying is that the procedures of Parliament already provide opportunities for the citizen to reply to charges made by a member of Parliament under privilege, and to seek redress, but perhaps such procedures are not generally known. If the procedures were once used and became known, I suggest that it may prove salutary with respect to any abuse of the principle of freedom of speech.

But suppose no member would present my humble petition and therefore the further action suggested could not follow. What then? In that case I would write to the Presiding Officer setting out the facts and asking the Presiding Officer setting out the facts and asking the Presiding Officer, as the guardian of the privileges of the House, to either present my petition or make a statement to the House.

If the latter course failed, I would release all the documents to the press and seek their help to assist a citizen in the presentation and redress of my grievance, pointing out that, although it is the privilege of any individual to petition Parliament to obtain redress of grievances, Parliament had denied me that historic privilege.

I like to think that my scenario would bring about second thought in the mind of a member contemplating any unfair charge against a citizen under the cloak of Parliamentary privilege.

Along the way, too, there could be an appeal to the Human Rights Commission.

So the citizen does enjoy some privileges; and it must never be forgotten that a member of Parliament is always subject to the discipline of his House for things said under Parliamentary privilege, even to censure or expulsion.

93. Members who find themselves in Opposition from time to time have, understandably, a different attitude towards any restriction on their freedom of speech to those Members who from time to time find themselves in Government. As an indication that concern and abuse of privilege is not restricted to any political outlook, the considered views of the federal Leader of the National Party, Rt Hon. J. D. Anthony, addressed themselves, again in practical terms, to how a Member who has made grave allegations might be held to account for the substance of those allegations. Mr Anthony asked, not without justification, for the application of at least four criteria which might enable the House to consider with whatever objectivity is available in the circumstances whether the allegations reflect any credit on the person making them.

94. Mr Anthony asks for the House to consider whether it is the honest and reasonable belief of the accuser that his allegation is true; secondly, whether all reasonable investigations have taken place before the accuser makes his allegations; thirdly, whether there is an honest and reasonable belief that the allegations made were made in the public interest; and, fourthly, whether the manner of communication chosen was one reasonably appropriate to the nature of the public interest involved.

95. There is no Parliament in Australia that does not have its proceedings subject to a partisan outlook and the political interests of its members. On many occasions—a great many more occasions than members of the public or the media are prepared to concede—a sense of the common good does prevail and Houses can make decisions in concord. Whether the resolution of continual and flagrant breaches of privileges can be undertaken by a privileges committee goes to the heart of the sort of committee that the House in its wisdom might choose to establish.

VIII. DEFAMATION, HANSARD AND THE PUBLICATION OF SPEECHES

96. Perhaps no area of the Committee's inquiry has been more vexed than the wish of Members to have their speeches published and distributed far and wide. The concern is shared by the media who need to rely upon the certainty of Hansard as a record that is both accurate and legitimate—that is, enjoying immunity from defamation proceedings. It is the one aspect of privilege that a Member who takes his legislative function seriously will ultimately encounter, often in circumstances quite surprising to him, because of the rigidity of the New South Wales Defamation Act and the narrow scope of absolute privilege under the terms of that Act. All persons concerned with the proceedings of Parliament believe that the legislature should act to put the legal position beyond doubt. The concern is universal: Members who make speeches want to disseminate them far and wide while those allegedly defamed in that speech have an interest in restricting that circulation. The Hansard reporters who transcribe that speech and the staff of the Government Printing Office are not certain of their liability for any involvement they might have in the publication of an alleged defamation. The members of the working media and their editors want to be able to rely upon the proof that their report is based on a fair and accurate account of words stated in Parliament.

97. Your Committee intends to bring down a detailed discussion paper on this question and invites the views of all Members and other interested parties on the principles involved. Your Committee does not believe that there is an advantage at this time is setting out a century of statute and case law involving the publication of the proceedings of Parliament and the very clear distinction that exists between the comprehensive record of *Parliamentary Debates* (Hansard) and the extract of any Member's speech from that *Hansard*—even if the speech should be reproduced in full verbatim.

98. In summary, section 17 (2) of the Defamation Act states that:

> There is a defence of absolute privilege for the publication by the Government Printer of the debates and proceedings of either House or both Houses of Parliament.

99. It is the advice of the senior Crown law officers that the defence is available only for publication of the whole of the debate and not any part of it. Another section of the Defamation Act—section 25—deals with the publication of official and public documents and records providing a defence for the publication of such document where it is:

> a fair extract or fair abstract from, or fair summary of, any such document or record.

100. The Attorney General of New South Wales, the Hon. D. P. Landa, M.L.C., has written to the chairman of your Committee on this matter to advise:

> There is, of course, a provision in section 25 of the Defamation Act which provides a defence for the publication of a fair extract or fair abstract from or fair summary of any document or record of the debates and proceedings of the House. However, senior counsel has advised that to come within this protection it would not necessarily be enough to publish a verbatim account of a Member's speech. If, for example, in the very next speech in the House much or some of what was said by a Member was refuted, reproduction of the first mentioned Member's speech alone would not be a "fair" extract of the debates of proceedings. The conclusion of the former Attorney General, and indeed senior counsel, with which I concur, is that under the present state of the law it could not be said that the privileges of Parliament would extend to a publication of an extract of a Member's speech. . .

101. Subsequently, the Committee authorized the chairman to write to the Clerk of the Legislative Assembly concerning the understanding of the Parliament about the present law. The Committee carried this resolution after many expressions of concern to its Members from other Members of Parliament who had received rejections from the Government Printer to their request for the reprinting of their speeches. Mr Wheeler wrote:

> Advisings have been received from the Crown Solicitor and also senior counsel concerning the possible liability and defamation of the Government Printer and the Editor of Debates when supplying reprints of Members' speeches from Hansard. The advices were to the effect that the Printer and the Editor are at risk to some extent as joint publishers, if any material distributed by a Member was held to be defamatory in content. Similar principles would seem to apply so far as the photocopying of speeches is concerned. Advice received by at least one other Australian Parliament is to the effect that reprints of Members' speeches attract only qualified privilege and, in providing them to Members, the Government Printer and the Editor are at risk for defamation.

102. The Crown Law authorities are relying upon fairly ancient British precedent going back to *Abingdon's Case* in 1795 which decided that privilege does not protect a Member publishing his own speech apart from the rest of the debate. *Erskine May* has also indicated that there may be liability for defamation:

> Although the privilege of freedom of speech protects what is said in debate in either House, this privilege does not protect the publication of debate outside Parliament . . . A Member who publishes his speech made in either House separately from the rest of the debate is responsible for any libellous matter it may contain under common law rules as to the defamation of character . . . If a Member publishes his speech, his printed statement becomes a separate publication, unconnected with any proceedings in Parliament.

103. Witnesses before the Committee might have had their differences about what Parliament should do to resolve the situation but they were united that new legislation should be introduced to put the situation beyond any doubt. It does appear curious to your Committee that Members might be at risk for disseminating the complete text of the speech that they made in Parliament and should be in some jeopardy while a newspaper that gives a comprehensive report of that speech or reproduces it verbatim will enjoy a strong defence of qualified privilege. Your Committee does not believe that there should be any distinction in law based on the mechanical processes of reproduction: that is, it should be immaterial whether the speech is a photocopy reproduction of Hansard, a galley pull from the typeset proofs, a booklet that transcribes the Member's entire speech verbatim or a newspaper report of some of all of that speech.

104. Members of Parliament do have very different and equally valid outlooks on the conflicts involved. The chairman of the Committee wrote to all Members of both Houses and asked for Members to express their views on the current restrictions on the reproduction of speeches by the Government Printer.

105. Two respected Members—one from each House—wrote in reply and set out most adequately the broad terms of the arguments for both sides of the case. Arguing very strongly for an unrestricted right of reproduction was Mr John Akister, M.P., Member for Monaro, who informed the Committee that:

> I would like to state firstly my strong opinion that the Hansard copy of any member's speech should be able to be published without fear or favour. It seems to me a fundamental principle that having acknowledged the right of a member of Parliament on the floor of the House to speak on any matter and to do so without fear of litigation, then it follows that what the member has said should be available to the general public by way of publication or quotation. To deny the member the right to reproduce his speech or statement is to curtail his privilege to speak fearlessly and freely on behalf of his constituents or the citizens of New South Wales. A member's speech as recorded in Hansard is often the only record of what was said in Parliament and that official record should be as freely available to the public as access to the public galleries of the Parliament.
>
> The people of New South Wales are entitled to know what members of Parliament are talking about in Parliament. That is why we provide public galleries which are open to any member of the public when the Parliament is sitting. For practical reasons only a minute proportion of the public can ever be in the House during a member's speech. It therefore follows that if there is any curtailment on the reproduction of the official records of what a member has said in Parliament, then that must be seen as firstly a reduction of the member's right to inform his constituents of any matter, and secondly denies the vast majority of New South Wales men and women their right to hear the proceedings of the Parliament.

106. The contrary view is put by the Hon. R. D. Dyer, M.L.C., who wrote that:

> While the right of a Member to speak freely in Parliament is a privilege that should always be maintained in a democratic society, I am, by no means, certain that the present legal position in regard to the reprinting or photocopying of Members' speeches is necessarily undesirable. The making of an otherwise defamatory statement concerning a person, while speaking in a parliamentary debate or in asking a question of a Minister, can be justified in terms of giving a matter of public controversy a good airing or seeking Government or administrative action to redress the matter.
>
> However, the propagation of that defamatory statement by the distribution outside Parliament of multiple copies of the Member's speech raises other issues. If copies so distributed outside Parliament were to be given absolute privilege by legislation, it is conceivable that a Member might make a speech within Parliament *for the specific purpose* of obtaining the right to distribute the otherwise defamatory material to persons associated with the person defamed, thereby destroying his professional, business or personal reputation. If absolute privilege attached to the reprinted or copied speech, such a person would be in the unjust position of having no legal redress against the Member.
>
> I trust that I have made the point clearly that different policy considerations apply to the actual making of a speech in Parliament and the distribution of copies of it outside Parliament. It is my view that the Committee should be very wary of giving the benefit of absolute privilege to photocopies or reprints of Members' speeches, because of the threat posed to the personal rights of citizens by the possible malevolent use of such a privilege.

Your Committee again invites the considered views of Members on whether it is both feasible and desirable for the Parliament to enact legislation that will put the reproduction of Members' speeches beyond doubt.

VIII. PARLIAMENT HOUSE AND ITS PRECINCTS

107. The meeting place of Parliament and the surrounding buildings and grounds that accommodate and service Members occupy a special status within the law. They are a place apart wherein ordinary jurisdiction of civil and military authorities does not extend, except in the express permission of the presiding officers of the Houses themselves. The right of Members of Parliament to go about their business within the precincts of a Parliament is a basic privilege and one of the most ancient. Within the precincts a Member cannot be arrested or have a summons served upon him. No person has the right of access to the Houses of Parliament except as the Parliament itself might determine.

108. These ancient privileges derive from the privileges that attach to the Palace of Westminster in London. On the banks of the Thames the present Houses of Parliament meet on a site that was once the Royal Palace of Edward the Confessor. Just as Westminster became the usual residence of the King, the Palace became the habitual meeting place of Parliament. Records exist from at least 1341 indicating that the Lords and Commons met in a chamber within the Palace. In the subsequent centuries of constitutional conflict, the Commons was able to assert its independence and, ultimately, its sovereignty to deny the King and his officers access to their chamber and surrounding precincts. The Commons became a sanctuary within the law and its chamber became a place where all Members could speak fearlessly in the knowledge that they were not accountable to any external authority for their utterances. It is curious to note, however, that these precincts in which the writ of the Crown was expressly denied remained a royal palace until 1965.

109. Parliament House and its precincts in the State of New South Wales enjoy the same privileges as the Palace of Westminster. Although Parliament is a public building in virtually every sense of the word and access to it is both permitted and encouraged, the rights of the Presiding Officers and the constituent Houses to assert their control over all parts of the precincts are not in doubt.

110. Your Committee has sought to provide an exact definition of the precincts and the various legal titles under which it is held and, with that determined, considered the merits of a specific statute dealing with the Parliament House of New South Wales. We have now walked the metes and bounds of every Parliament House in Australia (except Canberra) and studied the various legal and statutory instruments of which those other Parliaments have protected their precincts. In view of the unheralded alienation of part of our precincts to the State Library of New South Wales—an alienation executed without reference to either House of Parliament—the time is now pertinent for our Parliament to give detailed consideration as to whether it should now legislate to define its precincts and place authority over them beyond any doubt.

The Practice in the other Australian States

Tasmania

111. The Parliament of Tasmania has asserted its control over its own precincts through an Act of Parliament and accompanying Statutory Rules. The Parliament House Act, 1962, is a model of modern drafting that requires only nine sections for the Parliament to indicate that it controls Parliament House and in whom that day-to-day control is vested. As an example of modern and clear drafting, section 2, setting out the legal position of Parliament House and what it comprises is set out below:

> 2—(1) Parliament House at Hobart and its grounds are domain lands of the Crown set apart for the use of the Parliament of Tasmania.
>
> (2) The grounds of Parliament House comprise—
>
> (a) the drive, lawns, and gardens in front of Parliament House;
>
> (b) the yard at the northern end of Parliament House;
>
> (c) the yards and outbuildings at the back of Parliament House, but not any part of the land formerly occupied by or in connection with the house and shop known as number 6, Murray Street, and now demolished; and
>
> (d) the lane between Parliament House and Salamanca Place as far as the prolongation to Salamanca Place of the western boundary of the yard behind the southern end of Parliament House.

112. Other provisions dealing with the drive, lane and yards in the grounds of Parliament House were enacted because motorists used the laneway as a short cut and mini speedway. The control of the grounds is vested in a House Committee that is itself created by the Standing Orders of the Houses of Parliament. Although the grounds in front of Parliament House are extensive, they in fact serve as a public reserve to which no one is denied access. There is a low stone wall on the perimeter, a few statues and well cared for gardens. Demonstrations do take place there without any objections from the Parliament, although the House Committee could, under the Act, deny anyone the use of the reserve.

Victoria

113. The Parliament of Victoria relies upon the assumed powers of the House of Commons to maintain order and decorum within its precincts. The Victorian Parliament has the advantage that its Parliamentary Reserve has been defined by a 1970 amendment to the Road Traffic Act. That amendment describes the reserve as "Crown land in the city of Melbourne (being land within the boundaries of which the buildings of Parliament House are situated)". The House Committee of the Parliament may appoint an officer to institute prosecutions for parking offences under the Principal Act.

114. The precincts of the Victorian Parliament are undoubtedly the most pleasant in Australia. Your Committee was able to wander at their leisure through the five acres of gardens and lawns—and observe in the late afternoon sunshine the children of attendants enjoying some archery practice happily alone and without danger to others, on the edge of a bustling metropolis. The Victorian Parliament is not completed and in its present state reflects all the aspirations of the era known as "Marvellous Melbourne". Behind the facade, however, are grim indications of the fear that gripped the ruling class in the aftermath of the Eureka Stockade: gun lofts, hidden under the roof, provide a panoramic sweep for riflemen; the ornate doors are riot-proof with concealed trapdoors to enable special attention in an enclosed area behind them; a secret passage runs from the basement of the building to an innocent looking picnic shelter in the midst of the grounds. These apparatuses of physical

resistance are fully backed by draconian legislation that remains the law of the State. The Unlawful Assemblies and Processions Act defines a particular area in the immediate vicinity of Parliament House and creates an offence for fifty or more persons to gather there to incite disaffection against any law or proposed law before the Parliament. This Act authorizes a police officer, in the event of an unlawful assembly refusing to disperse, to "kill, injure and maim" any person in that assembly without further inquiry. The law, it should be noted, is not a macabre colonial relic—it was re-enacted in 1958. (The Clerk of the Assembly advised the Committee that, if it had ever been enforced, most Members of the present Government would have been guilty under its provisions.)

South Australia

115. The geographical position of the South Australian Parliament made it a fortress; it is on the corner of two major streets and adjoins the Constitutional Museum and the Festival Theatre complex. Alone in the Parliaments it enjoys no grounds or reserves. No legislation exists to define the parliamentary precincts. The front steps of Parliament are part of the precincts—an Opinion in 1969 by the Crown Solicitor advised that the steps were regarded by the Parliament and the Police as providing sanctuary: the police must be invited by the presiding officers to act on the steps. The precincts of the Parliament extend to an inalienable part of the Festival Theatre Car Park. The area in question involved certain underground marked spaces immediately adjoining the basement areas of Parliament House. The Parliament gained inalienable rights to that area because that section of the Festival Theatre had abutted part of the precincts and was ceded to the Festival Theatre for car parking purposes. This section of the car park is connected to Parliament House by a tunnel which members may enter with a security key.

116. The Constitutional Museum, the original Parliament House itself, was also part of the parliamentary precincts. Today it serves as a superb example of restoration in which the development of South Australia from colonial times to a representative democracy is the subject of changing displays and exhibitions. The title to the Festival Theatre car park and the Constitutional Museum is vested in the Minister for Public Works. The title to Parliament House itself is vested in the Minister for Public Works, also.

117. The steps at the front of the building provide a wide area for demonstrators to assemble and for their speakers to address the gathering. With the exception of the uranium demonstration in 1982, the demonstrators have been co-operative in ensuring that access was unimpeded to the building at all times. In the case of the uranium demonstration, an inspector of police was required to come to the steps and supervise the establishment of a passageway for people wishing to enter and leave Parliament House.

Western Australia

118. Perhaps the most interesting experiment governing Parliament House, its precincts and the vista beyond is the tripartite committee system employed in the west. In that State three distinct committees with overlapping personnel protect Parliament House.

119. The first is the Joint House Committee which, as its name implies, undertakes the usual activities of supervizing the maintenance of the building and precincts of Parliament House.

120. The Parliamentary Reserve surrounding Parliament House is defined as a reserve under the Western Australian Parks and Reserves Act; under section 3 of that Act boards have been established to administer the various reserves in the State. The board administering the Parliamentary Reserve is prescribed by schedule to the Act to be the members of the Joint House Committee. The members of the Joint House Committee were gazetted as members of the Board and any changes in personnel are similarly gazetted. The Committee and the Board meet separately but, on occasions, sequentially. Notices for each meeting are distinct as are the minutes. Demonstrators use the ground in front of Parliament House (that is, the area between the House and the freeway—the present front was once the rear). They require the permission of the Board: permission has been granted always.

121. The third committee, known as the Parliamentary Precincts Committee, is responsible for the vista from Parliament House. This Committee is a sub-committee of the Metropolitan Regional Planning Authority. It consists of various architects, Perth city councillors, planners and two members of Parliament. It has a responsibility to see that the heights of buildings and general appearance of such buildings do not cause offence to the aesthetic sensibilities of people viewing them from Parliament House nor impose upon what should be the pre-eminence of the Parliamentary precincts. Plans submitted for building approval have been altered in order to comply with the wishes of the Parliamentary Precincts Committee.

Queensland

122. The precincts of Parliament House in Queensland are defined by a 1978 Order-in-Council issued under the Lands Act. After a period of new construction and refurbishing of buildings, the precincts now include the original Parliament House, the Parliamentary Annexe and a car park area underneath the south-east freeway. The Order-in-Council sets out in clear language what constitutes the precincts. In addition to the ordinary laws of trespass, anyone committing an offence or disturbance within the grounds of Parliament commits an offence against the Criminal Code. Under the Code the Speaker has the power to take action and can have offenders arrested without warrant. The power vested in the Speaker is vested in the Clerk of the Parliament whenever the Speaker is not present.

The Northern Territory

123. The Legislative Assembly of the Northern Territory meets in squat and unprepossessing buildings beside Darwin Harbour. The Legislative Council, the precursor to the Assembly, first met there in 1955. The old Council had met in the naval headquarters (now the Administrator's office) and then the Supreme Court building (which, confusingly, is now naval headquarters). In the present buildings there are but the Chamber and the adjoining offices plus a number of de-mountable huts. Members use offices in an administrative building next door and gain access to the precincts by walking out of that building through the public entrance and walking along the public footpath.

124. The Legislative Assembly (Powers and Privileges Act), 1977, refers to the precincts in several sections. Section 15 sets out the precincts, while section 17 deals with the removal of persons from the precincts. The precincts themselves are defined in a schedule to the Act. The Northern Territory Criminal Code creates criminal offences for persons who attempt to interfere with the Legislative Assembly by force, deception, threat or intimidation; another section (section 61) creates a criminal offence for persons who intentionally disturb the Legislative Assembly while it is in session or engage in conduct in the immediate view and presence of the Assembly with the intention of interrupting it.

The National Parliament

125. Although the Committee has not yet visited our National Parliament in Canberra, all of the Members have visited it in the past and are generally familiar with its layout. In addition, we have very good guides to its workings in the books on *Practice* by J. R. Odgers, former Clerk of the Senate, and J. A. Pettifer, former Clerk of the House of Representatives.

126. The title to the land on which Parliament House is situated is as curious as any title in any part of the Westminster world. Pettifer has written:

> The land on which Parliament House is erected and the building itself are the property of the Commonwealth. By notification in the *Gazette* in 1927 the Governor-General under the Seat of Government (Administration) Act vested in the Federal Capital Commission all the Commonwealth land in the Australian Capital Territory other than the land as shown in a Schedule attached to the notice. The Schedule sets out the site allotted for Parliament House. Apart from the building area itself, an area on Camp Hill was also reserved for Parliament together with the 2 parliamentary gardens on each side of the House, the boundaries of which were delineated by a hedge. These areas were at no time passed over to the Parliament for its control. No instrument sets out the precise area over which the Executive Government has given Parliament exclusive jurisdiction or the conditions under which that jurisdiction is to be exercised.

127. The precincts of Parliament House, Canberra, have not been defined with any precision. Even without that precision, the Presiding Officers exercise an exclusive jurisdiciton over what the Parliament regards as its precincts. Mr Odgers has written:

> In practice, the Presiding Officers at Canberra have exercised jurisdiction over the actual Parliament House building, the front steps, open verandahs, and the enclosed gardens situated on either side of Parliament House.

128. The perils of failing to define the precincts by a precise legal instrument resulted in the National Parliament suffering the ultimate indignity of having its jurisdiction examined by the ordinary courts. The offence arose out of the quite trivial matter of a parking infringement notice being placed upon a vehicle parked in front of the House. The Supreme Court of the Australian Capital Territory in the case of *Rees* v. *McCay* rejected an argument to the effect that the ordinary law of the land has no application in relation to Parliament House and its precincts.

Your Committee is surprised at the certainty of expression employed by his Honour Mr Justice Fox in dismissing the appeal:

> Reliance was placed on an alleged general proposition to the effect that the ordinary law of the land has no application in relation to Parliament House and its precincts. Parliament, it is said, can manifest an intention that particular laws should apply there, but otherwise it is for Parliament (in the sense of the Houses of Parliament) and for it alone to regulate and govern what is done in Parliament House and its precincts. This is a misconception. Parliament enjoys certain privileges designed to ensure that it can effectively perform its function and there are some aspects of conduct concerning the operation of Parliament into which courts will not inquire . . . Doubtless it can also control the use of the immediate precincts of those buildings, but arrangements about such matters are made in a sensible and practical way, bearing in mind the reasonable requirements of Parliament. The fact is that there is no general abrogation of the ordinary law.

129. It is a matter of some regret that the presiding officers did not authorize an appeal to the High Court itself. That the Parliament had failed to define its precincts by a precise instrument may well be the material factor and, if it had done so, one wonders whether any judge in any court would assert that the ordinary parking ordinances override a standing order or instruction issued under the authority of the House. The English case involving the author, A. P. Herbert, and the application of the liquor laws in the refreshment rooms in the Palace at Westminster indicate that English law is contrary to this doubtful precedent in the A.C.T. In that case the divisional court of the King's Bench Division refused to inquire into the sale of liquor within the precincts of Parliament as no court of law was competent to call into question the legality of such a sale: it was a domestic matter for the Houses of Parliament. The observations of Mr Justice Fox are, in our opinion, untenable.

Definition of the Precincts of the Parliament of New South Wales

130. Many generations of presiding officers in our Parliament have simply assumed ownership and control of the precincts of Parliament House. Mr Speaker Kelly advised the Committee—

> Ownership and control was something successive persons in authority have decided it was better to assume the existence of rather than attempt to prove.

131. The Committee sought the assistance of the present Presiding Officers, Hon. J. R. Johnson, M.L.C. (President of the Legislative Council) and Hon. L. B. Kelly, M.P. (Speaker of the Legislative Assembly), on what they considered to be the parliamentary precincts and the means by which they exercised lawful authority.

132. The chairman wrote a letter setting out a number of questions.

133. (a) *What the precincts are thought to be.*

134. Mr President Johnson offered a straightforward definition of the precincts based on usage and clear assertion of control;

> I consider the precincts of Parliament House to be the area bounded by the front fence facing Macquarie Street, the dividing wall, or line, between the Parliamentary premises and Sydney Hospital, the building alignment fronting Hospital Road, and a dividing line upon which a fence existed—prior to the present building operations being carried out—between Parliament House and the State library.
>
> I know of no legal basis which would support the foregoing but it is highly desirable to me that the parliamentary buildings and the land occupied or used by Members in their parliamentary duties should be regarded within the Parliamentary precincts.

135. (b) *Survey of title.*

136. In the absence of any recent survey in the precincts, the Committee has carried out its own research into the legal history of the various parcels of land that make up our precincts. The Crown Solicitor observed as long ago as 1947:

> The land upon which the parliamentary establishment is situated consists partly of Crown land, which has never been alienated, and partly of lands which have been resumed.

137. The Committee has received the willing co-operation of the Registrar General's office and the Department of Public Works. At present that Department's principal surveyor is working on an updated survey plan which will delineate the perimeters of the various parcels of land and the new parliamentary buildings upon them. A Member of the Committee, Hon. Bryan Vaughan, a practising solicitor, has prepared a description of the parliamentary precincts.

138. (c) *Legal instrument for control.*

139. President Johnson has advised the Committee that the Presiding Officers in New South Wales have assumed that they enjoy an authority similar to the authority exercised by the presiding officers of the United Kingdom Parliament. A detailed advising by the Crown Solicitor (the same Advising as mentioned above in 1947) sets out the law at some length concerning the basis of lawful authority by Mr Speaker. The seminal case of *Kielley* v. *Carson* was quoted by the Crown Solicitor as deciding the authority in common law that the Presiding Officers exercise. Their Lordships in that case observed:

> . . . we feel no doubt that such an assembly has the right of protecting itself from all impediments to the due course of its proceedings.

140. The Crown Solicitor concluded by pointing out that the Speaker was, "in de facto control of certain parts" and that his authority had been exercised "without question".

The Value of a Statutory Definition

141. The Parliament will need to consider whether there is value in asserting its control over the precincts by express enactment. Formal legal alienation has certainly not been necessary for the Parliament to assume constitutional control over its area—and it does not appear to be necessary for that constitutional control to continue. The messiness of title, however, and the uncertainty prior to the completion of the updated survey indicate a need for the removal of all doubt for the future. If the Parliament were to assert its privilege by express enactment, then it would seem reasonable to encompass in that expression a definition of its precincts. A definition may be considered desirable on other grounds, such as the preservation or protection of Parliament House against the depredations of the executive government inclined always—regardless of political colour—to act in its own interests rather than that of the parliamentary establishment.

142. The Commonwealth Parliament is presently considering the question and the Legislature of other States have acted to put their precincts beyond doubt. This State has used statutes to regulate other parcels of significant land. Parliament should not ignore this question indefinitely. There is much merit in vesting control in the two Presiding Officers jointly and/or making the Parliament a corporation for the purpose of owning property and dealing with all matters relevant to that property. Our Parliament may wish to consider the merits of the Western Australian Planning Legislation, or the creation of a parliamentary zone similar to that in the Parliament Act, 1974, enacted by the Commonwealth Parliament which defines a wide sweep from the new Parliament House to the shores of Lake Burley Griffin.

143. The horse may have well and truly bolted in Macquarie Street. The streetscape in the vicinity of Parliament House is dominated by the Westpac building, the Reserve Bank and some very unsympathetic glass and steel constructions. Recent legislation on the Royal Botanic Gardens and Domain provide an encouraging alternative and, indeed, a model form of drafting if the Parliament should seek to establish a board to control its own affairs. It is unlikely that any future Parliament will be able to resist the demands of the executive government without a statute.

Related Matters

144. The Committee has been examining the legal authority under which attendants protect Members of Parliament and maintain order. Related questions are in the presence of police within the precincts and their wearing of sidearms. Many parliaments have or have had annexes not contiguous to the precincts over which their control was in some doubt. Your Committee has looked at the current invasion of our precincts by the extensions to the State Library of New South Wales. We have protested formally to the presiding officers and sought their advice on the means by which permission was granted to the Department of Public Works to construct a new building for the Library without any reference to either House of Parliament.

PART B—REVIEW OF THE DEFINITION AND PROTECTION OF PRIVILEGE IN THE AUSTRALIAN STATES

145. In order to savour how the various Parliaments set about defining and protecting their own privileges, the Committee decided to visit each Parliament House. Your Committee wanted to move beyond documentary research and ask the protectors of privilege how they went about their jobs. Your Committee was able to walk the metes and bounds of the respective precincts, talk to Presiding Officers, Clerks and Hansard Reporters and see how the media is accommodated (in every sense of the word).

146. The Committee travelled to Tasmania, Victoria, South Australia and Western Australia in July, 1983. The magnitude of the task precluded the Committee from completing all its investigations in one trip. In October, the Committee visited the Northern Territory and Queensland. The Committee plans to visit the Australian Capital Territory on 8–9 December.

147. The complex matters of law and precedent required considerable concentration as they were outlined by the local authorities. The Committee was entirely without the benefit of Hansard for the first journey and for most of that time did not have sound recording equipment. The Clerk to the Committee kept detailed notes on every witness: he had to concentrate every moment of every day.

I. TASMANIA

148. The Committee met with the Clerk of the Legislative Council, Mr A. J. Shaw, and the Clerk of the House of Assembly, Mr T. P. McKay. The Clerks drew the attention of the Committee to the Parliamentary Privilege Act 1858 (Tasmania).

149. The Act may be *paraphrased* as follows:

150. *Section* 1—

Each House of Parliament and authorized Committee is empowered to order any person to attend before the House or Committee and to produce papers.

151. *Section* 2—

(1) Any such order to attend or produce documents is to be by summons under the hand of the President, or Speaker or Committee Chairman.

(2) A Member of either House may be ordered to attend before the House or Committee, without summons.

152. *Section* 3—

Each House is empowered to imprison summarily, as it may direct, during the then session or part of it, for any of the following contempts, whether committed by a Member or other person:

(a) disobedience of any order of either House or Committee, to attend or produce records;

(b) refusing to be examined before the House or Committee or to answer any lawful and relevant questions;

(c) assaulting, menacing, obstructing, or insulting any Member in coming to or going from the House, or in the House, or on account of his behaviour in Parliament, or endeavouring to influence the vote of any Member by force, insult, or menace;

(d) the publishing or sending to a Member any insulting or threatening letter on account of his behaviour in Parliament;

(e) the sending of a challenge to fight to a Member, on account of his behaviour in Parliament;

(f) the offering of a bribe to, or attempting to bribe, a Member; and

(g) the creating of, or joining in, any disturbance in the House, or in the immediate vicinity of the House.

153. *Section* 4—

. . . Repealed.

154. *Section* 5—

The President or Speaker is empowered upon resolution by the House to issue his warrant for the apprehension and imprisonment of any person judged by the House to be guilty of any of the above contempts.

155. *Section* 6—

Any Member or other person creating or joining in any disturbance in the House or in its immediate vicinity, during its actual sitting, may be apprehended without warrant on the verbal order of the President or Speaker and may be kept in the custody of the officer of the House.

156. *Section* 7—

Every such warrant shall state that the person mentioned has been judged guilty of the named contempt.

157. *Section* 8—

The Sheriff, his officers and all other persons are required to assist in the apprehension and detention of any person in pursuance of the verbal order of the President or Speaker.

158. *Section* 9—

It shall be lawful for any person charged with or assisting in the execution of any such warrant to break open in the daytime all doors of places where it is reasonably thought that the person sought is concealed.

159. *Section* 10—

It shall not be lawful for the Supreme Court or its judges to inquire by *habeas corpus* or otherwise into any such warrant, provided that the warrant purports that the person mentioned has been judged guilty of any of the contempts. It shall be a conclusive return in all cases to any writ of *habeas corpus* that the person is detained because of the warrant; and, in any action for arrest, trespass, or imprisonment, it shall be a bar that such action took place by virtue of the warrant or verbal order.

160. *Section* 11—

Each House may direct the Attorney-General to prosecute for any offence (committed against either House or any Member) which the Supreme Court recognizes the House of Commons as possessing of directing the Attorney-General of England to prosecute for like offences against the Commons or Member. Every person so convicted by the Court shall be liable to imprisonment for two years, or to a fine of $400 and imprisonment until such fine is paid, or both.

The Parliamentary Privileges Act of 1885 amended the former Act by empowering each House or authorized Committee to have prisoners brought forward to give evidence, by summons of the President or Speaker. Disobedience of the order is liable to be punished summarily, as for contempt, under section 3 of the Principal Act.

161. The Clerks confirmed that Standing Committees upon Privilege exist in both Houses. Mr McKay added that the membership of the Standing Committee upon Privilege of the House of Assembly comprised the Speaker, the Premier, the Deputy Premier, the Leader of the Opposition and the Deputy Leader of the Opposition. The Committee meets only when a case is referred to it. The last meeting took place in 1978. Most cases were resolved with an apology, as the Standing Committee was faced with the pragmatic problem of imposing a penalty which would be acceptable to both Parliament and electorate.

162. It is the practice for the Standing Committee to operate on a non-partisan basis. The few cases considered have merely involved newspaper reports. Mr McKay was of the opinion that a privilege case involving a Member of Parliament would most likely be dealt with on a partisan basis.

163. The role of the Speaker of the House of Assembly in Privilege cases is essentially that of determining whether a prima facie case of Privilege has arisen. The Speaker's decision as to the prima facie case is challengeable—the last dissent motion was moved in 1976. (The motion, which had been moved in the heat of the moment, was later withdrawn).

164. Mr Shaw stated that the Committee on Privileges of the Legislative Council comprised five members, including the President, invariably the Leader of the Government and three other members selected for their seniority and experience. The President is required to establish that a prima facie case of privilege has arisen. The decision is challengeable though no decisions have been challenged. Only one case of privilege has arisen in the Legislative Council in the past eighteen years. It is the practice for privilege cases in the Legislative Council to be dealt with on a non-partisan basis.

165. The Standing Orders of the Legislative Assembly concerning privilege may be summarized as:

> 96. An urgent Motion, directly concerning the privileges of the House, shall take precedence of other Motions and Orders;
>
> 155. An adjourned debate relating to privilege shall stand first on the Notice Paper;
>
> 164. Debate may be interrupted by a matter of privilege suddenly arising;
>
> 177. Any Member may rise to speak . . . upon a matter of Privilege suddenly arising;
>
> 277. With respect to any Bill brought from or returned by the Legislative Council with amendments of a pecuniary nature, the House shall not insists on its privileges when the object of the amendment:
>
> (a) is to secure the execution of the Act, or the punishment or prevention of offences; and
>
> (b) is not in aid of the Public Revenue.
>
> 385. A Committee of Privileges, to consist of five Members, shall be appointed at the commencement of each Parliament to inquire into and report upon complaints of breach of Privilege which may be referred to it by the House.

II. VICTORIA

166. The Committee met with Mr J. H. Campbell, the Clerk of the Legislative Assembly of Victoria. Mr Campbell said that privilege in the Parliament of Victoria was different to that in New South Wales because the Victorian Parliament had legislated for its privilege powers. Mr Campbell said that the privilege powers of the Parliament of Victoria did not exceed those of the House of Commons as at 21 July, 1855, the date of the Victorian Constitution. The Privilege powers of the Victorian Parliament had been upheld by the Privy Council in the case of *Dill* v. *Murphy*.

167. The Privilege powers are now consolidated in section 19 of the Constitution Act, 1975. Section 19 provides, in essence, that the Council and the Assembly and their respective committees and members shall enjoy the privileges exercised by the House of Commons and its committees and members as at 21 July, 1855, so far as they are not inconsistent with any Act of the Victorian Parliament. The powers of the Victorian Parliament as regards Privilege are today virtually identical to those of the House of Commons.

168. Section 19 of the Constitution is the only statute in Victoria concerning Privilege. There is no codification of parliamentary privilege in Victoria: in the Legislative Assembly you must go to the standing orders. The first step is to establish the privileges of the House of Commons in 1855. This was achieved basically by consulting *May* and establishing:

(a) relevant cases in the House of Commons and any resulting resolutions;

(b) Mr Speaker's rulings in Commons;

(c) the various reports of the Privileges Committees of the House of Commons; and

(d) the reaction of the House to those reports.

169. The Legislative Assembly has adopted the evolving viewpoints of the House of Commons and the practice in *May* in order to determine whether complaints come within the existing heads of privilege.

170. The Legislative Assembly adopted the new procedure of the House of Commons concerning the waiving of an alleged breach of privilege in 1978.

171. This process entails:

(a) The aggrieved Member writing a letter to Mr Speaker setting out the complaint and stating the grounds for that complaint;

(b) Mr Speaker examining the complaint (while Mr Speaker is thus engaged the alleged breach cannot be raised in the House or elsewhere);

(c) Mr Speaker deciding only whether the alleged breach should be granted precedence over all other matters.

172. If Mr Speaker is of the opinion that the alleged breach does not warrant precedence, he writes to the Member concerned. The Member can then give notice of a motion concerning privilege. If, however, Mr Speaker believes that the alleged breach warrants precedence, he advises the Member when he can move a motion in the House. The Member accordingly moves the motion, which is usually referred to the Privileges Committee as a matter of course.

173. The procedure has proven to be controversial; two reports of the Privileges Committee have been tabled.

174. There have been no contempt cases under the 1978 procedure, but the following alleged breaches have occurred since the adoption of that procedure:

> Seven complaints were made by private notice to the Speaker—one was accorded precedence. Four of the seven complaints were considered by the House on a substantial motion after rejection by the Speaker. The four cases were resolved to the satisfaction of the House without being put to the vote. No further action was taken in the two other cases, as the members concerned accepted the dismissal by the Speaker.

175. In the ten years prior to 1968–69 there were no Privilege complaints. In the period 1968–69 to 1978–79 (when the former House of Commons procedure was followed) there were sixteen complaints of alleged breach of privilege and one contempt case. The contempt case concerned misbehaviour by a Member of the Legislative Assembly in the Legislative Council gallery. The President wrote about the Member's behaviour to the Speaker who dealt with the matter immediately. The incident was resolved by the Member concerned apologizing.

176. Of the sixteen alleged breaches, six cases were considered to be prima facie; eight cases were not considered to be prima facie; one case was referred to the privileges committee on a substantive motion, without the Chair being involved; and one case was dealt with by the House directly. Thus, of the twenty-one complaints in the period 1968–1983, sixteen were from the period 1968–1978 (which were dealt with under the old House of Commons procedure) and five were from the period 1978–1983.

177. A Standing Committee on Privileges of the Legislative Assembly was first appointed on 14 November, 1974. The motion provided that a select committee be appointed to inquire into and report upon complaints of breach of privilege referred to it by the House. The committee has power to send for persons, papers and records; to hear evidence on oath; to sit on days in which the House does not meet; to move from place to place; and to report the minutes of evidence from time to time. The committee has been appointed each session since. (No comparable standing committee exists in the Legislative Council.)

178. The Standing Committee on Privileges has seven members, with a quorum of four. The Committee consists entirely of private members. The party affiliations are: four A.L.P., two Liberal and one National Party. The Committee has no power of initiation: the House alone may refer matters to it.

179. In Victoria the practice is for Mr Speaker not to be a member of the Committee—it is thought that Mr Speaker would not have time to be a member but, more importantly, that the Speaker—having given an opinion as to whether precedence should be attracted or not—should not then proceed to sit in judgment.

180. There is no convention of non-partisan voting, although votes in the Committee do not reflect party blocs. Division lists show shifts in "allegiances" according to the question before the Chair. The Chairman has given his casting vote on several occasions.

181. Although only one Member has served continuously on the Committee since the new procedures of the House of Commons were adopted by the Assembly in 1978, no problem in lack of continuity has arisen. New Members of the Standing Committee are given a background briefing on Privilege at the beginning of each term of Parliament.

182. The internal operations of the Standing Committee draw their example from the Privileges Committee of the House of Commons. Members of the Standing Committee keep up with developments in the House of Commons Privileges Committee by examining the reports of that Committee. The Standing Committee benefits from studying the workings of the House of Commons Committee.

183. Mr Campbell gave as instances the following contempt cases that had occurred in the Legislative Assembly of Victoria since 1855:

Misconduct by a witness before a committee.
Acceptance of an office of profit by a Member of Parliament.
Imprisonment of a Member of Parliament.
Imputation of improper conduct by a Member of Parliament.
A Member of Parliament procuring the impersonation of voters.
Assault upon a Member of Parliament.
Bribery of a Member of Parliament.
Threatening a Member of Parliament.
Insinuating partiality by the Speaker or Chairman.
Seditious libel; and
Refusing to produce documents.

184. The summoning of witnesses before the Committee is at the absolute discretion of the Committee. No witnesses, however, had been refused leave to appear. Witnesses have been given the opportunity by the Chairman to make a final statement, but no closing addresses are allowed. Witnesses are sent background material, the terms of reference and other relevant documentation.

185. The Standing Committee upon Privilege does not conduct its hearings upon judicial lines: the Chairman has observed that the Committee, having been set up by resolution of the Legislative Assembly, was bound by the Standing Orders of the Assembly, and that where their Standing Orders were inadequate resort was had to Standing Orders of the House of Commons.

186. Witnesses do not have the right to cross-examine other witnesses, nor do they have the right to remain silent. Journalists, for instance, are thought not to have the right to protect sources.

187. The initial evidence before the Committee is the submissions from witnesses. Basically, evidence is sought by interrogation. Witnesses are sent copies of material pertaining to the background to the committee, together with photostats of any relevant documents. Witnesses have access only to public documents: access is not given to the documents of other witnesses.

188. The question of natural justice has not yet arisen before the Committee. Witnesses are not allowed to have legal representation before the Committee. On one occasion a solicitor had been present to give moral support to a witness. He had not been allowed to give notes or advice to the witness. Although the witness drew the attention of the Committee to the fact that the Committee was not following court procedures according to the Evidence Act, the Chairman indicated that the Committee was governed by the resolutions and Standing Orders and Rules of the Legislative Assembly of Victoria and that where those Orders and Rules were not precise, recourse was had to the Rules of the House of Commons. Witnesses are summoned by virtue of resolution to the House appointing the Committee.

189. The Legislative Assembly of Victoria has the power to resolve to adopt a practice at variance with that of the House of Commons; the Assembly could, therefore, resolve to allow a witness the right to be represented.

190. The evidence before the Standing Committee is transcribed, a copy of which is sent to witnesses. Hearings are not taped. The witnesses have the right to correct typographical errors in the transcripts, although the Committee ultimately decides what the witness in fact did say. The Committee, accordingly, can override a witness' objections to the transcript.

Legislative Council of Victoria

191. The Committee was addressed by Mr A. R. B. McDonnell, then Clerk of the Parliaments. A claim of an alleged breach of Privilege is raised in the House. Theoretically, any complaint is raised as soon as it becomes known—in practice it is raised at the time of the first meeting on the next sitting day. The Member first speaks with the Clerk and the President to establish whether there is in fact a breach.

192. The most recent instance of a claim of a breach of Privilege occurred in April, 1983, when the President asked a Member of the Legislative Council to give factual evidence. The complaint did not proceed. Mr McDonnell mentioned, however, that Privileges Committees had existed in the Legislative Council. The last Committee was appointed in 1939 to counter allegations of bribery of Members.

III. SOUTH AUSTRALIA

193. The question of Privilege rarely arises in the House of Assembly of the Parliament of South Australia. There is no Privileges Committee—in fact the issue is almost non-existent. (Since then the reaction of the ASIO Royal Commission to a speech by a Member of the South Australian House of Assembly has concentrated the minds of South Australian legislators on privilege powerfully.) There are no set rules of precedence. The practice has been to deal with each claim on its merits. The prevailing philosophy seems to be that, in the absence of a recognizable framework, Parliamentary Privilege will not arise.

194. The legislation in South Australia dealing with Parliamentary Privilege is contained in sections 9, 38, 39 and 40 of the Constitution Act. The provisions are general in nature and do not represent a detailed code.

195. The original Constitution Act of 1856 authorized the setting up of the bicameral legislature. The new Parliament was given power to define by Act the privileges, immunities and powers of the two Houses and its members, provided that they did not exceed the Privileges, immunities and powers of the House of Commons as at the time of the passing of the Act. (This authority is retained in section 9 under the present Constitution.)

196. In pursuance of this power, the Parliament enacted the Parliamentary Privileges Act of 1858, which set out in detail the privileges of the Parliament.

197. The Parliament was empowered to order the attendance of persons, with the order to attend being notified by summons.

198. Parliament was empowered to order the attendance of Members.

199. Provision was made for objection to answering questions or producing documents to be reported to the House.

200. The legislation empowered both Houses to punish summarily for certain enumerated contempts.

201. Members were liable for disobeying either a summons or an order to attend upon the House.

202. Persons could be arrested without warrant for disturbing the proceedings of the House.

203. Provision was made for either the President or Speaker to issue warrants under the legislation for breaches of the privileges legislation in the relevant House.

204. The legislation enabled sheriffs, constables and other persons to assist in the execution of the warrant or verbal order of either Presiding Officer. Provision similar to the Tasmanian legislation was made in that doors were to be broken open in executing the warrant if necessary.

205. All these detailed provisions were repealed, however, in 1872, as a consequence of the Parliamentary Privilege Act, 1872, as the trend for detailing privilege had been swept away following two cases concerning Parliamentary Privilege in Victoria which had been submitted to the Privy Council for decision. Lord Cairns was of the firm conviction that Parliament's most important privilege is not to define the privileges of Parliament. Lord Cairns was of the further opinion (*Speaker of Victoria Legislative Assembly* v. *Glass*):

> A privilege to commit, which is dependent upon the chance that some other body to whom a narrative shall be given of that which was done before their own eyes, being of the same opinion as you are as to whether it was a contempt or not, is no privilege at all.

206. This principle enunciated by Lord Cairns is recognized in the 1872 Act. These provisions are still extant in sections 38 and 40 of the Constitution Act.

207. Section 38 enacts that the privileges, immunities, and powers of the House of Assembly shall be the same as but no greater than those which on 24th October, 1856, were held, enjoyed and exercised by the House of Commons and by its committees and members, whether such privileges, immunities, or powers were so held, possessed, enjoyed by custom, statute, or otherwise.

208. Section 39 abolishes privilege against legal proceedings. It provides that no Member of the Parliament shall be entitled to set up or claim any of the privileges, immunities, or powers to which he may be entitled by virtue of section 38 as against any summons, subpoena, writ, order, process, or proceeding whatsoever issued by any court of law within the said province: Provided that—

(a) no writ of *capias ad satisfaciendum* (arrest of a debtor after judgment in a civil case for an unpaid debt) shall be executed or put into effect against any such Member during any session of Parliament, or within ten days prior to the meeting thereof; and

(b) no Member shall be liable to any penalty or process for non-attendance as a witness in any court when such non-attendance is occasioned by his attendance in his place in Parliament.

209. Section 40 provides: that any copy of the journals of the House of Commons printed, or purporting to be printed, by the order or printer of the House of Commons shall be received as prima facie evidence, without proof of its being such copy, upon any inquiry touching the privileges, immunities, and powers of the House of Assembly, or any of its committees or Members.

210. The only case law dealing with the privileges of the South Australian Parliament is to be found in the 1880 case of *Wicklein* v. *Ward* and *Swinden* v. *Ward*. The defendant, a Member of the House of Assembly, was arrested on 18th March, 1880, by virtue of two writs of *capias ad satisfaciendum* issued at the instance of the plaintiffs respectively. Parliament had been prorogued until 23rd April, 1880.

211. It was held that a Member of the South Australian Parliament is privileged from arrest for forty days after the prorogation, and for a like period before the re-assembling of Parliament. By this case the Supreme Court confirmed the then privileges of the South Australian Parliament.

212. However, eight years after this case, Parliament made a law (Act No. 430 of 1888) by which privilege against legal proceedings was largely abolished. (This enactment is incorporated in the present Constitution Act, s. 39 *vide supra.*)

213. There is only one instance in the history of the South Australian Legislature of committal for breach of Parliamentary Privilege. On 13th August, 1870, the Hon. John Baker, a Member of the Council, read to the House a very abusive letter which he had received from a Mr McBride. The letter was forthwith, on motion, declared to be a breach of the privileges of Parliament, and although the President read at the next sitting a letter from McBride expressing great regret that he should have committed a breach of the privileges of Parliament, he was at once adjudged guilty of contempt of the Council and committed to gaol for a period of seven days on the warrant of the President.

214. The power to commit, as exercised by the Legislative Council, was not challenged.

215. Provision, of course, has been made under Standing Orders for questions of parliamentary privilege.

216. Standing Order 160 provides that any Member may rise to speak . . . upon a matter of privilege suddenly arising.

217. Standing Order 161 provides that all questions of order and matters of privilege at any time arising shall, until decided, suspend the consideration and decision of every other question.

218. Standing Order 162 provides that any Member complaining to the House of a statement in a newspaper as a breach of privilege shall produce a copy of the paper containing the statement in question and be prepared to give the name of the printer or publisher, and also submit a substantive motion declaring the person in question to have been guilty of contempt.

219. Standing Order 232 provides that an urgent motion, directly concerning the privileges of the House, shall take precedence of other motions, as well as orders of the day.

220. The Speaker of the House of Assembly of South Australia is of the opinion that the datum point of the privilege in South Australia (1856) is so enormously wide that it covers every contingency in Privilege. He is of the consequent opinion that there is no need for the codification of the privileges of the Parliament.

221. The Clerk of the House of Assembly stated that Parliament treats each incident on its merits.

222. Eight recorded cases exist concerning a breach of privilege in approximately 130 years. Several cases were spurious. Most cases were dealt with by way of Speaker's rulings.

223. The practice favoured in the House of Assembly (Standing Orders notwithstanding) is for the Speaker to consider the issue of Privilege overnight. If the Speaker concludes that a prima facie case has been made out, the matter is referred to an *ad hoc* select committee. Such a Committee would not include the Speaker or any Minister among its membership, although the majority of members would be drawn from those members supporting the Government.

224. Most issues of privilege rising in the House of Assembly are "informal"—that is, they are not breaches of the privileges of Parliament or contempts but generally are defamatory remarks. There is possibly one such case per year. The paucity of privilege cases illustrates why there has never been the need for a Standing Committee on Privileges in the House of Assembly.

IV. WESTERN AUSTRALIA

225. The Committee met with Mr Bruce Oakley, Clerk of the Legislative Assembly of Western Australia.

226. Mr Oakley said that Parliamentary Privilege was governed in Western Australia principally by the provisions of section 36 of the Constitution Act. The Parliament of Western Australia enjoyed all the privileges of the House of Commons, but it could not exceed those powers.

227. The Parliamentary Papers Act and the Parliamentary Privileges Act—both enacted in 1891—dealt with Privilege.

228. The provisions of the Criminal Code give general protection to Parliament. The specific provisions are section 44 (sedition), section 54 (Interference with Governor or Ministers), section 55 (Interference with the Legislature), section 56 (Disturbing the Legislature), section 57 (False evidence before Parliament), section 58 (Threatening witness before Parliament), section 59 (Witnesses refusing to attend or give evidence before Parliament or Parliamentary Committee), section 60 (Member of Parliament receiving bribes) and section 61 (Bribery of a Member of Parliament).

229. The Assembly has the power to fine under the Parliamentary Privilege Act, which is a power not claimed by the House of Commons. The High Court has recently held in *Willsmore's case* that the Parliamentary Privileges Act overrides section 36 of the Constitution Act of Western Australia.

230. A much earlier case in the Legislative Assembly (*Drayton's case*) concerned the imposition of a fine imposed under the Parliamentary Privileges Act, 1891, a fine which Drayton refused to pay. The Speaker issued a warrant for the arrest of Drayton. The warrant provided for the incarceration of the miscreant in Fremantle gaol until either the fine was paid or the session concluded. Drayton was apprehended, and was later given a free pardon, with the issue being resolved. It is thought that the bumbling manner in which the case was handled by Drayton's contemporaries led to the denouement.

231. Mr Oakley is of the opinion that a matter of Privilege could be best handled by:

(a) the raising of a substantive motion either on notice or with the Speaker, who in the latter case, would determine whether a prima facie case had arisen;

(b) the subject of the motion would then be referred to the Privileges Committee; and

(c) the Privileges Committee would determine the matter on the principles of natural justice—both parties could, therefore, examine and cross-examine witnesses.

232. The Committee in the situation could recommend:

(a) that no action be taken; or

(b) that some action be taken by the House (e.g., admonition or loss of privilege);

(c) that the House refer the matter to the Attorney General for prosecution, but not if the offence involved a Member of Parliament or was committed within the Parliamentary precincts (unless the offence was a breach of the Criminal Code)—for example, the wearing of firearms in the gallery).

233. Privilege in fact is raised in the Assembly by a Member moving a motion from the floor of the House for the offender to be brought before the Bar of the House. If the motion were successful, another motion would be moved for the punishment of the offender. (Drayton was never before the Bar of the House and no persons have been before the Bar of the House since).

234. No Select Committee on Parliamentary Privilege exists (or has ever existed) in the Assembly. The Standing Orders Committee once recommended certain standing orders to provide for a Privileges Committee but the proposed standing orders were not considered by the House.

235. Mr Oakley believes the House should have a Privileges Committee but jurisdiction over criminal matters should be elsewhere.

Legislative Council

236. The Committee interviewed Mr Laurie Marquet, Clerk of the Legislative Council of Western Australia. Mr Marquet presented the Committee with a detailed exposition on the law of Privilege in the Parliament of Western Australia.

Procedural Aspects

237. Section 17 of the Parliamentary Privileges Act defines Privilege in the Western Australian context. A Privilege case has never arisen in the Legislative Council in Western Australia. There was no reference in the Standing Orders to a Privileges Committee.

238. A Member of the Legislative Council would raise privilege on the floor of the House without warning. The trial is held at the Bar of the House. No referral of the matter is made to the President at any stage. The exercise of penal jurisdiction by the House is not an exercise of judicial power. It is a non-legislative function. primarily inquisitorial and fact finding in nature.

V. QUEENSLAND

239. The Parliament of Queensland is a uni-cameral legislature. The Legislative Council was abolished in 1922.

240. The standing orders do not fully cover matters of privilege.

241. Standing Order No. 46 provides that an urgent motion, directly concerning the privileges of the House, shall take precedence of other Motions as well as of Orders of the Day.

242. Standing Order 115 provides that a Member may rise to speak to order, or upon a matter of privilege suddenly arising.

243. Standing Order 333 provides that in all cases not specially provided for by the standing rules and orders, or by sessional or other orders, resort shall be had to the rules, forms and usages of the House of Commons for the time being, which shall be followed and observed so far as they can apply to the proceedings of the House.

244. The practice of the Parliament of Queensland concerning matters of privilege is in theory dependent upon the practice of the House of Commons.

Legislative Provisions

245. Legislative provisions also cover privilege in the Queensland Parliament.

246. These are principally certain sections of the criminal code which may be *paraphrased* as follows:

(a) Section 371, absolute protection—*Privilege of Parliament* (Speeches by Members in Parliament: publication of petitions presented to Parliament; publication by order of Parliament of a paper containing defamatory matter);

(b) Section 374, *Protection*: *reports of matters of public interest* (the publication in good faith for the information of the public of an enumerated list of documents);

(c) Section 377, *qualified protection*: *excuse* (lawful excuse with the enumerated publication of defamatory matter made in good faith).

247. The Constitution Amendment Act, 1978, provides that the Parliament of Queensland enjoys the full powers, privileges and immunities of the House of Commons.

248. The Legislative Assembly has the right to protect itself from interference by any government instrumentality in the exercise of its functions. The police and the courts cannot take action against any member for anything he does or says in the Assembly, and orders of the Assembly may be executed by its own members and agents without reference to any court.

249. The Assembly may order non-members to attend for the purpose of giving evidence or producing documents. For refusal of its orders the Assembly may punish anybody with a fine (not exceeding $1,000) or by imprisonment for the duration of the session if the fine is not paid. Similar punishment may be inflicted upon non-members for assaulting, obstructing or insulting any member; attempting by force, menace or insult to persuade any member to support or oppose any proposition before the Assembly; sending a member a threatening letter or challenging him to a fight; attempting to bribe a member; creating a disturbance within or in the vicinity of Parliament House while the Assembly is sitting.

250. In addition, the Assembly may direct the Attorney-General to prosecute non-members for any contempt punishable under Chapter VIII of the Criminal Code. The maximum penalty is seven years' gaol for giving false evidence before the Assembly or attempting to bribe a member; three years' gaol for interfering with or disturbing the Assembly while in session; two years' gaol for refusing to attend or give evidence before the Assembly; and six months' gaol for taking a firearm or any explosive or corrosive substance to Parliament House, or for creating a disturbance at Parliament House or at the residence of any member while the Assembly is not sitting.

251. Though members' speeches in the House are privileged and writs cannot be served on members within the precincts of the House, outside Parliament a member may be arrested for any indictable offence (including acceptance of a bribe for the purpose of influencing the Assembly, punishable by a maximum of seven years' gaol) and may also be gaoled for contempt of court. Exemption from jury service is the only freedom from the normal processes of the law a member enjoys.

252. Apart from suspension, the Assembly may also impose a fine on any member it has found guilty of contempt. Power is given to the Speaker to ensure that the fine is paid, if necessary, by withholding portion of the member's parliamentary salary (Officials in Parliament Acts and Legislative Assembly Acts Amendment Act of 1946).

Select Committee of Privileges

253. For many years there were few questions on matters of privilege and most of these were of little import. A Select Committee of Privileges, however, was set up for the first time in April, 1976, following proposals from a working party. The setting up of this Committee received unanimous support in the Parliament.

254. The Committee made its first report to the House in September, 1976. The report intimated that certain recommendations had been made to the Attorney General proposing changes to the Constitution Act of Queensland, which would define and secure privilege as it relates to the Parliament of Queensland.

255. The Clerk of the Parliament, Mr Alan Woodward, believes that the amendment to the Constitution Act equating the Queensland Parliament with the full powers, privileges and immunities of the House of Commons is less satisfactory than a codification of privileges—one is never quite sure what the privileges of the House of Commons are at any given moment.

256. There have been reports on a wide variety of matters. One dealt with the sub judice rule. That report provides the bias of the practice of the House.

257. In 1977 a report was tabled on a political party exercising what in effect was a "levy" on its Members in the Parliament. No action was taken in the matter, as the committee decided that it did not want to express a view.

258. A further report was tabled in 1977 outlining procedures raising matters of privilege. Its recommendation was that an opportunity be provided for members to raise matters of privilege not suddenly arising, informally and confidentially with the Speaker and the Chairman of the Privileges Committee. Where a prima facie case was seen to exist, the matter could be raised in the House.

259. Mr Woodward said that there had perhaps been only one or two occasions in the past three years in which Members informally and confidentially discussed an alleged breach of privilege with the Speaker. Mr Woodward thought it practical for members to discuss alleged breaches with the Speaker on such a basis, as it is very difficult for a presiding officer to know precisely what to do at the time someone raises something in the House. Invariably, such matters are now referred to the Privileges Committee. It has time to consider the matter and seek expert evidence.

260. In 1978, the committee tabled a report on the protection of the citizen. This report concerned remarks made by a Member of Parliament about a business firm. Information supplied by the solicitors for that firm was tabled in the House for the information of Members. There had been one or two other cases of persons who felt aggrieved by what had been said about them in Parliament and who subsequently approached the Speaker. Most of them wanted to submit a long letter which they wished the Speaker to read to the House. The Speaker, however, had declined to do this as he thought it took up too much time. In this case a considerable amount of correspondence was received from the solicitor of the aggrieved person; it was tabled in the House. The correspondence was also reproduced in the report for the information of all Members. Mr Woodward said that the tabling of the correspondence was not to be regarded as a precedent for redress by an aggrieved citizen.

261. A report was tabled in October, 1981, which concerned the unauthorized use of unrevised Hansard proofs. Mr Woodward said that the report related to the fact that a Member had complained in the House that portion of his speech delivered the day before had been quoted in the press. At that stage the report of the speech was in proof form only. The Member was upset as the report was critical of him. The Member pointed out to the House that the information in the press had been corrected in the proof the next morning and was not actually what he had said. As a result of the report, the proofs now have on the top of each page "Unrevised proofs for the use of Members of the Legislative Assembly only and not for reproduction". The degree of privilege attached to the proofs is uncertain, as is the time of attraction.

262. Mr Woodward believes the Select Committee of Privileges has worked well in Queensland. It has been of benefit to the Parliament and particularly of benefit to the Members who have served on the Committee. The Members have had the opportunity to look at issues other than the specific cases before the Committee.

Note: The political composition of the committee prior to the 1983 election had been two Liberal, two A.L.P. and three National Party.

VI. THE NORTHERN TERRITORY OF AUSTRALIA

263. The Committee had the honour, when visiting the Legislative Assembly of the Northern Territory of Australia, to be addressed by Mr Ronald Withnall, a former Member of the Legislative Council.

264. Mr Withnall was the draftsman and architect of the Legislative Assembly (Powers and Privileges) Act, 1977. Mr Withnall had been Chairman of the Select Committee on the Legislative Council (Powers and Privileges) Bill, 1963. The Committee's Report was largely adopted by the then Government. The Report contained a draft bill as an annexure—the bill was enacted without change.

265. The Legislative Assembly (Powers and Privileges) Act, 1977, is a comprehensive codification of the privileges of the Parliament. No other legislation relates to or amplifies parliamentary privilege in the Northern Territory, with the exception of the Defamation Act.

266. The Act codifies privilege in the following sections:

1. Short title.
2. Repeal.
3. Definitions.
4. Powers, privileges and immunities not elsewhere declared.
5. Freedom of speech.
6. Attendance of members and officers as witnesses.
7. Service of process within the precincts.
8. Member not to be arrested on civil process at certain times.
9. Contempts of the Assembly.
10. Publication of contempt.
11. Publication of documents and evidence.
12. Authority for certain publications.

13. No action for publishing authorized publications.
14. Persons not to print matter contrary to order.
15. Precincts of the Assembly.
16. Ordinance not to limit powers of Speaker or Assembly under Standing Orders.
17. Removal of persons from the precincts.
18. Persons to obey directions of Speaker.
19. Summons to witness.
20. Evidence may be taken on oath.
21. Witnesses may be compelled to answer.
22. Offences by witnesses.
23. Claim of Crown privilege.
24. Broadcasting of proceedings.
25. Admission of documents in evidence.
26. Proceedings not to be disclosed without authority.
27. Commencement of prosecutions.
28. Summary trial.
29. Punishment of offences.

267. Mr Withnall acknowledged that some people objected to the power of Parliament to punish. He was of the opinion, however, that the average person, not having seen the power of the Parliament in use, had no real opinion as to its effect. It would need a practical example of the use of the power to cause people to form an opinion. The practical solution would be that upon notification of contempt, it would be reported to the Privileges Committee. They would bring a report before the House and the House would adopt that report. If the report recommended prosecution, the Speaker would be required to commence the prosecution in the courts.

268. Mr Withnall thought that the procedure would be accepted in the community as fair and reasonable. A trial would take place, with the Parliament being represented by a prosecutor. The Clerk, on the fiat of the Speaker, would issue a complaint. For minor matters a magistrate would have the authority to hear the evidence and decide whether the matter would proceed. The magistrate would have the power to deal with the matters summarily, but he could commit for trial if he thought the offence was serious. In every trial Parliament and the defendant would be represented by counsel.

269. Mr Withnall believed that Parliament should accept the finding of the charge and not appeal to a higher court, if dissatisfied with the judgment. There would, in effect, be no appeal, unless there were some gross error of law. Parliament, having chosen the instrument of punishment, could scarcely complain about the exercise of it.

270. Mr Withnall was not of the opinion that there would be an abdication by Parliament of its privileges and powers by committing such a matter to another court. Mr Withnall was of the further opinion that a person, who might be considering committing what could be a breach of parliamentary privilege, would be sufficiently deterred by the idea that they would find themselves in a court in front of a judge from proceeding with the breach.

271. Mr Withnall informed the Committee that section 1 of the Legislative Assembly (Powers and Privileges) Act, which provides that the powers and privileges of the Assembly, except as otherwise stated, are those of the House of Representatives, was intended to specify the major areas in which powers and privileges or questions relating to powers and privileges might be expected to arise. They would be dealt by way of definition and it was intended to deal with them exclusively within the Act. Mr Withnall acknowledged, of course, that there could very well be some occasion when the question of the exercise of powers and privileges arose in relation to a subject matter not deal with in the Act. In other words, the section was intended both as a shopping list and a blanket provision.

272. Mr Withnall acknowledged the seeming contradiction that, in New South Wales where there is no privileges legislation and the situation is ill defined, it could be argued that the lack of definition has served the Parliament of New South Wales well. He thought that the power of privilege in New South Wales was so wide as to be capable of being elastic and for that reason it had served Parliament well. He thought, however, that such powers needed codification in order that the content of the law may be known to all.

273. A Member of Parliament wishing to raise a matter of privilege in the Legislative Assembly of the Northern Territory of Australia generally does so by writing a report to the Speaker. The Speaker would not make a prima facie ruling on whether privilege is involved but would refer the matter to the Privileges Committee. He would examine the matter and report back to the House. The House would either adopt or reject the report.

274. Mr Withnall adverted to the problem of codifying privilege in that the codification had to be regularly updated. The public entrusted the Parliament to make all sorts of laws and review them from time to time. It must trust the Parliament to be able to review the law in regard to Privilege. In the long run it is always much safer if people know what the law is, rather than having it depend upon someone reading it in *Erskine May*.

Mr Guy Smith, Clerk of the Legislative Assembly of the Northern Territory

275. Mr Smith, speaking not as Clerk of the Assembly, but personally, differed with Mr Withnall on the codification of privileges. Mr Smith was not in favour of codification. He believed that a Legislature should deal with its own matters and retain its own independence. He did not believe that legislature should adopt a "Pontius Pilate" attitude. Most of the immunities and contempts that occur in a parliament are really matters that would be considered as hindering or tending to hinder the performance of the House itself. Mr Smith believed, therefore, that it was up to the House to protect itself and that many of the decisions would consequently be to that extent political. The decisions that must be made in matters of contempt are to a large and unavoidable extent political, with the Legislature as a political body. Mr Smith does not believe that political matters should be put to a court, which is a judicial body. There is not a court in Australia that has the current expertise to judge matters of privilege.

276. The Northern Territory Legislative Assembly (Powers and Privileges) Act 1977 is not an exhaustive definition of privilege because of the "omnium gatherum" section. Mr Smith said that this catch-all section related everything else that is not actually laid down in the Act back to the House of Representaitves and ultimately through that House to the House of Commons.

277. It is virtually impossible to codify contempt because in this day of changing technology and changing feelings, what today is considered to be an insult may be considered tomorrow to be a compliment. Mr Smith instanced a recent case in the Senate where there was contempt by telephone—continual harassment by telephone. With changing technology it is difficult to codify what can lead to a contempt which is the crux of the problem. The major contempt, of course, is the hindrance of a Member or the House in the performance of a duty.

278. If a Parliament does not have sanctions available then it should acquire them in order to be able to enforce its powers and prevent contempt. If no sanction exists, the Parliament is a toothless tiger.

Northern Territory of Australia Criminal Code

279. Mr Smith drew the attention of the Committee to Part III—Offences against Public Order in the Criminal Code. Division 3 of that particular Part concerns offences against the executive and Legislative power. As the sections are refreshingly free of the crustiness which often accompanies legislation, sections 56 to 62 of the code are included in the body of the report for the edification of members.

DIVISION 3—*Offences Against the Executive and Legislative Power*

56. INTERFERENCE WITH ADMINISTRATOR MINISTER

Any person who does an act with the intention of interfering with the free exercise by the Administrator or a Minister of the Crown of a duty or an authority of his office is guilty of a crime and is liable to imprisonment for 7 years.

57. INTERFERENCE WITH LEGISLATIVE ASSEMBLY

Any person who, by force or deception, or by threat or intimidation of any kind, interferes with the free exercise by the Legislative Assembly of its authority is guilty of a crime and is liable to imprisonment for 7 years.

58. INFLUENCING LEGISLATIVE ASSEMBLY MEMBER

Any person who, directly or indirectly, by force, deception, threat or intimidation of any kind, influences a member of the Legislative Assembly in the exercise of his duty or authority as a member of, or induces him to absent himself from, the Legislative Assembly or a committee of the Legislative Assembly, is guilty of a crime and is liable to imprisonment for 7 years.

59. BRIBERY OF LEGISLATIVE ASSEMBLY MEMBER

Any person who, in order to influence a member of the Legislative Assembly in the exercise of his duty or authority as a member, or in order to induce him to absent himself from the Legislative Assembly or a committee of the Legislative Assembly, gives, confers or procures, or promises or offers to give, confer or procure, property or a benefit of any kind to, upon or for the member or another, is guilty of a crime and is liable to imprisonment for 7 years.

60. LEGISLATIVE ASSEMBLY MEMBER RECEIVING BRIBE

Any person who, being a member of the Legislative Assembly, solicits, receives or obtains, or agrees to receive or obtain, property or a benefit of any kind for himself or another, upon the understanding that the exercise by the member of his duty or authority as a member shall be in any way influenced or affected, is guilty of a crime and is liable to imprisonment for 7 years.

61. DISTURBING THE LEGISLATIVE ASSEMBLY

Any person who intentionally—

(a) disturbs the Legislative Assembly while it is in session; or

(b) engages in conduct in the immediate view and presence of the Legislative Assembly while it is in session with the intention of interrupting its proceedings or impairing the respect due to its authority.

is guilty of a crime and is liable to imprisonment for 3 years.

PART C—FURTHER WORK

62. GOING ARMED TO LEGISLATIVE ASSEMBLY

Any person who, without lawful excuse, being armed with a firearm or other dangerous or offensive weapon, enters or is found within the precincts of the Legislative Assembly is guilty of a crime and is liable to imprisonment for 3 years.

280. The above chapters are but an indication of the work already undertaken by your Committee. Additional matters of considerable importance to Members at the present time not discussed in this progress report include:

. . . Member's correspondence;

. . . lawful questions and the workings of parliamentary committees;

. . . the alleged paramountcy of Commonwealth law in relation to State Parliamentary privilege.

281. These subjects have not been discussed in summary form because of the weight of material that needs to be assembled to give the Parliament an indication of the dimensions of the problem. Your Committee intends to prepare discussion papers—a series of single issue progress reports—which will be tabled in the Parliament at regular intervals. These papers will consider all sides of a question but will come down with firm recommendations for action by the Parliament, the Presiding Officers or the Executive Government.

282. The papers envisaged are as follows:

- Members' Correspondence.
- The Precincts of Parliament.
- A Code for the Behaviour of the Media within Parliament.
- Lawful Questions and the Workings of a Parliamentary Committee.
- Codification: is there any Value? (This paper will include a draft bill exhaustively defining the privileges enjoyed by our Parliament and a more basic omnium gatherum clause that will amend the N.S.W. Constitution Act.)
- Hansard style and Publication Practices.
- Alleged Paramountcy of Commonwealth Law.
- Defamation, privilege and parliamentary papers.

283. The discussion papers will include the Advisings and Opinions of learned counsel, the Crown Solicitor and the Solicitor General, as well as written advice from persons in specialist areas.

284. It is the hope of your Committee that Members will respond to papers on topics that affect all members directly. The responses of Members will be of material assistance to your Committee in compiling its final report. Our present timetable presumes that we will be able to present our final report to the Parliament during next year's Budget session.

LIST OF WITNESSES

BATES, Graham Douglas (Partner, Stephen, Jacques, Stone, James).

CAMPBELL, Enid (Professor of Law, Monash University).

COOPER, Thomas Richard (then Acting Editor of Debates, Parliament of N.S.W.).

DUX, John Douglas (Acting Editor, The Sunday Telegraph).

FISHER, Hon. Marie Claire, B.A., Dip.Ed., M.L.C.

GAUDRON, Mary Genevieve, Q.C. (Solicitor-General for the State of N.S.W.).

GEDDES, Wayne Keith (Secretary, Parliamentary Press Gallery, N.S.W.).

HATTON, John Edward, M.P.

HOGBEN, Brian Malcolm James (Group General Manager Editorial, News Limited).

JECKELN, Leslie Arthur (Clerk of the Parliaments and Clerk of the Legislative Council).

JONES, David Llewellyn (President, Parliamentary Press Gallery, N.S.W.).

KIRBY, Michael Donald (Judge of the Federal Court of Australia and Chairman of the Australian Law Reform Commission).

LAURENCE, John Hopetoun (Barrister-at-Law).

LAWRENCE, John Lockwood (Federal President of the Australian Journalists' Association).

MOCHALSKI, Richard Charles, LL.B., M.P.

O'CONNELL, Keith, M.P.

PETERSEN, Wilfred George, M.P.

RANSOM, Dr Alan Arthur (Senior Lecturer in Law, Macquarie University).

ROBERTSON, Timothy Frank (Barrister-at-Law).

ROGAN, Patrick Allan, M.P.

SAWER, Geoffrey (retired Professor of Law and Chairman of the Australian Press Council).

SHEPHERDSON, Frank, B.E.M. (Principal Parliamentary Attendant, Legislative Assembly, Parliament of N.S.W.).

SOLOMON, David Harris (High Court Correspondent, *Australian Financial Review*).

STECKETEE, Michael Adrian (Vice-President, Parliamentary Press Gallery, N.S.W.).

SUICH, Maxwell Victor (Chief Editorial Executive, John Fairfax and Sons Limited).

UNSWORTH, Hon. Barrie John, M.L.C.

WEST, Donald (Government Printer).

WILDE, Barry Charles, M.P.

WHEELER, Douglas Leslie (Clerk of the Legislative Assembly, Parliament of N.S.W.).

TABLE OF CASES

1. In the Courts

2. In Parliament

TABLE OF STATUTES

EXTRACT FROM THE VOTES AND PROCEEDINGS OF THE LEGISLATIVE ASSEMBLY

ENTRY NO. 8, VOTES AND PROCEEDINGS NO. 21, 21 OCTOBER, 1982

JOINT COMMITTEE UPON PARLIAMENTARY PRIVILEGE:

(1) Mr Walker, *on behalf of* Mr Wran, moved, pursuant to Notice—

(1) That a Joint Select Committee be appointed to review and report whether and 5 Members of th eLegislative Assembly.

(a) The law and practice of parliamentary privilege as they affect the Legislative Council and the Legislative Assembly, the Members and Committees of either or both Houses and other persons;

(b) The powers and procedures by which cases of alleged breaches of parliamentary privilege may be raised, investigated and determined.

(2) That such Committee consist of 3 Members of the Legislative Council and 5 Members of the Legislative Assembly.

(3) That at any meeting of the Committee any 3 Members shall constitute a quorum, provided that the Committee shall meet as a Joint Committee at all times.

(4) That Mr Cavalier, Mr McIlwaine, Mr Bowman, Mr Moore and Mr Brown be appointed to serve on such Committee as Members of the Legislative Assembly.

(5) That the Committee have leave to sit during the sittings or any adjournment of either or both Houses; to adjourn from place to place; to make visits of inspection within the State of New South Wales and other States and Territories of the Commonwealth; and have power to take evidence and send for persons and papers; and to report from time to time.

Debate ensued.

Mr Cavalier moved, That this debate be now adjourned.

Question put and passed.

Ordered. That the resumption of the debate stand an Order of the Day for To-morrow.

EXTRACT FROM THE VOTES AND PROCEEDINGS OF THE LEGISLATIVE ASSEMBLY

ENTRY NO. 8, VOTES AND PROCEEDINGS NO. 23, 3 NOVEMBER, 1982

JOINT COMMITTEE UPON PARLIAMENTARY PRIVILEGE:

(1) The Order of the Day having been read for the resumption of the adjourned debate, on the motion of Mr Wran—

(1) That a Joint Select Committee be appointed to review and report whether any changes are desirable in respect of:

(a) The law and practice of parliamentary privilege as they affect the Legislative Council and the Legislative Assembly, the Members and Committees of either or both Houses and other persons;

(b) The powers and procedures by which cases of alleged breaches of parliamentary privilege may be raised, investigated and determined.

(2) That such Committee consist of 3 Members of the Legislative Council and 5 Members of the Legislative Assembly.

(3) That at any meeting of the Committee any 3 Members shall constitute a quorum, provided that the Committee shall meet as a Joint Committee at all times.

(4) That Mr Cavalier, Mr McIlwaine, Mr Bowman, Mr Moore and Mr Brown be appointed to serve on such Committee as Members of the Legislative Assembly.

(5) That the Committee have leave to sit during the sittings or any adjournment of either or both Houses, to adjourn from place to place; to make visits of inspection within the State of New South Wales and other States and Territories of the Commonwealth; and have power to take evidence and send for persons and papers; and to report from time to time.

And the Question being again proposed—

The House resumed the said adjourned debate.

Mr Flaherty moved, That the Question be now put.

Question put—"That the Question be now put."

The House divided.

Ayes, 61

Mr Akister	Mr Gabb	Mr O'Neill
Mr Anderson	Mr Gordon	Mr Page
Mr Aquilina	Mr Haigh	Mr Petersen
Mr Bannon	Mr Hills	Mr Quinn
Mr Beckroge	Mr Hunter	Mr Ramsay
Mr Bedford	Mr Jackson	Mr Robb
Mr Booth	Mr Jones	Mr Rogan
Mr Bowman	Mr Keane	Mr Ryan
Mr Brading	Mr Knight	Mr Sheahan
Mr Brereton	Mr Knott	Mr Stewart
Mr Cahill	Mr McCarthy	Mr K. J. Stewart
Mr Cavalier	Mr McGowan	Mr Walker
Mr Christie	Mr McIlwaine	Mr Walsh
Mr R. J. Clough	Mr Mair	Mr Webster
Mr Cox	Mr Miller	Mr Whelan
Mrs Crosio	Mr Mochalski	Mr Wilde
Mr Day	Mr H. F. Moore	Mr Wran
Mr Debus	Mr Mulock	*Tellers,*
Mr Degen	Mr J. H. Murray	
Mr Durick	Mr Neilly	Mr Flaherty
Mr Egan	Mr O'Connell	Mr Wade

Noes, 25

Mr Arblaster	Mr Fisher	Mr Schipp
Mr Armstrong	Mrs Foot	Mr Singleton
Mr Boyd	Mr Hatton	Mr Smith
Mr Brewer	Mr Mack	Mr West
Mr Brown	Dr Metherell	Mr Wotton
Mr Cameron	Mr Murray	*Tellers,*
Mr Caterson	Mr Park	
Mr Collins	Mr Punch	Mr Fischer
Mr Duncan	Mr Rozzoli	Mr Moore

And it appearing by the Tellers' Lists that the number in favour of the motion, being a majority, consisted of "at least thirty Members"—

Original Question put and voices given—Mr Speaker stated his opinion that the *Ayes* had it.

Whereupon, Division called for, and Mr Speaker declared the determination of the House to be in the *affirmative,* as there were only four Members (*Mr Duncan, Mr Hatton, Mr Mack and Mr Smith*) in the minority who had challenged his decision.

(2) Ordered, on motion of Mr Wran, That the following Message be sent to the Legislative Council—

Mr PRESIDENT—

The Legislative Assembly having this day agreed to the following resolution—

"(1) *That a Joint Select Committee be appointed to review and report whether any changes are desirable in respect of*:

(*a*) *The law and practice of parliamentary privilege as they affect the Legislative Council and the Legislative Assembly, the Members and Committees of either or both Houses and other persons;*

(*b*) *The powers and procedures by which cases of alleged breaches of parliamentary privilege may be raised, investigated and determined.*

(2) *That such Committee consist of* 3 *Members of the Legislative Council and* 5 *Members of the Legislative Assembly.*

(3) *That at any meeting of the Committee any* 3 *Members shall constitute a quorum, provided that the Committee shall meet as a Joint Committee at all times.*

(4) *That Mr Cavalier, Mr McIlwaine, Mr Bowman, Mr Moore, and Mr Brown be appointed to serve on such Committee as Members of the Legislative Assembly.*

(5) *That the Committee have leave to sit during the sittings or any adjournment of either or both Houses; to adjourn from place to place; to make visits of inspection within the State of New South Wales and other States and Territories of the Commonwealth; and have power to take evidence and send for persons and papers; and to report from time to time,*"—requests that the Legislative Council will appoint three of its Members to serve with the Members of the Legislative Assembly upon such Joint Committee.

Legislative Assembly Chamber,
Sydney, 3 *November,* 1982.

L. B. KELLY,
Speaker.

EXTRACT FROM THE MINUTES OF THE PROCEEDINGS OF THE LEGISLATIVE COUNCIL

ENTRY NO. 3 (4), MINUTES OF PROCEEDINGS NO. 14, 3 NOVEMBER, 1982

JOINT COMMITTEE ON PARLIAMENTARY PRIVILEGE—

Mr PRESIDENT—

The Legislative Assembly having this day agreed to the following resolution—

(1) *That a Joint Select Committee be appointed to review and report whether any changes are desirable in respect of*:

(*a*) *The law and practice of parliamentary privilege as they affect the Legislative Council and the Legislative Assembly, the Members and Committees of either or both Houses and other persons;*

(*b*) *The powers and procedures by which cases of alleged breaches of parliamentary privilege may be raised, investigated and determined.*

(2) *That such Committee consist of* 3 *Members of the Legislative Council and* 5 *Members of the Legislative Assembly.*

(3) *That at any meeting of the Committee any* 3 *Members shall constitute a quorum, provided that the Committee shall meet as a Joint Committee at all times.*

(4) *That Mr Cavalier, Mr McIlwaine, Mr Bowman, Mr T. J. Moore, and Mr Brown be appointed to serve on such committee as Members of the Legislative Assembly.*

(5) *That the Committee have leave to sit during the sittings or any adjournment of either or both Houses; to adjourn from place to place; to make visits of inspection within the State of New South Wales and other States and Territories of the Commonwealth; and have power to take evidence and send for persons and papers; and to report from time to time."*

And the Legislative Assembly requests that the Legislative Council will appoint three of its Members to serve with the Members of the Legislative Assembly upon such Joint Committee.

Legislative Assembly Chamber,
Sydney, 3 November, 1982.

L. B. KELLY,
Speaker.

Ordered, on motion of Mr Landa, That consideration of the Legislative Assembly's Message stand an Order of the Day for next Sitting Day.

EXTRACT FROM THE MINUTES OF THE PROCEEDINGS OF THE LEGISLATIVE COUNCIL

ENTRY NO. 9, MINUTES OF PROCEEDINGS NO. 16, 9 NOVEMBER, 1982

JOINT SELECT COMMITTEE ON PARLIAMENTARY PRIVILEGE.—Upon the Order of the Day being read, Mr Hallam (*on behalf of* Mr Landa) moved—

(1) That this House agrees to the Resolution embodied in the Legislative Assembly's Message of 3 November, 1982, relating to the appointment of a Joint Select Committee on parliamentary privilege.

(2) That the representatives of the Legislative Council on the Joint Select Committee be the Honourable D. D. Freeman, the Honourable D. M. Grusovin and the Honourable B. H. Vaughan, and that Tuesday, 9 November, 1982, at 8.30 p.m. in Room No. S851 be the time and place for the first meeting.

Debate ensued.

Question put and passed.

Whereupon Mr Hallam moved, That the following Message be forwarded to the Legislative Assembly:

MR SPEAKER—

The Legislative Council having had under consideration the Legislative Assembly's Message dated 3 November, 1982, agrees to the Resolution embodied therein relating to the appointment of a Joint Select Committee on Parliamentary Privilege.

2. That the representatives of the Legislative Council on the Joint Select Committee be the Honourable D. D. Freeman, the Honourable D. M. Grusovin and the Honourable B. H. Vaughan and that Tuesday, 9 November, 1982, at 8.30 p.m. in Room No. S851 be the time and place for the first meeting.

Legislative Council Chamber,
Sydney, 9 November, 1982.

Question put and passed.

The House adjourned at Twenty-three minutes before Seven p.m., until tomorrow at Four p.m.

L. A. JECKELN,
Clerk of the Parliaments.

EXTRACT FROM THE VOTES AND PROCEEDINGS OF THE LEGISLATIVE ASSEMBLY

ENTRY NO. 13, VOTES AND PROCEEDINGS NO. 25, 9 NOVEMBER, 1982

JOINT COMMITTEE UPON PARLIAMENTARY PRIVILEGE:

(1) Mr Speaker reported the following Message from the Legislative Council:

Mr SPEAKER—

The Legislative Council having had under consideration the Legislative Assembly's Message dated 3 November, 1982, agrees to the Resolution embodied therein relating to the appointment of a Joint Select Committee on Parliamentary Privilege.

2. That the representatives of the Legislative Council on the Joint Select Committee be the Honourable D. D. Freeman, the Honourable D. M. Grusovin and the Honourable B. H. Vaughan and that Tuesday, 9 November, 1982, at 8.30 p.m. in Room No. S851 be the time and place for the first meeting.

Legislative Council Chamber,
Sydney, 9 November, 1982.

JOHN JOHNSON,
President.

(2) Ordered, on motion of Mr Day, *on behalf of* Mr Wran, That the following Message be sent to the Legislative Council:

Mr PRESIDENT—

The Legislative Assembly agrees to the time and place appointed by the Legislative Council in its Message, dated 9 November, 1982, for the first meeting of the Joint Committee upon Parliamentary Privilege.

Legislative Assembly Chamber,
Sydney, 9 November, 1982.

L. B. KELLY,
Speaker.

EXTRACT FROM THE MINUTES OF THE PROCEEDINGS OF THE LEGISLATIVE COUNCIL

ENTRY NO. 3, MINUTES OF PROCEEDINGS NO. 17, 10 NOVEMBER, 1982

JOINT SELECT COMMITTEE ON PARLIAMENTARY PRIVILEGE.—The President reported and read the following Message from the Legislative Assembly:

Mr PRESIDENT—

The Legislative Assembly agrees to the time and place appointed by the Legislative Council in its Message, dated 9 November, 1982, for the first meeting of the Joint Committee upon Parliamentary Privilege.

Legislative Assembly Chamber,
Sydney, 9 November, 1982.

L. B. KELLY,
Speaker.

EXTRACT FROM THE MINUTES OF THE PROCEEDINGS OF THE LEGISLATIVE COUNCIL

ENTRY NO. 32, MINUTES OF PROCEEDINGS NO. 37, 30 MARCH, 1983

JOINT SELECT COMMITTEE ON PARLIAMENTARY PRIVILEGE—Mr Hallam moved, *by consent,* That, in place of the Honourable D. D. Freeman, the Honourable M. F. Willis be appointed as a representaitve of the Legislative Council on the Joint Select Committee on Parliamentary Privilege.

Question put and passed.

Whereupon Mr Hallam moved, That the following Message be forwarded to the Legislative Assembly:

Mr SPEAKER—

The Legislative Council has this day agreed to the following Resolution—*"That, in place of the Honourable D. D. Freeman, the Honourable M. F. Willis be appointed as a representative of the Legislative Council on the Joint Select Committee on Parliamentary Privilege".*

Legislative Council Chamber,
Sydney, 31 *March,* 1983, *a.m.*

Question put and passed.

PROCEEDINGS OF THE JOINT COMMITTEE OF THE LEGISLATIVE COUNCIL AND LEGISLATIVE ASSEMBLY UPON PARLIAMENTARY PRIVILEGE

TUESDAY, 9 *NOVEMBER,* 1982

At Parliament House, Sydney, at 8.30 p.m.

MEMBERS PRESENT:

Legislative Council	*Legislative Assembly*
Dr FREEMAN	Mr BOWMAN
Mrs GRUSOVIN	Mr BROWN
Mr VAUGHAN	Mr CAVALIER
	Mr McILWAINE
	Mr MOORE

Mr G. H. Cooksley informed the Committee of his appointment as Clerk to the Committee.

The following entries in the Votes and Proceedings of the Legislative Assembly and the Minutes of the Proceedings of the Legislative Council were read by the Clerk:

Legislative Assembly—

Entry No. 8, Votes and Proceedings No. 21 of Thursday, 21 October, 1982.

Entry No. 8, Votes and Proceedings No. 23 of Wednesday, 3 November, 1982.

Entry No. 13, Votes and Proceedings No. 25 of Tuesday, 9 November, 1982.

Legislative Council—

Entry No. 3 (4), Minutes of Proceedings No. 14, of Wednesday, 3 November, 1982.

Entry No. 9, Minutes of Proceedings No. 16 of Tuesday, 9 November, 1982.

On the motion of Mr Brown, seconded by Mrs Grusovin, Mr Cavalier was called to the Chair and thereupon made his acknowledgements to the Committee.

Resolved, on the motion of Mr Moore, seconded by Mr Bowman: That arrangements for the calling of witnesses and visits of inspection be left in the hands of the Chairman and the Clerk of the Committee.

Resolved, on the motion of Mr Moore, seconded by Mr Bowman: That, unless otherwise ordered, parties appearing before the Committee shall not be represented by any member of the legal profession.

Resolved, on the motion of Mr Moore, seconded by Mrs Grusovin: That, unless otherwise ordered, the press and public (including witnesses after examination) be admitted to the sittings of the Committee.

Resolved, on the motion of Mr Brown, seconded by Mr Freeman: That departmental officers and/or persons having special knowledge of the matters alluded to in the Terms of Reference may be invited to assist the Committee.

Resolved, on the motion of Mrs Grusovin, seconded by Mr Bowman: That press statements concerning the Committee be made only by the Chairman after approval in principle by the Committee or after consultation with Committee Members.

Resolved, on the motion of Mrs Grusovin, seconded by Mr Moore: That unless otherwise ordered, transcripts of evidence taken by the Committee be not made available to any person, body or organization: provided that witnesses previously examined shall be given a copy of their evidence.

Resolved, on the motion of Mr Moore, seconded by Mr Freeman: That the Chairman and the Clerk to the Committee be empowered to negotiate with the Premier for the provision of funds to meet expenses in connection with travel, accommodation, advertising and approved incidental expenses of the Committee.

Resolved, on the motion of Mr Moore, seconded by Mr Freeman: That this Committee requests the Premier to approve payment of the following:

(i) A daily allowance to each member when he attends a meeting of the Committee on a day on which the House is not sitting, and for each day he is present at an official visit of inspection;

(ii) a living-away-from-home allowance for Mr Bowman and Mr Brown when attending a meeting of the Committee on a day on which the Legislative Assembly is not sitting.

(iii) Air travel for visits of inspection when other modes of transport are impracticable.

Resolved, on the motion of Mr Moore, seconded by Mr Brown: That the Clerk be empowered to advertise and/or write to interested parties requesting written submissions within the Terms of Reference.

Resolved, on the motion of Mrs Grusovin, seconded by Mr Brown: That the allowances for the Chairman and Members be paid by cheque at the end of each calendar month.

Resolved, on the motion of Mr Freeman, seconded by Mrs Grusovin: That upon the calling of a division or quorum in either House, the proceedings of the Committee shall be suspended until the termination of the division or quorum and the return of members affected.

Resolved, on the motion of Mr Vaughan, seconded by Mr McIlwaine: That the Chairman and the Clerk make arrangements for visits of inspection by the Committee as a whole and that individual members wishing to depart from these arrangements be required to make their own.

Resolved, on the motion of Mr McIlwaine, seconded by Mr Freeman: That the Clerk arrange for the purchase of appropriate document cases for members of the Committee.

The Chairman made a statement on the aims and objectives of the Committee. He thanked the Clerk of the Legislative Assembly, Mr D. L. Wheeler, for providing so senior an officer as Mr Grahame Cooksley as Clerk to the Committee. The Chairman also welcomed Mr Wheeler to the meeting.

Resolved, on motion of Mrs Grusovin, seconded by Mr Brown: That the daily allowance payable when attending a meeting of the Committee on a day on which the House is not sitting and for each day when present at an official visit of inspection be $51.00 for the Chairman and $27.00 for each Member.

Resolved, on motion of Mrs Grusovin, seconded by Mr Brown: That the Clerk compile a bibliography of publications relevant to parliamentary privilege, rulings and precedents in the Parliament of New South Wales and relevant case law.

Resolved, on motion of Mr Moore, seconded by Mr Vaughan: That the Clerk be authorized to purchase nine copies of Enid Campbell, *Parliamentary Privilege in Australia.*

Resolved, on motion of Mr Moore, seconded by Dr Freeman: That the Clerk be authorized to invite submissions from:

The Members of the Legislative Council of New South Wales;

The Members of the Legislative Assembly of New South Wales;

The Government Whip in the Legislative Council;

The Secretary of the Caucus of the State Parliamentary Labor Party;

The Opposition Whip;

The National Party Whip;

The General Secretaries of the five political parties represented in the Parliament of New South Wales;

The Law Society of New South Wales;

The New South Wales Bar Association;

The Faculties of Law of the University of Sydney, the University of New South Wales and Macquarie University;

The Media and media holding companies;

The Local Government Association of New South Wales;

The Shires Association of New South Wales;

The Australasian Study of Parliaments Group;

The Australian Institute of Political Science;

The departments of political science (however entitled) of the University of Sydney, the University of New South Wales, the University of Newcastle, the University of New England and the Macquarie University,

and prepare advertisements for placing in the daily newspapers of the Metropolitan, Newcastle and Illawarra regions and the news magazines of New South Wales.

Resolved, on motion of Mr Moore, seconded by Dr Freeman: That the Clerk request the Clerks of the Houses of Commons of the United Kingdom and Canada to furnish copies of the Report of the Select Committee upon Parliamentary Privilege of their respective Houses.

Resolved, on motion of Mr Brown, seconded by Mr Moore: That the Clerk write to the Secretary of the Commonwealth Parliamentary Association seeking particulars of the application of privilege in Parliaments of the Commonwealth.

Resolved, on motion of Mr Moore, seconded by Mr Bowman: That the Clerk write to the Clerk of the Parliament of Sri Lanka requesting details of the prosecution of Mr Satyendra, Q.C., for contempt of the Parliament of Sri Lanka with particular reference to the initiation of the prosecution and the judgment of the Supreme Court of Sri Lanka.

Resolved, on motion of Mr McIlwaine, seconded by Mr Bowman: That the Clerk write to the consulates of West Germany, United States of America, Norway, Denmark, Sweden, France and Japan requesting information concerning the existence and application of privilege in the legislatures of those countries.

Resolved, on motion of Mr McIlwaine, seconded by Mr Moore: That the Clerk request the Attorney-General to forward to the Committee the advice received by him concerning the application of parliamentary privilege to the publication of extracts of members' speeches from Hansard.

Resolved, on motion of Mr Brown, seconded by Mr Bowman: That the closing date for submissions be 31 March, 1983.

Resolved, on motion of Mr McIlwaine, seconded by Mrs Grusovin: That the Clerk be empowered to undertake all duties necessary for the establishment of the Committee prior to the next meeting.

The Chairman made a statement on specialist assistance for the Committee.

The Committee deliberated.

Resolved, on motion of Mr Moore, seconded by Mr Brown: That the next meeting of the Committee be at 10.00 a.m., on 29 November, 1982, unless otherwise determined by the Clerk.

The Committee adjourned at 9.45 p.m. until Monday, 29 November, 1982, at 10.00 a.m.

MONDAY, 29 NOVEMBER, 1982

At Parliament House, Sydney, at 10.00 a.m.

MEMBERS PRESENT:

Legislative Council	*Legislative Assembly*
Dr FREEMAN	Mr BOWMAN
Mrs GRUSOVIN	Mr BROWN
Mr VAUGHAN	Mr CAVALIER
	Mr McILWAINE
	Mr MOORE

The minutes of the meeting held on 9 November, 1982, as circulated, were confirmed.

The Chairman made a statement concerning the draft letters which had been prepared in accordance with certain resolutions passed at the first meeting of the Committee. The draft letters were perused by the Committee.

The Chairman made a statement concerning the draft Budget.

The Committee deliberated.

The Committee adjourned at 12.12 p.m., *sine die.*

MONDAY, 14 *FEBRUARY,* 1983

At Parliament House, Sydney, at 10.00 a.m.

MEMBERS PRESENT:

Legislative Council	*Legislative Assembly*
Dr FREEMAN	Mr BOWMAN
Mr VAUGHAN	Mr BROWN
	Mr CAVALIER
	Mr McILWAINE
	Mr MOORE

An apology was received from Mrs Grusovin.

The Minutes of the Meeting held on 29 November, 1982, as circulated, were confirmed.

Resolved, on motion of Mr Moore, seconded by Mr Bowman: That the Chairman and the Clerk to the Committee be empowered to circulate the memorandum on parliamentary privilege prepared by the Clerk.

Resolved, on motion of Dr Freeman, seconded by Mr Moore: That the Committee recommend that Parliament define the precincts of Parliament.

Resolved, on motion of Mr Brown, seconded by Dr Freeman: That a Code of Conduct be prepared for people employed within the media reporting within Parliament House or upon the proceedings of the Parliament.

The Committee deliberated.

The Chairman made a statement about future meetings.

The Committee adjourned at 12.10 p.m. until Monday, 21 March, 1983, at 10.30 a.m.

MONDAY, 21 *MARCH,* 1983

At Parliament House, Sydney, at 10.30 a.m.

MEMBERS PRESENT:

Legislative Council	*Legislative Assembly*
Dr FREEMAN	Mr BOWMAN
Mrs GRUSOVIN	Mr BROWN
Mr VAUGHAN	Mr CAVALIER
	Mr McILWAINE
	Mr MOORE

The Minutes of the Meeting held on 14 February, 1983, as circulated, were confirmed.

Resolved, on motion of Mr McIlwaine, seconded by Mrs Grusovin: That Messrs Moore and Vaughan be appointed to examine the legal title(s) to the parliamentary precincts and that the Clerk to the Joint Committee be their assistant.

Resolved, on motion of Mr Vaughan, seconded by Mr Moore: That Mr Brown be congratulated on his service of 24 years to the people and Parliament of New South Wales.

The Committee deliberated.

The Chairman made a statement on the Basis of Authority for Parliamentary Privilege.

The Committee deliberated.

The Chairman made a statement on Defamation and Free Speech.

The Committee deliberated.

The Chairman made a statement on Members' Correspondence.

The Committee deliberated.

The Chairman made a statement about future meetings.

The Committee adjourned at 4.30 p.m. until Monday, 18 April, 1983, at 10.30 a.m.

MONDAY, 18 *APRIL*, 1983

At Parliament House, Sydney, at 10.45 a.m.

MEMBERS PRESENT:

Legislative Council	*Legislative Assembly*
Mrs GRUSOVIN	Mr BOWMAN
Mr VAUGHAN	Mr BROWN
Mr WILLIS	Mr CAVALIER
	Mr McILWAINE
	Mr MOORE

The Minutes of the Meeting held on 21 March, 1983, as circulated, were confirmed.

Resolved, on motion of Mr Vaughan, seconded by Mr Brown: That an appreciation of the valuable contribution by Dr Freeman to the functioning of the Joint Committee be formally recorded.

The Chairman welcomed Mr Willis on behalf of the Committee.

The Chairman outlined the proposed hearings for the week.

The Chairman drew the attention of the Committee to the resolution passed at the initial meeting of the Committee, which provides that, unless otherwise ordered, the press and public (including witnesses after examination) be admitted to the sittings of the Committee.

Professor Enid Campbell, Professor of Law, sworn and examined.

Evidence concluded, the witness withdrew.

The Committee deliberated.

The Committee adjourned at 4.40 p.m., until Tuesday, 19 April, 1983, at 10.30 a.m.

TUESDAY, 19 *APRIL* 1983

At Parliament House, Sydney, at 10.45 a.m.

MEMBERS PRESENT:

Legislative Council	*Legislative Assembly*
Mrs GRUSOVIN	Mr BOWMAN
Mr VAUGHAN	Mr BROWN
Mr WILLIS	Mr CAVALIER
	Mr McILWAINE
	Mr MOORE

The Minutes of the Meeting held on 18 April, 1983, as circulated, were confirmed.

Douglas Leslie Wheeler, Clerk of the Legislative Assembly, sworn and examined.

Evidence concluded, the witness withdrew.

Leslie Arthur Jeckeln, Clerk of the Parliaments and Clerk of the Legislative Council, sworn and examined.

Evidence concluded, the witness withdrew.

The Committee deliberated.

The Committee adjourned at 4.00 p.m. until Wednesday, 20 April, 1983, at 10.30 a.m.

WEDNESDAY, 20 *APRIL,* 1983

At Parliament House, Sydney, at 10.30 a.m.

MEMBERS PRESENT:

Legislative Council	*Legislative Assembly*
Mrs GRUSOVIN	Mr BOWMAN
Mr VAUGHAN	Mr BROWN
Mr WILLIS	Mr CAVALIER
	Mr McILWAINE
	Mr MOORE

The Minutes of the Meeting held on 19 April, 1983, as circulated, were confirmed.

Barrie John Unsworth, part-time member of the Legislative Council and Trade Union official, sworn and examined.

Evidence concluded, the witness withdrew.

Thomas Richard Cooper, Acting Editor of Debates, sworn and examined.

Evidence concluded, the witness withdrew.

Resolved, on the motion of Mr Moore, seconded by Mr Brown:

1. that the Clerk write to the Clerks of the various Houses of the Parliaments of Tasmania, Victoria, South Australia, Western Australia, Northern Territory and Queensland requesting

   (a) that interviews be arranged with the Clerks themselves, the respective Editors of Debates, Government Printers and Presidents of the Press Galleries, and those persons who the Clerks believe could contribute to the proceedings of the Committee; and

   (b) that leave be sought of the respective Presiding Officers to inspect the parliamentary precincts, to be accorded the use of the parliamentary facilities and to have set aside an appropriate room for the use of the Committee; and

2. that air travel involved be at economy rates.

The Committee deliberated.

The Committee adjourned at 12.35 p.m. until Thursday, 21 April, 1983, at 10.30 a.m.

THURSDAY, 21 *APRIL,* 1983

At Parliament House, Sydney, at 10.30 a.m.

MEMBERS PRESENT:

Legislative Council	*Legislative Assembly*
Mrs GRUSOVIN	Mr BOWMAN
Mr VAUGHAN	Mr BROWN
	Mr CAVALIER
	Mr McILWAINE
	Mr MOORE

The Minutes of the Meeting held on 20 April, 1983, as circulated, were confirmed.

Keith O'Connell, Member of Parliament, sworn and examined after presentation of a prepared statement.

Evidence concluded, the witness withdrew.

Barry Charles Wilde, Member of Parliament, sworn and examined.

Evidence concluded, the witness withdrew.

Resolved, on motion of Mr Brown, seconded by Mr Moore: that

1 the Clerk and those Members of the Committee desiring to attend the Fourth Special Workshop of the Australasian Study of Parliament Group, on the Media in Parliament, to be held in Canberra on 6–7 May, 1983, be reimbursed for the necessary expenses incurred; and

2 that the Clerk arrange for the Committee to be supplied with 9 sets of all or any papers resulting from the Workshop.

The Committee deliberated.

The Committee adjourned at 2.45 p.m., until Monday, 2 May, 1983, at 10.30 a.m.

MONDAY, 2 *MAY,* 1983

At Parliament House, Sydney, at 10.45 a.m.

MEMBERS PRESENT:

Legislative Council	*Legislative Assembly*
Mrs GRUSOVIN	Mr BOWMAN
Mr VAUGHAN	Mr BROWN
Mr WILLIS	Mr CAVALIER
	Mr McILWAINE
	Mr MOORE

The Minutes of the Meeting held on 21 April, 1983, as circulated, were confirmed.

Mr Don West, Government Printer, sworn and examined following presentation of prepared statement. Evidence concluded, the witness withdrew.

Mr Justice Michael Kirby, Chairman, The Law Reform Commission, Australia, sworn and examined.

Evidence concluded, the witness withdrew.

The Committee deliberated.

The Committee adjourned at 4.10 p.m. until Tuesday, 3 May, 1983, at 10.30 a.m.

TUESDAY, 3 MAY, 1983

At Parliament House, Sydney, at 10.40 a.m.

MEMBERS PRESENT:

Legislative Council	*Legislative Assembly*
Mrs GRUSOVIN	Mr BOWMAN
Mr VAUGHAN	Mr BROWN
Mr WILLIS	Mr CAVALIER
	Mr McILWAINE
	Mr MOORE

The Minutes of the Meeting held on 2 May, 1983, as circulated, were confirmed.

Resolved, on motion of Mr Moore, seconded by Mr Vaughan: That the Chairman write to the Acting Editor of Debates drawing his attention to those statements by Messrs Jones and Dux in their evidence referring to the recording of the parliamentary debates.

Mr David Jones, journalist and President of the Parliamentary Press Gallery, sworn and examined following presentation of prepared statement.

Evidence not concluded—to be resumed.

Mr Michael Steketee, journalist, sworn and examined.

Evidence not concluded—to be resumed.

Mr Wayne Geddes, journalist, sworn and examined.

Evidence not concluded—to be resumed.

Mr John Dux, Acting Editor of The Sunday Telegraph, sworn and examined following presentation of prepared statement.

Evidence concluded, the witness withdrew.

The Committee deliberated.

The Committee adjourned at 3.20 p.m. until Thursday, 5 May, 1983, at 10.30 a.m.

THURSDAY, 5 MAY, 1983

At Parliament House, Sydney, at 10.50 a.m.

MEMBERS PRESENT:

Legislative Council	*Legislative Assembly*
Mr VAUGHAN	Mr BOWMAN
Mr WILLIS	Mr BROWN
	Mr CAVALIER
	Mr McILWAINE
	Mr MOORE

An apology was received from Mrs Grusovin.

The Minutes of the Meeting held on 3 May, 1983, as circulated, were confirmed.

Mr Max Suich, Chief Editorial Executive, John Fairfax and Sons Limited, sworn and examined following presentation of a prepared statement.

Evidence concluded, the witness withdrew.

Mr Graham Bates, partner, Stephen Jaques Stone James, sworn and examined.

Evidence concluded, the witness withdrew.

Mr John Laurence, Q.C., President, New South Wales Council of Professions, sworn and examined following presentation of a prepared statement.

Evidence concluded, the witness withdrew.

The Committee deliberated.

The Committee adjourned at 3.20 p.m. until Friday, 3 June, 1983, at 10.00 a.m. sharp.

FRIDAY, 3 JUNE, 1983

At Parliament House, Sydney, at 10.00 a.m.

MEMBERS PRESENT:

Legislative Council	*Legislative Assembly*
Mrs GRUSOVIN	Mr BOWMAN
Mr VAUGHAN	Mr BROWN
Mr WILLIS	Mr CAVALIER
	Mr McILWAINE

An apology was received from Mr Moore.

The Minutes of the Meeting held on 5 May, 1983, as circulated, were confirmed.

Resolved, on motion of Mr Bowman, seconded by Mr McIlwaine:

That the Chairman write to the Presiding Officers and the Acting Premier seeking clarification of the proposed cession of part of the parliamentary precincts.

Mr John Lawrence, journalist, sworn and examined following presentation of a prepared statement.

Evidence concluded, the witness withdrew.

Mr David Solomon, journalist and Author, sworn and examined.

Evidence concluded, the witness withdrew.

The Committee deliberated.

The Committee adjourned at 3.10 p.m. until Tuesday, 28 June, 1983, at 10.30 a.m.

TUESDAY, 28 *JUNE,* 1983

At Parliament House, Sydney, at 2.00 p.m.

MEMBERS PRESENT:

Legislative Council	*Legislative Assembly*
Mrs GRUSOVIN	Mr BOWMAN
Mr WILLIS	Mr BROWN
	Mr CAVALIER
	Mr McILWAINE
	Mr MOORE

An apology was received from Mr Vaughan.

The Minutes of the Meeting held on 3 June, 1983, as circulated, were confirmed.

Professor Geoffrey Sawer, Chairman, the Australian Press Council, sworn and examined following presentation of prepared statements.

Evidence concluded, the witness withdrew.

The Committee deliberated.

The Committee adjourned at 3.45 p.m. until Wednesday, 29 June, 1983, at 10.30 a.m.

WEDNESDAY, 29 *JUNE,* 1983

At Parliament House, Sydney, at 10.30 a.m.

MEMBERS PRESENT:

Legislative Council	*Legislative Assembly*
Mrs GRUSOVIN	Mr BOWMAN
Mr WILLIS	Mr BROWN
	Mr CAVALIER
	Mr McILWAINE
	Mr MOORE

An apology was received from Mr Vaughan.

The Minutes of the Meeting held on 28 June, 1983, as circulated, were confirmed.

Resolved, on motion of Mr McIlwaine, seconded by Mr Brown:

That the Chairman write to the Acting Premier to ascertain the policy in the Public Service and the Statutory Authorities ocncerning the confidentiality or otherwise of letters from Members to Ministers in relation to third parties.

Ms Mary Gaudron, Q.C., Solicitor-General, sworn and examined following presentation of a prepared statement.

Evidence concluded, the witness withdrew.

Mr George Petersen, M.P., sworn and examined following presentation of a prepared statement.

Evidence concluded, the witness withdrew.

The Committee deliberated.

The Committee adjourned at 4.10 p.m., *sine die.*

MONDAY, 18 *JULY,* 1983

At Parliament House, Hobart, at 10.30 a.m.

(Committee Room No. 1)

MEMBERS PRESENT:

Legislative Council	*Legislative Assembly*
Mrs GRUSOVIN	Mr BOWMAN
	Mr BROWN
	Mr CAVALIER
	Mr McILWAINE
	Mr MOORE

Apologies were received from Mr Vaughan and Mr Willis.

The Committee met and had informal discussions with the following persons:

The Clerk of the Legislative Council, Mr A. J. Shaw;

The Clerk of the House of Assembly, Mr P. T. McKay;

The Government Printer, Mr A. B. Caudell;

Mr Wayne Crawford and Mr Jonathan Lange, of the Parliamentary Press Gallery; and

The Editor of Debates, Mr W. Washington.

Discussion having concluded, the Committee toured the parliamentary precincts.

The Committee adjourned at 4.00 p.m. until Tuesday, 19 July, 1983, at 9.30 a.m.

TUESDAY, 19 *JULY*, 1983

At Parliament House, Melbourne, at 9.45 a.m.
(Council Committee Room)

MEMBERS PRESENT:

Legislative Council	*Legislative Assembly*
Mrs GRUSOVIN	Mr BOWMAN
	Mr BROWN
	Mr CAVALIER
	Mr McILWAINE
	Mr MOORE

Apologies were received from Mr Vaughan and Mr Willis.

The Committee met and had informal discussions with the following persons:

The Clerk of the Parliaments, Mr A. R. B. McDonnell;

The Clerk of the Legislative Assembly, Mr J. H. Campbell;

The Acting Chief of Hansard, Mr E. Sutton and

The Government Printer, Mr F. Atkinson.

Discussion having concluded, the Committee adjourned at 4.00 p.m. until Wednesday, 20 July, 1983, at 2.30 p.m.

WEDNESDAY, 20 *JULY*, 1983

At Parliament House, Melbourne, at 2.00 p.m.
(Council Committee Room)

MEMBERS PRESENT:

Legislative Council	*Legislative Assembly*
Mrs GRUSOVIN	Mr BOWMAN
	Mr BROWN
	Mr CAVALIER
	Mr McILWAINE
	Mr MOORE

Apologies were received from Mr Vaughan and Mr Willis.

The Committee met and had informal discussion with Ms Allison Brouwer, President of the Parliamentary Press Gallery, Victoria.

An inspection was made of the parliamentary precincts and the Press Offices at the Public Works Building, Treasury Place.

Discussion having concluded, the Committee adjourned at 4.30 p.m. until Thursday, 21 July, 1983, at 10.00 a.m.

THURSDAY, 21 *JULY*, 1983

At Parliament House, Adelaide, at 10.00 a.m.
(House of Assembly Conference Room)

MEMBERS PRESENT:

Legislative Council	*Legislative Assembly*
Mrs GRUSOVIN	Mr BOWMAN
	Mr BROWN
	Mr CAVALIER
	Mr McILWAINE
	Mr MOORE

Apologies were received from Mr Vaughan and Mr Willis.

The Committee met and had informal discussions with the following persons:

The Speaker, Hon. T. McRae;
The Clerk of the Legislative Assembly, Mr G. Mitchell;
Leader of Hansard, Mr K. Simms;
The Production Manager, Government Printing Office, Mr R. Fletcher; and,
Mr M. Abraham, State Political Reporter, *The Advertiser*.

An inspection was made of the parliamentary precincts.

Discussion having concluded, the Committee adjourned at 4.30 p.m. until Friday, 22 July, 1983, at 8.00 a.m.

FRIDAY, 22 *JULY*, 1983

At the Gateway Motel, Adelaide, at 8.00 a.m.

MEMBERS PRESENT:

Legislative Council	*Legislative Assembly*
Mrs GRUSOVIN	Mr BOWMAN
	Mr BROWN
	Mr CAVALIER
	Mr McILWAINE
	Mr MOORE

Apologies were received from Mr Vaughan and Mr Willis.

The Chairman foreshadowed the production of reports by the Joint Committee akin to Green Papers.

The Committee deliberated.

The Committee deliberated upon the issues canvassed at the meetings held in Hobart, Melbourne and Adelaide and the possible recommendations flowing therefrom.

The Committee considered the future course of deliberations.

The Committee adjourned at 9.30 a.m., *sine die*.

SUNDAY, 24 *JULY*, 1983

The Drawing Room, Padthaway Estate, Padthaway, South Australia, at 2.15 p.m.

MEMBERS PRESENT:

Legislative Council	*Legislative Assembly*
Mrs GRUSOVIN	Mr BOWMAN
	Mr BROWN
	Mr CAVALIER
	Mr McILWAINE
	Mr MOORE

Apologies were received from Mr Vaughan and Mr Willis.

The Committee reviewed the Evidence taken at the meetings in Hobart, Melbourne and Adelaide.

The Committee deliberated.

Mr Moore circulated a discussion paper.

The Committee deliberated.

The Committee decided that members of the Committee, together with the Clerk, would prepare submission papers.

The Committee adjourned at 7.15 p.m., until Monday, 25 July, 1983, at 2.00 p.m.

MONDAY, 25 *JULY*, 1983

At Parliament House, Perth, at 2.00 p.m. (Legislative Council Chamber)

MEMBERS PRESENT:

Legislative Council	*Legislative Assembly*
Mrs GRUSOVIN	Mr BOWMAN
	Mr BROWN
	Mr CAVALIER
	Mr McILWAINE
	Mr MOORE

Apologies were received from Mr Vaughan and Mr Willis.

The Committee met and had informal discussions with the following persons:

The Clerk of the Legislative Assembly, Mr Bruce Oakley;

Professor Gordon Reid; and

The Clerk of the Legislative Council,
Mr Laurie Marquet.

Discussions having concluded, the Committee adjourned at 5.00 p.m. until Tuesday, 26 July, 1983, at 10.00 a.m.

TUESDAY, 26 *JULY*, 1983

At Parliament House, Perth, at 10.00 a.m. (Legislative Council Chamber)

MEMBERS PRESENT:

Legislative Council	*Legislative Assembly*
Mrs GRUSOVIN	Mr BOWMAN
	Mr BROWN
	Mr CAVALIER
	Mr McILWAINE
	Mr MOORE

Apologies were received from Mr Vaughan and Mr Willis.

An inspection was made of the Parliament precincts.

The Committee met and had informal discussions with the following persons:

The Chief Hansard Reporter, Ms Jessie Bussola;

Mr Dan O'Sullivan, Editor-in-Chief,
The West Australian; and

The President of the Legislative Council,
the Hon. Clive Griffith, M.L.C.

Discussion having concluded, the Committee adjourned at 2.30 p.m., *sine die.*

MONDAY, 8 *AUGUST*, 1983

At Parliament House, Sydney, at 10.00 a.m.

MEMBERS PRESENT:

Legislative Council	*Legislative Assembly*
Mrs GRUSOVIN	Mr BOWMAN
Mr VAUGHAN	Mr BROWN
Mr WILLIS	Mr CAVALIER
	Mr McILWAINE
	Mr MOORE

Dr Alan Ransom, Senior Lecturer in Law, Macquarie University, sworn and examined following presentation of a prepared statement. Evidence concluded the witness withdrew.

Patrick Allan Rogan, Member of Parliament, sworn and examined following presentation of an oral statement.

Evidence concluded, the witness withdrew.

The Committee deliberated.

Resolved, on motion of Mr Moore, seconded by Mr Bowman: That Dr Ransom be permitted to use his submission as the basis of a learned article.

Resolved, on motion of Mr Moore, seconded by Mr Vaughan: That the Chairman write to the Attorney-General seeking his Advice as to the meaning of the term "lawful question", in S. 11 of the Parliamentary Evidence Act, 1901,

The Committee deliberated.

The Committee adjourned at 3.30 p.m., until Tuesday, 9 August, 1983, at 10.30 a.m.

TUESDAY, 9 AUGUST, 1983

At Parliament House, Sydney, at 10.30 a.m.

MEMBERS PRESENT:

Legislative Council	*Legislative Assembly*
Mrs GRUSOVIN	Mr BOWMAN
Mr VAUGHAN	Mr BROWN
Mr WILLIS	Mr CAVALIER
	Mr McILWAINE
	Mr MOORE

Richard Charles Mochalski, Member of Parliament, sworn and examined following presentation of a prepared statement.

Evidence concluded, the witness withdrew.

Frank Shepherdson, Principal Parliamentary Attendant, Legislative Assembly, sworn and examined.

Evidence concluded, the witness withdrew.

Douglas Leslie Wheeler, Clerk of the Legislative Assembly, previously sworn (19 April, 1983) examined.

Evidence concluded, the witness withdrew.

John Edward Hatton, Member of Parliament, sworn and examined following presentation of a prepared statement.

Evidence concluded, the witness withdrew.

The Committee deliberated.

Resolved, on motion of Mrs Grusovin, seconded by Mr Vaughan:

That the Clerk prepare a Log for presentation to witnesses incorporating the terms of reference of the Committee and Standing Order 362 of the Legislative Assembly.

Resolved, on motion of Mr Moore, seconded by Mr Vaughan,

(1) That the Chairman be authorized to write to the Prime Minister expressing the concern of the Committee about the incident reported this morning by the Principal Parliamentary Attendant of the Legislative Assembly, and to inquire as to whether it is usual practice for ASIO and its agents to operate within the precincts of Parliament Houses in Australia.

(2) And that the Chairman write to the Attorney-General of the Commonwealth of Australia seeking the appearance of the Regional Director of ASIO or an appropriate delegate.

The Committee deliberated.

The Committee adjourned at 4.00 p.m. until Thursday, 11 August, 1983, at 10.30 a.m.

THURSDAY, 11 *AUGUST,* 1983

At Parliament House, Sydney, at 10.45 a.m.

MEMBERS PRESENT:

Legislative Council	*Legislative Assembly*
Mrs GRUSOVIN	Mr BOWMAN
Mr VAUGHAN	Mr BROWN
Mr WILLIS	Mr CAVALIER
	Mr McILWAINE
	Mr MOORE

Brian Malcolm James Hogben, Group General Manager Editorial, News Limited, sworn and examined following presentation of a prepared statement.

Evidence concluded, the witness withdrew.

Marie Claire Fisher, Member of Parliament, sworn and examined following presentation of an oral statement.

Evidence concluded, the witness withdrew.

The Committee deliberated.

Resolved, on motion of Mr Moore, seconded by Mr Bowman:

That the Chairman write to the Attorney-General seeking his Advice as to the extra-territorial application, if any, of the laws of New South Wales concerning privilege.

The Committee deliberated.

The Committee adjourned at 4.15 p.m., until Friday, 19 August, 1983, at 9.30 a.m.

FRIDAY, 19 *AUGUST,* 1983

At Parliament House, Sydney, at 9.40 a.m.

MEMBERS PRESENT:

Legislative Council	*Legislative Assembly*
Mrs GRUSOVIN	Mr BOWMAN
Mr VAUGHAN	Mr BROWN
	Mr CAVALIER
	Mr McILWAINE
	Mr MOORE

David Llewelyn Jones, journalist, previously sworn (3 May, 1983) examined.

Evidence concluded, the witness withdrew.

Wayne Keith Geddes, journalist, previously sworn (3 May, 1983) examined.

Evidence concluded, the witness withdrew.

Michael Adrian Steketee, journalist, previously sworn (3 May, 1983) examined.

Evidence concluded, the witness withdrew.

The Committee deliberated.

The Committee adopted the following statement and authorized the Chairman to issue it:

"The Committee is aware of and concerned at any attempt by the Commonwealth Government purporting to limit freedom of speech in State Parliaments.

"This goes to the roots of Parliamentary Privilege inherited from the Parliament of Westminster.

"The Committee is not interested in the merits or party political matters raised by this incident. Our anxiety is aroused by any potential conflict between Parliamentary privilege of State Parliaments and Commonwealth legislation.

"The Committee is inquiring into all the issues raised by Mr Justice Hope and will be making definite recommendations to the New South Wales Parliament.

"The Committee does not accept that there should be or are constitutional inhibitions on freedom of speech in State Parliaments caused by Commonwealth legislation. The question has grave potential and is a matter properly to be considered by the Standing Committee of the Australian Constitutional Convention".

The Committee adjourned at 12.50 p.m., *sine die.*

FRIDAY, 26 *AUGUST,* 1983

At Parliament House, Sydney, at 9.30 a.m.

MEMBERS PRESENT:

Legislative Council	*Legislative Assembly*
Mr VAUGHAN	Mr BOWMAN
Mr WILLIS	Mr CAVALIER

The Minutes of the Meetings held on 29 June, 18, 19, 20, 21, 22, 24, 25 and 26 July; and 8, 9, 11 and 19 August, as circulated, were confirmed.

Apologies were received from Mrs Grusovin, Mr Brown, Mr McIlwaine and Mr Moore.

Mr Timothy Robertson, barrister-at-law, sworn and examined following presentation of an oral statement. Evidence concluded, the witness withdrew.

The Committee deliberated.

Resolved, on motion of Mr Vaughan, seconded by Mr Bowman, that the Chairman write to the Presiding Officers recommending that each House should reassert its undoubted privileges by resolution.

The Committee adjourned at 12.45 p.m., *sine die.*

THURSDAY, 27 *OCTOBER*, 1983

At Parliament House, Brisbane, at 10.00 a.m. (Conference Room A17)

MEMBERS PRESENT:

Legislative Council	*Legislative Assembly*
Mrs GRUSOVIN	Mr BOWMAN
Mr VAUGHAN	Mr BROWN
Mr WILLIS	Mr CAVALIER

Apologies were received from Mr McIlwaine and Mr Moore.

The Committee met and had informal discussions with the following persons:

The Clerk of the Parliament, Mr Alan Woodward; and
Mr John Bevan Battersby, Editor of Debates.

Discussion having concluded, the Committee toured the parliamentary precincts.

The Committee adjourned at 3.00 p.m. until Friday, 28 October, 1983, at 10.00 a.m.

FRIDAY, 28 *OCTOBER*, 1983

At Parliament House, Brisbane, at 10.00 a.m. (Conference Room A17)

MEMBERS PRESENT:

Legislative Council	*Legislative Assembly*
Mrs GRUSOVIN	Mr BOWMAN
Mr VAUGHAN	Mr BROWN
Mr WILLIS	Mr CAVALIER

Apologies were received from Mr McIlwaine and Mr Moore.

The Committee met and had informal discussions with the following persons:

The Government Printer, Mr S. Hampson; and
Mr Quentin Dempster, Parliamentary Press Gallery (*Telegraph*).

Discussion having concluded, the Committee met with the Acting-Speaker.

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

TUESDAY, 25 OCTOBER, 1983

At Parliament House, Darwin, at 9.00 a.m. (Legislative Assembly Chamber)

MEMBERS PRESENT:

Legislative Council	*Legislative Assembly*
Mrs GRUSOVIN	Mr BOWMAN
Mr VAUGHAN	Mr BROWN
Mr WILLIS	Mr CAVALIER

The Minutes of the Meeting held on 26 August, 1983, as circulated, were confirmed.

Apologies were received from Mr McIlwaine and Mr Moore.

The Committee met and had informal discussions with the following persons:

Mr R. Withnall, Chairman of the Planning Authority;

The Clerk of the Legislative Assembly of the Northern Territory of Australia, Mr Guy Smith;

Mr R. Stewart, Editor of Debates;

Mr Peter Secrett, Senior Client Services Officer, representing the Government Printer; and

Mr J. Ellis, Sub-editor, *The Northern Territory News* and Mr P. Wilson, Political Roundsman, *The Northern Territory News.*

Discussion having concluded, the Committee toured the parliamentary precincts.

The Committee adjourned at 4.00 p.m. until Thursday, 27 October, 1983, at 10.00 a.m.

TUESDAY, 1 NOVEMBER, 1983

At Parliament House, Sydney, at 11.45 a.m.

MEMBERS PRESENT:

Legislative Council	*Legislative Assembly*
Mrs GRUSOVIN	Mr BROWN
Mr VAUGHAN	Mr CAVALIER
Mr WILLIS	Mr McILWAINE

Apologies were received from Mr Bowman and Mr Moore.

Mr Vaughan presented the plan of the parliamentary precincts, which was inspected by the members of the Committee.

Resolved, on motion of Mrs Grusovin, seconded by Mr Brown:

That the Chairman write to the Presiding Officers expressing the Committee's concern that part of the parliamentary precincts are being ceded to the State Library without reference to the Parliament.

The Committee deliberated.

The Committee adjourned at 12 noon until Wednesday, 2 November, 1983, at 5 p.m.

WEDNESDAY, 2 NOVEMBER, 1983

At Parliament House, Sydney, at 5.00 p.m.

MEMBERS PRESENT:

Legislative Council	*Legislative Assembly*
Mrs GRUSOVIN	Mr BOWMAN
Mr VAUGHAN	Mr CAVALIER
	Mr BROWN
	Mr McILWAINE

An apology was received from Mr Moore.

The Minutes of the Meetings held on 25, 27, 28 October and 1 November, 1983, as circulated, were confirmed.

Mr Leonard Spira, Government Architects Branch, Department of Public Works, addressed the Committee on the planned extensions to the State Library.

The Committee deliberated.

The Committee adjourned at 5.45 p.m., *sine die.*

TUESDAY, 15 NOVEMBER, 1983

At Parliament House, Sydney, at 2.00 p.m.

MEMBERS PRESENT:

Legislative Council	*Legislative Assembly*
Mrs GRUSOVIN	Mr CAVALIER
Mr VAUGHAN	Mr McILWAINE

Apologies were received from Messrs Bowman, Brown, Moore and Willis.

The Minutes and Memoranda of the Meetings held on 25, 27 and 28 October and 1 and 2 November, 1983, as circulated, were confirmed.

The Chairman made a statement on the reading of members' correspondence in the House.

Resolved, on the motion of Mr McIlwaine, seconded by Mrs Grusovin:

> That the Committee approve the statement of the Chairman concerning the reading of members' correspondence in the House in principle, and that the statement be circulated among the members of the Committee for comment.

Mr Andrew Andersons, Government Architects Branch, Department of Public Works, addressed the Committee on the planned extensions to the State Library.

The Committee deliberated.

The Committee adjourned at 4.30 p.m., until Tuesday, 22 November, 1983, at 10.45 p.m.

MONDAY, 28 *NOVEMBER*, 1983

At Parliament House, Sydney, at 11.45 a.m.

MEMBERS PRESENT:

Legislative Council	*Legislative Assembly*
Mrs GRUSOVIN	Mr BOWMAN
Mr VAUGHAN	Mr BROWN
Mr WILLIS	Mr CAVALIER
	Mr McILWAINE
	Mr MOORE

The Minutes of the Meetings held on 2 and 15 November, 1983, as circulated, were confirmed.

The Committee deliberated.

A copy of the draft Progress Report having been transmitted to each member of the Committee—the draft Progress Report was accepted by the Committee as having been read.

The Committee proceeded to consider the draft Progress Report.

Paragraph 1 read and agreed to.
Paragraph 2 read and amended.
Paragraph 2, as amended, agreed to.
Paragraph 3 read and agreed to.
Paragraphs 4 and 5 read and amended.
Paragraphs 4 and 5, as amended, agreed to.
Paragraphs 6 to 8 read and agreed to.
Paragraphs 9 to 20 read and amended.
Paragraphs 9 to 20, as amended, agreed to.
Paragraph 21 read and agreed to.
Paragraphs 22 to 38 read and amended.
Paragraphs 22 to 38, as amended, agreed to.
Paragraph 39 read and agreed to.
Paragraphs 40 to 131 read and amended.
Paragraphs 40 to 131, as amended, agreed to.
Paragraphs 132 to 139 read and agreed to.
Paragraphs 140 to 148 read and amended.
Paragraphs 140 to 148, as amended, agreed to.
Paragraphs 149 to 160 read and agreed to.
Paragraphs 161 to 172, read and amended.
Paragraphs 161 to 172, as amended, agreed to.
Paragraph 173 read and agreed to.
Paragraphs 174 to 196 read and amended.
Paragraphs 174 to 196, as amended, agreed to.
Paragraphs 197 to 203 read and agreed to.
Paragraphs 204 to 213 read and amended.
Paragraphs 204 to 213, as amended, agreed to.
Paragraphs 214 to 227 read and agreed to.
Paragraphs 228 to 238 read and amended.
Paragraphs 228 to 238, as amended, agreed to.
Paragraphs 239 to 245 read and agreed to.
Paragraphs 246 to 266 read and amended.
Paragraphs 246 to 266, as amended, agreed to.
Paragraphs 267 and 268 read and agreed to.
Paragraphs 269 to 284 read and amended.
Paragraphs 269 to 284, as amended, agreed to.

Resolved, on motion of Mr Brown, seconded by Mr Bowman, That the draft report, as amended and agreed to, be the report of the Committee.

Resolved, on motion of Mrs Grusovin, seconded by Mr McIlwaine:
That the Chairman write the foreword to the Progress Report.

The Committee deliberated.

The Committee adjourned at 11. 15 p.m., *sine die.*

TUESDAY, 29 NOVEMBER, 1983

At Parliament House, Sydney, at 11.25 p.m.

MEMBERS PRESENT:

Legislative Council	*Legislative Assembly*
Mrs GRUSOVIN	Mr BOWMAN
Mr VAUGHAN	Mr BROWN
	Mr CAVALIER
	Mr McILWAINE
	Mr MOORE

The Minutes of the Meeting held on 28 November, 1983, as circulated, were confirmed.

The draft Progress Report, as agreed to, was brought up by the Chairman.

Resolved, on motion of Mr Moore, seconded by Mr Bowman:

That the draft Progress Report be the Progress Report of the Committee.

Whereupon the Chairman signed the Progress Report.

The Committee deliberated.

The Committee adjourned at 11.40 p.m., *sine die.*