THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

COMMITTEE OF PRIVILEGES

THE CIRCULATION OF PETITIONS

(11TH REPORT)

JUNE 1988

MEMBERS OF THE COMMITTEE

Senator Patricia Giles (Western Australia) Chair

Senator John Black (Queensland)

Senator Bruce Childs (New South Wales)

Senator John Coates (Tasmania)

Senator the Honourable Peter Durack, QC (Western Australia)

Senator Janet Powell (Victoria)

Senator Baden Teague (South Australia)

The Senate
Parliament House
CANBERRA

CONTENTS

IN'RODUCTION

1. On 25 February 1988, the Senate agreed to eleven resolutions in relation to parliamentary privilege. Resolution 3 sets out criteria to be taken into account when determining matters relating to contempt. Resolution 4 sets out criteria to be taken into account by the President of the Senate in determining whether a motion arising from a matter of privilege should be given precedence of other business. Resolutions 3 and 4 are reproduced in Appendix 1 of this Report.

2. The President, Senator the Honourable Kerry Sibraa, announced on 15 March 1988 that Senator Chaney, Leader of the Opposition in the Senate, had raised with him, by letter, a matter of privilege. This was the first time that the President had been called upon to make a determination under the new resolution. In making his determination, pursuant to the procedures established on 25 February, the President stated:

> The determination which I am required to make does not involve an assessment of the truth or merits of the matter raised, nor does it finally determine the matter. My decision is simply whether, having regard to the stated criteria, a motion concerning the matter should be given precedence so that the Senate is given an early opportunity to consider the matter. (Hansard, p. 706)

The President determined that the motion to refer the matter should have precedence.

3. Senator Chaney then gave notice that on the next day of sitting he would move:

> That the following questions be referred to the Committee of Privileges: Whether a petition to the Senate was suppressed in consequence of a threat of legal proceedings by the Honourable Brian Burke,

and, if so, whether this constituted a contempt of Parliament. (Journals of the Senate, p. 545)

4. On 16 March, Senator Chaney moved this motion. During debate on the motion, Senators raised many issues in connection with the general question of the circulation and presentation of petitions, as well as matters specific to the questions raised by Senator Chaney. The discussions in the Senate on 15 and 16 March are at Appendix 2 to this Report.

5. Following extensive debate, Senator Collins moved the following amendment to the motion moved by Senator Chaney:

> Leave out all words after 'Committee of Privileges', insert 'Whether the circulation of a petition containing defamatory material for the purpose of gaining signatures and subsequent submission to the Senate is or ought to be privileged and how such issues should be determined and in what forum'.

In speaking to his amendment, Senator Collins indicated that it removed personal references while allowing the Committee to look at the general issues of the matter. Further, Senator Collins went on to state 'that the removal of personal references would not preclude in any sense whatever the Committee, of its own motion, choosing to have brought before it people who may well be concerned with the case in point'. (Hansard, p. 826).

6 In responding to Senator Collins' amendment, Senator Chaney expressed his concern at the generality of the amendment and noted that all of the precedents concerning petitions relate to individual cases: 'the whole body of law on privilege had been, until our own legislation of last year, built up on an examination of particular cases'. (Hansard, p. 827).

7. The amended motion was agreed to by the Senate.

CONDUCT OF THE INQUIRY

8. The Committee first met on 18 March 1988. The Committee determined that, given the generality of the reference before it, it would proceed under Resolution 1, the general inquiry provision of the Resolutions agreed to by the Senate on 25 February, rather than the specific provisions relating to alleged contempt of the Senate. Resolution 1 is reproduced at Appendix 1. In order to carry out its inquiry, the Committee agreed to seek from the Senate additional powers. The motion conferring these powers was moved by the Chairman and was agreed to by the Senate on 24 March 1988. This resolution is also reproduced at Appendix 1.

SUBMISSIONS

9. The Committee decided to place advertisements in the national press seeking submissions from the public on the terms of the reference. These advertisements appeared on 25 and 26 March. In addition, the Committee wrote to the Clerks of all State Parliaments, State and Territory Bar Associations and Law Societies, civil liberties groups and individuals with an interest in parliamentary privilege. The Committee received 10 submissions (see Appendix 4).

10. The Committee also decided to write to the Clerk of the Senate, Mr Harry Evans, seeking background information on the matter referred to it. Following the expeditious receipt of his response, which is reproduced at Appendix 3, the Clerk was invited to attend a meeting of the Committee to discuss matters arising from his response with members of the Committee. The Committee wishes to thank the Clerk for his contribution to the Committee's inquiry, and acknowledges that the discussion which follows draws heavily on the Clerk's paper and the Committee's informal discussions with him.

11. The Committee received a submission from the person whose situation first directed the attention of the Senate to the general question referred to the Committee and noted that, during the course of debate, some speakers indicated that there was nothing to preclude the Committee, of its own motion, seeking to examine the particular case brought before the Senate.

12. After considering all the submissions received, however, a majority of the Committee concluded that, given the questions referred by the Senate, which concern matters of principle rather than the particularity of an individual case, it would not be appropriate to hear evidence from the person whose case gave rise to the reference, or from others. A minority of the Committee, bearing specifically in mind that 'the whole body of law on privilege had been ... built up on an examination of particular cases', (Hansard, p. 827) considered that evidence should have been taken (and see dissenting report).

ISSUES

13. The Committee decided to address the reference by turning its attention to two crucial questions, as follows:

(a) whether the circulation of a petition is privileged; and

(b) if not, whether such circulation should be privileged.

Subsidiary matters arising from the reference are:

(c) the question of defamation which is of significance in determining a response to paragraph (b); and

(d) the forum for the determination of questions (a) and (b).

(a Circulation of a petition: is this act covered by parliamentary privilege?

14. In considering the question whether the act of circulating a petition attracts parliamentary privilege, the Committee had regard to the passage of the Parliamentary Privileges Act 1987, noting that the actual submission of a petition to a House of the Parliament is protected under the Act whether or not a House of Parliament agrees to receive the petition. The question arises whether the acts preceding the submission of a petition, that is, the preparation and circulation of a document where a person or persons have an intention to submit it to a House of Parliament, attract a similar protection.

15. The Parliamentary Privileges Act does not explicitly deal with the circulation of petitions, and it would be for the courts to interpret the provisions of the Act and to decide whether the circulation of petitions is privileged. It may be argued that, under paragraph 16(2)(b) of the Act, the preparation of a petition (and thus circulation as part of that preparation) is an essential part of a submission of a petition and therefore absolutely privileged; and that since, under paragraph 16(2)(c), the presentation of a petition is part of the business of a House, the process of drawing up a petition, including the gaining of signatures, is therefore absolutely privileged.

16. Against this, however, it may also be argued that, while circulation of a petition is normally associated with, or incidental to, its submission to a House of Parliament, given the right of a single citizen to submit a grievance to the Parliament under absolute privilege its prior circulation to others is not a necessary pre-condition to its submission.

17. The Clerk of the Senate concludes, in his comprehensive and closely-argued paper, that it is unlikely that the courts would take the view that an absolute privilege attaches to the circulation of a petition for the purpose of gaining signatures, particularly as this would give a petitioner the means of ignoring the civil and criminal law. This conclusion is supported by the Law Council of Australia, and others who have addressed this element of the Committee's terms of reference.

18. The Clerk also addresses the question whether a qualified privilege might attach to the circulation of a petition. He points out that qualified privilege usually arises consequent upon, rather than antecedent to, absolute parliamentary privilege. While noting that a limited antecedent privilege attaches to parliamentary proceedings, as under paragraphs 16(2)(c) and (d) of the Parliamentary Privileges Act (preparation and formulation of documents), he points out that these acts, unlike the circulation of a petition, do not take place in public, and concludes that the courts would be unlikely to extend the privilege any further than the statute indicates.

19 The Clerk also makes the valid point that, even if the courts had taken a different view of the privilege attached to the circulation of petitions before the passage of the Parliamentary Privileges Act, the passage of that Act has clarified the issues to such an extent that the courts might well observe that, given the comprehensive nature of the Act, in the absence of a specific provision to grant some form of statutory protection to the circulation of petitions it was the intention of Parliament that the privilege should not so extend.

20 After considering the Clerk's explanation of the issues, and the views of the Law Council and others, the Committee therefore believes that the act of circulating a petition is not, and indeed never has been, privileged.

(b) and (c) Should the circulation of a petition, whether or not it contains defamatory matter, be privileged?

21. The Committee, in reaching the conclusion that the circulation of a petition should not be privileged, had regard to the following matters:

(i) The burden of the submissions received, as well as the concerns expressed in debate in the Senate when the matter was referred to the Committee, is that the protection afforded by Article 9 of the Bill of Rights should not be used to circumvent the normal protections afforded to persons who might be defamed by a petition purportedly circulated with an (unprovable) intention that the document be presented to a House of Parliament. Only the person whose case gave rise to the present reference, and the Free Speech Committee, disregarded this concern in their submissions.

As stated during debate:

> I think it would be an appalling proposition if [a] person were prevented from taking the legal action that would, under any other circumstance, be available to him because I had topped and tailed .... garbage and nonsense and presented it in the correct form as a petition. (Senator Collins, Senate Hansard, 16 March 1988, p. 826.)

(ii) It may be that, under the general laws of defamation in Australia, a defence on the basis of the interest and duty principle would be available to persons who have a

clear common interest in the subject of a petition, and this, in the Committee's view, would provide, if it were available, adequate protection without placing a petitioner's rights above those of other citizens.

(iii) In considering the general question whether the circulation of petitions should attract some statutory form of privilege, the Committee draws attention to the nature and purpose of the petitions which are now submitted to the Senate. As the Minister for Home Affairs (Senator Ray) pointed out in debate (Senate Hansard, 16 March 1988, p. 817), the overwhelming majority of petitions received by the Senate is from citizens questioning a matter of public policy: only rarely are petitions presented in order to obtain relief from perceived personal injustices and wrongs. In these rare circumstances it is possible, albeit unlikely, that a citizen might be obliged, in making his or her case, to make accusations or statements which, under other circumstances, would be actionable. The Committee believes that, in such cases, difficulties would be overcome by that person alone signing a petition, the submission of which, as stated in paragraph 14, is specifically protected under the Parliamentary Privileges Act. Such a document would be examined before presentation under the Standing Orders of the Senate, which provide that a petition must be 'respectful, decorous and temperate in language' (Standing Order 88). It may be that the petition would be ruled out of order, under the Standing Order. In that case, the Senator who proposed to present the petition, or others, might consider the matter of such significance as to raise the issues contained in it by a different method. Even if the petition did not offend Standing Orders, it is always within the province of the Senate to refuse to receive it, thus preventing the

publication of a matter which, in the Senate's view, does not justify receipt. Again, the remedy for the individual citizen is the same - the Senator, or others, may take up the issue by different means. It may also be that a judgement was made by the Senate that the grievance was of such a serious nature that, in the particular circumstances of the case, a greater injustice would be done if the person were denied the right to make the grievance known under absolute privilege, and would therefore agree to receive the petition. The Committee considers, however, that it is most unlikely that any of these circumstances would arise.

22. The question whether the circulation of petitions should be accorded some privileged status should, in the Committee's view, be answered in the negative.

(d) In which forum should these matters be determined?

23. The general question as to the status of a petition circulated before submission to the Senate is a matter of law for the courts to determine. The Committee considers that the courts would be unlikely to conclude that the circulation of a petition would be covered by parliamentary privilege. If, therefore, despite the concerns about defamation expressed so widely in debate and in the submissions received, it were to be concluded that petitions should attract a privilege, Parliament itself would have to provide specifically for this by amendment to the Parliamentary Privileges Act.

24. The Committee emphasises, however, that the existing law does not inhibit the normal rights of citizens to bring their concerns to the attention of the Parliament and considers that, as there are sufficient mechanisms available to cover

rare cases such as described at sub-paragraph 21(iii), an extension of the privilege is not warranted. The dangers involved in changing the law to cover an almost inconceivable situation far outweigh any benefits which would accrue.

REPORT

25. The Committee reports to the Senate as follows:

1 That, while the question whether the circulation of a petition for the purpose of gaining signatures and subsequent submission to the Senate is privileged is a question of law for the courts to determine, the Committee believes that the circulation is not absolutely privileged and is probably not subject to any form of qualified privilege;

2 That, if the Parliament were to determine that the circulation of a petition should be privileged, absolutely or otherwise, a change to the law would therefore be required;

3 That, in the light of the dangers inherent in denying a citizen the right to pursue action in the courts to redress an attack on his or her character or reputation, the circulation of a petition containing defamatory matter should not be protected by parliamentary privilege; and

4 That the circulation of other petitions requires no special protection and therefore that no change to the present law is warranted.

Patricia Giles
Chair

June 1988

DISSENTING REPORT

by Senator the Honourable Peter Durack, Q.C.

REPORT ON PETITIONS - COMMITTEE OF PRIVILEGES

DISSENTING REPORT
by Senator Peter Durack Q C

On 16 March Senator Chaney moved that the following question be referred to the Committee of Privileges:

> "Whether a petition to the Senate was suppressed in consequence of a threat of legal proceedings by the Honourable Brian Burke, and, if so, whether this constituted a contempt of Parliament."

The petition which was allegedly suppressed had been prepared by a Mr R.M. Strickland of 28 Modillion Avenue, Shelley in the State of Western Australia and was in the following form:

> "To the Honourable the President and Members of the Senate in Parliament assembled.
>
> The Petition of the undersigned showeth that the standard of Australia's diplomatic representatives overseas is a matter of concern to all Australians.
>
> Your Petitioners most humbly pray that the Senate, in Parliament assembled, should seek to have the appointment of Honourable Brian Burke as our Ambassador to Ireland deferred until such time as the charges presently pending against Mr Len Brush and Mr Robert Martin shall have been heard and concluded, and until matters arising therefrom shall have been answered to the satisfaction of both Houses of the Parliament of Western Australia.
>
> And your Petitioners, as in duty bound, will ever pray."

After lengthy debate in the Senate, Senator Chaney's motion was amended to read that the following question be referred to the Committee of Privileges:

> "..whether the circulation of a petition containing defamatory material for the purpose of gaining signatures and subsequent submission to the Senate is or ought to be privileged and how such issues should be determined and in what forum."

In moving this amendment, Senator Collins made it clear that the alternative reference to the Privileges Committee "would not preclude in any sense whatever the Committee, of its own motion, choosing to have brought before it people who may well be concerned with the case in point."(Hansard p.826). Senator Macklin said "I believe it would be very odd to go into a general inquiry without looking at that specific item."(Hansard p.830)

The Committee in attempting to deal with the reference from the Senate has been left in a curious and difficult position. The problem for the Committee has been clearly outlined by the Clerk of the Senate, Mr Harry Evans, in a briefing paper which the Committee requested from him.

In that paper he shows clearly that the original motion moved by Senator Chaney raises a question of conduct which may have constituted a contempt of Parliament, whereas the amended form of the motion raises an entirely different question e.g. whether the circulation of a petition (not its submission to the Senate) possesses some legal immunity in proceedings for defamation.

This question, as Mr Evans pointed out, can only be determined by a court on the facts of a particular case or as a general proposition of law by an Act of Parliament.

I might add that there were no grounds on the part of the Senate to assume that the actual petition allegedly suppressed was defamatory. The Clerk of the Senate specifically cautions against making that assumption.

The exercise on which this Committee has been asked to embark is an academic one and it would be easy for the Committee to report to the Senate that the reference it has been given is misconceived and a waste of the Committee's time. However in order to avoid such a damaging assumption about a vote of the Senate the Clerk has suggested that "the Committee should assume that it has been asked to determine whether there is or ought to be a legal immunity in respect of the circulation of a petition."

The Committee has accepted that task and has called for written submissions from the public and has received a number of them including a submission from Mr Strickland. However the Committee by a majority has decided not to hear oral evidence from Mr Strickland nor from anybody else on this point.

In my opinion the Committee was mistaken in conducting its inquiry in this way which has made it even more academic than it need have been.

Most of the submissions have come from Clerks of other Parliaments and the Law Council of Australia has made a useful contribution as well. The weight of these submissions is that no change in the current law should be made by which it is assumed that no legal immunity should attach to the process by which a petitioner obtains support for his petition from others. This process of course involves the publication of a document to at least one other person. As far as the law of defamation is concerned it does not matter if this is done publicly or privately.

In my opinion it would have been helpful to have obtained some evidence from Mr Strickland about the way in which he sought support from other people for his petition. In view of the fact that large numbers of persons these days prepare and/or sign petitions to the Senate, it is disappointing that more people did not come forward to assist the Committee on this question.

The body known as the Free Speech Committee presented a thoughtful and helpful report in which it stated:

> "For the Parliament to be properly informed of the views of the people it is essential that circulating petitions enjoy the same protection as Parliamentary debates."

Mr Strickland in his submission stated:

> "There are a number of obstacles to be overcome by the individual or small group in order to draw up and circulate a petition to either House of the Parliament. Not the least of these is the Abuse of the Right of Petition, referred to by Senator Ray in the debate on 16 March, Hansard page 815. In Western Australia Section 361 of the Criminal Code further deters any person from publishing any false or scandalous defamatory matter touching the conduct of any member or members of either House of Parliament, with a term of imprisonment, This Section must give a large measure of protection to Members of Parliament.
>
> There are practical problems connected with the circulation of a petition in order to obtain sufficient signatures to show significant public interest in the matter, without soliciting, or displaying the petition in a public place. If the petition contains politically sensitive material which may be considered offensive by a section of the community, then without some protection from legal action the task becomes impossible."

In my view it would have been most helpful to the Committee if the practical problems experienced by Mr Strickland had been made known to the Committee and it would have had the opportunity of fully testing the magnitude of them. Material of this kind and perhaps other material would have helped the Committee to give a more considered answer to the question it has addressed itself.

Although I am sympathetic to the view that the publication of defamatory matter generally should not be excused by the claim that it is intended to or has been presented to the Senate, I believe that there may well be circumstances in which a limited and largely private publication of a document in the form of a petition which is subsequently presented to the Senate should attract some legal immunity. There is clearly doubt whether it does so under the law of defamation in Australia.

Any such immunity should apply nationally and not just in this or that State and it is clearly a protection which should be given by the national Parliament and not left to be determined by courts on an ad hoc basis. In these circumstances it is my view that the Committee should recommend a further amendment to the Parliamentary Privileges Act 1987 to give some protection to people like Mr Strickland who can be easily deterred by the threat of legal proceedings from raising with the Senate matters about which they feel aggrieved or concerned. Standing Orders of the Senate can control the abuse of that right.

For these reasons, therefore, I do not agree with the finding of the majority report that, "the circulation of a petition containing defamatory matter should not be protected by parliamentary privilege" and that no change to the law is "warranted".

31 May 1988

APPENDICES

APPENDIX 1

Resolutions Agreed to by the Senate on
25 February 1988

Resolution 1
Resolution 3
Resolution 4

Powers of the Committee

PARLIAMENTARY PRIVILEGE

RESOLUTIONS AGREED TO BY THE SENATE ON 25 FEBRUARY 1988

1. **Procedures to be observed by Senate committees for the protection of witnesses**

That, in their dealings with witnesses, all committees of the Senate shall observe the following procedures:

(1) A witness shall be invited to attend a committee meeting to give evidence. A witness shall be summoned to appear (whether or not the witness was previously invited to appear) only where the committee has made a decision that the circumstances warrant the issue of a summons.

(2) Where a committee desires that a witness produce documents relevant to the committee's inquiry, the witness shall be invited to do so, and an order that documents be produced shall be made (whether or not an invitation to produce documents has previously been made) only where the committee has made a decision that the circumstances warrant such an order.

(3) A witness shall be given reasonable notice of a meeting at which the witness is to appear, and shall be supplied with a copy of the committee's order of reference, a statement of the matters expected to be dealt with during the witness's appearance, and a copy of these procedures. Where appropriate a witness shall be supplied with a transcript of relevant evidence already taken.

(4) A witness shall be given opportunity to make a submission in writing before appearing to give oral evidence.

(5) Where appropriate, reasonable opportunity shall be given for a witness to raise any matters of concern to the witness relating to the witness's submission or the evidence the witness is to give before the witness appears at a meeting.

(6) A witness shall be given reasonable access to any documents that the witness has produced to a committee.

(7) A witness shall be offered, before giving evidence, the opportunity to make application, before or during the hearing of the witness's evidence, for any or all of the witness's evidence to be heard in private session, and shall be invited to give reasons for any such application. If the application is not granted, the witness shall be notified of reasons for that decision.

(8) Before giving any evidence in private session a witness shall be informed whether it is the intention of the committee to publish or present to the Senate all or part of that evidence, that it is within the power of the committee to do so, and that the Senate has the authority to order the production and publication of undisclosed evidence.

(9) A chairman of a committee shall take care to ensure that all questions put to witnesses are relevant to the committee's inquiry and that the information sought by those questions is necessary for the purpose of that inquiry. Where a member of a committee requests discussion of a ruling of the chairman on this matter, the committee shall deliberate in private session and determine whether any question which is the subject of the ruling is to be permitted.

(10) Where a witness objects to answering any question put to the witness on any ground, including the ground that the question is not relevant or that the answer may incriminate the witness, the witness shall be invited to state the ground upon which objection to answering the question is taken. Unless the committee determines immediately that the question should not be pressed, the committee shall then consider in private session whether it will insist upon an answer to the question, having regard to the relevance of the question to the committee's inquiry and the importance to the inquiry of the information sought by the question. If the committee determines that it requires an answer to the question, the witness shall be informed of that determination and the reasons for the determination, and shall be required to answer the question only in private session unless the committee determines that it is essential to the committee's inquiry that the question be answered in public session. Where a witness declines to answer a question to which a committee has required an answer, the committee shall report the facts to the Senate.

(11) Where a committee has reason to believe that evidence about to be given may reflect adversely on a person, the committee shall give consideration to hearing that evidence in private session.

(12) Where a witness gives evidence reflecting adversely on a person and the committee is not satisfied that that evidence is relevant to the committee's inquiry, the committee shall give consideration to expunging that evidence from the transcript of evidence, and to forbidding the publication of that evidence.

(13) Where evidence is given which reflects adversely on a person and action of the kind referred to in paragraph (12) is not taken in respect of the evidence,

the committee shall provide reasonable opportunity for that person to have access to that evidence and to respond to that evidence by written submission and appearance before the committee.

(14) A witness may make application to be accompanied by counsel and to consult counsel in the course of a meeting at which the witness appears. In considering such an application, a committee shall have regard to the need for the witness to be accompanied by counsel to ensure the proper protection of the witness. If an application is not granted, the witness shall be notified of reasons for that decision.

(15) A witness accompanied by counsel shall be given reasonable opportunity to consult counsel during a meeting at which the witness appears.

(16) An officer of a department of the Commonwealth or of a State shall not be asked to give opinions on matters of policy, and shall be given reasonable opportunity to refer questions asked of the officer to superior officers or to a Minister.

(17) Reasonable opportunity shall be afforded to witnesses to make corrections of errors of transcription in the transcript of their evidence and to put before a committee additional material supplementary to their evidence.

(18) Where a committee has any reason to believe that any person has been improperly influenced in respect of evidence which may be given before the committee, or has been subjected to or threatened with any penalty or injury in respect of any evidence given, the committee shall take all reasonable steps to ascertain the facts of the matter. Where the committee considers that the facts disclose that a person may have been improperly

influenced or subjected to or threatened with penalty or injury in respect of evidence which may be or has been given before the committee, the committee shall report the facts and its conclusions to the Senate.

3. **Criteria to be taken into account when determining matters relating to contempt**

The Senate declares that it will take into account the following criteria when determining whether matters possibly involving contempt should be referred to the Committee of Privileges and whether a contempt has been committed, and requires the Committee of Privileges to take these criteria into account when inquiring into any matter referred to it:

(a) the principle that the Senate's power to adjudge and deal with contempts should be used only where it is necessary to provide reasonable protection for the Senate and its committees and for Senators against improper acts tending substantially to obstruct them in the performance of their functions, and should not be used in respect of matters which appear to be of a trivial nature or unworthy of the attention of the Senate;

(b) the existence of any remedy other than that power for any act which may be held to be a contempt; and

(c) whether a person who committed any act which may be held to be a contempt:

(i) knowingly committed that act, or

(ii) had any reasonable excuse for the commission of that act.

4 Criteria to be taken into account by the President in determining whether a motion arising from a matter of privilege should be given precedence of other business

Notwithstanding anything contained in the Standing Orders, in determining whether a motion arising from a matter of privilege should have precedence of other business, the President shall have regard only to the following criteria:

(a) the principle that the Senate's power to adjudge and deal with contempts should be used only where it is necessary to provide reasonable protection for the Senate and its committees and for Senators against improper acts tending substantially to obstruct them in the performance of their functions, and should not be used in respect of matters which appear to be of a trivial nature or unworthy of the attention of the Senate; and

(b) the existence of any remedy other than that power for any act which may be held to be a contempt.

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

Extract from JOURNALS OF THE SENATE

No. 57 ***dated*** 24 March 1988

PRIVILEGES—STANDING COMMITTEE—POWER: The Chairman of the Committee of Privileges (Senator Giles), pursuant to Notice of Motion not objected to as a Formal Motion, moved—

(1) That, for the purpose of the inquiry and report by the Committee of Privileges on the circulation and submission of petitions to the Senate:

(a) the Committee have power to send for and examine persons, papers and records and to move from place to place, notwithstanding any prorogation of the Parliament or dissolution of the House of Representatives, and

(b) a daily *Hansard* be published of such proceedings as take place in public.

(2) That the foregoing provisions of this Resolution, so far as they are inconsistent with the Standing Orders, have effect notwithstanding anything contained in the Standing Orders.

Question put and passed.

APPENDIX 2

MATTER OF PRIVILEGE - PARLIAMENTARY DEBATE

MATTER OF PRIVILEGE

The PRESIDENT—Pursuant to the procedures established by resolutions of the Senate on 25 February 1988, Senator Chaney has raised with me, by letter dated 11 March 1988, a matter of privilege. Under the resolutions I am required to determine whether a motion to refer the matter to the Committee of Privileges should have precedence over other business, having regard to the following criteria:

(a) the principle that the Senate's power to adjudge and deal with contempts should be used only where it is necessary to provide reasonable protection for the Senate and its committees and for senators against improper acts tending substantially to obstruct them in the performance of their functions, and should not be used in respect of matters which appear to be of a trivial nature or unworthy of the attention of the Senate; and

(b) the existence of any remedy other than that power for any act which may be held to be a contempt.

The determination which I am required to make does not involve an assessment of the truth or merits of the matter raised, nor does it finally determine the matter. My decision is simply whether, having regard to the stated criteria, a motion concerning the matter should be given precedence so that the Senate is given an early opportunity to consider the matter. In applying the criteria laid down by the Senate, I think I ought to give precedence to a motion if the matter raised is such that it appears to be capable of being held by the Senate to meet criterion (a), and if another remedy is not clearly and readily available. The essence of the matter raised by Senator Chaney is not such that it can be treated as trivial or unworthy of the attention of the Senate within the meaning of criterion (a).

The matters in issue under criterion (b) are much more complex, involving difficult questions of principle about the interaction between judicial and parliamentary processes and legal and political avenues of redress. In all the circumstances, I think it appropriate that the Senate be given the opportunity to refer the issues to the Committee of Privileges. I have determined that the motion to refer the matter should have precedence accordingly.

Senator CHANEY (Western Australia—Leader of the Opposition)—Mr President, following the determination that the motion should have precedence, I give notice that, on the next day of sitting, I shall move:

That the following questions be referred to the Committee of Privileges: whether a petition to the Senate was suppressed in consequence of a threat of legal proceedings by the Hon. Brian Burke, and, if so, whether this constituted a contempt of Parliament.

Mr President, in light of your explanatory comments, and without wishing to cover the ground that I will cover in debate tomorrow, I seek leave to make a brief statement.

Leave granted.

Senator CHANEY—This is the first opportunity that the Senate has had to look at this procedure and I do not intend——

Senator Gareth Evans—I rise on a point of order, Mr President. Is this a point of order to enable Senator Chaney to have two bites at the cherry, or is it to make a general contribution to an understanding of the procedures that are applicable and available in this place? Perhaps I could ask Senator Chaney's intentions in this regard, before we make a decision on whether to give leave. We know the nature of the matter from the subject matter of the notice of motion and I do not think we need any further explanation of that. If Senator Chaney wishes to make some statement about the applicability of the procedures, obviously that is a matter for you, Mr President.

The PRESIDENT—There is no point of order. Senator Chaney sought leave and leave was granted, so my hands are tied.

Senator CHANEY—The point I wish to make relates to the fact that this is novel in the sense that it is the first time that the Senate has had to follow the procedures which were established by the resolution of February. In accordance with that resolution, before I made this matter public I raised it with you, Mr President. Paragraph 3 of resolution 7 adopted in February provides that a senator:

shall not take any action in relation to, or refer to, in the Senate, a matter which is under consideration by the President in accordance with the resolution.

Clearly, in its terms, that is a requirement that no one should take action in this chamber or outside this chamber until you, Mr President, had a chance to make the determination that you have made and told us of this afternoon.

When I wrote to you, Mr President, on 11 March, I indicated that in the light of the fact that public, as well as parliamentary, interest is involved, I proposed to make public my letter to you within a matter of a few days. The request which I received second hand was that I should hold action on that until you had had a

cha ice to consider it and deal with the matter in the Senate. I indicate to the Senate that in def rence to that request I have not, to this poi it, published the letter that I wrote to you see ing your consideration. In those circumstances I wish to do no more now than to seek lea e to incorporate that letter in *Hansard*.

Leave not granted.

Senator CHANEY—In that case I shall read the letter which I wrote to you. This is the letter of 11 March:

Dear Mr President,

Pursuant to the resolution of the Senate on 25 February, I write to advise you of my intention to raise a matter of privilege.

The matter arises from the circulation of a petition in Western Australia requesting deferral of the appointment of the Hon. Brian Burke as Australian Ambassador to Ireland pending resolution of forthcoming legal proceedings involving the former chairman of the State Superannuation Board and a Perth businessman.

This petition was circulated at the instigation of a citizen who sought advice from the Liberal Party who, in turn, contacted my office about the way in which the petition might be phrased to ensure it complied with Standing Orders.

Mr Burke subsequently threatened legal proceedings against the person concerned, alleging that the words in the petition were defamatory. A legal settlement has since been concluded with the former Premier, on conditions which include collection and destruction of petition forms and an undertaking not to present the petition to Parliament.

It is my very strong view that the action taken by the former Premier is in breach of the right of citizens to circulate petitions for presentation to the Parliament. Any lingering doubts about this matters would appear to have been resolved by the passage of the Parliamentary Privileges Act (No. 21 of 1987) and in particular section 16, sub sections 2 (b) (c) and (d) of that Act.

It is also my view that the Senate must be very ready to defend the availability of recourse to the Parliament by citizens of modest means against infringement by those who are comparatively rich and powerful.

I would appreciate your consideration of this matter and your early advice as to when I might move in the Senate for a reference to the Committee of Privileges. As the public as well as parliamentary interest is involved, I propose to make this letter public in the next few days.

That is the end of my letter. I note that both Senator Cook and Senator Walsh were attempting to interject during the course of my reading that letter. I am very glad that the Labor Party colleagues of Mr Burke have exposed their support for what I see as a bullying and pathetic attempt to prevent a citizen from exercising his rights in the community. Having read the contents of that letter, I point out that I bring this matter forward as a senator from Western Australia. Whilst I advised my party room this morning of my intention to do so, I add that this is not a matter which has had the consideration of my party room. I make that point because the Senate will be called upon to make a judgment on this matter if the motion is carried, as I believe it should be in light of the significance of any attempt to prevent a citizen from exercising his or her right to petition this Parliament. It may well be that Senator Cook and Senator Walsh wish to defend that sort of pressure being put upon a citizen, but I have no such wish to do so. If that is the stance they wish to take, no doubt they can indicate that in debate tomorrow.

For my part, I bring this matter forward because it is a matter of considerable public interest that individuals should not be put upon in this way. I believe it is something which warrants very early consideration by the Committee of Privileges. I will deal with the matter in more detail tomorrow when the motion comes on for debate. I hope it will be speedily considered and dealt with by the Senate.

MATTER OF PRIVILEGE

Senator CHANEY (Western Australia—Leader of the Opposition) (10.11)—I move:

That the following questions be referred to the Committee of Privileges: Whether a petition to the Senate was suppressed in consequence of a threat of legal proceedings by the Hon. Brian Burke, and, if so, whether this constituted a contempt of Parliament.

Mr President, yesterday when giving notice of this motion following your consideration of my request for consideration of it, I outlined very briefly the matters which I had placed before you in my letter of 11 March. What I wish to do this morning is to deal with the same matters in a little more detail and to raise some of the quite difficult issues which I think have to be considered by the Committee of Privileges. The first thing that could be said about the motion is that it relates to a petition which was presented in the Senate today by Senator Knowles. One of the two petitions which were presented by her relating to this matter was a petition in the form which gave rise to the complaint and the threat of legal proceedings by the Hon. Brian Burke. Headed 'Petition', it reads:

To The Honourable the President and Members of the Senate in Parliament assembled.

The Petition of the undersigned showeth that the standard of Australia's diplomatic representatives overseas is a matter of concern to all Australians.

Your Petitioners most humbly pray that the Senate, in Parliament assembled, should seek to have the appointment of Honourable Brian Burke as our Ambassador to Ireland deferred until such time as the charges presently pending against Mr Len Brush and Mr Robert Martin shall have been heard and concluded, and until matters arising therefrom shall have been answered to the satisfaction of both Houses of the Parliament of Western Australia.

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

I would have thought that that was not a particularly startling petition. In the large number of petitions that go through this chamber one would not have thought that it would give rise to any particular concern; but, this petition, which was produced by a retired public servant in Western Australia, at his own initiative, apparently caused Mr Burke such concern as to lead him to threaten the person concerned with legal action. I have not named in this place the person who organised the petition, although I was advised by telephone this morning that he has been named in the *West Australian* newspaper. It is not my intention to name him in this place. Although he is happy to give evidence to the Privileges Committee, clearly he has been put in a very difficult position in his association with the petition to date and, as far as I am concerned, that is in his hands and not mine.

Senator Robert Ray—I know his name.

Senator CHANEY—The Minister for Home Affairs says that he knows his name. I am quite sure that the whole Labor machine knows his name. No doubt the very heavy Minister will be a party to sitting on this poor gentleman. I suggest that the Minister simply curb his impatience——

Senator Robert Ray—We will be doing more than that. We will see who put him up to it before the day is out.

Senator CHANEY—It is good to hear the Minister going on like that. He assumes that everybody on this side of the Parliament behaves like Labor members of parliament that we read about in the daily newspapers. Therefore, I am not concerned about the Minister's intervention.

Mr President, the petition came to my attention prior to circulation, as I made clear in my letter to you. The individual concerned con-

acted the Liberal Party of Australia and asked about the form which a petition had to take. That person was referred to my office and, I think, probably to another office as well. Certainly, he had contact with my office and was advised as to the form which a petition has to take if it is to be presented to this place. All honourable senators would be aware that we often receive petitions that are not in proper form. I think as recently as yesterday the Leader of the Australian Democrats (Senator Haines) rose in this place and sought leave to present a petition which was not in proper form. That is not an uncommon thing. I am sure that senators and members generally would have had experience of being asked for guidance with respect to the wording of a petition.

I simply make the point that in my own contact it was certainly in no way something that was instigated by me. As far as I know—this will be a matter which no doubt the Privileges Committee may wish to examine and which may well come within the purview of the Privileges Committee as it examines this issue—this is a matter that was initiated by this person on his own account and because of his own concern. I bring the matter forward knowing that there will be opportunities in the Privileges Committee to test that proposition. The Privileges Committee has a majority of Government senators. There is no suggestion that this should be sent off to some sort of hung jury. It will be going before a committee of senators who, I have no doubt, will in the appropriate Senate tradition examine this matter on the basis of the facts that are put before them and they will, at least in the Committee activities, put aside the politics of this matter and deal with it on the basis of the very substantial issues which, as I intend to indicate, fail to be dealt with.

I suppose to many honourable senators the subject of this petition is a matter of some mystery. What is it and who are the people named in the petition? Why is it that there should be a view on the part of some citizen that Mr Burke should not go to Ireland pending the hearing of this matter? The fact of the matter is that the people named are subject to a number of criminal charges including corruption, forgery and uttering false documents. They have pleaded not guilty. In those circumstances I think the facts have to be dealt with circumspectly. In this debate I have no intention of putting any matter before the Senate that has not already been published. I think that the simplest way of explaining the factual background of this matter is to quote from the *Sydney Morning Herald* of 7 March which summarised what this matter is about. The article has been published since, I understand, these people were committed for trial. I assume therefore that it is in order from a legal point of view. The article headed 'Anatomy of the Brush-Martin loan affair' reads:

> The Brush-Martin Affair has been a source of great embarrassment to the W.A. Government and its Premier, Mr Burke, who retired from politics this week.
>
> Brush joined the ALP when he was 19, and became an adviser to Mr Burke on financial and superannuation matters following the Labor Government's election in 1983.
>
> Brush's wife, Brenda, served on Mr Burke's staff for 10 years, and prior to her resignation early last year was Mr Burke's principal private secretary.
>
> In 1984, Brush took the $60,000-a-year post of chairman of the W.A. Superannuation Board, and oversaw its rapid growth. He was also appointed one of the commissioners on the newly formed State Government Insurance Commission.
>
> Under his guidance, the Superannuation Board became an aggressive and successful investor, and participated in deals such as a $500 million development at Fremantle with Robert Martin, and proposed developments in Perth's CBD with Mr Laurie Connell and Mr Alan Bond.
>
> The Brush-Martin affair surfaced in the media early last year, and was subsequently taken up and pursued by the Senate Opposition.
>
> Soon after, the W.A. Fraud Squad began inquiries into some of the complicated allegations concerning loans from Martin to companies controlled by Brush, and investment by Mr Brush in companies associated with Martin.
>
> These dealings were occurring at a time when the Superannuation Board was involved in the Fremantle development with Martin.
>
> Rumours about the loans had been circulating in Perth from late 1986, and Mr Burke later told State Parliament he was aware of them from about December.
>
> He revealed in Parliament in April last year that by January he had learnt that Brush was the public servant allegedly involved in the loan affair.
>
> Despite this, he had appointed Mr Brush in February to an even more powerful position in the management of Government funds.
>
> This was the setting up of Funds Corp, an arm of the W.A. Development Corporation.
>
> Funds Corp will handle the State Treasury's money-market investments, as well as the property, equity and money-market investments of the SGIC and the Superannuation Board.
>
> When the loan affair became public, Mr Burke maintained his support for Brush, suggesting that the affair appeared to involve merely misjudgment by him but not impropriety.
>
> However, the Premier conceded that Brush had been "hopelessly naive and foolish" in accepting a loan from someone with whom the Superannuation Board had dealings.

Within a week, Brush had resigned his official positions. He was charged soon afterwards.

His successor as board chairman and head of Funds Corp was Mr Tony Lloyd, who more recently has been appointed the new managing director of Rothwells, and the W.A. Government's representative on the company's board.

Martin and Brush first appeared in court on April 22 last year to face a total of 25 charges of corruption, forgery and uttering false documents. They have pleaded not guilty to all charges.

That is the sort of information which is on the public record in Western Australia. I quoted from a Sydney newspaper because it contains a succinct summary of a matter which has received massive publicity over a considerable period. But I remind the Senate that the petition is one in which it is suggested that the appointment of Mr Burke as Ambassador should be deferred until the charges which are referred to in that summary have been dealt with.

The threat of legal proceedings was a very serious matter for the petitioner. I heard of this matter next when he had, through solicitors, entered into a settlement with Mr Burke and with Mr Burke's solicitors. A condition of that settlement, as I understand it, was that he would collect up those petitions he could, he would have them destroyed, if necessary in the presence of Mr Burke's solicitors, and he would pay Mr Burke's costs of, I think, some $500. The situation was that the petitioner, having taken legal advice, was in a position where he simply could not afford the litigation that would have been involved in proceeding against the former Premier of Western Australia.

Senator Robert Ray—Ha, ha!

Senator CHANEY—We get a laugh from the Minister on the front bench. I remind the Senate of how often people have complained about the cost of litigation and the need for representatives of this Parliament to receive legal aid because of the very high cost of representation. I believe it would be true of most people in Western Australia that the threat of legal proceedings from somebody with a relatively long pocket would be something that would cause them very deep concern. That is a matter which I think will be made very clear ultimately.

We are dealing with the situation of a person who is seeking to petition this Parliament—a other people to petition the Parliament on a matter which was of concern to him and on a matter which clearly involves the public interest.

Is this something which ought to concern the Senate? In my view, it is extremely clear that it should concern the Senate, because the reality is that we have a society in which the distribution of wealth and power is very uneven. We have a society in which it is very difficult for the ordinary man and woman to withstand the very considerable forces that are arrayed against them in the community. With that imbalance of power, we in Parliament should be concerned to preserve the right of the men and women of Australia to see this Parliament as a place to which they can have recourse without facing the costs that are inherent in the legal system and those other organisations in our society which are there to protect individual rights and liberties. I regard it as a very serious matter that there should be any interference with the free access of citizens to this place. That is why I think this is a matter of major importance.

As I will go on to explain, it is a matter of difficulty; but it is not a novel matter that someone should seek to interfere with a petitioner who is bringing forward something which is of difficulty to him. For that reason there is some authority which will be available to guide the Privileges Committee, quite apart from the legislation which has just been passed by this Parliament. Erskine May's *Parliamentary Practice* deals with misconduct on page 166 under the heading 'Misconduct affecting petitioners and others soliciting business before either House', and it reads as follows:

> Petitioners and other persons soliciting business before either House or its committees, e.g. counsel, agents and solicitors, are considered as under the protection of the High Court of Parliament, and obstruction of, or interference with such persons in the exercise of their rights or the discharge of their duties, or conduct calculated to deter them or other persons from preferring or prosecuting petitions or bills or from discharging their duties may be treated as a breach of privilege.

Erskine May lists a series of past examples of such interference. I quote just a number of those examples which are on page 167 of the same volume. For example, it gives as an example of this type of contempt, 'Speaking scandalous and reproachful words against petitioners who

The authority for that is Gee's case. Finally, one finds as an example of this sort of contempt, 'Casting aspersions on persons for having petitioned the House of Commons'. Quite clearly, those examples are of the same nature as the conduct complained of on this occasion.

Of course, what we have now is a Parliamentary Privileges Act which confirms the privileges of this Parliament but in statutory form. We find in section 16, under the heading 'Parliamentary privilege in court proceedings':

> For the avoidance of doubt, it is hereby declared and enacted that the provisions of article 9 of the Bill of Rights, 1688 apply in relation to the Parliament of the Commonwealth and, as so applying, are to be taken to have, in addition to any other operation, the effect of the subsequent provisions of this section.

It goes on to say:

> For the purposes of the provisions of article 9 of the Bill of Rights, 1688 as applying in relation to the Parliament . . . 'Proceedings in Parliament' means all words spoken and acts done in the course of, or for purposes of or incidental to, the transacting of the business of a House or of a committee, and, without limiting the generality of the foregoing—

I stress those words because one is entitled to look to precedent to see what those words in their generality can mean. We find reference in paragraph (b) which states:

> the presentation or submission of a document to a House or a committee.

In my view the Committee of Privileges will have to examine this Act as well as the history of this matter and determine whether there is a breach of privilege in the interference that was afforded this petitioner—which is my personal view.

I referred earlier in my comments to the fact that real difficulties are occasioned by this matter. Those difficulties relate to the fact that one can have competing rights in a society such as our own. One of the rights that we have in our society is to take action for defamation if we believe that we have been defamed. Of course, it will be the view of the Opposition that that is an important civil right and one which should be preserved. That means that, in looking at this matter, one has to examine the interaction between the principles that I have raised with respect to the privileges of this Parliament and the rights of a petitioner to petition this Parliament, and the rights of any citizen, whether he has a long pocket or a short pocket and whether or not he has been in public life. I in no way suggest that the former Premier is denied the normal rights of citizenship. That would be an absurd proposition and I do not bring that forward on this basis. The Privileges Committee has to examine what rights might be held by any citizen, including the Hon. Brian Burke, and how they fit with the rights of somebody to petition this Parliament.

I do not wish to enter into the question of whether this petition is defamatory. It seems to me that that is a matter that cannot be determined by a politician, and any view I might express would be seen as being a biased and prejudiced view rather than a legal view. But let me say that I believe as a politician that it shows an extraordinary sensitivity to criticism to regard that as something that ought to be actionable in the courts. I doubt whether there is a senator in this place who has not had harsher things than that said about him or her, but who has not even given consideration to bringing an action for defamation against the citizen involved.

Actions for defamation by politicians are not unknown in this country. We have a Prime Minister who is particularly tender in these matters and who, if rumour is correct, has done very well out of them over the years. However, let me say that I believe that most of us follow a rule that, in the to and fro of democratic debate, it does not do us to be unduly tender, to the detriment of the rights of our fellow citizens. I believe that is an appropriate course to follow. I would not say that there are no circumstances in which I as an individual would not sue. However, I would say that on occasions I have looked at a matter and thought, 'What a nonsense. It is actionable, but I would be quite wrong to pursue it'. I am sure that many honourable senators have made the same judgment. I just make that point.

I have read out the petition. I think it is one that, on any fair reading, makes an extremely mild point about a politician who has operated at the level that Mr Burke has. By that I mean one who has held the high offices that Mr Burke has held, and been subject, I assume, to some public criticism and scrutiny in the past. I would say that in judgments made at a political level on this matter, the former Premier has shown quite extraordinary sensitivity.

The sorts of issues which may fail to be considered by the Committee are those that relate to the extent to which a petition, including its preparation, circulation and normal political process, is exempted from the general law relating to defamation—quite apart from any question of whether this particular petition is defamatory, which on the face of it it appears to me not to be. The sorts of issues raised

include the question of whether in those circumstances there is an absolute privilege or, alternatively, whether the circulation of the petition is merely a matter that would attract qualified privilege, in which case if it came to an action for defamation it would be open for the complainant, the plaintiff, to show that what was done was done maliciously, and therefore that qualified privilege would not afford a defence. In other words, they are quite difficult issues.

Though of course I have not exhaustively canvassed the issues, as the Committee will do, I suspect that there are issues which the Committee may well feel cannot be determined by it or, at best, can simply be dealt with by the Committee giving an opinion which would not be binding upon a court. The reality is that the operation of privilege is a matter which would be determined by the courts in those cases where there was an action before the courts in which privilege, either absolute or qualified, was claimed. They are matters that may well await determination. Perhaps they will be determined only when some person of considerable financial means is set upon by somebody in Parliament, and is taken through the courts in a full-blooded way in extensive litigation.

There is nothing in politics today that suggests that the Labor Party is in the business of entering into litigation against the rich and powerful. I think that the reverse appears to be true. I bring forward this motion at a time when the cosy relationships between this Government and business are a matter of acute concern not only to the public but also to many members of the Labor Party and, I would hope, to many members of the Government.

I suppose that all of those issues form a framework within which this matter comes forward to be considered. However, I would say that the fundamental point is that here we have a citizen who I believe on any examination—and I can only speak of the facts as they are currently known to me—would be seen to have had an independent wish to petition this place. There is no question that he had contact with my political party, but my contact with him is on the basis that he has come to us for guidance as to how to go about the matter and not otherwise. I have received a specific assurance on that matter.

Senator Robert Ray—That is you. There were others.

Senator CHANEY—That is me. I make that point very clear. The fact that there are others should not in any way alter the situation, because my assurance was that that was the basis of the approach—that it was a self-initiated matter. I might say that it would make no difference if it was not. The Labor Party and the Government should not seek to muddy the water in that regard. The promotion of petitions by members of parliament is by no means unknown. I could have produced a letter that was left in the photocopier of the Perth offices by a Labor member of parliament distributing petitions against the former Government.

Senator Michael Baume—What is wrong with that?

Senator CHANEY—I do not believe that there is anything wrong with that at all. I simply make the point that the waters should not be muddied in this regard. I can give a specific example of a Labor senator from Western Australia doing something which I am not suggesting is improper, namely, the promotion of a petition. However, I simply want to make the point that the fact, as I am advised, is that this petition was promoted by the individual concerned. It does not, however, go to the substance of the question. The substance of the question is whether any individual in this country who is concerned about an element of public administration is entitled to go around with his fellow citizens, having put that onto a piece of paper, having put it in the form of a petition, seeking their support in expressing that concern to this Parliament. In my view, if that is not a protected activity, it is an activity that should be protected. We have passed in this Parliament privilege legislation which is defective if that is not a protected activity.

Where does the citizen in this country go if he cannot petition the Parliament on these matters? Does he go to the media? We hear from many critics of the media in this country that it is owned by a small group of people; that we do not have a widely dispersed ownership of a free and critical media; that we have a media which is in itself not in a form to protect the public interest in many circumstances. Does the citizen go to the law? The reality is that, for the ordinary citizen in this country—I would include in this category even someone on a politician's salary—the prospect of civil litigation is terrifying. The prospect of civil litigation for one who falls outside the areas in which legal aid can be obtained is simple ruin.

This Parliament remains the only free point of complaint. We are dealing with democratic rights and freedoms which are very important. These issues cannot be lost sight of in the hurly-

b irly of day to day politics and abuse. In the p olitics of Australia in 1988 I would have thought t at there was no more live issue in the com- r unity than this question of the coming together c f the powerful in our community. This Govern- r ient is based on an accord between itself and t ie trade union movement. It has established the c losest possible links with big business. We are t old that the appointment of Mr Young does : ot matter because the big businessmen con- erned know that the Prime Minister (Mr Hawke) will take their calls. That is the context of bringing this matter forward. The ordinary nen and women of Australia are entitled to ask where they fit into the system, where their rights are protected, where they stand when there is massive legal aid for public figures who need the assistance of the courts or need to be defended against law enforcement. The ordinary men and women of Australia feel that they are friendless, that they are alone and that they have no voice.

It is for these reasons that this is a matter of very great importance. It is a matter of how we preserve the freedom of people in Australia to approach this Parliament without fear or favour against the competing rights of others who wish to suppress views that they feel are uncomfortable for them and who can afford to go to the law about it.

That is a very significant question for determination. I am grateful that the Australian Democrats, in their consideration of this matter, have indicated that they will support the reference to the Committee. But I say to Labor senators opposite that this matter has to be dealt with on a basis which goes to the very real issues of substance. I have looked at the composition of the Privileges Committee and I hope that it would not be out of order to say that I believe—

Senator Robert Ray—I have not even done that.

Senator CHANEY—I just want to say that I believe that what I am about to say is realistic, namely, that I would hope that on all sides of this chamber there would be an attempt to deal in a fair and proper way—and I am sure there will be—with the very important issues of principle which are raised by this matter.

There is some current political content to this matter but I believe that that is subsidiary to the broad issues that have been raised. The Minister for Home Affairs (Senator Robert Ray) smiles. He knows that matters of privilege must be brought forward at the first available opportunity. That is a simple legal requirement on us.

Senator Robert Ray—Preferably before two by-elections.

Senator CHANEY—The Minister says, 'Preferably before two by-elections'. Nobody on our side of the House tried to get Mr Burke to act in the way that he did. I believe that any attempt by the Government to slide out from that sort of matter on that basis is absolutely absurd. I commend this motion to the Senate.

Senator ROBERT RAY (Victoria—Minister for Home Affairs) (10.42)—A decision by the Senate to refer matters of privilege to the Privileges Committee should not follow automatically on the proposal of a motion by a senator. I believe that the Senate has an obligation to assess the facts of the case and to determine here and now whether or not the facts suggest the likelihood of a contempt. A referral shall only occur where a majority of senators are satisfied that contempt seems to have been committed. The facts, as I will outline them, should leave no doubt in even the most suspicious mind that no contempt was committed by Mr Burke. In fact, the most likely candidate for contempt is the Leader of the Opposition (Senator Chaney) in his role and in the role of the Liberal Party of Australia in manufacturing this issue. Brian Burke is entirely blameless in this matter, as would be any citizen who used his democratic legal rights to defend himself against libels promoted by the Liberal Party.

The petition in question is part of a pattern of smear and slander against Brian Burke. As a public figure, Brian Burke was subject to a vitriolic campaign of rumour and innuendo about his private life, none of which was true. It was all to do with Brian Burke's political dominance in Western Australia. Where it is taken that someone is so politically dominant, the only way to reduce that dominance is by a gutter campaign of non-source smears—a reliable old political tactic when someone is politically dominant.

In my belief, what Senator Chaney needed to do here today was to establish that there is a prima facie case that there has been a breach of privilege. He has failed miserably to do that. I will go into a little more detail in regard to the facts of the case to determine whether this matter should go to the Privileges Committee. The facts are: a highly defamatory allegation against the Premier of Western Australia was circulated by Mr Strickland. The allegation that Mr Burke's appointment as Ambassador to Ireland had some connection with charges pending against Mr Brush and Mr Martin was circulated in the form of a petition to this Senate. Mr Burke's solicitors

contacted Mr Strickland on Wednesday, 10 February. The solicitors advised Mr Strickland that they were instructed to issue a writ of summons against him with claims for defamation. Mr Burke's solicitors further suggested that a withdrawal of the circulation of the petition—note that—would be a mitigating factor in respect of damages. The following day—Thursday, 11 February—solicitors acting for Mr Strickland contacted Mr Burke's solicitors. The solicitors conveyed Mr Strickland's offer that he would withdraw the petition and not present it to Parliament. I stress that. That decision not to present the petition to Parliament was not a demand by Mr Burke or his solicitors; it was an offer made by Mr Strickland's solicitors.

Senator Chaney—I think that is what one would call sophistry.

Senator ROBERT RAY—No, it is not sophistry. There are two big issues that Senator Chaney has raised here—the protection of petitions coming to this Parliament, and defamation. He raised those issues and said that they were interrelated and hard to define. In terms of the defamation of Mr Burke, the withdrawal of that petition covered that angle. The non-presentation to this Parliament was an offer made by Mr Strickland's solicitors and not at the demand or request of Mr Burke's solicitors.

Following some discussions between the two firms of solicitors, Mr Strickland's firm wrote on 17 February outlining a proposal to resolve the matter. The proposal had four elements: first, an apology and an undertaking; secondly, the collection and destruction of all copies of the petition; thirdly, costs of about $500; and fourthly, in return for the above, no defamation action by Mr Burke. The proposal was accepted by Mr Burke's solicitors on 24 February. Let me read to the Senate the apology and the undertaking, made by Mr Ronald MacKenzie Strickland:

> In January and February 1988 I circulated a petition addressed to the President and Members of the Senate.
>
> I now realise that the petition carried the imputation that the Premier, Brian Burke, was involved in some way in the matters giving rise to charges presently pending against Mr Len Brush and Mr Robert Martin, although I did not intend to so impute.
>
> I acknowledge that the imputation is completely unfounded and unreservedly withdraw any such imputation. I sincerely apologise to Mr Burke for any embarrassment or distress I may have caused.
>
> I undertake not to further circulate the petition or any similar petition regarding this matter. I also undertake not to present such a petition to the Federal or State Parliament.

What is the status of the petition? I know that we can all quote sources, but I do so only in support of my case, not as absolute proof. In the fifth edition of *Australian Senate Practice*, Odgers states:

> It is the privilege of any individual or body of individuals in the community to petition Parliament to obtain redress of grievances, or to ask it not to do something that is contemplated.

However, this privilege is not a parliamentary privilege before a petition is presented. Odgers goes on to say:

> A petition which has been ordered to be received by the Senate becomes a public document and is protected by absolute privilege.

Thus, in terms of parliamentary privilege, this only applies from the moment the petition is received. The origins of petitioning of parliament are bound up with the origins of parliament itself and I acknowledge that petitions are a fundamental part of democracy. However, the compilation of petitions, like any other material outside parliament, should be subject to the laws of the land. In a democracy parliament is not the only means available to redress grievances. The Australian legal system also offers citizens means of achieving justice. Mr Burke exercised his proper rights through the legal system and a settlement of the matter was achieved to the satisfaction of both his and Mr Strickland's solicitors.

Senator Chaney's motion attempts to set parliament against the due processes of law, which include legal bargaining. It also opens the door to the circulation of any libel in any form of documentation which may be intended for presentation to parliament at some indeterminate time in the future. In anyone's language this is an abuse of parliamentary privilege. This is the real issue at heart here. It is not simply a question of whether, in Senator Chaney's view, this matter comes into the category of defamation; it is the precedent that is being set for the future. If one says that whatever is contained in a document which is to be a petition is a privileged piece of information, one will open Pandora's box. If Senator Chaney is saying, 'I can write any slander, any smear I like in any petition, I can circulate it for eight months without even bringing it to this Parliament yet it attracts privilege and protection and there is no other legal redress', that is a farce. I may circulate a petition in the Wollongong area about my friend and colleague Senator Michael Baume. A variety of smears have been made about him over the years. Does this mean that I can put information about anyone in a petition, run it right around

Australia, and that person has no redress. One should think of the precedent that would be set.

Senator Knowles—Why are you so sensitive about this?

Senator ROBERT RAY—Senator Knowles, in her inimitable knock-on ruckman style, asks why I am sensitive. I do not have to be, but every other person in the community must be sensitive on this point. We have defamation and libel laws. In essence, Senator Chaney says that these do not apply to petitions to parliament. Imagine the Frankenstein monster that would be created if any petition that came to this Parliament could say whatever it wanted to about anyone. This is ultimately what Senator Chaney is saying. That is an outrageous proposition. If this became reality, politicians would be privileged because we can circulate petitions attacking other politicians and we have the right to come in here and defend ourselves. But, if people were to circulate petitions with slanders, smears, innuendos and lies about other citizens and we politicians said, 'Well, we cannot interfere in the petition process—that is a parliamentary privilege going back forever', would we really be saying that those individuals should be crucified in this way? That is one of the major principles involved here. It is one that the Opposition laughs at and one which it, along with everyone else in the Australian community, would live to regret.

On 25 February the Senate adopted a series of resolutions relating to privilege. Amongst them was one establishing the criteria to be taken into account when determining matters relating to contempt. In summary, the Senate agreed to three criteria. First, the Senate's power should only be used where it is necessary to provide reasonable protection against improper acts tending substantially to obstruct senators in the performance of their duties; secondly, the existence of any other remedy; and thirdly, whether the alleged contempt was knowingly committed, or whether there was any reasonable excuse. By all three criteria, the actions of Mr Burke and his solicitors do not constitute a contempt of privilege. On the first criterion, the Senate has in no way been obstructed in its duty—the living proof of that was read in here today at 10.05 a.m. Mr Strickland's solicitors volunteered the undertaking not to deliver the petition to the Senate for presentation.

Senator Chaney—So you understand.

Senator ROBERT RAY—Of course. I have spoken to Mr Burke's solicitors and, like most competent solicitors, they took notes of the conversation between the respective solicitors. Senator Chaney would realise that a good solicitor always takes notes. I would be very interested to see whether the notes of Mr Strickland's solicitor and Mr Burke's solicitor totally correspond. Those notes clearly show that the offer not to present the petition to Parliament was made by Mr Strickland's solicitors—he volunteered that undertaking.

On the second criterion, another remedy obviously exists. Mr Strickland had the opportunity to take the matter to court. It was his decision not to do so. Senator Chaney claims that he could not afford it. I will refer to someone who probably could afford it in a moment! However, it is worth noting that he or anyone else who cares to make the same allegation can still today test the matter in court. Surely Senator Chaney can find someone in the Western Australian community with the money to make those statements and take the matter to court. We would then have a test case on it. On the third criterion, the exercise by a citizen of his legal rights must be, by anyone's standards, a reasonable excuse. This Parliament cannot be seen to undermine a citizen's rights to defend himself against scurrilous libels just because those libels have some tentative and hypothetical connection with the proceedings of parliament.

Let us turn to what constitutes a real contempt of parliament. There is a rare case, apparently without precedent in Australia, in regard to this matter. Our parliamentary privilege derives from the House of Commons. The most useful reference is Erskine May's *Parliamentary Practice*, which in the twentieth edition on page 147 refers to the 'Abuse of the Rights to Petition'. In particular, it notes numerous old instances of contempt such as:

> ... frivolously, vexatiously or maliciously submitting to either House a petition containing false, scandalous or groundless allegations against any person, whether a Member of such House or not, or contriving, promoting and prosecuting such petitions.

If this matter is referred to the Privileges Committee, a number of questions really have to be asked. The first one that I would ask, and to which Senator Chaney has only briefly alluded, is: What is the role of the Liberal Party of Australia in promoting this petition? Is it an innocent bystander, merely correcting formal defects in a petition, or was it heavily involved in it? The Privileges Committee would have to look at that.

The second thing is that we are not talking about a petition; we are talking about two peti-

tions. There were two petitions—not one—circulated in regard to this. The first petition did not make reference to Mr Burke's appointment as Ambassador-designate to Ireland; the second petition did. I ask the question: Where was the change made? Was it made in Mr Peter Shack's office? According to journalists, it was. Journalists were informed that that was where the change to the petition was made. People from the other side earlier scoffed and said, 'It is only a red herring that the Labor Party may allege Liberal Party involvement'. If it is not a case of just changing the formal defects of a petition to make sure that it contains the words 'humbly pray', et cetera, but changing the genesis, the very wording and meaning of the petition—done with the help and assistance of Liberal Party members—the case no longer falls into the dimension or sort of argument of a poor battler being crushed by a brilliant apparatchik from Western Australia with all the money in the world.

The Opposition's case starts to fall into a bit of disrepair when it may well be that the hardest question to determine is whether Mr Strickland was simply misled by the Liberal Party or just abused and used by the Liberal Party of Western Australia. Of course, I understand that today Senator Chaney has said to journalists that he would present any petition to this Parliament. But he also went on to say, 'In this case I support the petition'. He said that to a journalist. He cannot divorce himself from the fact.

Senator Chaney—I do not think I did, actually, but still.

Senator ROBERT RAY—That was a direct quote that was used from a source that I have. Someone may be libelling Senator Chaney; someone may be defaming him. However, the fact is that he cannot simply come in here and say, 'Well, I may not agree totally with the content of it'. He did not say that. He did not have the guts to come out and say it Whether he agrees with the content or not, the fact is that he is on record elsewhere as having said that he also believes in the content of it.

I do not believe in conspiracy theories. I quite often upset the Nuclear Disarmament Party and others by deflating them. But I find it just a marvellous coincidence that Mr Strickland happened to use the firm of Parker and Parker if he is just a battler with no real connection with the Liberal Party. That is the same firm that Mr Barry MacKinnon used on the same concurrent matter, with the same outcome. It is a firm in which Mr Harry Lodge, the State Treasurer of the Liberal Party, happens to be a senior partner. Of all the solicitors that the poor battler could have found, he went and found that fairly Liberal establishment firm.

While I am on the subject of Mr MacKinnon, at one stage similar allegations were made. It is not just a case of one little battler suddenly getting the bright idea of putting a scurrilous petition around against Mr Burke. The Leader of the Western Australian Opposition was into the same thing. I will read his apology into the record, too, just to round it out. It stated:

> On the 19th March 1987 during the Channel 9 News, I made certain statements concerning loan agreement documents between the former head of the Superannuation Board, Len Brush, and a Perth businessman having been knowingly dated incorrectly. I went on to make the following statements:
>
> "Did the Premier in fact have a part in negotiations that led to the documents being prepared after the date they were supposedly signed? What was his knowledge of the whole affair right from the beginning? I think he has got a lot to answer for."
>
> I did not intend to suggest that the Premier, Mr Burke, had knowledge of or was involved in the loan agreement documents being post-dated and I did not intend to suggest that the Premier had been involved in any impropriety concerning the loan agreement. I recognize that there is no foundation for any such allegations against the Premier.
>
> I sincerely apologise to the Premier, Mr Burke, for having made those comments.

So there is another person—not impecunious like perhaps the little battler who circulated the petition—who could have batted on in courts but decided not to. It all fits into a pattern of an organised smear campaign against Mr Burke, who copped it for four years and did not respond with anything. But in the end, when those vile accusations, innuendos and rumours swept Perth—fuelled by we do not know who—Mr Burke got to a certain point and as a citizen said, 'I have had enough. The next person who comes out publicly and slanders me I will hit with a writ. If they want to apologise and withdraw, that is as far as I will take the matter'.

In some ways I oppose this matter going to the Privileges Committee on the basis that it sets a precedent that a prima facie case has not been established. But, if it does go ahead, I will not be bitterly disappointed. I look forward to Mr Strickland coming to give evidence. I hope he is truthful; I have no reason to believe otherwise. I want him to give evidence and I want questions to be asked. I will not be able to ask them because I am not on the Committee, but I hope someone will. I want to know what contact he had with the Liberal Party on this matter. I

want to know what his contacts were with Senator Chaney. I want to know what his contacts were with Mr Peter Shack. I want to know who suggested that he go to the basically Liberal establishment firm of Parker and Parker. I want to know the answers to all of those questions.

Senator Chaney—You should not be able to punish him for going to a firm of lawyers you don't like. You are a bully like the rest of them, Ray. That has now come out.

Senator ROBERT RAY—There is no punishment going to it. Senator Chaney says that I am a bully. But what I do in politics is to front up to issues and go to them honestly. I do not put them behind some sanctimonious, pious principles in which I do not believe. That is Senator Chaney's style. If Senator Chaney wants to throw a bit of mud in Western Australia, he invents some pious principle and then reads from the *Sydney Morning Herald* and tries to muddy the waters on it, et cetera. That is his style. He has no guts to confront issues straight up. He always wrings his hands and says, 'I am terribly sorry to raise these matters; it hurts me more than it hurts you'. Very piously, he says, 'Mr President, this is a matter of major principle'. Then he gets out the knife and stiletto and gradually sticks it in. That is the Chaney style, which is very well known. He is always dressed up on principle but really he is no different from me. If it comes to gutter fighting in politics, he will get into the dirt and throw the mud. The difference is that I do it straight up and honestly; he does it behind a cloak of sanctimonious principle. That is the essence of Senator Chaney. That is why, although he is named as Leader of the Opposition on his door, out in the corridor he leads no one because everyone behind him knows his style.

I will just summarise and go over once again the issues involved here. For an issue to be referred to the Privileges Committee, I think we all should agree that there should be some prima facie case. We can all disagree today on whether a prima facie case has been established. Senator Chaney alleges that it has been; I allege that it has not. That is an important principle to state. No matter should automatically go to the Privileges Committee because a senator raises it.

The second issue involved here relates to a precedent that we may set. But that in any event will not be set in this debate. If the matter goes to the Privileges Committee, it will be set by the Privileges Committee. But it cannot go unstated here, and I for once will honestly get out of the political mode of a party loyalist and say this, that there is a serious question, leaving aside the Burke matter, of whether we establish a principle that anything can be put into a petition and thereby be protected. What we have to remember is that petitions have changed in their nature. Originally they were a means by which a citizen got redress in the Parliament. We all know that nowadays that applies to only 2 to 4 per cent of petitions. Most are serialised versions meant for political ends—to get publicity for generating support for an issue. The very nature of petitions has changed.

I will not support adding a further dimension, given the change that has occurred, whereby any libel, any canard, can be attached to a petition—leaving aside this case—and a person can say anything about anyone else and automatically attract privilege. I think that that extends this Parliament's power to far too privileged a position. This does not apply to members of parliament only. Senator Chaney and others say, 'What are you frightened about?'. I am not frightened about anything. As a member of parliament, I have a right of response. If someone—say, Senator Puplick—puts out a petition against me, I can get up in this place and we can have a blue about it. That does not worry me. What does worry me is if petitions are put out about another citizen which contain allegations amounting to lies, smears or defamation. The Opposition is saying that a person cannot take such a matter to the courts to get a remedy? It is crazy if it wants to invoke that system of privilege in this country. It represents a complete change to the traditions and privileges of parliaments throughout the world. That is worth thinking about.

My third point, I believe, is a very strong one. Even if we ignore all the other points, the case really hinges on how the petition did not get to this Parliament. That is an interesting question. I have said, and I am sure of the facts, that Mr Burke's solicitors asked for the petition to be withdrawn from circulation because it was in that essence that the defamation occurred. They did not ask for it not to be presented to this Parliament. As part of the settlement, that offer was made by Mr Strickland's solicitors. We cannot criticise Mr Burke for accepting that. After all, it was part of the offer of settlement. Obviously it was made in the hope of getting a settlement. That settlement has been achieved. Mr Strickland has apologised. Senator Chaney seemed to be imputing that the motive for the apology and the withdrawal was lack of means. I cannot establish whether that is true or not. I can only take the apology on its face value—that it is a withdrawal of the imputations in the petition. That is the same type of matter, but is

r ot strictly related to it, as Mr MacKinnon's ı ithdrawal of similar allegations.

As I described earlier, two by-elections are ı oming up on the weekend. This is an attempt l y the Liberal Party, mostly from Western Aus- ı ralia, to stir up this issue, to throw a bit of ıud, under the cloak of principle. I am used to hat type of sanctimonious performance by Sen- .tor Chaney. It fits his style. It does not mean hat we on this side have to cop it. Every time ve stand up for ourselves we are accused of ɔeing bully boys. We are accused of not being nterested in principle. I suggest that Senator Chaney go home, try to establish the principles ɔf this case and come to a realisation that there ıre conflicting principles of major——

Senator Chaney—That is what I said in my ;peech.

Senator ROBERT RAY—That is what Sena- :or Chaney said in his speech, but he does not understand it or practise it. That is the problem with Senator Chaney's dichotomy. What he espouses and the way in which he behaves are two entirely different things. I do no know whether he suffers from some kind of schizophrenia. I wonder whether he ever looks in the mirror and tries to resolve those matters. This is just political opportunism under the cloak of political principles. It backfires when one cuts away the layers of political opportunism, because no principle is involved. It is sad to say that I am not only right in terms of exposing Senator Chaney's political opportunism but also in terms of principle. A citizen has a right to protect his reputation by way of legal proceedings. If that is not right, I wonder whether Senator Chaney intends to change the defamation and libel laws. He did not do so when he was in government from 1975 to 1983.

In summary and in conclusion: matters of principle are involved in this case which, if it goes to the Privileges Committee, must be considered. Just to satisfy some revengeful feelings of Western Australian Liberals is not a good enough reason for us to set up a precedent for the future that every Australian citizen will regret. I know the angst, the jealousy and the intense hatred that have built up in the Western Australian Liberal Party in respect of Brian Burke. I know that this hatred exists. It is similar to that which existed for Wran, except, for some reason, Western Australians are always more intense about these matters. They have attempted again to get Burke. I guess the greatest crime Brian Burke ever committed was to leave Parliament before the Liberal Party could get him in three, five, 10, 15 or 20 years time—whenever it thought it could get him. He has rubbed the Liberals' nose in it, destroying one of the citadels of the Liberal Party in Western Australia, exposing its every policy and threatening its very existence. What we have seen today from the start is a petty exercise of revenge and it has failed miserably. I am sure that whenever the matter is concluded, Mr Brian Burke will come out totally exonerated. Not one charge or allegation made by the Opposition today can be sustained.

Senator MACKLIN (Queensland) (11.11)—The motion to which the Senate is addressing itself reads:

> That the following questions be referred to the Committee of Privileges: Whether a petition to the Senate was suppressed in consequence of a threat of legal proceedings by the Hon. Brian Burke, and, if so, whether this constituted a contempt of Parliament.

We will support the motion; that is, that the matter be referred to the Committee of Privileges. For the last hour we have listened to a couple of speeches rehearsing a whole range of issues concerned with this matter. I do not wish to follow those because it seems to me that what we are asking the Committee of Privileges to do is to go over that particular operation and to come forward with a report to this Parliament. I remind honourable senators that the Committee of Privileges does not decide anything; it merely reports back to this chamber. A final decision will be made here.

I wish to rehearse why we support the motion. Senator Ray is perfectly correct, in that every matter that is brought before the chamber does not have to be supported. If it did, we would not have had to engage in an earlier exercise; that is, the resolutions of 25 February. The hope is that the resolutions will sift out trivial matters. It is important to note that this is the first item on which we have asked the Presiding Officer to make some type of judgment regarding the resolutions of 25 February.

I do not know whether all honourable senators are aware of the fairly long history of this exercise. It goes back to the Joint Select Committee on Parliamentary Privilege which was appointed under the Fraser Administration, I think, towards the end of 1981. The matter has a very long history. It culminated in both an Act of the Parliament and resolutions of the Senate and, hopefully, the House of Representatives. We have attempted to tease out a number of these issues in order to streamline the operation and make sure that what we are about is up to date and

has built in protections not only for members of Parliament but also for citizens.

We asked the President to address himself to a number of issues—in deciding whether or not he would give precedence to the motion. He decided to do so. I draw the attention of honourable senators to the fact that, in considering whether the Senate should send this matter on, the Senate is asked to address itself to almost identical propositions. In our case we have three criteria. In the case of the President, there are two criteria. The President's two criteria are repeated in the three criteria to which we must address ourselves. The third criterion with which we must concern ourselves is:

whether a person who committed any act which may be held to be a contempt:

(i) knowingly committed that act, or

(ii) had any reasonable excuse for the commission of that act.

I believe that it is important for the Senate, in addressing itself to this issue for the first time, to be very careful. I think it is a pity that this is a contested matter. I think for two reasons it would be more appropriate for the matter to be sent uncontested to the Committee of Privileges. The first reason is that we would thereby give added weight to the very difficult type of decision that the Presiding Officer is called upon to make with regard to this matter. Honourable senators quite knowingly gave the Presiding Officer that very difficult task of working out whether this was a matter that should take precedence or whether it was a trivial matter or otherwise that should not actually be raised. I think it is important that on this first occasion we should give that, as it were, implicit support to the Presiding Officer in terms of the judgment he made that it was a matter of importance that should be dealt with by the Senate. By the way, I do not wish to imply that the President in any way made a decision as to whether the Senate in its consideration should then send the matter on.

The second matter is one which I think was raised by Senator Ray. Interestingly enough, we have come to the opposite conclusion for almost identical reasons. We believe that the matter ought to be decided very clearly. The Parliament does not have a motion before it to enable the matter to be decided. I thought that Senator Ray raised very important considerations about defamation, libel and petitions. The motion we have before us does not allow us in any way to decide those matters. The motion before us is whether the matter should go off to the Committee of Privileges.

For the reasons that Senator Ray raised the Australian Democrats have decided that the matter should go to the Committee of Privileges so that we can have a report back and a motion aimed quite directly at the issue of petitions. I want to address something in this regard to Senator Chaney and put it even more pointedly. If a petition were circulated about, for example, the private sex life or something like that of Senator Chaney, I am quite sure that Senator Chaney would take umbrage. Knowing the position he has taken with regard to family life and other matters I know that he would want to take his legal rights to the court with regard to the circulation of that type of petition. He would not want every person in the community running around with a piece of paper listing all those types of allegations and suggesting that as a result of all of the things which Senator Chaney had done—they would not be allegations but statements that he had done them—he should be expelled from the Parliament. That seems to me to be a very serious proposition. It has been raised here.

Senator Chaney—I did raise that conflict in my speech.

Senator MACKLIN—I know. I have absolutely no problem with Brian Burke taking his legal rights. Senator Chaney raised the problems of the cost of justice and whatever else. That is fine. We have had a continual concern with the cost of justice. We think that further work needs to be done in this area and that we need to look very closely at the problem citizens have in getting redress before the courts. However, I think it is very odd to continue that idea but then criticise someone for taking his legal rights. I really do not believe that as a result of a failure of the system in terms of being able to support people with money for legal aid we should then turn the whole thing on its head and criticise somebody who takes his rights in that regard. The criticism should be of the system that does not enable people to defend themselves because it does not give them the wherewithal to defend themselves. Somebody should not be criticised merely for asserting his legal rights. I think that Burke is now in a somewhat different situation. I am not at all sure of the chronology of events. I do not want to enter into that; I have enough problems in Queensland without working out the Western Australian political system. Undoubtedly it is

now the case that Mr Brian Burke is a private citizen.

Senator Robert Ray—He is an ambassador.

Senator MACKLIN—He is an ambassador but he is not a political figure. I do not see why anyone in such a situation should be in any way inhibited from taking any legal action. We might think that politicians should be inhibited. It is a prohibition we might urge on ourselves. However, I really do not believe we have the right to urge it on anybody else including, quite frankly, other politicians. If they wish to have recourse to law they have a perfect right as politicians to do so. I think that such action might show that they are thin skinned. I might urge that as a counsel of recommendation to myself but I do not think I am entitled to urge it on somebody else and certainly not somebody who has removed himself from the active political arena. I think that he is perfectly entitled to use whatever is available to him if he feels affronted and to take his rights before the courts. I assume that the apologies given were given in good faith. Hence, I assume that the people involved have actually apologised.

The other items raised by Senator Chaney undoubtedly will become part of the whole discussion before the Privileges Committee. However, the reason I wish to reiterate that we are supporting the examination of this particular item by the Privileges Committee is that we wish to vote on a motion in regard to petitions—a motion that quite specifically addresses the issue of whether a petition that is circulated that is defamatory is covered by parliamentary privilege. I want to vote on such a matter. I am not about to express my personal opinion now because I would like to hear the Committee's report. However, I really believe that this chamber should be given the opportunity to vote quite directly on that matter. That is why we are supporting this matter going before the Privileges Committee—so it can work over the whole matter in detail and come back to us with recommendations. Those recommendations will then be the subject of a vote in this chamber. Hopefully, it will clear the matter up once and for all. It is for that reason—not for being either in support of or against Mr Burke, the petitioners or anybody else—that we want to have this matter worked out because it is, I think, in the tradition we have accepted in the last two or three years of getting some detailed clarification, both for ourselves and for the community, of what quite precisely we are dealing with in regard to parliamentary privilege. I think this is a useful inquiry and a useful development. I am quite sure that it will be a useful report, as will the vote. As well, it will enhance our understanding of the privileges of this place and will enhance the understanding of the citizens of Australia.

Senator COONEY (Victoria) (11.24)—Perhaps I ought to begin by indicating that I am listed as being a member of the Committee of Privileges. I understood that Senator Childs was to be a member and that I was not. I should say to the Senate that I have prepared material in regard to this matter and, therefore, had I remained on the Privileges Committee for this case I could not have brought an unbiased mind to it. I begin my address on this matter in those circumstances. I indicate that I will not remain on the Privileges Committee for the examination of this matter because of the way my mind has already been affected. I did not realise that I was listed to be on the Committee because the arrangement was that Senator Giles would take my place and become Chairperson of the Committee. That was my understanding.

Senator Macklin—What is the circumstance now, Senator?

Senator COONEY—I will not be sitting on the Privileges Committee. Indeed, it is only proper for me to tell the Senate that because if I had not told the Senate and gone ahead and sat on the Committee I do not think that I could have brought an unbiased mind to the matter. I have prepared a case to put before the Senate today on the basis that I am not a member of the Privileges Committee.

I have some concern with the matter which perhaps I should go ahead and explain. Of the speeches given so far by honourable senators, the speech given by Senator Macklin, for whom I have the greatest respect, is the speech which gives me great concern. As I understand his proposition, he is saying that this is a case that we ought to let go to the Privileges Committee and that we ought to discuss in the Senate because it is time that we established a precedent for the way in which petitions are handled. If I may say so with respect, it seems to me to be wrong for people to be dragged before the Privileges Committee of this Senate and for their future to be debated by the Senate simply for the purpose of establishing a precedent—simply so that in the future the procedure for dealing with petitions that are presented to the Senate will have been established.

The fact is that under the Parliamentary Privileges Act 1987 a person who is charged, as it

were, with an offence against this House may be imprisoned, if the Senate considers it proper, for six months. It seems to me to be a most draconian practice to have somebody brought before this House, brought before the Privileges Committee and charged, as it were, with contempt, or at least put at risk of being so charged, simply to establish a precedent so that in the future this House will know how to deal with petitions. I think that is a most merciless and most unfair way of going about things.

I am sure that Senator Macklin and the Australian Democrats did not intend that their approach to this matter would have that effect; but, indeed, that would be the effect of what he proposes. What he said is that persons—in this case it is a former Premier of Western Australia—should be put at risk of being put in prison by this House simply to establish the procedure that this House should adopt in dealing with petitions that come before the Senate. I think that is a very base motive. I can well understand the Privileges Committee talking about practices that should guide this House, without somebody being put at risk of attracting a gaol sentence. That is done again and again. However, to put at risk the liberty of a subject of this country simply to establish the proper procedures for this House to adopt as regards privilege is a very heartless and very dangerous precedent to set.

I turn now to the Opposition's case. The letter sent by Senator Chaney to the President bears the date stamp of 11 March 1988. The letter reads in part:

> The matter arises from the circulation of a petition in Western Australia requesting deferral of the appointment of the Honourable Brian Burke as Australian Ambassador to Ireland pending resolution of forthcoming legal proceedings involving the former chairman of the State Superannuation Board and a Perth businessman.

That letter does not correctly set out the position taken by the petition and it does not correctly state the position that Senator Chaney put forward and supported today. The petition wants the appointment of Brian Burke deferred not only until any relevant legal cases that might arise have been dealt with but also until the Western Australian Parliament deems it time it should discharge the matter from its consideration. The petition reads:

> Your petitioners most humbly pray that the Senate, in Parliament assembled, should seek to have the appointment of the Hon. Brian Burke as our Ambassador to Ireland deferred until such time as the charges presently pending against Mr Len Brush and Mr Robert Martin shall have been heard and concluded, and until matters arising therefrom shall have been answered to the satisfaction of both Houses of the Parliament of Western Australia.

This petition does not purport to vindicate the right of somebody to present a reasonable petition. The petition does not simply ask for the postponement of the appointment of Brian Burke as Ambassador to Ireland pending the outcome of legal proceedings; it goes further than that. The letter that Senator Chaney sent to the President does not make clear the full intent of the petition. I do not suggest for one minute that Senator Chaney has intentionally tried to mislead anyone, but certainly the letter that he sent to the President does not go on to state that the petition seeks to have Mr Burke's appointment as Ambassador deferred until the Houses of Parliament in Perth are satisfied that it is appropriate for him to take up that appointment. Senator Chaney's letter does not point that out. It is a ridiculous suggestion that the taking up of the appointment of an Ambassador should depend upon the whim of State Houses of Parliament. State parliaments have nothing to do with the appointment of ambassadors; they have nothing to do with external affairs; for that matter, neither does this Parliament have anything to do with an ambassador taking up an appointment.

This petition asks this House to do something that it cannot do; that is, to delay the appointment of the Hon. Brian Burke as Ambassador to Ireland. Such matters are within the jurisdiction of the Executive, and only within the jurisdiction of the Executive. I say with respect that, first of all, this petition is a nonsense petition because it asks the Senate to do something it cannot do. Why would a petition be circulated asking this House to do something that it cannot do? My suggestion is that the purpose of circulating that petition around the streets of Perth was to blackguard Brian Burke. Let us be quite clear that this is a matter of libel. Is that the true purpose of taking this petition around the streets of Perth? The petition can have no other effect because, as I say, this Parliament cannot affect the appointment of a person as ambassador and when such a person takes up his position. Senator Chaney's letter to the President went on to state:

> This petition was circulated at the instigation of a citizen who sought advice from the Liberal Party who, in turn, contacted my office about the way in which the petition might be phrased to ensure it complied with Standing Orders.

Although that is what Senator Chaney said in his letter, he said in the Senate, 'Look, when I put that in I did not mean to suggest for one

minute that I in any way instigated this petition, that I in any way prompted its circulation. I simply gave advice'. If it were a criminal offence to circulate this petition, certainly Senator Chaney would be guilty of aiding and abetting. For Senator Chaney to say in the Senate that he is quite removed, as it were, from what happened with the petition is, I think, to miss the real thrust of what the petition is about.

There is no doubt that this is a libellous matter. Libel actions can be defended, first, by showing that the words claimed to be libellous are true. It has not been suggested in the Senate today that the inferences in the petition are in any way true. Another way of defending a libel action is to say that the matter has absolute privilege because it was carried out under legal privilege or parliamentary privilege. Those are the ways in which libel actions can be defended. But the whole system has been twisted around in this case: Instead of Parliamentary privilege being put forward as a defence, it has been turned into a means of attack. As I say, a breach of privilege can attract a gaol sentence. Suddenly it has become an offence—this point was made by Senator Ray—subject to the imposition of a custodial sentence, for a person to defend himself against a libellous attack.

The question arises—this has been asked—as to whether taking legal action to vindicate one's character is a breach of the privileges of parliament. That is the issue. Let us say, for example, that somebody in Perth had circulated a petition which was as libellous as this against somebody who lived in Adelaide and that person took action in the High Court, as he is entitled to do, and as soon as he took action in the High Court, he is told 'You cannot go on with this action because it is a breach of parliamentary privilege'. What is to stop the High Court from saying, 'There is such a thing as separation of powers. Members of parliament have committed a contempt of the High Court because they have stopped the processes of the High Court'? Those are the sorts of problems involved in the debate today.

Somebody talked about Gee's case. To compare Gee's case in any way with what is happening here is nonsense. Gee's case is certainly not a precedent for what is happening here. If honourable senators had looked at the report of that case in the journals of the House of Commons rather than reading a short summary of it in *Erskine May*, they would have seen that the situation is quite different. In that case the person was alleged to have taken bribes and to have acted arbitrarily in his position as a commissioner for licensing and regulating hackney-carriages. When people approached Parliament with petitions complaining about that, he had them arrested. Parliament said, 'You cannot treat people who approach Parliament to seek relief in that manner'. Of course, this Parliament would be outraged if someone approached it with a petition against corruption and the person involved used his official position to have the petitioner arrested. But that is entirely different from a person taking the legal processes otherwise available to him. If people are going to suggest that Parliament can override the processes of law, that is entirely different from a situation where a person does not have someone arrested for approaching Parliament and trying to stop bribery and corruption but has said, 'This is libellous. I want to stop it, and I intend to take legal action'.

If the person was confident that he was correct and that what he set out in the petition was right, why did he not go on with the petition? A defence to libel is truth. If the person who was circulating this document really believed that it was true, why did he withdraw, apparently on the advice of his own solicitors, when the solicitors acting for Mr Burke approached him? That question has to be answered. What do we do? Do we say, 'We will send Mr Burke off to the Privileges Committee for approaching his solicitor for legal advice'? He is a man who has been clearly libelled. Everybody agrees that he has been libelled.

Senator Chaney—I don't agree with that.

Senator COONEY—Senator Chaney does not agree that he has been libelled but the solicitors to whom he went agreed that he had been libelled.

Senator Chaney—Hang on. How do you know that?

Senator COONEY—Because an apology has been made, as I understand it, pursuant to an agreement.

Senator Chaney—That is an absurd conclusion for a lawyer to draw.

Senator COONEY—An agreement has been reached. Let us just analyse Senator Chaney's approach to this. He says that he does not think it is libellous. I have said to Senator Chaney that I believe it is libellous because the solicitors on both sides of the case agreed that it was libellous and came to a settlement.

Senator Chaney—Rubbish. They agreed to avoid proceedings.

Senator COONEY—Senator Chaney says that they did not agree to come to a settlement because it was libellous; they agreed to come to a settlement to avoid legal proceedings. What sort of solicitor would advise people who came to him for advice when sued for libel to come to a settlement simply to avoid legal proceedings? What a lot of nonsense. Senator Chaney knows that it is a lot of nonsense. If there is no colour of libel in that statement, that solicitor has failed in his duty to his client in agreeing to a settlement.

Senator Macklin—What a shocking defamatory thing to say about a lawyer, Senator.

Senator COONEY—That is the situation. Action was not taken to prevent this petition from being presented. That was not the position at all. Action was taken to stop the libel that had been committed.

The Senate's action today has extended the parliamentary privilege that adheres to members speaking in this chamber to people speaking outside this chamber. If anybody here makes outside this Parliament a libellous statement about anybody else, he can be sued. The privilege that Opposition senators are trying to attach to a petitioner is a privilege which members of parliament do not enjoy. So the petitioner's privilege rises above the privilege of members of parliament because the petitioner can go around libelling anybody he likes outside as long as he attaches it to a document with particular words in it, but a member of parliament cannot go outside this Parliament and libel people. So why does this chamber seek to elevate the privilege which attaches to a petitioner above the privilege that attaches to a member of parliament? The more we look at this whole process, the more ridiculous it becomes.

Senator Chaney, in his letter, talks about the Bill of Rights. The Bill of Rights protects parliamentarians and the parliamentary processes. It does not purport to protect the rights of libellers even if they put that libel in a petition. That is what Opposition senators are doing. A libel has been committed. There has been a twisting of the precedents of this House and a twisting of the law to attach privileges to somebody who wants to blackguard a former Premier of Western Australia. Senator Chaney goes on in his letter:

> Any lingering doubts about this matter would appear to have been resolved by the passage of the Parliamentary Privileges Act (No. 21 of 1987) and in particular Section 16, subsections 2 (b), (c) and (d) of that Act.

I have read that provision. There is nothing in section 16 of the Parliamentary Privileges Act 1987 which gives protection to people who libel others, whether in a petition or otherwise, outside Parliament. The Act protects evidence that is before a parliament or a parliamentary committee. No part of section 16 gives protection to a libeller of people outside Parliament. So it is a nonsense for Senator Chaney to write this in his letter:

> It is my very strong view that the action taken by the former Premier is in breach of the right of citizens to circulate petitions for presentation to the Parliament. Any lingering doubts about this matter would appear to have been resolved by the passage of the Parliamentary Privileges Act . . . and in particular section 16, subsections 2 (b) (c) and (d) of that Act.

Senator Chaney either does not know his law or is writing in a way which gives a false impression. He also states in his letter:

> It is also my view that the Senate must be very ready to defend the availability of recourse to the Parliament by citizens of modest means against infringement by those who are comparatively rich and powerful.

I do not believe that anybody should be denied recourse to his member of parliament. That is why members, at least on our side of the House, have their electoral offices and are available for people to come and see them. If, on the other hand, what is meant is that people should be able to present petitions to Parliament, and should be able to say what they like in those petitions without being subject to the law, that is another matter.

What Senator Chaney says is that people who present petitions should be privileged above every other citizen in the community. If someone wrote a letter to a newspaper setting out what is contained in the petition, or if someone said that on the radio, no privilege would attach. What I should like to hear from Senator Chaney is why he is interested in protecting people who circulate libellous petitions, but has no interest at all in protecting people who circulate letters or commit other forms of libel less serious than that involved here. Why should he favour one particular process rather than another? Perhaps what was envisaged in this particular case was that the matter would be raised in Parliament and made the subject of debate, and that the very purpose that Brian Burke had in taking action would be frustrated, namely, that the libel be put to rest. It is quite a tragedy—I have chosen to use that word—that this matter should be referred, as it appears it will be on the numbers, to the Privileges Committee.

I repeat that I believe it is quite wrong of the Democrats to put at risk—and that is what the Democrats quite clearly are doing—the liberty of people simply to set a precedent. This is what has been stated. It is quite wrong to make people subject to the risk of imprisonment or fines simply to establish precedent. That certainly shows no proper concern for the rights of citizens. Simply because a man has been the Premier of a State does not make him any less vulnerable to the anxieties, worries and concerns that he would have if he were subjected to this Committee and perhaps ultimately to the Senate. Nevertheless, if we are to have some interesting lines about privilege put in the books by the Democrats, so be it.

I believe that the approach taken by the Opposition, particularly the Liberal Party, is extraordinary. The letter from Senator Chaney states only half of the situation. It gives the wrong impression of what the petition really asked for. It failed to state the full extent of the petition. I should like Senator Chaney to say in reply why he did not do that; why the letter he wrote to the President failed to set out the full extent of the petition; and why it did not mention that the petition sought to delay the appointment until both Houses of the Western Australian Parliament were satisfied.

I ask Senator Chaney why he quoted section 16 of the Parliamentary Privileges Act in a context where it has no proper application at all. Section 16 clearly relates to matters which have come before this Parliament or its committees, such as evidence given before those bodies. It is quite wrong to say that it provides otherwise. The letter refers to a legal settlement since concluded with the former Premier on conditions that included collection and destruction of petition forms. There is no evidence at all that there was any agreement that the forms were to be destroyed. I call upon Senator Chaney to show where there was any agreement that the petition was to be destroyed. The letter also misrepresents the petition in so far as it says:

> It is also my view that the Senate must be very ready to defend the availability of recourse to the Parliament by citizens of modest means against infringement by those who are comparatively rich and powerful.

I ask Senator Chaney why he chooses a particular class of libellers to protect against the rest of the community. I ask him to explain in what way the Senate can in any way affect the appointment of ambassadors. I ask him to explain how this Parliament can stop the recourse to law by people who wish to vindicate any rights that they believe they have. That would be the effect of his argument because if one objects to the threat of legal action, one must object to legal action itself. I ask Senator Chaney to explain what the situation would be with people living in different States if one libelled another, and the person libelled brought an action in the High Court. Could this Parliament stop the High Court hearing that case on the basis that there was a breach of privilege? Further, might it not be argued that the High Court had power to punish for contempt those who attempted to frustrate its processes by resorting to parliamentary processes?

The Opposition sits peacefully by, stopping a man resorting to what should be the right of every person in this country: to go to a court of law to have the umpire decide whether he is right or wrong. This is almost getting back to the sorts of things that used to occur with the bill of attachment. Before I conclude I should like to make clear that the Democrats, the Liberal Party and the National Party have combined here today to use their numbers to stop a person who has been grievously libelled from doing what everybody in this country should be entitled to do—to attempt to vindicate his character before the courts and either win or lose. That is what the Opposition has done.

Senator Haines—The senator knows that that is not true.

Senator COONEY—From now on anyone who is libelled in a petition and dares to contradict or protest about what has been put in a petition will be brought before the Senate and made subject to the risk of imprisonment or being fined.

Senator Haines—The senator knows that that is not right.

Senator COONEY—That is exactly what has been done. If not, I invite Senator Haines to explain how it is otherwise. It is no good protesting and saying that has not been done, because clearly the Opposition has done it.

The DEPUTY PRESIDENT—Order! The honourable senator's time has expired.

Senator COLLINS (Northern Territory) (11.54)—I am quite sure that none of the motives or purposes that, with the greatest respect, Senator Cooney attributed to the Democrats are in fact correct. I indicate to the Senate that I intend to move an amendment to the motion before the Chair. I shall do so because this is one of those rare occasions—perhaps too rare—when debate in the chamber has actually influenced the course of a matter under considera-

tion. I was extremely unhappy about the original wording of the motion, but on the other hand was totally persuaded by Senator Macklin's comments, which I support, that the question of privilege raised by the motion with the removal of personal references should be referred on principle to the Committee for some determination.

Once again I believe that the entire matter of parliamentary privilege requires further extensive overhaul. Though I shall not do so, one could be unkind enough to suggest that perhaps the circumstances under which the original motion before the Chair evolved could at least in the moral sense constitute some abuse of privilege. However, I do not suggest that.

The whole question of privilege does need to be examined. Privilege, in my view, has been brought into considerable contempt—I use the word 'contempt' in its simple English meaning—by the Parliament itself on a number of occasions over the years, which, of course, has resulted in a great deal of debate on the subject. The most infamous case was that in 1955 when both the publisher of a newspaper and the journalist who wrote a particular article were imprisoned in Goulburn gaol for a period of three months and served out every day of their sentences. I noted when I read the transcript of that matter that a very young and new member of the then Opposition, by the name of E. G. Whitlam—a man I respect enormously—voted in favour of those prison sentences being imposed. I intend one day to ask Gough why he did that.

Senator Puplick—Have a look in Souter's book.

Senator COLLINS—It is in Souter's book, is it?

Senator Robert Ray—You never met Frank Browne; that is obvious. He was a grub.

Senator COLLINS—I never met him, but I am perfectly prepared to say on the evidence before me that he was a grub and a scurrilous person. But I do not think that people who are grubs should be sent to gaol. There would be a lot of us in deep trouble if that were the case. Having been persuaded by Senator Macklin that this matter should be looked at, I drafted the amendment with that in mind, to remove the personal references from the motion.

I point out to members of the Senate that the whole question of privilege has been examined by the relevant committee of the Constitutional Commission inquiring into potential amendments to the Australian Constitution. One of the recommendations of that committee is that consideration should be given to overhauling the entire question of parliamentary privilege and having its limits defined in very precise terms in the Australian Constitution. That is a proposition with which I concur, the extent of my concurrence being with the need to examine the possibility of having a constitutional amendment defining precisely the limits of parliamentary privilege. Parliamentary privilege will remain a respectable institution only if it is accorded respect and not abused by the members of parliament upon whom it is conferred. I think I would have a fair amount of support in saying that the infamous case of Fitzpatrick in 1955 in the House of Representatives was one in which privilege was abused by the Parliament and extended in a way that I hope will never be done again. The amendment is self-explanatory. I move:

> Leave out all words after 'Committee of Privileges', insert 'whether the circulation of a petition containing defamatory material for the purpose of gaining signatures and subsequent submission to the Senate is or ought to be privileged and how such issues should be determined and in what forum'.

I point out to honourable senators that I included the words 'defamatory material' in this amendment at the suggestion of the Australian Democrats. The final words, which I support, as to the question of how such issues should be determined and in what forum, were included at the suggestion of the Leader of the Opposition, Senator Chaney. I think it is a proper reference to make.

Senator Puplick—Who is going to determine first whether the material is defamatory?

Senator COLLINS—I will get onto that now. I had some concerns, and I think Senator Chaney was a party to my voicing them, about the inclusion of the words 'defamatory material' because of that very question. I must say that, had I been left to my druthers, I druther have left the wording in the original form, which simply read, 'whether the circulation of a petition for the purpose of gaining signatures' so that the question of principle could be resolved. But because I am seeking the support of the Senate for this proposition, and because I am a reasonable man, I acceded to the suggestion.

To answer Senator Puplick's question as to whether the petition contained defamatory material, that would be put beyond doubt if, subsequent to the circulation of the petition, the matter were determined in a court of law and the court came down with a judgment that the material complained of—I imagine that a com-

plaint would have to be lodged in that circumstance—was in fact defamatory. But I would not rule out the possibility of the Senate itself, as it obviously has the power to do at any time, taking exception to the material or, having had brought to its attention an allegation concerning possible defamatory material, referring the matter on its own motion to the Committee of Privileges. In that instance that determination could be made by the Senate, not acting as a court of law but simply indicating that there was a prima-facie case that the material was defamatory.

Those are the two circumstances in which I would envisage such a determination could be made in a legal and a definitive sense by a court of law, should action be taken. I totally support Senator Macklin's comment, as I am sure every honourable senator in this chamber would, that under no circumstances should this Parliament seek, by exercising privilege—which I think would be a gross abuse of privilege—to prevent someone who was grossly defamed by a petition from taking the legal action that is his right.

I was alarmed in the true sense of the word by the wording of the original motion that came before this House. In a way I am glad that this matter has been raised, because it is one that should be looked at. I again advise honourable senators who are interested in this whole question of privilege, as all members of parliament should be, to refer to the suggestions of the committee of the Constitutional Commission on enshrining limits to the powers of privilege by amendment to the Constitution. It is probably appropriate that we look at that. I would be absolutely alarmed and horrified to think that a grossly defamatory statement affecting a person's credit and standing in the community could be written on a piece of paper, topped and tailed with the appropriate prayer and, set out in the proper order and form of a petition, laid on the counter of every store and public place in the community. Thousands of copies could be printed and circulated for 12 months, it could be grossly damaging to a person's credibility but, because it is in the correct form of a petition, it could be covered by parliamentary privilege. No legal redress would, therefore, be available to the person defamed.

I refer again to the point that I thought was made very succinctly by the Minister for Home Affairs, Senator Robert Ray, when he said that such a petition could refer to people who are not members of parliament and who have absolutely no personal right of redress in parliament to put the record straight. If the document were covered by privilege, such a person would have no legal redress, in contrast to a case of a normal defamatory statement being printed. It is indeed a moot point. I for one am pleased that it is to be examined by the Committee of Privileges. I make no bones about stating the manner in which I think it should be resolved, not in the particular case involved but in terms of principle.

We are all familiar with the gossip that goes around about people in public life, and it is appalling to think that anyone could seriously put forward the view that I could draft the most libellous suggestions about a member of parliament, saying for example that that person was a sexual deviate and that on those grounds, as a member of the 'moral majority' organisation, I was seeking the assistance of members of parliament to expel that person from the Parliament, as the Parliament has the power to do. I could then go on, under the situation that perhaps some people in the course of this debate have suggested might be possible, to describe in graphic detail the extent, purpose and type of sexual deviancy that was involved. I think it would be an appalling proposition if that person were prevented from taking the legal action that would, under any other circumstance, be available to him because I had topped and tailed that garbage and nonsense and presented it in the correct form as a petition.

In closing, I take on board the concern that Senator Cooney expressed—and I think this is a proper concern—about whether we should be using people as sacrificial lambs simply to establish for our convenience and, I think, frankly, for the good of the community a precedent as to how this matter should be determined. I do not think that is proper or principled. Therefore, I think the form of words taking out the personal references in the original motion is the acceptable form that should be used. However, I wish to make it absolutely clear—I have taken advice on this and I believe that advice to be correct—that the removal of personal references would not preclude in any sense whatever the Committee, of its own motion, choosing to have brought before it people who may well be concerned with the case in point. This is simply a matter of principle that has to be determined. In fact, let me say, for what it is worth, that if I were a member of the Committee, it would make eminent sense to me in terms of examining some topical material to examine the particular case that has been brought before the Senate.

Senator Haines—Are you saying, Senator, that in the event of their not bringing this case before them for consideration, you would use the procedures of this place to ensure that they did?

Senator COLLINS—No. I thought I was putting it much more moderately than that and I am sorry that what I said has been misunderstood. I would not force anyone into doing it. I say it again: if I were a member of the Committee, I would simply think it a matter of commonsense that in terms of——

Senator Haines—This place could, if it chose to ignore the specific case and the principles as well as the principles involved, direct the Committee to take it on board.

Senator COLLINS—I agree with that. The Senate has the power to give directions to any of its committees at any time it wishes and nothing can interfere with that. I am saying that if one were having a look at the cases that lay under this reference, it would obviously be sensible to have a look at the one that was most topical. The Committee could decide that it wants to do that. The Committee is not precluded from doing that should it determine that that is what it should do. The Committee may also decide that it wants to do a considerable amount of research and discuss the question in general before it investigates cases. That, I might add, is a matter for the Committee itself.

As has already been pointed out properly in debate, not only is the Committee subject to any reference that could properly be made to it by the Senate, but also, of course, it cannot dictate itself how the matter should be dealt with. Whatever the Committee determines should happen can only come back to this place as a recommendation from the Committee. It will be the Senate itself that determines whether any definitive action will be taken by the Senate in response to that reference. Having said all that, I would simply ask the Senate to support my amendment to Senator Chaney's motion.

Senator CHANEY (Western Australia—Leader of the Opposition) (12.09)—Madam Acting Deputy President, in light of what I understand will be your position on the Privileges Committee, it is probably very fitting that you are in the chair and are thereby precluded from participating in this debate. I would like to respond to Senator Collins's amendment. Some of the discussion in the chamber has made following the debate more difficult than it would otherwise have been. While Senator Cooney was speaking, Senator Collins and I were talking to the Australian Democrats. Because of that, I must say that I was not able to follow completely some elements of the debate. At this stage I will purely address myself to Senator Collins's amendment rather than to the other elements of the debate that has taken place.

Senator Collins has proposed the sending off to the Privileges Committee of a quite general reference on the issues which are raised by the matter contained in my motion. The amendment that he has put down is in very broad terms. His amendment seeks to insert the following words:

> Whether the circulation of a petition containing defamatory material for the purpose of gaining signatures and subsequent submission to the Senate is or ought to be privileged and how such issues should be determined and in what forum.

I agree with Senator Collins's personal opinion, which has not been reflected in the wording of his amendment, that, in a sense, describing the material as defamatory material begs the question. One of the most difficult issues in this is the question of whether or not something is defamatory.

What I heard of Senator Cooney's speech took me back to the magistrates courts in a quite forceful way. I heard him address the question of this material. I would have to say that his view as to the defamatory nature of this petition and mine are starkly at odds. He described the material in terms that I would regard as highly excessive. I read the petition once in the course of this debate. I believe that it would be a very tender soul who would regard the contents of that petition as being defamatory. But that is not a matter that we should be focusing on. The point is simply brought out that the determination of whether or not something is defamatory is a difficult matter. It is a legal matter and opinions in this place will differ and do not matter anyway.

What concerns me about the amendment that Senator Collins has moved is its very generality. If we look at the development of the law of privilege, we will find in fact that the Parliament has been forced to address itself to particular cases. Although Labor senators have expressed some abhorrence at the fact that specific people have been brought into this—in this case, on the one hand the complaining would-be petitioner and, on the other hand the ex-Premier of Western Australia—the reality is that all of the precedents in this area relate to individual cases which have been addressed by the Parliament. The whole body of law on privilege had been, until our own legislation of last year, built up on an examination of particular cases.

My worry about the generality of what has been proposed by Senator Collins is twofold. My first concern is that he is setting the Committee an impossible task by asking it to try to cover fully what is such a generalised reference. My second concern, though, is that this generalisation could enable the Committee to avoid the particular concerns that I have raised in my motion. I listened very carefully to what Senator Collins had to say and to the exchange between Senator Collins and the Australian Democrats during his speech when the question was raised of whether or not the petitioner in this case could come forward and give to the Committee of Privileges the facts of his case and why he is concerned. Senator Collins said that he wanted to make it clear—he had taken advice on this—that the removal of the reference to the persons involved in the present case does not preclude the Committee, of its own motion, from having the persons before it. The rub, of course, is that this matter may or may not be acceded to by the Committee. That is why the Australian Democrats raised the point that the Senate could direct the Committee to hear a matter if there appeared to be a case of injustice.

I would suggest to Senator Collins that an alternative approach would in fact be preferable. I would ask the Australian Democrats in particular to consider this alternative approach. I believe that it is perfectly in accordance with the way in which Parliament has successfully dealt with privilege matters in the past that the particular matter of concern is dealt with as a particular matter of concern. One goes, then, from the particular to the general principle which has been distilled. There is nothing odd about that. The whole of the common law has been built up on that same principle. I would suggest that it would be sounder to leave my motion as it is and, if it is wished to ensure that the general principles that are sought to be adduced are dealt with, to add Senator Collins's words to my motion.

Senator Collins—That destroys the amendment and the purpose of it.

Senator CHANEY—The reality is that there is, I think, at least a danger that the amendment in the form put forward by Senator Collins will in fact present both an impossible task to the Committee, because of its very generality, and a risk that it will not be able to come to grips with the particular complaint which has given this issue some clarity.

Senator Collins—Should they be so foolish, the Senate can redress that.

Senator CHANEY—I would like to make sure that what Senator Collins has just said is on the record. I am sure that it will be now. I think it is very important that that point is clear because it would appear that the support that Senator Collins is giving his own amendment, which is likely to be shared by other members of the Australian Labor Party, is on the basis of assuming that the Committee will be accessible to this person if he wishes to come forward and put his case as to why the Senate should deal with this situation. I believe that that access is absolutely vital. It lies in the hands of the citizen concerned as to whether he should avail himself of that. That is his decision. The Opposition believes that the particular case should be dealt with. We have no objection to the addition of those words, but on that basis we will oppose the amendment.

Enough has been said in this debate to indicate that there are real difficulties, even in respect of a narrow examination. In his speech, the Minister for Home Affairs (Senator Robert Ray) made a great deal of the rights of people to sue for defamation. If honourable senators look at my speech in this place, they will find that I made the point that we are dealing with a competing set of rights. There is the right of the Parliament and the right of the citizen in respect of the Parliament; there are the rights of individuals to protect themselves against defamatory statements. There is no suggestion by the Opposition that there are not difficulties in marrying those two rights and I believe that, if we try to deal with this matter on the basis of dealing with every case that might come before us, there is a real risk of failure. I also think that if we are dealing with this matter in the abstract, which enables Senator Collins to say that he is alarmed and horrified that a gross and defamatory statement could be distributed because of this procedure, then we run the risk that this particular case will be regarded as one of a gross and defamatory statement in circumstances in which I believe that that would be quite inaccurate.

I was somewhat puzzled by Senator Cooney's suggestion that the settlement of this case in some way indicated to the Senate that the solicitors involved had agreed that the matter involved a defamatory statement. If Senator Cooney has had no experience of parties having to settle litigation because they simply cannot financially afford that litigation, then he has had a very narrow practice indeed. I think that anyone who has had any experience in the law in Australia knows that it is beyond the capacity of many middle income Australians to pay the

costs involved and on that basis they must avoid litigation. If Senator Cooney has had such a sheltered practice in Victoria that he has never come across such a case, then all I can say is that I envy him.

Senator Cooney—Are you saying that that is why it was settled?

Senator CHANEY—I do not know that, nor does anybody. There have been so many conflicting assertions of fact in this debate that one can only say that a proper examination of those facts by a committee is the only way to settle the matter. Senator Cooney's and Senator Robert Ray's assertions are all based on their information, just as my assertions are based on the information that has been provided to me. I do not believe that in this forum those issues can be finally determined.

Senator Cooney—It would be an extraordinary thing if somebody could libel somebody else, believing it was true, and then withdraw with an apology.

Senator CHANEY—That is a relatively simple-minded observation. For Senator Cooney to suggest that the withdrawal of a statement believed to be true under threat of legal proceedings means that that person has changed his mind and believes the statement is no longer true is a quite extraordinary statement. The simple point that I have been making—and I am surprised that Senator Cooney is not prepared to concede it—is that the cost of litigation is a factor in determining how people behave in many of these circumstances. If he does not understand that, then he does not understand the problem which is being brought forward in this case.

We have here a quite simple set of facts which a long debate cannot obscure. The reality is that a petition, in terms which have been read out in this Parliament, was circulated by an Australian citizen. That petition was withdrawn under circumstances which have been canvassed in this debate—circumstances involving the threat of legal proceedings for defamation. As a result of that settlement there was a collecting up of petitions and, as I understand it, the destruction of some of them. Costs were paid to the ex-Premier of Western Australia. The problem which this Senate has to face is that the proper access of Australian citizens to this Parliament can be denied by the use of legal process in cases where there is simply an alleged defamation. In those circumstances, for us to turn our backs on the matter and take the view that that is not a problem is to ignore reality. I believe that there has been an ignoring of that reality in much of the debate that has taken place this morning.

On behalf of the Opposition, I oppose the amendment moved by Senator Collins. I again ask the Australian Democrats to consider the fact that privilege matters have always been dealt with on the basis of moving from the particular to the general. In this case there should be no suggestion that the particular case is not to be examined because it is one which I believe raises very serious issues, not only for the citizen concerned but also for other Australians who might be involved in petitioning. It is not enough for both Senator Ray and Senator Cooney to say with great heat that it cannot or should not be asserted that an Australian can circulate grossly defamatory material with impunity in the form of a petition. They have not addressed themselves to the issue of what happens if an Australian wishes to circulate material which is not defamatory but faces the prospect of expensive, drawn out legal proceedings to prove that point. That is a simple, practical method of blocking access to this Parliament. In the debate which has taken place neither Senator Ray, who led for the Government, nor Senator Cooney, who I think—to do him justice—filled in time to some extent to allow consideration of an amendment and spoke for his full 30 minutes, probably at the request of the Minister for Home Affairs, paid attention to that very significant, practical problem which can face citizens of limited means trying to get access to this Parliament. That is a very serious problem.

I do not believe that Senator Collins's amendment is the best way of ensuring that the Privileges Committee looks at the real difficulties which this case raises. It would be far too easy, on a generalised reference, to take the simple view that if something is defamatory it should not be circulated. That is far too neat for the issues raised by the present case. We have here a situation which requires that we ensure that somebody is not denied his rights to come to this Parliament by the use of the threat of legal proceedings which economics preclude being determined by the courts.

I am sure that this matter will be concluded without too much more debate. I see that Senator Burns is here. He is one who takes a keen interest in these debates. I say to him, as a senator representing people who do not have a lot of money, that he and other Labor senators are in a position to show some sympathy for the real problems of people of limited means who are up against people who have relatively greater

means. I used to think that the Australian Labor Party had great concerns about that balance in our society. I see very little evidence of it in this debate.

Senator MACKLIN (Queensland) (12.24)—The issue at hand is the amendment moved by Senator Collins. Senator Collins is seeking to substitute the general principle for the particular case. I indicate that that would have our support. In answer to some of the points raised by Senator Chaney, I note that his motion did not require the Standing Committee of Privileges to call either Strickland or Burke. In fact, the Committee can do what it likes. It would be very odd not to have them called, I admit, but it would have no obligation and no requirement to call them. In fact, it would not even have a requirement to tell them that a hearing was being conducted. Some of the members of the Committee have been sitting in the chamber throughout the entire debate and are very much aware of what the issues are. I believe it would be very odd to go into a general inquiry without looking at that specific item. I raise a particular point, which is that the motion refers to looking at defamatory material; I think that is the crux of the matter. It also asks how that will be determined and where. Fairly obviously, as Senator Collins pointed out, at least on the first glance one assumes that it will be in the courts.

Senator Chaney quite rightly has an additional concern in that in the case to which he referred he maintains that there is no court action. As I understand it, there has not been a court hearing on it, so a court has not made a determination on whether the material was defamatory. The parties have come to an agreement by the issuing of an apology; hence it is not likely to get to court. So there is a further item, which I am quite sure needs to be picked up, of material which somebody is claiming to be defamatory. I do not perceive that any responsible committee of this chamber would go into an inquiry and not pick up those types of nuances and deal with the issue once and for all. One of the saving graces of this chamber is that our committees do do a thorough job when they deal with these issues. In fact, all the issues with which I have been involved on the Privileges Committee have been dealt with in the most thorough and comprehensive manner, picking up items that had not even been referred to in debate, let alone those items that had been referred to in debate.

So I am quite sure that the Committee will look at the specific issue. I am sure that it will advise Mr Burke and Mr Strickland that it is looking at this, and I presume it will probably invite them to make submissions to and even appear before it, if that seems to fit in with the operation, which I think it does. What the general will do for the particular is to remove Senator Cooney's——

Senator Chaney—What if it refuses to hear a submission?

Senator MACKLIN—If it refused to hear one, we have other mechanisms to deal with that at a later date. But this does satisfy Senator Cooney's proposition—which I must admit I did feel had substance—in that we are not necessarily going to string up anybody. I think he put it a little strongly and went a little over the top; certainly some parts were simply false, particularly the last part where he said that this would go on for evermore. If the Committee made a determination, presumably this would not happen again one way or the other, unless Senator Cooney was postulating that both the courts and the Senate Privileges Committee would be ignored. I do not think that would happen, and hence any determination that is likely to be made would satisfy that. I think that addressing the general issue would get us back a recommendation that would satisfy this. Senator Chaney should be satisfied because the particular items will have to be rehearsed. That is, as it were, one step down from defamatory material in that it relates to material which somebody is claiming to be defamatory and which has gone through some type of reconciliation process—irrespective of whether it was forced, to use Senator Chaney's terms, or given freely of the person's own accord because the person was wrong. I do not know the substance of the situation so am not able to judge that, and I do not think that I should in any event.

The amendment states 'whether the circulation of a petition containing defamatory material for the purpose of gaining signatures and subsequent submission to the Senate is or ought to be privileged and how such issues should be determined and in what forum'. I think that covers all of the principle matters that have been raised here today. In Senator Chaney's first speech what he was interested in was satisfying the principle matters. He should be satisfied that the principle matters will now be addressed.

Question put:

That the amendment (**Senator Collins's**) be agreed to.

The Senate divided.

(The President—Senator the Hon. Kerry Sibraa)

Ayes	37
Noes	32
Majority	5

AYES

Aulich, T. G.	Harradine, B.
Beahan, M. E.	Jenkins, J. A.
Black, J. R.	McKiernan, J. P.
Bolkus, N.	McLean, P. A.
Burns, B. R.	McMullan, R. F.
Button, J. M.	Macklin, M. J.
Childs, B. K.	Maguire, G. R. (Teller)
Coates, J.	Morris, J. J.
Collins, R. L.	Powell, J. F.
Colston, M. A.	Ray, Robert
Cook, P. F. S.	Reynolds, M.
Cooney, B. C.	Richardson, G. F.
Coulter, J. R.	Sanders, N. K.
Crowley, R. A.	Schacht, C. C.
Devereux, J. R.	Tate, M. C.
Devlin, A. R.	Walsh, P. A.
Foreman, D. J.	Wood, W. R.
Giles, P. J.	Zakharov, A. O.
Haines, J.	

NOES

Alston, R. K. R.	MacGibbon, D. J.
Archer, B. R.	Messner, A. J.
Baume, Michael	Newman, J. M.
Bishop, B. K.	Panizza, J. H.
Bjelke-Petersen, F. I.	Parer, W. R.
Boswell, R. L. D.	Patterson, K. C. L.
Brownhill, D. G. C.	Puplick, C. J. G.
Calvert, P. H.	Reid, M. E.
Chaney, F. M.	Sheil, G.
Chapman, H. G. P.	Short, J. R.
Crichton-Browne, N. A.	Stone, J. O.
Durack, P. D.	Tambling, G. E. J.
Hamer, D. J.	Teague, B. C.
Hill, R. M.	Vanstone, A. E.
Knowles, S. C. (Teller)	Walters, M. S.
McGauran, J. J.	Watson, J. O. W.

PAIRS

Evans, Gareth	Lewis, A. W. R.
Jones, G. N.	Baume, Peter

Question so resolved in the affirmative.

Motion, as amended, agreed to.

APPENDIX 3

PAPER PREPARED BY THE CLERK OF THE SENATE

AUSTRALIAN SENATE
CANBERRA, A.C.T

COMMITTEE OF PRIVILEGES

18 March 1988

Mr H. Evans
Clerk of the Senate
Parliament House
CANBERRA ACT 2600.

Dear Mr Evans,

As you are aware, on 16 March 1988 the following questions were referred to the Committee of Privileges: "Whether the circulation of a petition containing defamatory material for the purpose of gaining signatures and subsequent submission to the Senate is or ought to be privileged and how such issues should be determined and in what forum".

The Committee would appreciate any background information you may be able to provide relating to the questions before it. Without limiting any other matters you may wish to raise, the Committee would appreciate your addressing the following matters specifically:

(a) the status of a petition prepared for circulation:

(i) at present;

(ii) before the passage of the Parliamentary Privileges Act 1987; and

(b) provisions relating to the defence of qualified privilege in the Commonwealth and each of the States and the Northern Territory.

Yours sincerely,

(Patricia Giles)
Chair

AUSTRALIAN SENATE

OFFICE OF THE CLERK OF THE SENATE

PARLIAMENT HOUSE
CANBERRA, A.C.T. 2600
TEL. (062) 72 6346 TELEX 62326

24 March 1988

Senator P. Giles,
Chair, Committee of Privileges,
The Senate,
Parliament House,
CANBERRA, A.C.T. 2600.

Dear Senator Giles,

In response to your letter of 18 March 1988 requesting background information on the matter relating to petitions which was referred to the Committee, attached is a brief paper.

The paper goes somewhat beyond providing background information, and offers observations and suggestions which I hope the Committee will find helpful.

In order to keep the paper brief I have alluded to many points without elaboration. Should the Committee desire expansion of any of those points, I would be very happy to provide further material.

More intensive research might uncover judgements or other authorities of which I am not aware, but I would be surprised if there were anything which would require radical changes to the paper.

Yours sincerely,

(**Harry Evans**)
Clerk of the Senate

PETITIONS : PRIVILEGE
Reference to Committee of Privileges

Observations by the Clerk of the Senate

The Committee of Privileges has asked for some background information on the matter referred to it by the Senate on 16 March 1988. The following observations may be useful to the Committee.

The Committee is required to consider "whether the circulation of a petition containing defamatory material for the purpose of gaining signatures and subsequent submission to the Senate is or ought to be privileged and how such issues should be determined and in what forum".

Preliminary Questions

There are two aspects of this reference which, it is suggested, may be very readily determined.

First, the question refers to a petition containing defamatory material. As was pointed out in the Senate in debate on the reference, this phrase adds nothing to the question, but apart from adding nothing it may be misleading. It is a common misconception that the purpose of privilege is to confer immunity against suit for defamation. On the contrary, it must be constantly kept in mind that the species of absolute privilege known as parliamentary privilege protects against suit or prosecution for any cause, civil or criminal, and against examination or question in a wide sense in court proceedings. In considering whether the circulation of a petition is or ought to be privileged, therefore, the Committee is considering whether there is or ought to be the same total immunity as is given to proceedings in Parliament, or some lesser immunity.

Secondly, the sub-question "how such issues should be determined and in what forum", the word "issues" presumably referring to the questions of whether the circulation of a petition is or ought to be privileged, would appear to have only one possible answer. The question of whether the circulation of a petition is privileged is a question of law which can be determined only by a court in a particular case; only the courts can say what the law is. The question of whether the circulation of a petition ought to be privileged can be determined only by Parliament and only by legislation, if it has not already done so by legislation. This is made clear by section 49 of the Constitution, which puts in place all the law on parliamentary privilege in force in respect of the British House of Commons in 1901, but which allows the Australian Parliament (i.e., the Queen and the two Houses) to alter that law.

As it admits of only one answer, it is not clear why this phrase was included in the reference to the Committee. There is a misconceived impression that a House of the Parliament can in some way declare its privileges by its individual actions, but it is clear that a legal immunity cannot as a matter of law be created in that way. This misconception arises because of the power of each House to punish contempts, and it is thought that by treating a particular act as a contempt a House recognises a privilege. This mistaken notion is analysed in some detail in the 1967 report of the House of Commons Select Committee on Parliamentary Privilege, at pp. 89-90. It needs only be said here that the question of whether an act is privileged, i.e., possesses a legal immunity, is quite distinct from the question of whether a particular act may be treated as a contempt. The mixing up of the two questions, which has bedevilled consideration of parliamentary privilege for centuries, may have found its way into the reference before the Committee because the original motion, for which the reference was substituted by way of an amendment, would have asked the Committee to consider whether a contempt had been

committed.

The circulation of a petition may be said to be privileged in the sense that it may be protected by the power of a House to treat any violation of the right to petition as a contempt. This, however, is a misuse of the word "privilege". In centuries past the British Houses could bring a privilege into existence simply by declaring it and then by punishing the violation of it as a contempt. That situation has long since passed in Britain, with the ordinary courts establishing their exclusive jurisdiction over interpretation of the law, and by virtue of section 49 of the Constitution it was never the situation in Australia, where "privilege" clearly means a legal immunity embodied in the law. The Australian Houses may treat such acts as threatening or bribing a petitioner as a contempt, but the question of whether a petition is legally actionable can be determined only in court. This is made abundantly clear by section 4 of the Parliamentary Privileges Act 1987 and by the criteria which the Senate has adopted for itself to determine whether a contempt has been committed. A contempt is thereby declared to be an improper interference with the exercise of the authority or functions of a House, a committee or its members. The bringing of legal proceedings in respect of a petition could not be regarded as an improper act, except in the circumstance, very difficult to identify, of legal proceedings being brought not in good faith but for the purpose of intimidation, which was the very circumstance seemingly alleged in the original motion in the Senate. The question of whether such a circumstance occurred was removed from the proposed reference by the amendment.

It is therefore suggested that the Committee should assume that it has been asked to determine whether there is or ought to be a legal immunity in respect of the circulation of a petition, and not whether particular acts in relation to petitions should be treated as contempts, which can

really be decided only in particular cases of such acts.

The question before the Committee thus reduces itself to whether the circulation of a petition is or ought to be privileged (i.e., is or ought to be the subject of the legal immunity known as parliamentary privilege, or of some lesser immunity).

The reference also refers to the circulation of a petition "for the purpose of gaining signatures and subsequent submission to the Senate". This excludes the circulation or the publication of a petition for some purpose other than gaining signatures, and also excludes the circulation of a petition for some purpose other than eventual submission to the Senate. In other words, the Committee is looking at the normal process whereby a petition is prepared and submitted to the Senate. This is quite significant, as will appear on further analysis.

The question of the immunity attaching to the circulation of a petition is not one on which there are judgements of courts to indicate what the law is; the question has not been examined by the courts in Australia or in Britain so far as is known. If there were any significant judgements, their value might be questionable, depending on their tenor, because of the passage of the Parliamentary Privileges Act 1987, which significantly affected, or, on one view, clarified, the law relating to proceedings in Parliament.

Submission of a petition : Parliamentary Privileges Act

One of the intended purposes of the Parliamentary Privileges Act 1987 was to make it clear that the act of submitting a document to a House or a committee is absolutely privileged. Thus paragraph 16(2)(b) provides that, for the purpose of the application of the immunity contained in Article 9 of the Bill of Rights, "proceedings in Parliament" includes the presentation or submission of a document to a House or a

committee. This was intended to cover petitions as well as written submissions presented to committees and any other method of placing a document before a House or a committee.

The effect of this paragraph is that the submission of a document is absolutely privileged regardless of whether or not the document is accepted by the House or committee. For example, if a person sends a written submission to a committee, and the committee, perhaps because of the submission's irrelevance, declines to accept it and sends it back to the person who submitted it, the person cannot be sued or prosecuted for the act of submitting it. Provided that the person does not do anything else with the document, such as publish it to somebody else, the immunity is complete. The Act was quite deliberately framed in this way. The rationale of this provision is that citizens should be protected in approaching a House or a committee and in seeking to lay matters before Parliament, even if the approach is not accepted.

Petitions, of course, unlike written submissions to a committee, are not forwarded directly to a House but are given to a member of the House with a request that they be presented. This does not make any difference to the matter; presentation by a member is simply the mechanism by which the document is submitted to the House. Petitions are also virtually made public in the process of presentation, but that is not a difference in principle so far as submission is concerned.

The question arises whether the preparation of a petition prior to its submission is absolutely privileged. Attention was drawn in the matter originally placed before the Senate to paragraph 16(2)(c) of the Act, which provides that the preparation of a document for purposes of or incidental to the transacting of the business of a House or a committee is also part of proceedings in Parliament. As the presentation of petitions is part of the business of a House, it might

will be held that the preparation of a petition, that is, the process of drawing up a petition, is privileged by virtue of this paragraph. Apart from that possibility, it would seem that the preparation of a petition in that sense is an essential part of the submission of a petition, and is therefore absolutely privileged by virtue of paragraph 16(2)(b)..

The Committee has asked that the question of the status of a petition "prepared for circulation" before the passage of the Act be considered. The Act deals explicitly only with the submission of a petition, and, as will be seen, deals only implicitly with the circulation of a petition.

The status of such acts such as submitting petitions was somewhat uncertain before the passage of the Act, and it was the purpose of the Act to settle such uncertainties to the maximum possible extent. There had always been a great deal of speculation about what the term "proceedings in Parliament" would be held to cover, because the phrase has not been subject to any significant judicial interpretation. It was thought that it would be held to cover such things as the preparation of material for use in Parliament, for example, by a member gathering information for a question or a speech (but not simply gathering information: Rivlin v Bilainkin, 1953 1 QBD 534), but there was much uncertainty. A succession of committees of inquiry into parliamentary privilege, beginning with the 1967 House of Commons committee and culminating in the 1984 report of the joint select committee of the Australian Houses, recommended that the uncertainty be cleared up by a statutory definition of proceedings in Parliament. That definition has now been provided by the Act. The definition was framed to clear up the various uncertainties as far as possible, and to put in place what was always thought to be the law, rather than to make new law. Thus it was always thought that the submission of a document to a House or committee would be absolutely privileged, but in the absence of court judgements one could

not be certain, and it was generally believed that the privilege would depend upon a document being accepted. The Act has settled that question in the manner already described.

Apart from the question of whether submitting a petition is a proceeding in Parliament, it appears that as a matter of common law the submission of a petition was immune from suit or prosecution for defamation (Lake v King, 1667 Saunders 131, a case which will be referred to again). The defamation statutes of three states (Queensland, Code, s 371, Tasmania, Defamation Act 1957, s 10, and Western Australia, Code, s 351) enacted this rule.

Does the Parliamentary Privileges Act say anything about the circulation of a petition? It has always been fairly clear, and the Act makes it clearer, that the separate publication of a document submitted to a House or a committee by the person submitting it is not privileged (the common law is set out in Erskine May's Parliamentary Practice, 20th ed., pp. 85-8). Thus if a witness forwards a written submission to a committee, even if the committee accepts the submission, a separate publication of the submission by its author is not privileged, and the author and publisher would be liable in any suit or prosecution for anything defamatory or unlawfully published in that separate publication. The publication of such a document attracts privilege only where the publication comes about by an order or authority for publication by the House or the committee concerned. This was well established before the passage of the Act, but is made abundantly clear by paragraph 16(2)(d) of the Act, which provides, inter alia, that the publication of a document by or pursuant to an order of a House or a committee and the document so published is a proceeding in Parliament.

A reading of the two provisions, paragraphs 16(2)(b) and (d), in conjunction therefore clearly discloses that where a document is submitted to a House or a committee the act of submission is absolutely privileged, and where such a document is ordered to be published by a House or a committee the publication of the document and the content of the document itself thereupon become absolutely privileged. It is therefore obvious that the separate publication of a petition by the petitioner, apart from its submission to a House and in the absence of an order for its publication by the House, is not absolutely privileged. It is also obvious that a person who publishes a document cannot attract privilege to that publication by subsequently turning the document into a submission or a petition to a House or committee. If it were otherwise, every newspaper or journal article could be made absolutely privileged simply by sending it to a House or a committee in the guise of a submission.

The Act thus provides, in the way in which it clarifies the law, a firm basis for concluding that the publication by a petitioner of a petition is not privileged. A modification of this could arise only if there is some special consideration attaching to the circulation of a petition for gaining signatures.

Circulation of a petition

This leads to the crucial question before the Committee: is the circulation (i.e., the publication) of a petition <u>for the purpose of gaining signatures and subsequent submission to the Senate</u> (rather than for some other purpose) privileged?

The answer to that question is: probably not. As far as is known, there are no judgements by Australian or British courts on that point. It is likely that the terms of the

Parliamentary Privileges Act 1987 would significantly affect the way the courts would look at the matter, and there have certainly been no judgements interpreting the provisions of that Act. There is the very old case, already referred to, of Lake v King (1667 Saunders 131), the facts of which involved the publication of a petition, but the only conclusion which can properly be drawn from that rather confused case is that drawn by Erskine May's Parliamentary Practice, 20th ed., at p. 86, that the publication of a petition to members of the Parliament is not actionable. Such pre-19th century cases also have to be treated with caution because the Houses were then regarded as courts exercising exclusive jurisdiction over their own branches of the law.

One is therefore in the position of examining the arguments which may be put forward and which might sway a court if the question arose.

The principal argument in favour of the circulation of a petition for the purpose of gaining signatures having absolute privilege is that such circulation is an essential part of the preparation and submission of a petition to a House. This raises the obvious difficulty, which was referred to in debate in the Senate, that it would be open to a person to publish a document widely, the publication of which would otherwise be actionable or unlawful, simply by putting the document in the form of an intended petition to Parliament. The pretence of petitioning Parliament could thereby be used to drive a large hole through the civil and criminal law.

It might be reasoned in answer to this that privilege attaches to the circulation of a petition provided that the court is satisfied that it is a bona fide petition founded upon a genuine intention to petition Parliament, and not a document circulated under colour or pretence of a petition, and provided that the document is published to the extent

necessary for gaining signatures and no further. This may sound like a form of qualified privilege, but it would amount to no more than a requirement that a petition must be a petition. A further line of reasoning may be that the circulation of a petition is privileged only where the persons to whom it is published have a legitimate common interest in receiving and signing it. This would be somewhat analogous to the interest and duty rule, to which further reference will be made, but for the purpose of narrowing the scope of absolute privilege rather than of establishing the conditions for qualified privilege.

Such proposed interpretations, however, would scarcely make the perceived difficulty any smaller. The courts would have great difficulty in determining the matter, but it is suggested that they would be most reluctant to give a petitioner the means of ignoring the law, and it is therefore likely that it would be held that absolute privilege does not attach to the circulation of a petition for the purpose of gaining signatures.

The question then arises, and the Committee has specifically asked that it be considered, whether qualified privilege would attach to the circulation of a petition, that is, a privilege which can be negatived by proof of ill will or other improper motive.

Again, it appears that the existing case law does not allow this question to be answered with any certainty. As far as is known, there are no judgements dealing with the question of a qualified privilege attaching to the circulation of a document intended to be submitted to a House or a committee. The Parliamentary Privileges Act deals with the question of qualified privilege only in relation to reports of parliamentary proceedings. Section 10 of the Act refers to fair and accurate reports of proceedings of the federal Houses and their committees. This is the context in which qualified privilege ancillary to absolute parliamentary

privilege has usually arisen. It is, as it were, qualified privilege flowing from, and consequent on, absolute privilege. Any qualified privilege attaching to the circulation of a petition would be a qualified privilege precedent to the absolute privilege attaching to the submission of a document. As such, it would raise different and quite difficult questions than the normal sort of qualified privilege consequent on absolute privilege. A sort of antecedent privilege attaches to parliamentary proceedings, as under paragraphs 16(2)(c) and (d) of the Parliamentary Privileges Act (preparation and formulation of documents), and similarly to legal proceedings under a common law rule, but the acts in question do not take place in public, as does the collection of signatures for petitions in most instances.

Apart from the relationship of the circulation of a petition to the occasion of absolute privilege, the courts might be persuaded to apply to the circulation of petitions the rule relating to publication in the context of an interest or duty to publish and an interest or duty in the receipt of the publication. The rule might be applied in the manner of Braddock v Bevins (1948 1 KB 580), in which it was held that electors had a sufficient interest in hearing a defamatory statement about a member of Parliament. A reading of the authorities and cases on the interest and duty rule, however, indicates that the courts would probably be very reluctant to regard that rule as extending to the circulation of a petition, unless the petitioners had some special common interest in the subject of the petition.

There is some divergence between the states and territories in the statutory formulation and interpretation of the interest and duty rule, but the assessment of the previous paragraph appears to me to be valid even having regard to that divergence. Different findings on the circulation of petitions intended for the federal Houses in different states and territories would, of course, be highly

undesirable. I think that if state or territory courts were called upon to decide the matter, they would be inclined to base their judgements entirely upon the federal law, that is, upon section 49 of the Constitution and the Parliamentary Privileges Act, section 10 of which could be taken as an indication that the federal Parliament did not intend that qualified privilege relating to its proceedings extend any further.

The major question which the Committee has to consider, therefore, is whether the circulation of a petition for the purpose of gaining signatures should attract absolute or qualified privilege.

Should the circulation of a petition be privileged?

As has already been suggested, this question can be determined only by legislation. As has also been suggested, it may be that the Parliament has already determined the question by enacting the Parliamentary Privileges Act 1987. It has been submitted above that that Act makes it clear that the separate publication of a document submitted to a House or committee is not privileged, and the Act may be taken to mean that separate publication precedent to submission, as well as separate publication consequent on submission, is not privileged. If it were concluded that the circulation of a petition ought to be privileged, that decision would require legislation explicitly to that effect.

This paper will now go somewhat beyond providing background information and suggest some considerations which ought to be examined in answering this question, and will also respectfully suggest an answer which may be given.

It is submitted that in answering the question the Committee should return to first principles, and ask: what is the purpose of petitioning Parliament? In all the authoritative

texts on parliamentary procedure, it is stated that it is the right of the subject, or, in modern terms, the citizen, to petition for the redress of grievances. The historic purpose of a petition is to disclose the grievances of the petitioners and to pray for remedy or relief. Thus in earlier times petitions set out the wrongs or oppressions from which the petitioners believed they had suffered and asked that those wrongs or oppressions be removed. Many if not most of the petitions in the old cases referred to in the authoritative texts are of this character. For example, the case which is cited by Erskine May as authority for the proposition that legal proceedings against petitioners is a contempt (Gee's case, 20th ed., p. 167) refers to a petition presented in 1696 by the hackney coachmen, alleging that they had been oppressed by the arbitrary actions of licensing commissioners.

An examination of the petitions now presented to the Houses quickly reveals that the character of petitions has been transformed. They are not now concerned with wrongs suffered by particular individuals and the relief or remedy for such wrongs, but with questions of public policy. They disclose grievances of citizens only in the sense that those citizens disagree with public policies, feel that their interests suffer because of those policies, and ask that the policies be changed. A petition in the original shape, disclosing a personal grievance and praying for relief, is now extremely rare. It is well known that petitions are circulated by political groups for the purpose of advancing the controversy on matters of policy. In other words, petitions have become part of, and a forum for, general political debate.

It may well appear to the Committee that it would be quite unjustified to extend absolute privilege to political debate outside Parliament, the absolute privilege belonging properly only to debate in Parliament. It may also appear that it would not be justified in granting any qualified

privilege to this form of political debate outside the Houses, or in extending any qualified privilege which may already exist through the interest and duty rule.

Another observation which may be drawn from an examination of petitions presented nowadays is that it is virtually unknown to receive a petition defamatory of any person. This may be partly because in general political debate, such as is carried on through petitions and by other means, it is generally speaking not necessary to defame anybody, and most people engaging in political debate outside the Houses are careful not to do so. A secondary reason is that the rules of the Houses relating to petitions would probably prevent a defamatory petition from even being presented by a Senator. The Senate standing orders provide that, in order to be presented, a petition must be "respectful, decorous, and temperate in its language" (S.O. 88), and do not leave much scope for defamation in petitions. Although the Committee does not have before it, except in so far as it may illustrate the general question referred to the Committee, the particular case which gave rise to the reference, it is very doubtful whether the particular petition originally in question could be regarded as defamatory. Having regard to these matters, the Committee may well ask whether it is necessary to provide any greater protection for the presentation of defamatory petitions, as the system of petitioning the Houses appears to be functioning in its modern form without defamatory petitions being presented.

It may be thought that the rules and power of the Houses provide an adequate remedy against defamatory petitions, should they be allowed and protected. In the list of acts punishable as contempts in Erskine May's Parliamentary Practice, 20th ed., at pp. 147-148, are various abuses of the right to petition, including the presentation of false, malicious or vexatious petitions, and no doubt the Australian Houses could similarly treat such acts as contempts. It may well be thought, however, that the power

of the Houses to deal with petitioners after the event is no remedy where the circulation and presentation of a defamatory petition has already done great damage to individuals.

If the Committee did decide that some protection, or greater protection, should be given to circulation of petitions, it could be done, as has already been suggested, only by legislation, and it would be difficult, unless absolute privilege is to be conferred on any circulation of any intended petition, to draw the legislation so as to achieve only the desired end and not to give rise to unforeseen consequences. Such legislation could give rise to greater problems than the supposed problem that it would solve.

The Committee may well conclude, therefore, that the law should be left as it is at present.

A suggested solution

The foregoing discussion, particularly relating to the way in which the Parliamentary Privileges Act is framed, and how petitions have changed, suggests a solution which is now respectfully submitted to the Committee. It has been noted that the submission of a petition, regardless of whether or not the petition is accepted, is absolutely privileged. This means that an individual petitioner, and perhaps a group of petitioners with a common interest, who wish to complain of some injustice or oppression, may safely do so even where the petition contains defamatory matter, subject to the rules of the Senate relating to the presentation of petitions. It also means that a petitioner who wishes to defame some person in a petition dealing with a general political question may safely do so simply by presenting it as a sole petitioner and not circulating it for signatures, again subject to the rules of the Senate.

Perhaps, therefore, the Senate should explicitly recognise the difference between the old type of petition and the new, and overcome the problem, such as it is, of defamatory material in petitions, by making a rule that a Senator may not present a petition containing matter defamatory of any person unless the petition relates only to a personal grievance peculiar to a sole petitioner or to a group of petitioners having that grievance in common. This would mean that petitioners preparing petitions on general political questions would be less tempted to try to include defamatory matter in them, but a sole petitioner or a group of petitioners with a personal grievance would still have the right to present a defamatory petition for the purpose of revealing that personal grievance.

This suggested step would be very easy to adopt, as it requires only a resolution or a new standing order of the Senate. It would not affect the rights of petitioners to any significant degree, and would preserve the existing law in what may well be regarded as the best balance between the rights of the Houses, of petitioners, and of other citizens.

APPENDIX 4

Submissions and Correspondence

Submissions were received from:

Crofts, Mr R, Free Speech Committee
Dale, Mr M H, Albany, Western Australia
Law Council of Australia
Marquet, Mr L B, Clerk of the Legislative Council, Western Australia
Okely, Mr B, Clerk of the Legislative Assembly, Western Australia
Poll, Ms N, Canterbury, Victoria
Shaw, Mr A J, Clerk of the Legislative Council, Tasmania
Stoneham, Mr E R, Mt Waverley, Victoria
Strickland, Mr R M, Shelley, Western Australia
Woodward, Mr A R, Clerk of the Parliament, Queensland.

Correspondence was received from:

Clark, Mr C, Executive Director, Law Society of Tasmania
Cooksley, Mr G, Clerk of the Legislative Assembly, NSW
Francis, Mr C, Chairman, Victorian Bar
Hall, Ms J, Solicitor, Public Interest Advocacy Centre
Hockley, Mr J J, Honorary Secretary, Law Reform Committee, Victorian Bar
Smith, Mr H G, Clerk of the Legislative Assembly, Northern Territory.

MINUTES OF PROCEEDINGS

AUSTRALIAN SENATE
CANBERRA, A.C.T.

COMMITTEE OF PRIVILEGES
MINUTES OF PROCEEDINGS

NO. 1

18 MARCH 1988

1. MEETING OF THE COMMITTEE:

The Committee met at 1.20 pm in Senate Committee Room No. 5.

2. RESOLUTIONS OF APPOINTMENT OF THE COMMITTEE, APPOINTMENT OF MEMBERS AND CHANGES IN MEMBERSHIP:

The Secretary to the Committee reported the following Resolutions of the Senate:

(a) 24 September 1987

(i) Appointment of the Committee; and

(ii) Appointment of the following Members:

Senators Black, Childs, Coates, Cooney, Durack, Powell and Teague.

(b) 24 February 1988

Discharge from further attendance on the Committee of Senator Childs and appointment of Senator Giles.

(c) 18 March 1988

Discharge from further attendance on the Committee of Senator Cooney and appointment of Senator Childs.

3. ELECTION OF CHAIRMAN:

On the motion of Senator Childs, Senator Giles was elected Chairman of the Committee.

Senator Giles took the Chair.

4 REFERENCE OF MATTER:

The Chairman reported the following Resolution of the Senate of 16 March 1988:

> Whether the circulation of a petition containing defamatory material for the purpose of gaining signatures and subsequent submission to the Senate is or ought to be privileged and how such issues should be determined and in what forum.

5. PROPOSED RESOLUTION FOR SUBMISSION TO THE SENATE:

The Chairman circulated the following proposed resolution for submission to the Senate:

(1) That, for the purpose of the inquiry and report by the Committee of Privileges on the submission of petitions to the Senate

(a) the Committee have power to send for and examine persons, papers and records and to move from place to place, notwithstanding any prorogation of the Parliament or dissolution of the House of Representatives; and

(b) a daily Hansard be published of such proceedings as take place in public.

(2) That the foregoing provisions of this Resolution, so far as they are inconsistent with the Standing Orders, have effect notwithstanding anything contained in the Standing Orders.

After discussion, on the motion of Senator Black the Committee agreed that the Chairman move a motion in the above terms in the Senate during the next week of sittings.

6. RESOLUTIONS ADOPTED BY THE SENATE ON 25 FEBRUARY 1988:

The Chairman informed the Committee that the Committee would be conducting its inquiry into the matter referred to the Committee on 16 March under Resolution No. 1 of the Resolutions adopted by the Senate on 25 February 1988.

7. CONDUCT OF THE INQUIRY:

Following discussion on the conduct of its inquiry into the matter referred on 16 March 1988, the Committee resolved to:

(a) write to Mr H. Evans, Clerk of the Senate, in the terms as circulated by the Chairman, seeking his advice on the matters raised and requesting certain information relating to State legislation;

(b) release a statement to the Press on Wednesday, 23 March 1988, concerning the reference of the matter to the Committee;

(c) place advertisements in national and capital city newspapers on Saturday 26 March 1988 seeking submissions from interested persons and organisations, with a closing date for submissions of Friday, 29 April 1988; and

(d) invite selected persons and organisations to make submissions to the Committee on the terms of reference.

8. NEXT MEETING:

It was agreed that the next meeting of the Committee would take place on Friday, 15 April 1988.

9. ADJOURNMENT:

The Committee adjourned at 1.54 pm.

10. ATTENDANCE:

Senator Giles (Chairman), Senators Black, Coates, Childs, Durack, Powell and Teague.

CONFIRMED:

Patrick J. Giles.
15-4-88.

(Senator P. Giles)
Chairman

AUSTRALIAN SENATE
CANBERRA, A.C.T.

COMMITTEE OF PRIVILEGES

PARLIAMENT HOUSE
CANBERRA, A.C.T. 2600

MINUTES OF PROCEEDINGS

NO. 2

15 APRIL 1988

1. MEETING OF THE COMMITTEE:

The Committee met at 1.14 pm in Senate Committee Room No. 5.

2. MINUTES:

On the motion of Senator Teague, the Minutes of Meeting No. 1 of 18 March 1988 were confirmed.

3. RESOLUTION OF THE SENATE:

The Chairman reported the following Resolution of the Senate of 24 March 1988:

(1) That, for the purpose of the inquiry and report by the Committee of Privileges on the circulation and submission of petitions to the Senate:

(a) the Committee have power to send for and examine persons, papers and records and to move from place to place, notwithstanding any prorogation of the Parliament or dissolution of the House of Representatives, and

(b) a daily Hansard be published of such proceedings as take place in public.

(2) That the foregoing provisions of this Resolution, so far as they are inconsistent with the Standing Orders, have effect notwithstanding anything in the Standing Orders.

4. CORRESPONDENCE:

The following correspondence was noted:

. C. Francis, Chairman, The Victorian Bar
. C.E. Clark, Executive Director, The Law Society of Tasmania

5. SUBMISSIONS:

The Chairman reported receipt of the following submissions:

. N. Pohl, Canterbury, Victoria
. A.J. Shaw, Clerk of the Legislative Council, Tasmania
. B. Okely, Clerk of the Legislative Assembly, Western Australia
. A.R. Woodward, Clerk of the Parliament, Queensland

On the motion of Senator Powell, the Committee adopted the following resolution in relation to the receipt of submissions which relate to the Committee's inquiry into the circulation of petitions:

> That, subject to any contrary order in relation to a particular submission, the submission to the Committee by a person of a statement relating to the circulation of petitions be deemed to be the giving of evidence before the Committee by that person in accordance with that statement.

6 RESPONSE OF THE CLERK OF THE SENATE

The Committee noted the response of the Clerk of the Senate, Mr H. Evans, to the Chairman's letter of 18 March 1988 seeking his advice on matters relating to the Committee's inquiry.

It was agreed that the Clerk be invited to attend the meeting to discuss his response with the members of the Committee.

The Chairman welcomed the Clerk and invited him to speak to his paper.

Discussion ensued.

The Chairman thanked the Clerk for his attendance.

7. NEXT MEETING

It was agreed that, unless members were notified of other arrangements, the next meeting of the Committee would take place on Friday, 20 May 1988.

8. ADJOURNMENT

The Committee adjourned at 1.55 pm.

9. ATTENDANCE

Present: Senator Giles (Chairman), Senators Black, Coates, Childs, Powell and Teague

Apology: Senator Durack

Confirmed:

Patricia L. Giles.

20-8-86

Senator Patricia Giles
Chair

AUSTRALIAN SENATE
CANBERRA, A.C.T.

COMMITTEE OF PRIVILEGES

PARLIAMENT HOUSE
CANBERRA, A.C.T. 2600

MINUTES OF PROCEEDINGS

NO. 3

20 MAY 1988

1. MEETING OF THE COMMITTEE:

The Committee met at 1.06 pm in Senate Committee Room No. 6.

2. MINUTES:

On the motion of Senator Powell, the Minutes of Meeting No. 2 of 15 April 1988 were confirmed.

3. CORRESPONDENCE:

The following correspondence was noted:

- Letter from H G Smith, Clerk of the Legislative Assembly, Northern Territory, dated 18 April 1988.
- Letter from G Cooksley, Clerk of the Legislative Assembly, NSW, dated 19 April 1988.
- Letter from J J Hockley, Victorian Bar, dated 3 May 1988.
- Letter from J Hall, Public Interest Advocacy Centre, dated 10 May 1988.

4. SUBMISSIONS:

The Chair reported the following submissions:

- R Crofts, Free Speech Committee
- M H Dale, Albany, Western Australia
- Law Council of Australia
- L B Marquet, Clerk of the Legislative Council, Western Australia
- R M Strickland, Shelley, Western Australia
- E R Stoneham, Mt Waverley, Victoria

Submissions received pursuant to the Resolution of the Committee of 15 April 1988.

5. CALLING OF WITNESSES:

The Chair reported that the Secretary to the Committee had canvassed the views of members in relation to the calling of witnesses.

Discussion ensued.

Senator Teague moved:

> That the Committee of Privileges invite Mr R M Strickland to appear before the Committee.

Discussion ensued.

Question put -

The Committee divided -

Ayes, 2

Senator Durack	Senator Teague

Noes, 4

Senator Giles	Senator Coates
Senator Childs	Senator Powell

And so it was negatived.

6. CONSIDERATION OF DRAFT REPORT:

It was agreed, after discussion, that consideration of the draft report be postponed until the next meeting of the Committee.

The Committee noted that Senator Durack would circulate a paper relating to the draft report before the next meeting.

7. NEXT MEETING:

It was agreed that the next meeting of the Committee would take place on Tuesday, 31 May 1988.

8. ADJOURNMENT:

The Committee adjourned at 1.46 pm.

9. ATTENDANCE:

Present: Senator Giles (Chair), Senators Childs, Coates, Durack, Powell and Teague.

Apology: Senator Black

Confirmed:

31/5/88.

Senator Patricia Giles
Chair

AUSTRALIAN SENATE
CANBERRA, A.C.T.

COMMITTEE OF PRIVILEGES

PARLIAMENT HOUSE
CANBERRA, A.C.T. 2600

MINUTES OF PROCEEDINGS

NO. 4

31 MAY 1988

1. MEETING OF THE COMMITTEE:

The Committee met at 12.55 pm in Senate Committee Room No. 4.

2. MINUTES:

On the motion of Senator Teague, the Minutes of Meeting No. 3 of 20 May 1988 were confirmed.

3. CONSIDERATION OF DRAFT REPORT:

The Committee considered the Draft Report and a paper prepared by Senator the Honourable Peter Durack.

It was agreed that an amended paragraph 12 to the Report be circulated for consideration by the Committee and that the Secretary of the Committee seek the views of members in relation to the amendment. Further, it was agreed that the Chair be authorised, contingent on members' approval of the amendment, to amend paragraph 12 of the Report as required.

On the motion of Senator Coates, the Report of the Committee of Privileges on the Circulation of Petitions was agreed to, with amendments, subject to an amendment to paragraph 12.

The Committee noted that Senator Durack would add a dissent to the Report.

It was also agreed that Appendices 1 to 3, the Clerk's paper and the Minutes of Proceedings be included in the Report.

4. PRESENTATION OF REPORT:

It was agreed that the Committee's Report be presented to the Senate on 2 June 1988, and that all submissions received by the Committee also be tabled.

It was further agreed that a draft tabling statement be circulated for consideration by the Committee.

5. ADJOURNMENT:

The Committee adjourned at 1.33 pm.

6. ATTENDANCE:

Present: Senator Giles (Chair), Senators Black, Childs, Coates, Durack and Teague.

Apology: Senator Powell

Certified Correct:

Patricia J. Giles. 1/6/88.

Senator Patricia Giles
Chair