

Parliamentary Paper
No. 120/1978

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES
COMMITTEE OF PRIVILEGES

Report relating to an editorial
published in the *Sunday Observer*
of 26 February 1978

together with
Minutes of Proceedings
of the Committee

The Commonwealth Government Printer
Canberra 1978

MEMBERSHIP OF COMMITTEE

Mr D. M. Cameron, M.P., *Chairman*

Hon. L. F. Bowen, M.P.

Mr R. Jacobi, M.P.

Hon. C. R. Cameron, M.P.

Mr A. W. Jarman, M.P.

Mr B. W. Graham, M.P.¹

Mr P. E. Lucock, C.B.E., M.P.

Mr M. Hodgman, M.P.

Mr G. G. D. Scholes, M.P.

Clerk to the Committee

Mr L. M. Barlin

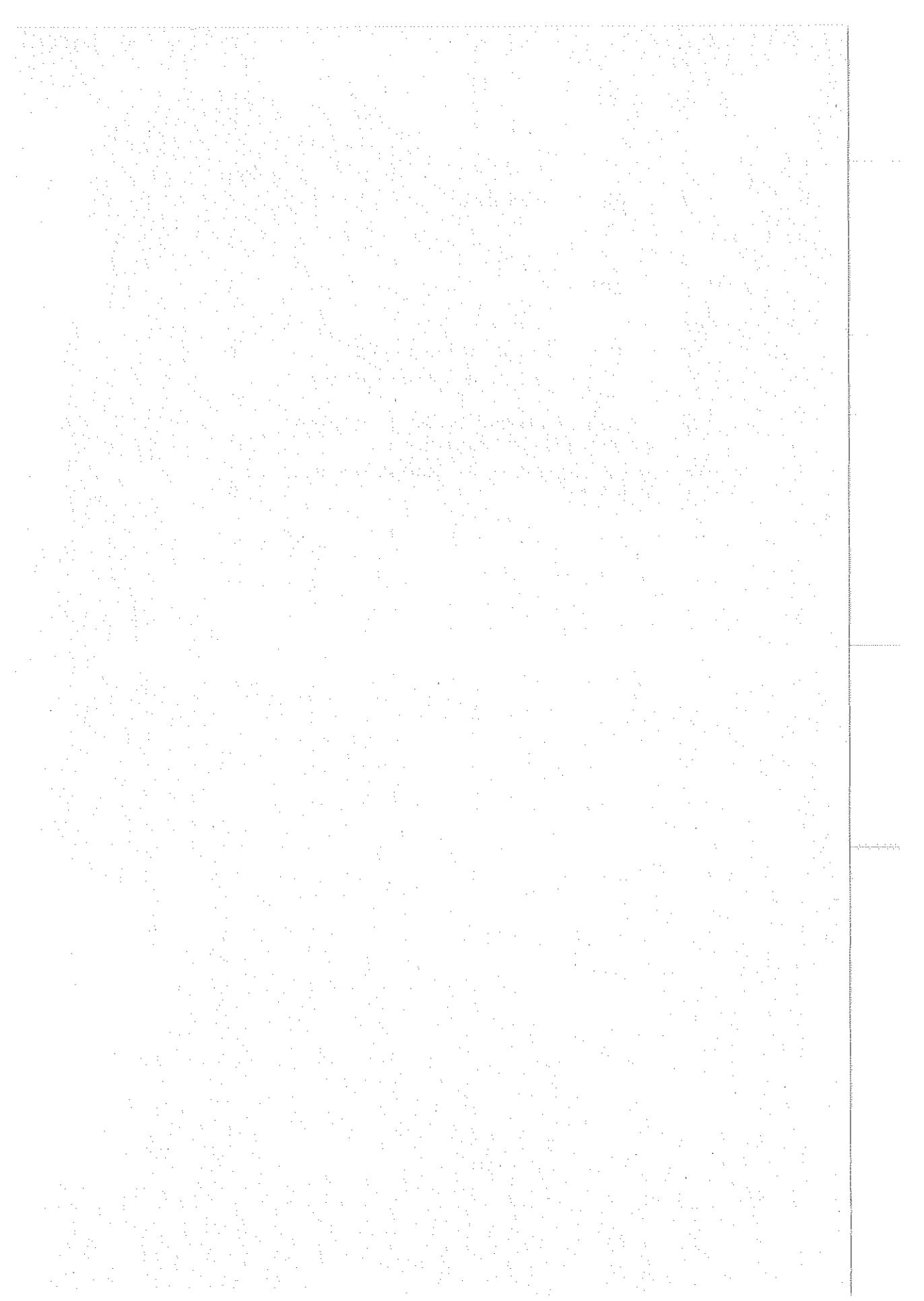
Clerk Assistant

House of Representatives

On 1 March 1978 the House of Representatives resolved that during consideration of this reference Mr W. Yates, M.P., be discharged from attendance on the committee and Mr B. W. Graham, M.P., be appointed to serve in his place.

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EXTRACTS FROM THE VOTES AND PROCEEDINGS

No. 4 of Tuesday, 28 February 1978

3 PRIVILEGE: Mr Yates raised a matter of privilege based on an editorial published in the *Sunday Observer* of 26 February 1978 under the heading 'Political bludgers'. Mr Yates produced a copy of the *Sunday Observer* containing the editorial and gave the name of the printer and publisher of that newspaper.

Mr Speaker stated that he would consider the matter and indicate later this day whether, in his opinion, a prima facie case of breach of privilege existed.

11 PRIVILEGE—EDITORIAL IN 'SUNDAY OBSERVER'—REFERENCE TO COMMITTEE OF PRIVILEGES: Mr Speaker referred to the matter of privilege raised by Mr Yates earlier this day. Mr Speaker said that he had given the matter consideration and, in his opinion, a prima facie case had been made out and Mr Yates was entitled to move a motion to refer the matter to the Committee of Privileges.

Mr Yates then moved—That the matter of the editorial in the *Sunday Observer* of 26 February 1978 be referred to the Committee of Privileges.

Question—put and passed.

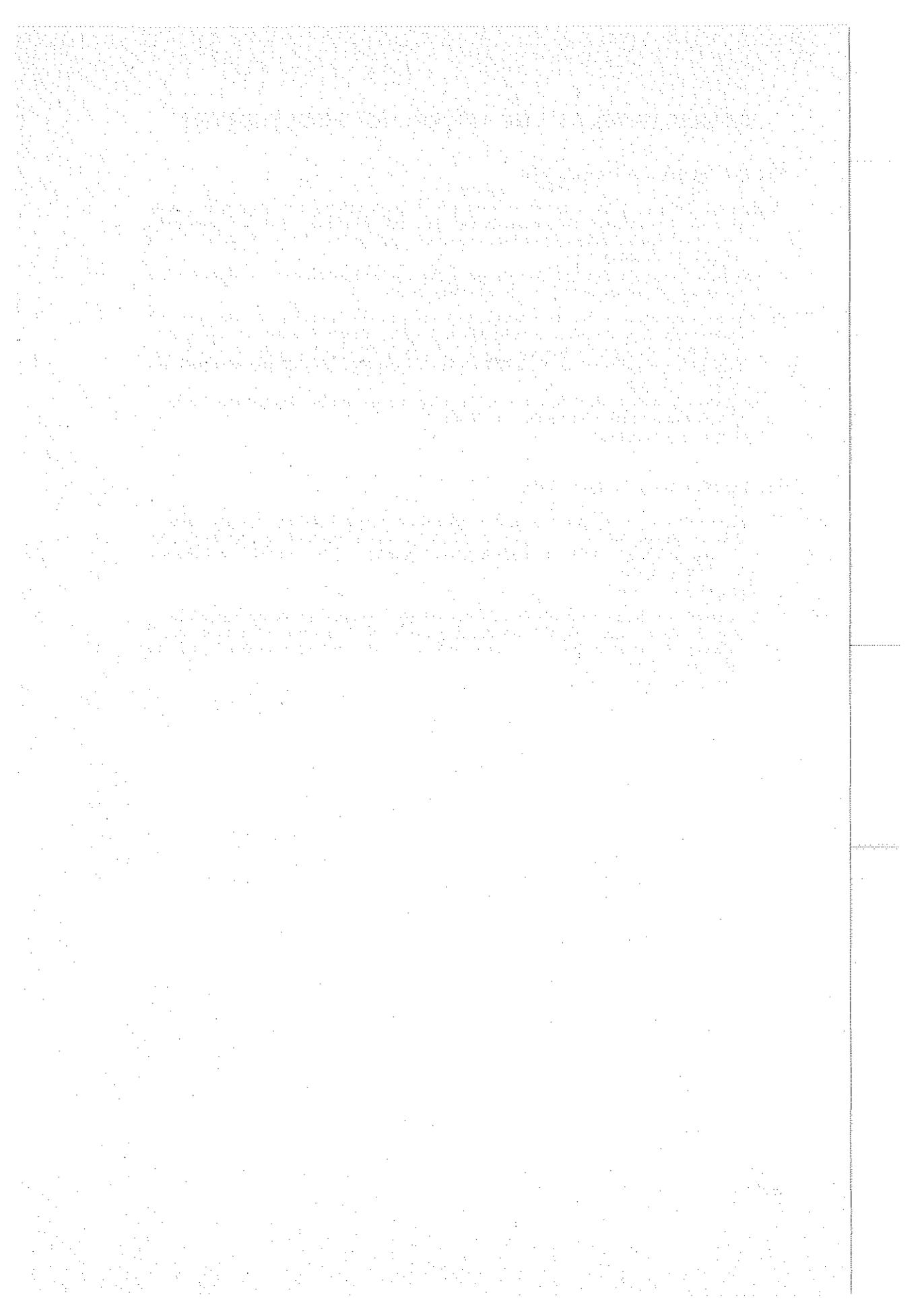
No. 5 of Wednesday, 1 March 1978

9 PRIVILEGES COMMITTEE: Mr Fife (Minister for Business and Consumer Affairs), by leave, moved—That Mr Bowen, Mr C. R. Cameron, Mr D. M. Cameron, Mr Hodgman, Mr Jacobi, Mr Jarman, Mr Lucock, Mr Scholes and Mr Yates be members of the Committee of Privileges; 5 to form a quorum.

Question—put and passed.

15 PRIVILEGES COMMITTEE: Mr Fife (Minister for Business and Consumer Affairs), by leave, moved—That, during consideration of the matter referred to the Committee of Privileges on 28 February, Mr Yates be discharged from attendance on the committee and Mr Graham be appointed to serve in his place.

Question—put and passed.



REPORT

1. The Committee of Privileges, to which was referred the matter of the complaint made in the House of Representatives on 28 February 1978 relating to an editorial published in the *Sunday Observer* of 26 February 1978, has agreed to the following Report.

Complaint

2. On 28 February 1978, Mr W. Yates, M.P., raised a matter of privilege based on an editorial published in the *Sunday Observer* of 26 February 1978 under the heading 'Political bludgers'. Later that day Mr Speaker stated that, in his opinion, a prima facie case of breach of privilege had been made out, and, on the motion of Mr Yates, the matter was referred to the Committee of Privileges.

3. The editorial which was the subject of the complaint is attached as Appendix II to this Report.

Powers, Privileges and Immunities of the House of Representatives, and of its Members

4. Section 49 of the Commonwealth of Australia Constitution Act provides that:

The powers, privileges, and immunities of the Senate and of the House of Representatives, and of the members and the committees of each House, shall be such as are declared by the Parliament, and until declared shall be those of the Commons House of Parliament of the United Kingdom, and of its members and committees, at the establishment of the Commonwealth.

5. Except in relation to a few minor powers, viz. Parliamentary Papers Act (protection of Printer), Parliamentary Proceedings Broadcasting Act (protection of Australian Broadcasting Commission) and Public Accounts Committee Act and Public Works Committee Act (provisions respecting witnesses before these committees), the Parliament has not declared its privileges and they therefore remain those of the House of Commons as at 1 January 1901.

6. In considering the matter referred to it, the Committee had recourse to the practice and precedents of the House of Commons and of the House of Representatives itself. Relevant cases and precedents are included in the Memorandum of the Clerk of the House of Representatives attached as Appendix III to this Report.

The Inquiry

7. Of particular relevance to the matter being inquired into by the Committee is the following extract from *May's Parliamentary Practice*, (19th edn) pages 144-5:

In 1701 the House of Commons resolved that to print or publish any books or libels reflecting on the proceedings of the House is a high violation of the rights and privileges of the House, and indignities offered to their House by words spoken or writings published reflecting on its character or proceedings have been constantly punished by both the Lords and the Commons upon the principle that such acts tend to obstruct the Houses in the performance of their functions by diminishing the respect due to them.

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

8. In the editorial, under a heading of 'Political bludgers', it was stated:

The over-taxed, government-burdened people of Australia were treated to a disgusting exhibition by many Federal politicians this week.

Many of our so-called leaders proved themselves lazy, two-faced bludgers at the opening of the 31st Parliament in Canberra.

It happened last Tuesday and, until now, not one newspaper has bothered to point out the outrageous antics of these power-puffed thespians of the parliamentary stage.

While our new Governor-General, Sir Zelman Cowen, delivered his speech to the combined Houses, politicians from all sides appeared in their newly-cleaned suits.

Colors were carefully chosen for ties and handkerchiefs, and members' wives preened themselves for the ceremonial hoo-ha.

Of course, the television cameras were rolling. Here was a chance to be shown off to the public.

Politicians were actually seen in the House, apparently taking some notice of official business.

But after the official ceremonies were over they skulked out like thieves in the night.

While new Opposition Boss Bill Hayden made his first speech in the House as leader, Members lounged about in the bar.

And when Federal Treasurer John Howard built up to an important parliamentary appearance the House was half empty. Once again the bar was adequately occupied.

Surely we can expect our Federal Parliamentarians to have enough interest in the affairs of government to remain in the House during the first session of government business.

Surely they should be interested in the performance of two major political figures.

Or would they? Probably not—the money's still pretty good, and they only have to con the voters once every three years.

9. Although the editorial may have been understood as a reference to one day, the allegations contained in the editorial clearly related to two separate days—Tuesday, 21 February 1978 when the Opening of the 31st Parliament occurred, and Wednesday, 22 February 1978 when the Leader of the Opposition raised a matter of public importance in the House of Representatives, to which the Treasurer responded in debate.

10. The allegations contained in the editorial were examined by the Committee. *It is satisfied that they are without foundation. In addition, the Committee considered that the editorial cast reflections upon Members in such a way as to bring the House into contempt.*

11. The Committee called two witnesses, Mr Peter Stuart Isaacson, Managing Director and Editor-in-Chief, Peter Isaacson Publications Pty Ltd, owners and publishers of the *Sunday Observer*, and Mr Alan Leonard Armsden, who, at the time of publication of the editorial, was editor of the *Sunday Observer*.

12. Mr Isaacson accepted responsibility for publication of the editorial. The Committee noted that Mr Isaacson had not read the editorial before publication and had not personally authorised the use of certain words which he described as imtemperate. He indicated his agreement with the proposition put to him that the editorial was both inaccurate and irresponsible.

13. The Committee appreciated the responsible attitude of Mr Isaacson and his personal commitment in evidence to the Committee of upholding the dignity of the Parliament.

14. Mr Isaacson undertook to publish an apology incorporating his acknowledgment that the editorial was inaccurate and irresponsible. This apology was published in the *Sunday Observer* of 19 March 1978 and is reproduced as Appendix IV to this Report.

15. The editorial was actually written by Mr Armsden. The Committee noted from his evidence that he was unable to personally vouch for the accuracy of any of the alleged facts contained in the editorial; his admission that he was not present in Canberra on the days in question; his further admission that his information was unreliable and his alleged source would not be used by him again, and his admission that he would not write the same editorial again and that he regretted its inaccuracy.

16. Mr Armsden ceased to hold the position of Editor of the *Sunday Observer* on 15 March 1978 and is no longer employed by Peter Isaacson Publications Pty Ltd.

Findings

17. The Committee finds:

- (a) That publication of the editorial in the *Sunday Observer* of 26 February 1978, in having reflected upon Members of the House of Representatives in their capacity as such, constituted a contempt of the House of Representatives, and
- (b) That Mr Peter Stuart Isaacson, Managing Director and Editor-in-Chief, Peter Isaacson Publications Pty Ltd, and Mr Alan Leonard Armsden, Editor of the *Sunday Observer* at the time of publication of the editorial, are both guilty of contempt of the House of Representatives.

Recommendations

18. The Committee recommends in the case of Mr Isaacson that, in view of his expressions of regret made before the Committee and his publication of an adequate and acceptable apology, no further action be taken.

19. The Committee further recommends in the case of Mr Armsden that in this particular instance his demeanour and his actions are not worthy of occupying the further time of the House.

Privilege in general

20. In considering the present matter, members of the Committee were concerned at the limited range of options available to the Committee should it wish to recommend the imposition of a penalty.

21. As stated earlier in this Report, the privileges of the House of Representatives are those of the United Kingdom House of Commons in existence as at 1 January 1901. The principal penalties which the House may impose upon a privilege offender would appear to be:

- (a) to reprimand;
- (b) in the case of an offence committed by a newspaper or other media organisation, to exclude its representative(s) from the precincts of the House; and
- (c) to sentence to a term of imprisonment.

22. Administration of a reprimand can be entirely unsatisfactory in certain instances. The Committee believes that the penalty of imprisonment is inappropriate except in the case of the most serious of privilege offences.

23. The power to fine was once exercised by the United Kingdom House of Commons but it fell into disuse about 300 years ago. Possession by the Commons of the power of imposing fines was denied by Lord Mansfield in the case of *R. v. Pitt* and *R. v. Mead*.¹ Consequently, the power of the House of Representatives to impose a fine must be considered extremely doubtful. It seems to your Committee that the imposition of fines could be an optional penalty in many instances of privilege offences.

24. The Committee strongly recommends to the House of Representatives that the whole question of parliamentary privilege should be referred to it for investigation and report to the House. Such reference should be couched in the broadest possible terms covering such matters as the means by which complaints of breach of privilege are referred to the Committee, the method of investigation of the complaint by the Committee, and the penalties which should be available to the House in respect of privilege offenders.

D. M. CAMERON
Chairman

5 April 1978

¹ (1762) 3 Burr., 1335

COMMITTEE OF PRIVILEGES
MINUTES OF PROCEEDINGS
PARLIAMENT HOUSE, CANBERRA
THURSDAY, 2 MARCH 1978
(31st Parliament—First Meeting)

Present:

Hon. L. F. Bowen	Mr Jacobi
Hon. C. R. Cameron	Mr Jarman
Mr D. M. Cameron	Mr Lucock
Mr Graham	Mr Scholes
Mr Hodgman	

The following extracts from the Votes and Proceedings were reported by the Clerk:

- (a) No. 4—28 February 1978—recording that the matter of the editorial in the *Sunday Observer* of 26 February 1978 be referred to the Committee of Privileges.
- (b) No. 5—1 March 1978—recording the appointment of members of the committee.
- (c) No. 5—1 March 1978—recording that, during the consideration of the matter referred to the Committee on 28 February 1978, Mr Yates be discharged from attendance on the Committee and Mr Graham be appointed to serve in his place.

On the motion of Mr Scholes, Mr D. M. Cameron was elected Chairman.

The following document was presented to the Committee:

Copy of the *Sunday Observer* newspaper of 26 February 1978 containing the editorial referred to the Committee by the House.

Resolved: That the Clerk of the House of Representatives be asked to submit a Memorandum upon the questions of privilege involved in the matter referred to the Committee on 28 February 1978.

The Committee deliberated.

Resolved: That approval of the House of Representatives be sought for the Committee, when inquiring into the matter referred to it on 28 February 1978, to have power to send for persons, papers and records.

The Committee again deliberated.

The Committee adjourned until a date and hour to be determined by the Chairman and notified to each member of the Committee.

COMMITTEE OF PRIVILEGES
MINUTES OF PROCEEDINGS
PARLIAMENT HOUSE, CANBERRA
THURSDAY, 9 MARCH 1978
(31st Parliament—2nd Meeting)

Present:

Mr D. M. Cameron (*Chairman*)

Hon. L. F. Bowen

Mr Jarman

Hon. C. R. Cameron

Mr Lucock

Mr Graham

Mr Scholes

Mr Hodgman

The Minutes of Proceedings of the meeting held on 2 March 1978 were confirmed.

The Chairman brought up a Memorandum prepared by the Clerk of the House of Representatives in relation to the matter referred to the Committee on 28 February 1978.

The Chairman advised the Committee that he had received an extract from the Votes and Proceedings of 2 March 1978 recording a resolution of the House of Representatives granting the Committee power to send for persons, papers and records when considering the matter referred to it on 28 February 1978.

The Committee deliberated.

Mr Lucock moved: That Mr Alan L. Armsden, Editor, *Sunday Observer*, be requested to appear before the Committee.

Debate ensued.

Question: put.

The Committee divided (Mr D. M. Cameron in the Chair):

Ayes, 6

Noes, 1

Mr Bowen

Mr Scholes

Mr C. R. Cameron

Mr Graham

Mr Hodgman

Mr Jarman

Mr Lucock

And so it was resolved in the affirmative.

The Committee deliberated.

Ordered: That the suggestion by Mr Hodgman, that the public be admitted during the examination of Mr A. L. Armsden, be noted.

The Committee adjourned until Thursday, 16 March 1978 at 2.15 p.m.

COMMITTEE OF PRIVILEGES
MINUTES OF PROCEEDINGS
PARLIAMENT HOUSE, CANBERRA
TUESDAY, 14 MARCH 1978
(31st Parliament—3rd Meeting)

Present:

Hon. L. F. Bowen	Mr D. M. Cameron (<i>Chairman</i>)	Mr Jarman
Mr Graham		Mr Scholes
Mr Hodgman		

The Chairman reported that he had called an earlier meeting of the Committee because advice had been received by the Clerk that Mr A. L. Armsden was no longer employed by Peter Isaacson Publications.

The Committee deliberated.

Resolved: On the motion of Mr Hodgman:

- (1) That Mr Peter Isaacson of Peter Isaacson Publications be requested to appear before the Committee on Thursday, 16 March 1978 at 2.15 p.m.
- (2) That Mr Isaacson's appearance be in addition to that of Mr A. L. Armsden, former Editor of the *Sunday Observer*.

The Minutes of Proceedings of the meeting held on 9 March 1978 were confirmed.

Resolved: On the motion of Mr Hodgman:

That in respect of the inquiry being undertaken by the Committee, any statements to the press shall be made by the Chairman after being authorised by the Committee.

The Committee again deliberated.

The Committee adjourned until Thursday, 16 March 1978 at 2.15 p.m.

COMMITTEE OF PRIVILEGES
MINUTES OF PROCEEDINGS
PARLIAMENT HOUSE, CANBERRA
THURSDAY, 16 MARCH 1978
(31st Parliament—4th Meeting)

Present:

	Mr D. M. Cameron (<i>Chairman</i>)	
Hon. L. F. Bowen		Mr Jarman
Mr Graham		Mr Lucock
Mr Hodgman		Mr Scholes
Mr Jacobi		

The Minutes of Proceedings of the meeting held on 14 March 1978 were confirmed.

The Committee deliberated.

Mr Peter Stuart Isaacson, Managing Director and Editor-in-Chief, Peter Isaacson Publications Pty Ltd, was called, sworn and examined.

The witness withdrew.

The Committee deliberated.

Mr Alan Leonard Armsden, former Editor of the *Sunday Observer*, was called, sworn and examined.

The witness withdrew.

The Committee again deliberated.

Mr Peter Stuart Isaacson was recalled and, having been sworn previously, was further examined.

The witness withdrew.

The Committee again deliberated.

Mr Alan Leonard Armsden was recalled and, having been sworn previously, was further examined.

The witness withdrew.

The Committee again deliberated.

Ordered: That the Chairman prepare a draft report for submission to the Committee at its next meeting.

The Committee adjourned until a date and hour to be determined by the Chairman and notified to each member of the Committee.

COMMITTEE OF PRIVILEGES
MINUTES OF PROCEEDINGS
PARLIAMENT HOUSE, CANBERRA
WEDNESDAY, 5 APRIL 1978
(31st Parliament—5th Meeting)

Present:

Mr D. M. Cameron (*Chairman*)

Mr Graham
Mr Hodgman
Mr Jarman

Mr Lucock
Mr Scholes

The Minutes of Proceedings of the meeting held on 16 March 1978 were confirmed.

The Chairman presented the following paper:

The *Sunday Observer* of 19 March 1978 containing an apology in relation to the editorial published in the same newspaper of 26 February 1978.

The Chairman submitted his draft report in respect of the editorial published in the *Sunday Observer* of 26 February 1978.

Paragraphs 1 to 7 agreed to.

Paragraph 8 amended, and agreed to.

Paragraphs 9 to 18 agreed to.

Paragraph 19 amended, and agreed to.

Paragraphs 20 and 21 agreed to.

Paragraph 22 amended, and agreed to.

Paragraph 23 agreed to.

Paragraph 24 amended, and agreed to.

Ordered: That the memorandum of the Clerk of the House of Representatives be incorporated in the Report of the Committee.

Resolved: On the motion of Mr Lucock—That the draft report, as amended, be the report of the Committee to the House.

The Committee adjourned *sine die*.

APPENDIX I

SPEECHES BY MR W. YATES, M.P.

Tuesday, 28 February 1978

Privilege

Mr YATES (Holt)—Mr Speaker, I raise a matter of privilege based on an editorial published in the *Sunday Observer* of 26 February 1978 under the heading 'Political Bludgers'. I will produce a copy of the *Sunday Observer* produced by Mr Alan Leonard Armsden of 46-49 Porter Street, Prahran, Victoria, for Peter Isaacson's Sunday Newspapers Pty Ltd of 44 Market Street, Melbourne. The article states:

The over-taxed, Government-burdened people of Australia were treated to a disgusting exhibition by many Federal politicians this week.

Many of our so-called leaders proved themselves lazy, two-faced bludgers at the opening of Federal Parliament in Canberra.

It happened last Tuesday and, until now, not one newspaper has bothered to point out the outrageous antics of these power-puffed thespians of the parliamentary stage.

While our new Governor-General, Sir Zelman Cowen, delivered his speech to the combined Houses, politicians from all sides appeared in their newly-cleaned suits.

Colours were carefully chosen for ties and handkerchiefs and members' wives preened themselves for the ceremonial hoo-ha.

Of course. The television cameras were rolling. Here was a chance to be shown off to the public.

Politicians were actually seen in the House, apparently taking some notice of official business.

But after the official ceremonies were over they skulked out like thieves in the night.

While new Opposition boss, Bill Hayden, made his first speech in the House as leader, members lounged about in the bar.

And when Federal Treasurer, John Howard, built up to an important parliamentary appearance the House was half empty. Once again the bar was adequately occupied.

Mr Speaker, I do not think I need to read any further. All this is supposed to have happened last Tuesday and I do not think that the bar was available last Tuesday. Most of us were outside in the garden. As to the failure of the Press Gallery correspondents to report the matter, of course nothing at all occurred on that day. They were probably in the garden as well. Therefore, Mr Speaker, I ask you to rule whether this sort of comment is, in your view, prima facie evidence of a breach of privilege, a matter which should be referred to the Committee of Privileges and a matter which I could bring to the attention of the House later.

Mr SPEAKER—I ask the honourable gentleman to provide me with a copy of the article in question. The Standing Orders make provision for precedence to be given over all other business to a matter involving a breach of privilege if the Speaker is of the opinion that the matter involves a prima facie breach of privilege. My understanding of what the honourable member read out is that, in his submission, it amounts to a breach of privilege by way of contempt. I shall look at the matter and advise the House at a later hour this day my decision as to whether the article constitutes a

breach of privilege. If my opinion were that it constitutes a breach of privilege, a course of action would proceed. If my opinion were to the contrary, the matter would be at an end. In the meantime, the matter is in abeyance.

Privilege

Mr SPEAKER—At the commencement of the sitting of the House today the honourable member for Holt (Mr Yates) raised a question of privilege. He raised the question of privilege in terms of whether an article which appeared in a newspaper breached parliamentary privilege in the sense that it was a contempt of the Parliament. Under the Standing Orders, the Speaker is required to consider the matter, for if the Speaker decides that it amounts to a prima facie case of contempt amounting to a breach of privilege that matter must take precedence over all other matters until disposed of. The fact that I have now concluded that it does amount to a prima facie breach of privilege means that the matter now has precedence over all other matters until disposed of. The honourable member for Holt is entitled to move his motion.

Mr YATES (Holt) (5.20)—For the convenience of honourable members and the House I move:

That the matter of the editorial in the *Sunday Observer* of 26 February 1978 be referred to the Committee of Privileges.

Question resolved in the affirmative.

Editorial published in the Sunday Observer,
26 February 1978



Sunday, February 26, 1978

Political bludgers

THE over - taxed, government -
burdened people of Australia were
treated to a disgusting exhibition
by many Federal politicians this
week.

Many of our so-called leaders proved themselves lazy, two-faced bludgers at the opening of the 31st Parliament in Canberra.

It happened last Tuesday and, until now, not one newspaper has bothered to point out the outrageous antics of these power-puffed thespians of the parliamentary stage.

While our new Governor General, Sir Zelman Cowen, delivered his speech to the combined Houses, politicians from all sides appeared in their newly-cleaned suits.

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While new Opposition Boss Bill Hayden made his first speech in the House as leader, Members lounged about in the bar.

And when Federal Treasurer John Howard built up to an important parliamentary appearance the House was half empty. Once again the bar was adequately occupied.

Surely we can expect our Federal Parliamentarians to have enough interest in the affairs of government to remain in the House during the first session of government business.

Surely they should be interested in the performance of two major political figures.

Or would they? Probably not — the money's
still pretty good, and they only have to
con the voters once every three years.

APPENDIX III

HOUSE OF REPRESENTATIVES
COMMITTEE OF PRIVILEGES

Editorial in the *Sunday Observer* of 26 February 1978

(Matter referred to the Committee of Privileges on 28 February 1978)

Notes prepared by the Clerk of the House of Representatives

6 March 1978

The following notes have been prepared at the request of the House of Representatives Committee of Privileges in connection with its inquiry into the matter of the editorial published in the *Sunday Observer* of 26 February 1978.

Extracts from the Votes and Proceedings of the House of Representatives, No. 4 of Tuesday, 28 February 1978

3 PRIVILEGE: Mr Yates raised a matter of privilege based on an editorial published in the *Sunday Observer* of 26 February 1978 under the heading 'Political bludgers'. Mr Yates produced a copy of the *Sunday Observer* containing the editorial and gave the name of the printer and publisher of that newspaper.

Mr Speaker stated that he would consider the matter and indicate later this day whether, in his opinion, a prima facie case of breach of privilege existed.

11 PRIVILEGE—EDITORIAL IN 'SUNDAY OBSERVER'—REFERENCE TO COMMITTEE OF PRIVILEGES: Mr Speaker referred to the matter of privilege raised by Mr Yates earlier this day. Mr Speaker said that he had given the matter consideration and, in his opinion, a prima facie case had been made out and Mr Yates was entitled to move a motion to refer the matter to the Committee of Privileges.

Mr Yates then moved—That the matter of the editorial in the *Sunday Observer* of 26 February 1978 be referred to the Committee of Privileges.

Question—put and passed.

The speech made by Mr Yates in raising the matter on 28 February 1978 is reproduced in Appendix A.

The following are the terms of the editorial published in the *Sunday Observer* of 26 February 1978:



Sunday, February 26, 1978

Political bludgers

THE over - taxed, government -
burdened people of Australia were
treated to a disgusting exhibition
by many Federal politicians this
week.

Many of our so-called leaders proved themselves lazy, two-faced bludgers at the opening of the 31st Parliament in Canberra.

It happened last Tuesday and, until now, not one newspaper has bothered to point out the outrageous antics of these power-puffed thespians of the parliamentary stage.

While our new Governor General, Sir Zelman Cowen, delivered his speech to the combined Houses, politicians from all sides appeared in their newly-cleaned suits.

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con the voters once every three years.

CONSTITUTIONAL PROVISION—GENERAL CHARACTER OF PRIVILEGE

Constitution

Section 49 of the Constitution states that:

The powers, privileges, and immunities of the Senate and of the House of Representatives, and of the members and the committees of each House, shall be such as are declared by the Parliament, and until declared shall be those of the *Commons House of Parliament of the United Kingdom*, and of its members and committees, at the establishment of the Commonwealth.

The Parliament has not so declared the privileges etc. except in relation to a few minor powers, viz. Parliamentary Papers Act (protection of Printer), Broadcasting of Parliamentary Proceedings Act (protection of Australian Broadcasting Commission) and Public Accounts Committee Act and Public Works Committee Act (provisions respecting witnesses before these committees).

To ascertain the law, it is necessary therefore for recourse to be had to the practice and precedents of the House of Commons. These are dealt with at length in Erskine May's *Parliamentary Practice*.

What constitutes Privilege

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

(May 19, p.67)

The particular privileges of the Commons have been defined as:—'The sum of the fundamental rights of the House and of its individual Members as against the prerogatives of the Crown, the authority of the ordinary courts of law and the special rights of the House of Lords'.

(May 19, p.67)

The distinctive mark of a privilege is its ancillary character. The privileges of Parliament are rights which are 'absolutely necessary for the due execution of its powers'. They are enjoyed by individual Members, because the House cannot perform its functions without unimpeded use of the services of its Members; and by each House for the protection of its Members and the vindication of its own authority and dignity.

(May 19, p.67)

PARTICULAR REFERENCES IN RELATION TO MATTER BEFORE THE COMMITTEE

The following references in *May* are considered to be the most relevant to the matter being considered by the Committee:

Contempt in General

It would be vain to attempt an enumeration of every act which might be construed into a contempt, the power to punish for contempt being in its nature discretionary. Certain principles may, however, be collected from the Journals which will serve as general declarations of the law of Parliament. It may be stated generally that any act or omission which obstructs or impedes either House of Parliament in the performance of its functions, or which obstructs or impedes any member or officer of such House in the discharge of his duty, or which has a tendency, directly or indirectly, to produce such results may be treated as a contempt even though there is no precedent of the offence.

(*May* 19, p.136)

Constructive Contempts

Speeches or Writings reflecting on either House

In 1701 the House of Commons resolved that to print or publish any books or libels reflecting on the proceedings of the House is a high violation of the rights and privileges of the House, and indignities offered to their House by words spoken or writings published reflecting on its character or proceedings have been constantly punished by both the Lords and the Commons upon the principle that such acts tend to obstruct the Houses in the performance of their functions by diminishing the respect due to them.

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

(*May* 19, pp.144-5)

Reflections upon Members

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

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

(*May* 19, p.152)

MATTERS FOR DETERMINATION BY THE COMMITTEE

The Committee is called upon to make a judgment as to whether the matter referred to it constitutes a contempt of the House and, if it does so judge, to decide upon a course of action.

In regard to the first point the relevant references in *May* are to be found in that section dealing with 'constructive contempts'. The significant words there relate to 'words spoken or writings published reflecting on its character or proceedings . . . which tend to obstruct the Houses in the performance of their functions by *diminishing the respect due to them*'. Again 'reflections upon Members, the particular individuals not being named or otherwise indicated (as is the case with the editorial in question) are equivalent to reflections on the House'.

The Privilege cases of the House of Commons provide a useful guide for making judgments. References to five cases, not too dissimilar to the case before the Committee, are reproduced below. An Australian House of Representatives case of 1951 is also included. In each case the passage complained of has been reproduced together with the relevant paragraphs of the Report of the Privileges Committee.

HOUSE OF COMMONS CASES

Complaint Monday, 17 November 1956

Complaint being made by Sir Charles Taylor, Member for Eastbourne, of a passage in the *Sunday Express* newspaper of 16 December 1956, reflecting on the conduct of the Members of the House: A copy of the said newspaper was delivered in, and the passage complained of was read, as followeth:

PRIVILEGE

To-morrow a time of hardship starts for everyone. For everyone? Include the politicians out of that.

Petrol rationing will pass them by. They are to get prodigious supplementary allowances.

Isn't it fantastic?

The small baker, unable to carry out his rounds, may be pushed out of business. The one-man taxi company may founder. The parent who lives in the country may plead in vain for petrol to drive the kids to school.

But everywhere the tanks of the politicians will be brimming over.

What are M.P.s doing about this monstrous injustice? Are they clamouring for Fuel Minister Mr Aubrey Jones to treat politicians like the rest of the community? If it were a question of company directors getting special preference you may be sure that the howls in Westminster would soon be heard from John O'Groat's to Ebbw Vale.

But now there is not a squeak of protest.

If politicians are more interested in privileges for themselves than in fair shares for all, let it swiftly be made plain to them that the public do not propose to tolerate it.

And let Mr Aubrey Jones know that, if he is so incapable of judging public feeling he is not fit to hold political office for a moment longer.

Committee's Recommendation

8. Mr Junor asserted that while the article contained criticism of Members of Parliament for their failure to make a protest and comment aimed at Members of Parliament, the attack was not aimed at them. He said that he was trying to convey in the article that there was an unfair disparity, as a result of which Members were getting an advantage, and that if there had been no effective protest the House was failing in its duty and that it would be contemptible on the part of Members of Parliament because they were using self-interest to justify their silence.

9. Your Committee, having heard Mr Junor's evidence and having considered his demeanour while giving evidence, are unable to accept his evidence that the article had been misread and misunderstood and that it did not suggest Members of Parliament were getting an unfair allocation.

In their view the article clearly meant and was intended to mean that Members of Parliament were getting an unfair allocation, 'prodigious supplementary allowances'. The word 'politicians' would ordinarily be understood to mean, primarily though not exclusively, Members of Parliament.

Your Committee do not accept his evidence that the article did not attack Members of Parliament. In their opinion it was, inter alia, intended to hold them up to public obloquy as a result of their alleged failure to protest against unfair discrimination of

which they were the beneficiaries. This is, in your Committee's view, confirmed by the fact that before publication Mr Junor made enquiries to ascertain whether any protest by a Member of Parliament had been reported in the national press.

As your Committee have observed and as Mr Junor admits, the article alleges that Members of Parliament were to get excessive supplementary allowances, yet Mr Junor did not before publication ascertain or make any enquiries to ascertain what allocations Members of Parliament might receive for political and parliamentary purposes.

10. In the opinion of your Committee, Mr Junor has been guilty of a serious contempt in reflecting upon all Members of the House and so upon the House itself by alleging that Members of the House had been guilty of contemptible conduct in failing, owing to self-interest, to protest at an unfair discrimination in their favour. Such an attack on Members is calculated to diminish the respect due to the House and so to lessen its authority.

11. Mr Junor was given every opportunity to express his regret and to apologise for his conduct. He said he did not mean to be discourteous to the House of Commons or to bring it into disrepute and that if it had been interpreted as discourtesy, then he was sorry. Your Committee, having heard these statements, recommend to the House that, in view of the gravity of the contempt committed by Mr Junor, he should be severely reprimanded.

Complaint Tuesday, 18 December 1956

Complaint being made by Mr Charles Pannell, Member for Leeds, West, of a drawing and text in the *Evening News* newspaper today, reflecting on the conduct of the Members of the House: A copy of the said newspaper was delivered in, and the text complained of was read, as followeth:

'Very thoughtful o' them M.P.s giving themselves such a generous Supplementary . . . nice there's one place in London where a gent can be sure o' getting a drop.'

Ordered, That the Matter of the Complaint be referred to the Committee of Privileges.

Committee's Recommendation

THE COMMITTEE OF PRIVILEGES, to whom was referred the Matter of the Complaint made upon the 18th day of this instant December by Mr Charles Pannell, Member for Leeds, West, of a drawing and text in the 'Evening News' newspaper that day, reflecting on the conduct of the Members of the House, HAVE considered the matter to them referred, and have agreed to the following REPORT:

1. Your Committee have examined Mr Willis, the Editor of the 'Evening News'.
2. The decision to publish the cartoon in question was made about 2.30 p.m. on Monday, 17 December, before the article in the 'Sunday Express' had been brought to the notice of the House. The decision to publish it was reached in the Editor's absence, but he has very properly accepted responsibility for the publication. The cartoon was sent to the Processing Department of the 'Daily Mail' and the block was sent to the 'Evening News' office on Monday evening nearly two and three-quarter hours after the editorial staff had left.
3. Early on the following morning, before the Editor had arrived, and despite the fact that the first edition had already gone to press, his staff decided, in view of the fact that the House had referred the complaint regarding the article in the 'Sunday

Express' to the Committee of Privileges, to withdraw the cartoon. It did not appear in any subsequent edition. In fact out of a total print of 1 412 000 copies that day, it appeared in 57 000 copies. When this matter was raised in the House, a report of this with an apology was immediately published. This appeared in 291 000 copies. Mr Willis also addressed a letter to Mr Speaker tendering to him and to the House his most sincere apologies for the publication of the cartoon. These apologies he repeated when giving evidence before us.

4. Your Committee, while of the opinion that the words in the caption 'very thoughtful o' them M.P.s giving themselves such a generous supplementary' imply that Members of Parliament had improperly favoured themselves in relation to petrol rationing and so constitute a reflection on all Members of the House and a contempt, recommend, in view of the very proper conduct of the Editor and the staff in securing the withdrawal of the cartoon at the earliest possible moment and in voluntarily publishing a full and unqualified apology, that no further action be taken by the House.

20 December 1956

Complaint Tuesday, 22 January 1957

Complaint being made by Mr Wigg, Member for Dudley, of a broadcast on the 21st day of December last by the British Broadcasting Corporation, commenting on and discussing a subject raised as a matter of Privilege in the House on the 17th day of December last and then referred to the Committee of Privileges, which he submitted constituted a breach of the Privileges of the House;

Ordered, That the Matter of the Complaint be referred to the Committee of Privileges. Complaint being made by Mr Lagden, Member for Hornchurch, of a statement reported in the *Romford Recorder* newspaper of the 4th day of January last, as having been made by a Mr Donald Paterson: A copy of the said newspaper was delivered in, and the statement complained of was read, as followeth:

M.P.s TOO KIND TO THEMSELVES

In common with M.P.s and other prospective Parliamentary candidates, I have just been allocated a supplementary petrol ration to cover 750 miles per month—this in addition to my 200 miles basic for private motoring.

Such an allocation is outrageously high—particularly when one considers how shabbily industry and people like commercial travellers are being treated. I have heard it said that the best club to belong to is the House of Commons. The privileges granted to its members certainly seem to be on the increase even if democracy is suffering as a result.

Moreover, it is my opinion that, in the light of their sad record over the past few years, which has more than anything else been responsible for the recent crisis and petrol rationing, the very last persons to have supplementary rations should be Members of Parliament.—DONALD PATERSON.

And Complaint being made by Mr Ledger, Member for Romford, of a statement reported in the *Romford Recorder* newspaper of the 18th day of January last, as having been made by the said Mr Donald Paterson: A copy of the said newspaper was delivered in and the statement complained of was read, as followeth:

PATERSON CALLS MEETING ON POLITICIANS' PETROL

Comment on this question, he told the Recorder, has been 'effectively muzzled' by the recent action of the House of Commons Committee of Privileges against the editors of two national newspapers.

Ordered, That the Matters of the Complaints be referred to the Committee of Privileges.

Committee's Recommendation 5 February 1957

4. The statement as a whole appears to Your Committee to be a criticism of the petrol rationing scheme so far as it relates to Members of Parliament and prospective candidates. The sentence 'The privileges granted to its members certainly seem to be on the increase even if democracy is suffering as a result', though untrue, is from its context related to the petrol rationing scheme.

5. Your Committee are of opinion that this statement made by the said Donald Paterson and published by the 'Romford Recorder' does not constitute a contempt of the House. It is not in their view calculated to diminish the respect due to the House or to lessen its authority.

6. The heading to the statement for which the Editor was responsible does not in Your Committee's view constitute a fair indication of the content of the statement. It clearly suggests that Members of Parliament have improperly favoured themselves in relation to petrol rationing and so amounts to a reflection upon and a contempt of the House: but not, in the opinion of Your Committee, a contempt of such a nature as to make it necessary to take further action.

7. The statement reported in the 'Romford Recorder' of 18 January last as having been made by Mr Paterson, and printed under the heading 'PATERSON CALLS MEETING ON POLITICIANS' PETROL' was as follows:—

Comment on this question, he told the Recorder, has been 'effectively muzzled' by the recent action of the House of Commons' Committee of Privileges against the editors of two national newspapers.

8. Comment on a matter which has been referred to the Committee of Privileges before the report of the Committee thereon has been made to, and considered by, the House may constitute a contempt, but to refrain from comment cannot do so. The allegation that such comment was 'muzzled' by action of Your Committee is without foundation, but Your Committee do not consider that that statement is worthy of any further notice.

Complaint Friday, 24 November 1967

Privilege.—Complaint having been made yesterday by Mr Emlyn Hooson, Member for Montgomery, of the publication in the December issue of the magazine *Town* of a report reflecting upon the conduct of Members of this House;

A Copy of the said magazine was delivered in, and the passage complained of was read, as followeth:

The Free Wales Army would dearly like to blow up the Severn Bridge. These days, when they blow things up, the boys go out with sten guns and Dyfed ap Coslett for one would not at all mind using them. 'We shoot to kill', he said, with great passion, pounding one fist in the other. 'Nothing stops us'.

'We have dossiers on all the traitors, all of them. Cledwyn Hughes and Emlyn Hooson and all the traitors who have sold Wales out to England.'

'Sure', said Cayo, who is not so intense, and better humoured, sipping his Guinness, 'and what about the councillor down the road?'

'I'll have him too. He's a bloody traitor, I'll shoot him.'

Ordered, That the Matter of the Complaint be referred to the Committee of Privileges.
(*Mr Richard Crossman*)

Committee's Recommendation

The Committee of Privileges to whom was referred the matter of the complaint by Mr Emlyn Hooson, Member for Montgomery, of the publication in the December issue of the magazine *Town* of an article containing words reflecting upon the conduct of Members of this House, have agreed to the following REPORT:

1. Your Committee are of opinion that the words referred to could constitute a contempt of the House.
2. Having considered the information which the Committee have received concerning the alleged activities which the article reports, and the incidents portrayed in the photographs with which it was illustrated, your Committee have come to the conclusion that it would not be consistent with the dignity of the House to take any action in respect of the contempt.
3. Accordingly, your Committee recommend that no further action should be taken.

29 January 1968

Complaint Tuesday, 16 February 1965

Privilege.—Complaint having been made yesterday by Sir Herbert Butcher, Member for Holland with Boston, of expressions reported in the *Sunday Express* newspaper of 14 February 1965, as having been used by Mr Duffy, Member for Colne Valley, on Friday, 12 February at a meeting at Saddleworth;

A copy of the said newspaper was delivered in, and the passage complained of read, as followeth:

Sensational Attack on Tory M.P.s

A Labour M.P. says
'Some were half-drunk
in debates'

(*Sunday Express Reporter*)

A Labour M.P., Mr Patrick Duffy, has made a sensational attack on Tory members of Parliament. He is reported to have said that some Tory M.P.s were 'half-drunk' and 'disgusting to look at' during recent censure debates in the Commons.

Tories told of the accusations last night, were enraged. A tremendous row is inevitable.

It was on Friday, at the annual social of Saddleworth (Yorkshire) Labour Party, that Mr Duffy, who is M.P. for Colne Valley, raised this explosive issue.

He is reported to have told the 80 people who had paid 7s 6d each for their tickets: 'Some of the Tories were half-drunk during the debates.

It was disgusting to look at them, and I only wish some of their constituents knew about this. Their condition not only hindered the debate but also threatened the whole purpose of having a Parliament'.

When Mr Duffy was interviewed by the *Sunday Express* yesterday at his political 'surgery' in Uppermill, near Oldham, Lancashire, he said: 'I stand by everything I said last night.

One had only to look at the other side of the House to see that some of the members—I refuse to name them—were not themselves but had clearly wine and dined very well.

Shut the bar

The deliberate and insistent obstruction, involving synthetic points of order and the baying, to prevent Government Front Benchers from being heard, was due to the fact that some of the Opposition members came straight from the bar and created virtual chaos.

Some Tories have always looked upon the House of Commons as one of the best clubs in London because of the bar facilities which are often available until the early hours during a long debate'.

Mr Duffy withdrew.

Ordered, That the Matter of the Complaint be referred to the Committee of Privileges.—(Mr Bowden).

Committee's Recommendation

1. The subject matter of the complaint was a report in the 'Sunday Express' of 14 February of remarks said to have been made by Mr Duffy at the Annual Social of Saddleworth (Yorkshire) Labour Party on 12 February and in an interview with a journalist on the following day, in which he alleged that some Tory M.P.s were 'half-drunk and disgusting to look at' during recent censure debates in the House of Commons.

2. Your Committee have held three meetings. They heard oral evidence from the Clerk of the House, who also submitted a memorandum on precedents of complaints on this nature (Appendix 1). Mr Duffy, in answer to two questions put to him in a letter from Your Committee, submitted a written statement (Appendix 2). He informed Your Committee that he did not wish to add anything in oral evidence to that statement.

3. The Report in the 'Sunday Express' was first raised as a matter of privilege by Sir Herbert Butcher, Member for Holland with Boston, who complained that the remarks by Mr Duffy, if correctly reported, constituted a grave reflection upon the conduct of honourable Members and were therefore a breach of privilege (H.C. Deb, Vol. 706, c. 855).

4. Your Committee have also had brought to their attention a passage in the 'Daily Telegraph' of 15 February, in which Mr Duffy was alleged to have said that 'the last censure debate... was reduced to a farce by Opposition Members coming in straight from the bar and creating virtual chaos with synthetic points of order and baying . . .'. In the opinion of Your Committee, this remark could mean that the Members who raised points of order were the worse for drink and, as their names were recorded in Hansard, they could be identified.

5. Mr Duffy, in his written statement, agreed that the report in the 'Sunday Express' was accurate, though incomplete. In regard to the quotation from the 'Daily Telegraph', he claimed that the remarks he made had been 'telescoped'. The 'synthetic points of order' referred to the early part of the debate, and the phrase 'coming in straight from the bar' referred to the later part. He further stated that he certainly contemplated no personal imputations and no breach of privilege was intended, and that he was only anxious to uphold the prestige of Parliament and to this end he unreservedly withdrew any remarks which might be construed to the contrary.

6. Your Committee have carefully considered the precedents of this type of complaint. In 1701 the House of Commons resolved that 'to print or publish any books or libels, reflecting upon the proceedings of the House of Commons, or any Member thereof, for, or relating to, his service therein, is a high violation of the rights and privileges of the House of Commons' (C.J., 1699-1702, 767). Since then, words or writings reflecting on the House, and on Members of the House, have constantly been published upon the principle that such acts tend to obstruct the House in the performance of its duties by diminishing the respect due to it. The precedents of

similar cases to this one, quoted in the memorandum of the Clerk of the House, show that the House has always regarded allegations of drunkenness as a gross libel on the House and a breach of its privileges.

7. Your Committee find that the words spoken by Mr Duffy constitute a gross contempt of the House and a breach of its privileges. Your Committee, however, having had regard to the terms of Mr Duffy's letter, recommend that the House should take no further action in the matter.

8 March 1965

HOUSE OF REPRESENTATIVES CASE

Reference

That the Committee of Privileges give early consideration to the comments by the Chief of *The Sun* Canberra Bureau appearing in *The Sun* newspaper of 2 October 1951, printed and published in Sydney, and report on:

- (1) the truth, or otherwise, of the impressions conveyed by the article;
- (2) the privileges extended by the House Committee to the writer of the article, and to all others who work within the precincts of Parliament House;
- (3) the wisdom or otherwise of continuing the extension of privileges to others than Members of the Parliament.

Article

See next page.

Conclusions

- (a) That in respect to the statements referred to in paragraphs 6 and 7 of this report, the Committee considers that a breach of privilege has been committed.
- (b) That the article, while not wholly untrue, contains statements regarding the conduct of Members which are grossly exaggerated and erroneous in their implications, and consequently conveys a false impression.
- (c) That the Committee does not recommend the taking of punitive action against the writer of the article; it considers that the House would best serve its own dignity by taking no further action in the matter.
- (d) That Parts 2 and 3 of the Resolution of the House referring this matter to the Committee relate to matters which come within the prerogative of the House Committee.

Canberra statesmen beat the Budget

CANBERRA, Tuesday. — Just as a man may admire the functional utility of a zoo without becoming too fond of the animals that inhabit it, he can respect the parliamentary institution without hero-worshipping individual members.

The necessity for distinguishing between the parliamentary institution and those who serve it was provided clearly last week.

Within minutes of the Budget details being announced and members learning that whisky, other spirits, cigarettes and shaving foam were to be dearer, there was a concerted onslaught on the parliamentary bar.

Joe Clark's Labor member for Darling, arrived just at the moment a Country Party group were stocking up with razor blades, shaving soap and, extraordinary as it may seem, shaving brushes.

(If Clark had arrived at another time he would probably have found members of his own party or Liberals doing the same, for human nature ignores the artificial barriers of party divisions.)

By ALAN REID, chief of The Sun Canberra bureau

Commented Clark bitterly. This is pretty tough. Here are you fellows hogging everything and beating the gun, and yet you are the very people who are putting the prices up.

BUT it was even more illuminating to stand in King's Hall and watch member after member from all parties coming from the bar with bottles of whisky and cartons of cigarettes, all at the old price, tucked under the arm.

Inglorious, undignified rush

Those who did not participate in the inglorious and undignified rush had no consideration.

Though members were repeatedly warned that their buying spree would mean that colleagues would have to go without, they demanded everything they could get and kept on demanding, though attempts were made to conserve stocks.

ACTUALLY the mass movement from the chambers of the House of Representatives and the Senate to the bar is a further manifestation of the manner in which members would prefer to see Parliament House function.

The members' angle generally (there are indi-

vidual exceptions) appears to be:
 • This is our club, and it is to be run exclusively for us.
 • We must have people to cater for our convenience, but they are dashed lucky to be permitted to cater for our convenience.

The parliamentary staff, and, particularly, the messengers, do not see it quite in that light.

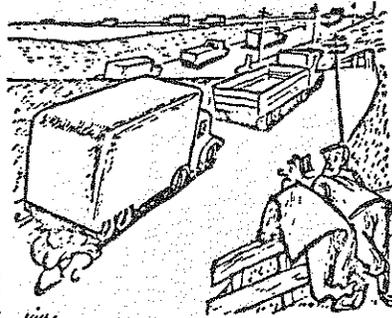
Just as a man cannot be a hero to his valet, the parliamentarians are no heroes to a staff that sees those MP's sweat and toil for every privilege and concession that is obtainable and then go into the clamber and denounce the evils of privilege and concession.

For a start, there is the bar. In prewar years, when cigarettes and tobacco were plentiful, the staff was encouraged to buy at Parliament House because bar trade was profitable and enabled the otherwise considerable deficit of the refreshment room to be reduced.

Solved their smoke worries

This staff buying built up the substantial quota which Parliament House was subsequently allotted. Then came the wartime tobacco shortage.

Members solved the problem with brilliant selfishness. They ration-



... "they must be MP's going back to Canberra for this week's Parliament ..."

ed everyone else in the House but themselves.
 • Members could cart away unlimited quantities of beer, whisky and cigarettes. (One Sydney-bound car is reported to have broken a back spring due to the beer load at the end of the last session.)
 • Non-members were issued with a pink rationing ticket entitling them to 20 cigarettes a week.

Their own mail order business

The members loudly hailed this reform as equality of sacrifice.

But from this sacrifice they exempted themselves.

This 'reform' enables them now to write from wherever they are in Australia and have forwarded them virtually unlimited quantities of liquor and cigarettes.

With these supplies they can make 'good fellows' of themselves at the expense of the staff.

- They rushed Parliament House bar.
- They stocked up on liquor and cigarettes at the old price.
- They even bought all the shaving brushes!
- Members insist on Parliament House bar opening on Sundays.

is justification for this because, stranded in Canberra over a dreary weekend, it is their only home) insist upon the bar opening.

But they do not pay overtime to the men who have to sacrifice their Sundays to attend work.

Poor treatment for the staff

Apparently those who wait upon their pleasure and convenience are sufficiently rewarded by the knowledge that they serve the nation's great.

ALTHOUGH Labor was in power for years, the staff had to wait until Archie Gaibrath Cameron became Speaker before their woes were even partially redressed.

Before that, men who won their safe Labor seats and drew their £1500 a year (and perquisites) for the eloquent manner in which they demanded better treatment for the workers let the men who worked for them eat their lunches in odd corners and keep their clothes and belongings anywhere.

Cameron gave them a lunch-room and lockers. He also gave them a system of overtime which, though not satisfactory

from their viewpoint, is at least something.

Now, after working 10 hours, they get 10s, and, after 13 hours, 1s.

These men would sooner be covered by the law rather than parliament's caprice, and have a proper award and conditions that would enable them to get payment if forced to work through the weekend.

In view of the indifference of the average parliament to their welfare they cannot be blamed.

But at present Parliament House is very definitely the most exclusive club in Australia and only members have rights.

In considering generally the matter referred to the Committee the following extract from the Report of the House of Commons Select Committee on Parliamentary Privilege (Paper No. 34 of Session 1966-67) should be noted:

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

- (i) The House should exercise its penal jurisdiction (*a*) in any event as sparingly as possible, and (*b*) only when it is satisfied that to do so is essential in order to provide reasonable protection for the House, its Members or its Officers from such improper obstruction or attempt at or threat of obstruction as is causing, or is likely to cause, substantial interference with the performance of their respective functions.
- (ii) It follows from sub-paragraph (i) of this paragraph that the penal jurisdiction should never be exercised in respect of complaints which appear to be of a trivial character or unworthy of the attention of the House; such complaints should be summarily dismissed without the benefit of investigation by the House or its Committee.

Again, in considering whether or not to impose a penalty, it is of interest to note the considerable weight which the House of Commons Committee gives to the attitude of the privilege offender. If the offender conducts himself in a proper manner in response to actions of the Committee and is prepared to tender an adequate apology for his contempt action the Committee has almost invariably recommended no further action.

A range of recommendations is open to the Committee in summing up and making its report to the House. Some examples are:

- That the dignity of the House is best maintained by taking no action;
- that the matter could constitute a contempt but it is inconsistent with the dignity of the House to take action;
- that a technical contempt had been committed but further action would give added publicity and be inconsistent with the dignity of the House;
- that a contempt of the House had been committed but in view of the humble apology tendered, no further action is recommended;
- that a contempt of the House had been committed but the matter was not worthy of occupying the further time of the House;
- that the journalist responsible be excluded from the gallery for a certain period;
- that the editor is guilty of a serious contempt and should be (severely) reprimanded.

THE COMMITTEE OF PRIVILEGES: FUNCTIONS, PROCEEDINGS ETC.

Standing order

House of Representatives Standing Order No. 26 is as follows:

A Committee of Privileges, to consist of nine Members, shall be appointed at the commencement of each Parliament to inquire into and report upon complaints of breach of privilege which may be referred to it by the House.

Witnesses—Summoning of and administration of oath

House of Representatives Standing Orders Nos 354 to 368 deal with the calling of witnesses etc.

May 19th edn, pp.644-5 deal with the general powers of a Select Committee regarding the attendance of witnesses.

In 1941, the Chairman of the Commonwealth Parliament War Expenditure Committee asked the Solicitor-General for advice on certain questions. In dealing with the following question:

Has a Select Committee or Joint Committee power to summon persons to give evidence and to administer oaths to witnesses

the Solicitor-General (Opinion 53 of 1941) said that if a Select Committee is empowered to send for persons, papers and records, it may, in his opinion, summon witnesses to give evidence.

By virtue of section 49 of the Constitution, the power contained in the Parliamentary Witnesses' Oaths Act 1871 of Great Britain for any Committee of the House of Commons to administer an oath to a witness is conferred on each House of the Commonwealth Parliament and on the Committees of each such House. This power however, does not extend to a Joint Committee.

The Solicitor-General briefly answered the question by stating:

A Select Committee or a Joint Committee authorised to send for persons, papers and records, has power to summon witnesses. A Select Committee also has power to administer oaths to witnesses. It is doubtful whether a Joint Committee has that power.

Scope of Inquiry

A select committee, like a Committee of the whole House, possesses no authority except that which it derives by delegation from the House by which it is appointed. When a select committee is appointed to consider or inquire into a matter, the scope of its deliberations or inquiries is defined by the order by which the committee is appointed (termed the order of reference), and the deliberations or inquiries of the committee *must be confined* within the limits of the order of reference . . . interpretation of the order of reference of a select committee is a matter for the committee . . . If it is thought desirable that a committee should extend its inquiries beyond the limits laid down in the order of reference, the House may give the committee authority for that purpose by means of an instruction.

(May 19, p. 635)

Besides the report properly so called relating to the subject-matter referred to the committee, it is frequently necessary for a committee to make what is termed a special report in reference to some matter incidentally arising relating to the powers, functions or proceedings of the committee . . .

A report from a committee desiring the instructions of the House as to the authority of the committee or the proper course for it to pursue or a report that a witness has failed to obey a summons to attend or has refused to answer questions addressed to him by the committee are examples of such special reports.

(*May 19*, p. 661-2)

A House of Representatives case of a special report relates to the Committee of Privileges inquiring into articles in the Bankstown 'Observer' (1955). An article dated 28 April 1955 had been referred to the Committee. Subsequently, the Committee presented a special report to the House seeking authority to include in its investigations articles appearing in the Bankstown 'Observer' of 5, 12 and 19 May. The House agreed to a motion that the Committee's request be acceded to.

(V & P 1954-55, pp. 225, 239)

. . . The scope of any inquiry (*of the Committee of Privileges*) comprises all matters relevant to the complaint. The committee does not sit in public.

(*May 19*, p. 675)

The foregoing reference in *May* results from a resolution of the House of Commons in 1947-48:

That when a matter of complaint of breach of privilege is referred to a Committee, such Committee has, and always has had, power to inquire not only into the matter of the particular complaint, but also into facts surrounding and reasonably connected with the *matter of the particular complaint*, and into the principles of the law and custom of privilege that are concerned.

(House of Commons Journals 1947-48, p. 23)

Counsel: Lack of judicial form

Persons accused of breaches of the privileges or of other contempts of either House are not, as a rule, allowed to be defended by counsel; but in a few cases incriminated persons have been allowed to be heard by counsel, the hearing being sometimes limited to 'such points as do not controvert the privileges of the House'. Where a person has been allowed to make his defence by counsel, counsel have sometimes been heard in support of the charge; and where a complaint of an alleged breach of privilege was referred to the Committee of Privileges, counsel were allowed, *by leave of the House*, to examine witnesses before the Committee on behalf of both the Member who had made the complaint and the parties named therein. (The last cases recorded in *May* were in the 18th century.)

Details of the Commons practice in relation to counsel appearing before Select Committees are given in *May*, 19th edn, pp. 644-6.

During the course of the sittings of the House of Representatives Committee of Privileges in the Bankstown 'Observer' case, Mr R. E. Fitzpatrick, who had been

called by the Committee, requested that he be represented by counsel. By resolution, the Committee decided to hear counsel on the following two points:

- (a) as to his right to appear generally for Mr Fitzpatrick, and
- (b) as to the power of this Committee to administer an oath to the witness.

The Committee heard counsel on these points but did not agree to counsel's application to appear. (Report of Committee tabled 8 June 1955, pp. 9-10).

Little attempt is made in the Committee of Privileges to observe judicial forms. Persons accused of contempt of the House are not as a rule allowed to be defended by Counsel, though in a few cases the House has given leave for an exception to be made. The Committee of Privileges usually hears only the parties concerned and the Clerk of the House, and the House decides the appropriate penalty on the tenor of the debate on the Committee's report. (Extract from Paper prepared by the Clerk of the House of Commons for the Association of Secretaries-General of Parliaments—March 1965.)

Protest or Dissent may be added to the Report

Standing Order 343 reads as follows:

The chairman shall read to the committee, at a meeting convened for the purpose, the whole of his draft report, which may at once be considered, but if desired by any Member it shall be printed and circulated amongst the committee and a subsequent day fixed for its consideration. In considering the report, the chairman shall read it paragraph by paragraph, proposing the question to the committee at the end of each paragraph—'That it do stand part of the report'. A Member objecting to any portion of the report shall move his amendment at the time the paragraph he wishes to amend is under consideration. A protest or dissent may be added to the report.

APPENDIX 'A'

SPEECHES BY MR W. YATES, M.P.

Tuesday, 28 February 1978

Privilege

Mr YATES (Holt)—Mr Speaker, I raise a matter of privilege based on an editorial published in the *Sunday Observer* of 26 February 1978 under the heading 'Political Bludgers'. I will produce a copy of the *Sunday Observer* produced by Mr Alan Leonard Armsden of 46-49 Porter Street, Prahran, Victoria, for Peter Isaacson's Sunday Newspapers Pty Ltd of 44 Market Street, Melbourne. The article states:

The over-taxed, Government-burdened people of Australia were treated to a disgusting exhibition by many Federal politicians this week.

Many of our so-called leaders proved themselves lazy, two-faced bludgers at the opening of Federal Parliament in Canberra.

It happened last Tuesday and, until now, not one newspaper has bothered to point out the outrageous antics of these power-puffed thespians of the parliamentary stage.

While our new Governor-General, Sir Zelman Cowen, delivered his speech to the combined Houses, politicians from all sides appeared in their newly-cleaned suits.

Colours were carefully chosen for ties and handkerchiefs and members' wives preened themselves for the ceremonial hoo-ha.

Of course. The television cameras were rolling. Here was a chance to be shown off to the public.

Politicians were actually seen in the House, apparently taking some notice of official business.

But after the official ceremonies were over they skulked out like thieves in the night.

While new Opposition boss, Bill Hayden, made his first speech in the House as leader, members lounged about in the bar.

And when Federal Treasurer, John Howard, built up to an important parliamentary appearance the House was half empty. Once again the bar was adequately occupied.

Mr Speaker, I do not think I need to read any further. All this is supposed to have happened last Tuesday and I do not think that the bar was available last Tuesday. Most of us were outside in the garden. As to the failure of the Press Gallery correspondents to report the matter, of course nothing at all occurred on that day. They were probably in the garden as well. Therefore, Mr Speaker, I ask you to rule whether this sort of comment is, in your view, prima facie evidence of a breach of privilege, a matter which should be referred to the Committee of Privileges and a matter which I could bring to the attention of the House later.

Mr SPEAKER—I ask the honourable gentleman to provide me with a copy of the article in question. The Standing Orders make provision for precedence to be given over all other business to a matter involving a breach of privilege if the Speaker is of the opinion that the matter involves a prima facie breach of privilege. My understanding of what the honourable member read out is that, in his submission, it amounts to a breach of privilege by way of contempt. I shall look at the matter and advise the House at a later hour this day my decision as to whether the article constitutes a breach

of privilege. If my opinion were that it constitutes a breach of privilege, a course of action would proceed. If my opinion were to the contrary, the matter would be at an end. In the meantime, the matter is in abeyance.

Privilege

Mr SPEAKER—At the commencement of the sitting of the House today the honourable member for Holt (Mr Yates) raised a question of privilege. He raised the question of privilege in terms of whether an article which appeared in a newspaper breached parliamentary privilege in the sense that it was a contempt of the Parliament. Under the Standing Orders, the Speaker is required to consider the matter, for if the Speaker decides that it amounts to a prima facie case of contempt amounting to a breach of privilege that matter must take precedence over all other matters until disposed of. The fact that I have now concluded that it does amount to a prima facie breach of privilege means that the matter now has precedence over all other matters until disposed of. The honourable member for Holt is entitled to move his motion.

Mr YATES (Holt) (5.20)—For the convenience of honourable members and the House I move:

That the matter of the editorial in the *Sunday Observer* of 26 February 1978 be referred to the Committee of Privileges.

Question resolved in the affirmative.

Extract from the *Sunday Observer*, 19 March 1978

Privilege and Parliament —AN APOLOGY

IN OUR issue of February 26 we criticised some Federal politicians for their non-attendance at sittings following the opening of Parliament on the previous Tuesday.

The intention of the article was not to show any disrespect for Parliament as an institution, only to criticise some members for what we believed was dereliction of their duty to constituents.

Some of the facts were inaccurate, the language used in the article emotive, and in some cases irresponsible. We regret these lapses.

Members cannot be in the chamber for the full period of every sitting. Attendance at committee meetings, interviewing constituents and other important duties often preclude this.

Most members of Parliament work hard.

Apart from social and official duties within their electorates, the time and effort required to keep abreast of legislation before the House, research required prior to speaking, all add up to a very dull, often overfull, workload.

Note:

A printing error occurred in the second last line of this apology. The word 'dull' should have read 'full'.

The newspaper offered to publish a correction but this was considered unnecessary.

