

Parliamentary Paper
No. 158/1980

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES
COMMITTEE OF PRIVILEGES

Report relating to the alleged
discrimination and intimidation of Mr
David E. Berthelsen in his public service
employment because of evidence given
by him to a Subcommittee of the
Joint Committee on Foreign Affairs
and Defence

The Commonwealth Government Printer
Canberra 1980

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MEMBERSHIP OF THE COMMITTEE

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

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

Hon. C. R. Cameron, M.P.¹

Mr W. M. Hodgman, M.P.

Mr A. C. Holding, M.P.²

Mr R. Jacobi, M.P.

Mr A. W. Jarman, M.P.

Mr B. O. Jones, M.P.³

Hon. L. R. Johnson, M.P.⁴

Mr P. E. Lucock, C.B.E., M.P.⁵

Mr P. C. Millar, M.P.⁶

Mr G. G. D. Scholes, M.P.⁷

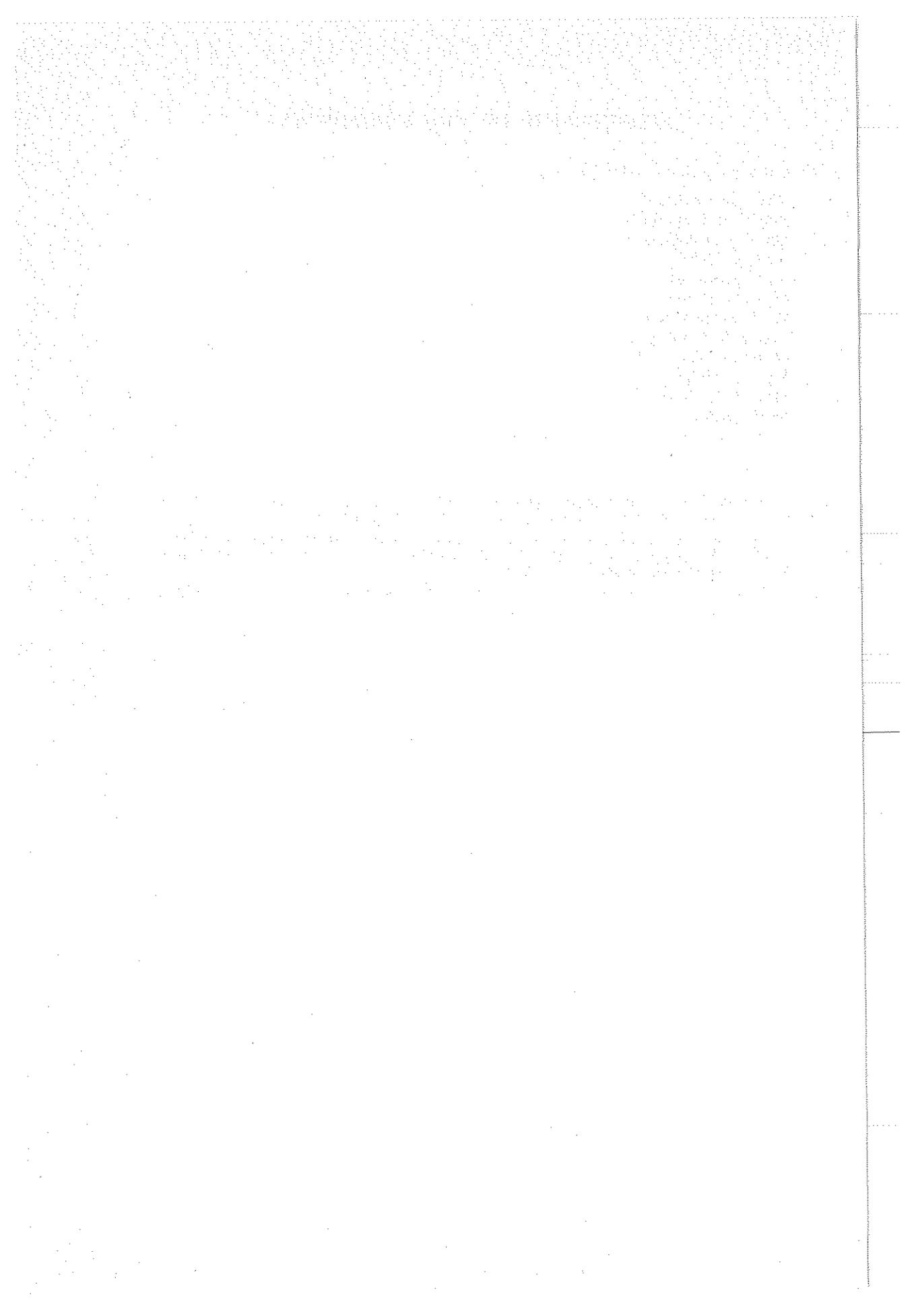
Mr W. Yates, M.P.

Clerk to the Committee—Mr L. M. Barlin

¹ and ⁴: On 22 May 1980 the House of Representatives resolved that during consideration of this matter, the Hon. L. R. Johnson, M.P., be appointed in the place of the Hon. C. R. Cameron, M.P.

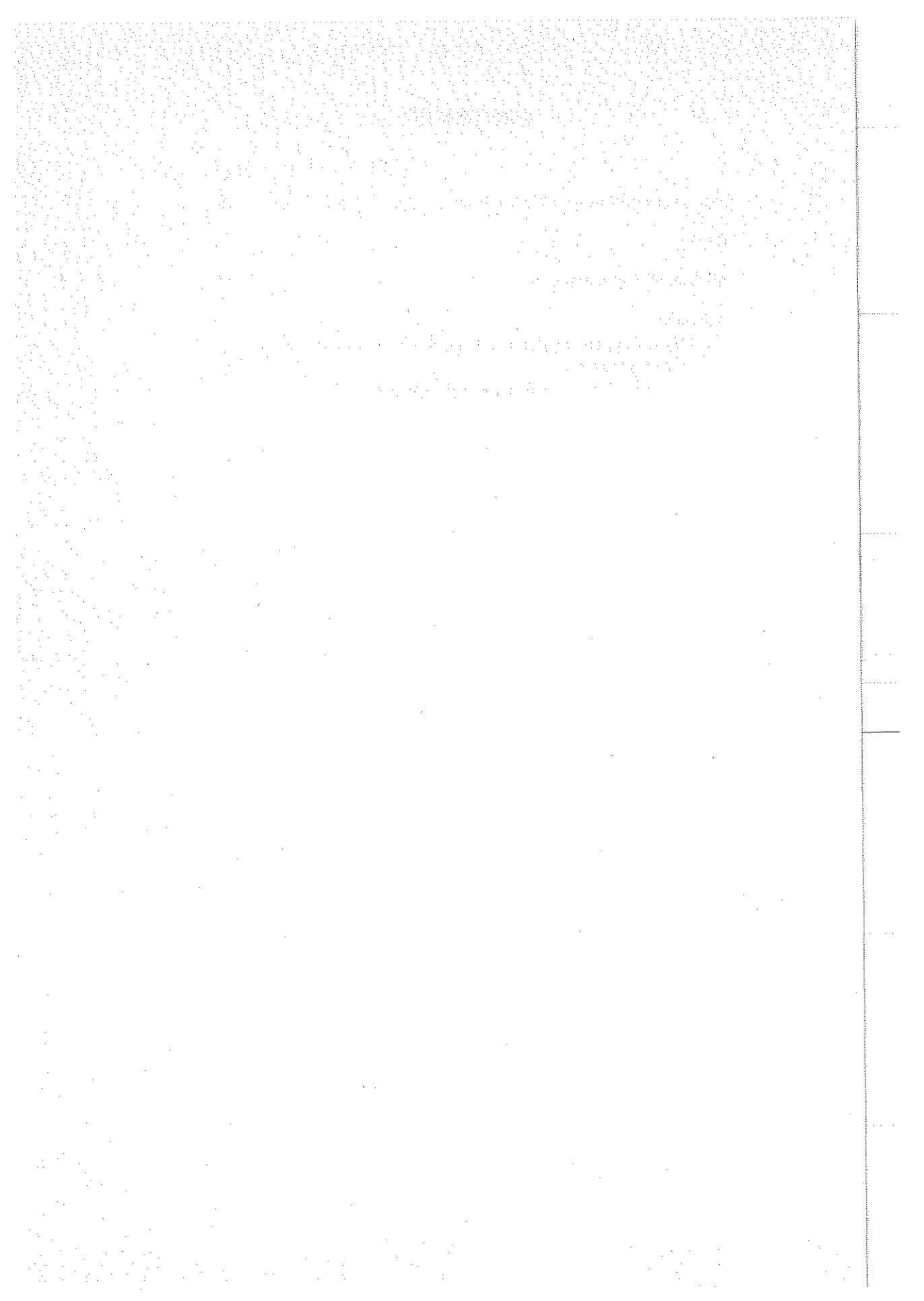
², ³ and ⁷: On 1 May the House of Representatives resolved that during consideration of this matter, Mr A. C. Holding, M.P., be appointed in the place of Mr G. G. D. Scholes, M.P.; on 22 May 1980 Mr B. O. Jones, M.P., was appointed in the place of Mr A. C. Holding, M.P.

⁵ and ⁶: On 22 May 1980 the House of Representatives resolved that during consideration of this matter Mr P. C. Millar M.P. be appointed in the place of Mr P. E. Lucock C.B.E., M.P.



CONTENTS

	<i>Page</i>
Extracts from Votes and Proceedings	vii
Report	1
Minutes of Proceedings	13
Appendix	
I Memorandum prepared by the Clerk of the House of Representatives	31
For Extracts from <i>Hansard</i> see pages 44–49	



EXTRACTS FROM VOTES AND PROCEEDINGS

No. 160 of 1 April 1980

- 4 PRIVILEGE: Mr Fry raised as a matter of privilege an allegation by a constituent that he had been discriminated against and intimidated in his employment in the Australian Public Service as a result of evidence given by him before a subcommittee of the Joint Committee on Foreign Affairs and Defence. Mr Fry produced documents relating to the alleged discrimination and intimidation.

Mr Speaker stated that he would examine the matter and announce whether a *prima facie* case of breach of privilege existed.

Privilege—Statement by Mr Speaker: Mr Speaker referred to the matter raised earlier this day by Mr Fry as a matter of privilege and stated that, from the information contained in the material produced, he was unable to conclude that a *prima facie* case of breach of privilege existed.

No. 167 of 23 April 1980

- 2 PRIVILEGE: Mr Fry rose on a matter of privilege and referred to a matter which he had first raised in the House on 1 April 1980 concerning alleged discrimination and intimidation in his employment in the Public Service of Mr David Berthelsen because of evidence given by him to a subcommittee of the Joint Committee on Foreign Affairs and Defence. Mr Fry presented additional documentary material relating to the matter which he asked Mr Speaker to consider.

Mr Speaker stated that he would consider the papers and report to the House.

- 34 PRIVILEGE—ALLEGED DISCRIMINATION AND INTIMIDATION OF WITNESS—REFERENCE TO COMMITTEE OF PRIVILEGES: Mr Speaker referred to the matter of privilege raised by Mr Fry earlier this day. Mr Speaker stated that, having considered the additional material submitted by Mr Fry, he was prepared to allow precedence to a motion by Mr Fry to refer the matter to the Committee of Privileges.

Mr Fry then moved—That the matter of the alleged discrimination and intimidation of Mr David Berthelsen in his public service employment because of evidence given by him to a subcommittee of the Joint Committee on Foreign Affairs and Defence, be referred to the Committee of Privileges.

Question—put and passed.

No. 168 of 29 April 1980

- 13 COMMITTEE OF PRIVILEGES: Mr Viner (Leader of the House), by leave, moved—That the Committee of Privileges, when considering the matter referred to it on 23 April 1980, have power to send for persons, papers and records.

Question—put and passed.

No. 170 of 1 May 1980

- 12 COMMITTEE OF PRIVILEGES: Mr Viner (Leader of the House), by leave, moved—That, during the consideration of the matter referred to the Committee of Privileges on 23 April 1980, Mr Scholes be discharged from attendance on the committee and Mr Holding be appointed to serve in his place.

Question—put and passed.

No. 176 of 22 May 1980

16 COMMITTEE OF PRIVILEGES: Mr Viner (Leader of the House), by leave, moved—That, during the consideration of the matter referred to the Committee of Privileges on 23 April 1980, Mr B. O. Jones be appointed to the committee in place of Mr Holding, appointed on 1 May 1980, Mr Millar be appointed in place of Mr Lucock and Mr L. R. Johnson be appointed in place of Mr C. R. Cameron, and that during consideration of the matter referred to the committee on 11 September 1979, Mr Millar be appointed in place of Mr Lucock and Mr L. R. Johnson be appointed in place of Mr C. R. Cameron.

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 23 April 1980 relating to the alleged discrimination and intimidation of Mr David E. Berthelsen in his public service employment because of evidence given by him to a subcommittee of the Joint Committee on Foreign Affairs and Defence, has agreed to the following Report.

Complaint

2. On 1 April 1980 the honourable Member for Fraser (Mr Fry) raised in the House of Representatives a matter of privilege concerning Mr David E. Berthelsen, an officer of the Auditor-General's Office. In doing so, Mr Fry informed the House that Mr Berthelsen alleged that he was being discriminated against and intimidated in his employment with the Commonwealth Public Service as a direct result of evidence he gave before the Joint Committee on Foreign Affairs and Defence. Mr Fry produced copies of a number of documents in support of his claim.

3. After considering these documents Mr Speaker later advised the House that from the information contained in the material he was unable to conclude that a *prima facie* case of breach of privilege existed.

4. On 23 April 1980 Mr Fry again raised the matter in the House. In doing so he provided additional documentary material which Mr Speaker undertook to consider. Later the same day, Mr Speaker advised the House as follows:

I have examined this new material. The issue here raised impinges upon a fundamental principle of privilege, that is freedom of witnesses before a committee of the Parliament. The claim is based upon a considerable volume of material and potential evidence. I have concluded that it would be proper for the Privileges Committee to examine the issue of principle raised against the facts to be elicited in this case for the future guidance of the Parliament and to determine whether any wrong has been done which amounts to a breach of privilege. Accordingly, if the honourable Member for Fraser wishes to move a motion to refer the matter to the Committee of Privileges, I am prepared to allow the motion to take precedence of other business.

Thereupon Mr Fry moved the following motion which was agreed to by the House:

That the matter of the alleged discrimination and intimidation of Mr David Berthelsen in his public service employment because of evidence given by him to a subcommittee of the Joint Committee on Foreign Affairs and Defence, be referred to the Committee of Privileges.

Powers, privileges and immunities of the House of Representatives, its members and committees

5. Sections 49 and 50 of the Commonwealth of Australia Constitution Act provide as follows:

Privileges, &c. of Houses

49. 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.

50. Each House of the Parliament may make rules and orders with respect to—

- (i) the mode in which its powers, privileges, and immunities may be exercised and upheld;
- (ii) the order and conduct of its business and proceedings either separately or jointly with the other House.

6. 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.

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

8. The following extracts from *Erskine May's Parliamentary Practice* (19th edition) are of special significance in respect of the Committee's inquiry:

Tampering with witnesses

To tamper with a witness in regard to the evidence to be given before either House or any committee of either House or to endeavour, directly or indirectly, to deter or hinder any person from appearing or giving evidence is a breach of privilege.

A resolution to this effect was passed by the House of Commons on 21 February 1700, and has been regularly renewed in every succeeding session, and in numerous instances *persons have been punished for offences of this kind. (Cases cited)*

Corruption or intimidation, though a usual, is not an essential ingredient in this offence. It is equally a breach of privilege to attempt by persuasion or solicitations of any kind to induce a witness not to attend, or to withhold evidence or to give false evidence.

This matter was considered in 1935 by a committee of the Commons who reported that, in their opinion, it was a breach of privilege to give any advice to a witness which took the form of pressure or of interference with his freedom to form and express his own opinions honestly in the light of all the facts known to him; and the House resolved that it agreed with the committee in their report (Report of the Select Committee on Witnesses, H.C. 84, p. vii (1934-35); C.J. (1934-35) 294).

Acts tending indirectly to deter witnesses from giving evidence

Any conduct which is calculated to deter prospective witnesses from giving evidence before either House or before committees of either House is a breach of privilege. It is upon this principle that witnesses are protected from arrest, not only while going to or attending either House or committees of either House, but while returning from such House or committees.

Molestation of Witnesses on Account of their Attendance or Testimony as Witnesses.— Upon the same principle any molestation of, or threats against, persons who have given evidence before either House or before committees of either House will be treated by the House concerned as a breach of privilege.

(Page 157)

The inquiry

9. The matters referred to the Committee related to the alleged discrimination and intimidation of a witness who had presented evidence both orally and in writing to a

Subcommittee of the Joint Committee on Foreign Affairs and Defence—a Committee consisting of both Senators and Members of the House of Representatives established by resolution of both Houses.

10. Before proceeding with its inquiry the Committee gave consideration to the question of its jurisdiction in respect of matters arising from an inquiry conducted by a Joint Committee of the Parliament. In doing so it noted that in 1973 a previous Committee of Privileges of the House of Representatives apparently did not hesitate to investigate a matter of privilege which had been raised in the House relating to an inquiry undertaken by the Joint Committee on Prices.

11. Having given careful consideration to this matter and, in particular, to the provisions of Sections 49 and 50 of the Constitution, the Committee was satisfied that it had jurisdiction and resolved to proceed with the inquiry.

12. In raising the complaint in the House Mr Fry had referred to events alleged to have occurred both in the Department of Defence and in the Office of the Auditor-General. The Committee noted, as had Mr Speaker in giving his ruling on 1 April 1980, that on 19 March 1980 the Chairman of the Subcommittee on Defence Matters (Mr Katter) had reported to the House on allegations which had been made by Mr Berthelsen in respect of the Department of Defence. The Committee also noted that the resolution agreed to by the House of Representatives was widely drawn and was not confined to allegations in respect of the Auditor-General's Office.

13. The Committee concluded that the House in agreeing to a resolution in those terms had not wished to be restrictive in the scope of the Committee's inquiry. It determined therefore that it should consider all allegations which may be made by Mr Berthelsen in respect of discrimination and intimidation of him in his public service employment as a consequence of his having given evidence to the Subcommittee on Defence Matters.

14. The Committee saw two possible issues of privilege being involved—firstly, the right of the Parliament to seek and obtain information required in the proper execution of its investigatory role and, secondly, the necessity to protect witnesses and prospective witnesses before committees of the Parliament from molestation, intimidation and discrimination or threats of such action. It determined that if the allegations were substantiated the Committee had a responsibility to report those findings to the House so that the House could take action not only to provide redress to the particular person involved on this occasion, but so as to secure the position of potential future witnesses and their willingness to assist committees of the Parliament. Unless the House was prepared to guarantee this protection to witnesses, the House and the Parliament may well be denied information necessary to Parliament's proper role of scrutiny.

15. Having called Mr Berthelsen on 9 June 1980 and heard the extent and nature of his allegations, the Committee took evidence from the Auditor-General (Mr D. Steele Craik), officers of the Auditor-General's Office, the former Secretary of the Department of Defence (Sir Arthur Tange), officers of the Department of Defence and an officer of the Public Service Board. In all, over 800 pages of transcript of oral evidence was taken.

16. Departmental papers and records relating to Mr Berthelsen and the subject matter of the Committee's inquiry were sought and obtained from the Auditor-General's Office, the Department of Defence and the Public Service Board. In addition, written evidence was obtained from the Joint Committee on Foreign Affairs and Defence and legal advice in respect of one aspect of the inquiry was provided by the Secretary, Attorney-General's Department, Canberra.

17. Mr Berthelsen presented the Committee with a vast amount of oral and written evidence and was examined before the Committee for two days. The Committee confined its inquiries to the two claims of significance, namely, the alleged intimidation of Mr Berthelsen by the Department of Defence after Mr Berthelsen's initial appearance before the Subcommittee, and the alleged discrimination and intimidation of him in his public service employment after the improper disclosure of a letter and attachment of 2 October 1979 addressed by Mr Berthelsen to members of the Subcommittee on Defence Matters. In respect of this letter, the Chairman informed Mr Berthelsen by letter dated 16 October 1979 that the Subcommittee had 'taken note' of the contents of his 'circular letter' of 2 October 1979. This was the subject of correspondence between the Chairman and the Minister for Defence on 20 December 1979.

18. The two matters are clearly related. However, to assist an understanding of the position they are separately described hereunder.

19. *Allegations involving the Department of Defence:* Mr Berthelsen was appointed to the Department of Defence on 4 April 1977. While still an employee of that Department he responded to press advertisements by the Subcommittee on Defence Matters and on 19 August 1978 lodged a written submission with the Subcommittee in respect of its inquiry into defence procurement policy.

20. He began duty in the Auditor-General's Office on 11 September 1978. On 12 October 1978, having been informed that he was to be called to give oral evidence before the Subcommittee, Mr Berthelsen provided a senior officer of the Auditor-General's Office with a copy of his written submission to the Subcommittee. On 18 October 1978 he gave the Acting Auditor-General an undertaking that he would inform the Subcommittee that he was appearing before it as a private citizen and not as an officer of the Auditor-General's Office.

21. Mr Berthelsen appeared before the Subcommittee at a public hearing on 24 October 1978. He honoured his undertaking given to the Acting Auditor-General. His evidence, which was critical of aspects of Department of Defence administration, received a good deal of media publicity. It was confirmed to the Committee of Privileges that his evidence disclosed no material of a classified nature.

22. On the day after his appearance before the Subcommittee Mr Berthelsen was visited at the Auditor-General's Office by a senior security officer of the Department of Defence who had been instructed by the Director of Defence Security to call on Mr Berthelsen and recover his security pass to the Russell Offices. This pass had not been surrendered by Mr Berthelsen upon his ceasing duty in the Department of Defence. Mr Berthelsen was also asked to sign a Declaration of Secrecy (Form XP 101) acknowledging his understanding of the requirement for continuing secrecy in respect of information that had come into his possession while an officer of the Department of Defence. In addition he was handed a blank Official Secrecy declaration form (Form XP 100), a copy of which he had completed on taking up duty in the Department of Defence, together with an 8-page printed statement containing extracts from the Laws of the Commonwealth setting out the principal obligations of persons who acquire information in the course of their duties as Commonwealth employees.

23. The Committee received evidence that it is normal practice for security passes to the Russell Offices to be surrendered by employees when ceasing duty in the Department of Defence. It was further advised that it is normal practice for a Declaration of Secrecy to be completed by those employees at the same time. Where an employee fails in his or her responsibility to return the pass or is not requested to complete the Declaration at the time of leaving the Department, the former employee is written to, if his or her address is known, and a request conveyed for the return of the pass and the completion of the Declaration of Secrecy form.

24. The Senior Security Officer involved (now the Chief Security Adviser in the Office of Industrial Security, Defence Security Branch) stated under examination that he had not visited other former employees who had failed to return their passes as this was not routine procedure to do so. In this instance he had been directed to visit Mr Berthelsen personally and retrieve his pass.

25. Mr Berthelsen claimed to have felt intimidated by this action of the Department of Defence. He felt further intimidated on 26 October 1978 when the Minister Assisting the Minister for Defence made critical references in the House of Representatives concerning the evidence given to, and witnesses before the Subcommittee. He was convinced that this was an attempt by the Department of Defence to discredit him and his evidence to the Subcommittee.

26. On 10 November 1978, Mr Berthelsen wrote to the Chairman of the Subcommittee complaining of intimidation by the Department of Defence. His complaint was heard by the Subcommittee at an *in camera* hearing on 30 November 1978. The Chairman of the Subcommittee reported to the House of Representatives on 19 March 1980 that the Subcommittee had determined that on the evidence available to it, it could not establish that such intimidation had taken place.

27. The 29 November 1978 edition of the *Laurie Oakes Report* contained a front page lead article headed 'How Defence deals with its critics'. The article disclosed that the then Secretary of the Department of Defence (Sir Arthur Tange) had written to the Auditor-General (Mr D. Steele Craik) in relation to Mr Berthelsen's evidence to the Subcommittee. The article contained verbatim extracts from two confidential minutes written by the Deputy Secretary of the Department of Defence (Mr M. G. Cowie) to Sir Arthur Tange, at Sir Arthur's request, giving an analysis of Mr Craik's letter and providing advice on what further action should be taken in respect of Mr Berthelsen's evidence to the Subcommittee.

28. Mr Berthelsen was concerned to learn from the publication of the action being taken at the highest levels of the Department of Defence. For its part, the Committee of Privileges is concerned that these papers which had a very limited circulation within the Department of Defence were revealed to the Press from within the senior levels of that Department.

29. *Allegations involving the Auditor-General's Office:* The Auditor-General defended Mr Berthelsen's position following representations from the Secretary, Department of Defence after Mr Berthelsen's initial evidence to the Subcommittee on 24 October 1978. Mr Berthelsen had shown a copy of his submission to a senior officer of the Auditor-General's Office and had made it clear to the Subcommittee that he was appearing before it as a private citizen. He had revealed no confidential material and had breached no Commonwealth law.

30. At the *in camera* hearing on 30 November 1978 to hear his allegations, Mr Berthelsen handed to the Secretary of the Subcommittee written replies to certain questions which had been directed to him at the hearing on 24 October 1978. When it later appeared to Mr Berthelsen that these answers may not have been distributed to members of the Subcommittee, nor published as evidence by the Subcommittee, he took the opportunity of revising them and forwarded these to the Subcommittee on 4 April 1979. He made further revisions to these answers in letters to the Subcommittee on 2 and 3 May 1979. The Subcommittee incorporated the revised answers in the *Hansard* transcript of its public hearing of 25 July 1979. The revised answers of 4 April 1979, which were also critical of aspects of defence administration, improperly came into the hands of the Press and were the subject of an article appearing in the

Bulletin of 24 April 1979. The journalist concerned has made a statutory declaration, at Mr Berthelsen's request, clearing Mr Berthelsen of responsibility for this disclosure.

31. On 25 July 1979 the then Secretary of the Department of Defence, Sir Arthur Tange, and the Chief of Defence Staff, Admiral Sir Anthony Synnot, presented evidence to a public hearing of the Subcommittee. Part of their evidence dealt with Mr Berthelsen's evidence of 24 October 1978 and his revised written answers.

32. On learning of the evidence that had been given by Sir Arthur and Sir Anthony, Mr Berthelsen again wrote to the Subcommittee on 2 October 1979 forwarding a ten-page paper responding to their evidence. In this paper Mr Berthelsen referred to the evidence of the Department of Defence including specific references to cassettes and the existence of a secret Chiefs-of-Staff Committee Minute No. 31/1974 concerning the transmission of data. Mr Berthelsen's paper was the subject of comment on the ABC 'PM' broadcast of 19 November 1979 and was referred to in the *Bulletin* dated 4 December 1979 published on 28 November 1979. These events 'triggered off' a response in the Auditor-General's Office about Mr Berthelsen's employment.

33. Mr John Sewell, a senior officer of the Department of Defence, advised the Committee that he had heard the 'PM' broadcast on 19 November 1979 at home and that he had made notes of key points. Mr Sewell claims that he was advised of the *Bulletin* article on the day of publication and obtained a copy. Following the matter being raised with him by a security investigating officer, Mr Sewell telephoned the Auditor-General's Office to inquire whether the *Bulletin* article had been drawn to their attention and if any action with respect to Mr Berthelsen was proposed. An immediate investigation was begun in the Department of Defence to ascertain whether Mr Berthelsen had had access to the highly classified document. Within the Auditor-General's Office, Mr Berthelsen was called before a meeting of senior officers. He was told that the purpose of the meeting was to enable the Office to form an opinion on whether any Act may have been breached and to enable the Office to respond quickly to any communication from the Department of Defence. At the request of the Auditor-General's Office, Mr Berthelsen completed a Statutory Declaration to the effect that he had not 'at any time since the date of my taking up duty in the Auditor-General's Office, viz. 11 September 1978, either in my capacity as an officer employed in the Auditor-General's Office or otherwise, sighted or inspected or had in my possession' the Chiefs-of-Staff Committee Minute No. 31/1974.

34. Investigations by the Auditor-General's Office revealed that no copy of the Minute was held in that Office and consequently Mr Berthelsen could not have had access to it in that Office. The Department of Defence satisfied itself that Mr Berthelsen had not had access to the Minute whilst employed in that Department and that 'there is a distinct probability that [he] is not aware of the contents of the COSC Minute'—facts which were confirmed by Mr Berthelsen in his evidence to the Committee of Privileges. However, the Auditor-General was obviously gravely concerned at the effect the continuing publicity surrounding Mr Berthelsen's communications with the Subcommittee was having on the relationship of the Auditor-General's Office with its client departments, especially the Department of Defence.

35. On 30 November 1979 the Auditor-General discussed Mr Berthelsen's situation with a First Assistant Auditor-General. As a consequence of that discussion the Auditor-General decided that it would be in the best interests of the Auditor-General's Office if Mr Berthelsen could be placed in a less sensitive area elsewhere in the Public Service.

36. Mr Berthelsen was told of the Auditor-General's decision on 4 December 1979 by the Controller, Policy Planning and Management Branch. He was advised that the assistance of the Public Service Board could be sought to facilitate his transfer but that no immediate approach would be made to the Board for assistance in his placement, provided he applied for positions elsewhere in the Service. It was indicated that the situation would be reviewed at the end of January 1980.

37. In a record of his conversation with the Controller, which Mr Berthelsen said he had prepared immediately after the meeting (and subsequently made as a Statutory Declaration), he claimed that the Controller had informed him that if he had not found a suitable position within the allotted time the Auditor-General's Office would request the Public Service Board to have him transferred out on the unattached list.

38. The evidence is quite contradictory and ambiguous as to what was said to Mr Berthelsen about the unattached list and in what context it was made. It is quite clear that Mr Berthelsen believed that he was threatened with being placed on the unattached list and that he believed that this course was a prelude to dismissal. His concern is reflected in the following remarks made by him to the Committee:

... the final rites are administered when you are put on the unattached list. The next step, if they cannot find a position for you elsewhere, is that you are out within six months. It is the natural progression when there is somebody there they want to get rid of. So the implications are pretty clear.

39. The Committee is not satisfied that any effort was made within the Auditor-General's Office to acquaint Mr Berthelsen of the precise provisions which would relate to alternative placement or to dispel any apprehension regarding such placement. Following Mr Berthelsen's unsuccessful attempts to obtain a position elsewhere, the Auditor-General's Office telephoned and later confirmed in writing its request for the Public Service Board's assistance in the placement elsewhere of Mr Berthelsen. Mr Berthelsen was informed of this action on 21 February 1980. On 3 April 1980 the Public Service Board was advised that 'the Auditor-General no longer wished to pursue the alternative placement of Mr Berthelsen'. On 10 April 1980 the Public Service Board advised the First Assistant Auditor-General by letter that in view of Mr Berthelsen's insistence on promotion it was not able to assist. Against the advice of an Assistant Commissioner of the Public Service Board, Mr P. Forster, a deliberate decision was made by the Auditor-General's Office not to inform Mr Berthelsen of the changed circumstances. The Auditor-General conceded that there was a 'failure not to notify him that we were not pursuing' his placement with the Public Service Board. He added that 'with the benefit of hindsight . . . I would agree that it would have been desirable'.

40. At the date of this Report Mr Berthelsen is still employed in the Auditor-General's Office. Whilst it is clear that the Auditor-General would prefer to see Mr Berthelsen located in another area of the Public Service, he informed the Committee that, if Mr Berthelsen 'could improve his work performance, confine himself to the task in hand and get a balance between what I regard as a duty as a public servant and his duty as a citizen I would have no real problems with him'.

Consideration of the issues

41. The first question which the Committee considered was: Did members of the Department of Defence individually or collectively attempt to intimidate Mr Berthelsen in respect of his evidence before the Subcommittee on Defence Matters?

42. Many issues were raised and on one only, namely the recovery of the security pass, does the Committee make a finding that the actions complained of by Mr Berthelsen were in no way improper nor could they constitute a breach of privilege.

43. Mr Berthelsen's allegations were varied and extremely detailed. In essence, he asserted that there was a clear and consistent pattern of conduct by the Department of Defence to intimidate him as the direct result of his appearances before, and submission of documents to, the Subcommittee on Defence Matters. This Committee is satisfied that Mr Berthelsen's original appearance before the Subcommittee on Defence Matters on 24 October 1978 did evoke a powerful response within the Department of Defence.

44. On the very day Mr Berthelsen gave evidence, a detailed report on his employment with the Department of Defence was called for; the Acting Defence Liaison Officer reported the details of Mr Berthelsen's evidence on 25 October and subsequently, the Senior Security Officer of the Department commented in his written report 'I feel that he [Berthelsen] won't be threatened easily'; the next day (26 October), Mr Berthelsen's credibility was attacked in the House by the Minister Assisting the Minister for Defence. Also on that day a senior officer in the Department of Defence prepared, at the Secretary's request, a draft letter to be sent to the Auditor-General by the Secretary: this draft stated, *inter alia*, that Mr Berthelsen's appearance before the Subcommittee on Defence Matters was 'grossly irregular'.

45. Five days later—on 1 November—the Secretary of the Department of Defence, Sir Arthur Tange, personally drafted what can only be described as a very strong letter to the Auditor-General (Mr Steele Craik). By 8 November it was clear that Sir Arthur Tange had sought a memorandum from Mr M. G. Cowie, Acting Deputy Secretary A of the Department of Defence, seeking an analysis of Mr Steele Craik's reply to Sir Arthur's letter and requesting advice as to 'further action'. In minutes dated 8 and 10 November 1978 to Sir Arthur Tange, Mr Cowie recommended, *inter alia*, that Mr Berthelsen's credibility be attacked as he was 'not a substantial witness'. There is little doubt that Mr Berthelsen's evidence had evoked keen interest at the highest level in one of the most powerful administrative structures within the Public Service. It is also clear that at that time, Sir Arthur Tange was universally regarded as the *doyen* of the Public Service in Australia and the impact of his personal intervention in the Berthelsen affair could hardly be overstated (notwithstanding a staunch defence of Mr Berthelsen by the Auditor-General (Mr Steele Craik) in his letter in reply to Sir Arthur on 6 November 1978).

46. By 21 November 1978, three divisions of the Department of Defence had prepared detailed analyses in response to Mr Berthelsen's evidence. Mr Berthelsen's evidence, it should be noted, was mainly based on material freely available to the public, which he had extracted from reports of the Auditor-General. True it was, that Mr Berthelsen had ventured personal observations in the course of his evidence. These contributions had been described by Sir Arthur Tange as 'pretentious comment' and 'dubious assertions'.

47. The Committee is satisfied that the publication of the article 'How Defence deals with its critics' in the *Laurie Oakes Report* dated 29 November 1978 (which as mentioned above contained verbatim extracts from Mr Cowie's minutes of 8 and 10 November 1978) was the direct result of deliberate leaks from within the Department of Defence itself. The publication of these minutes clearly revealed the thinking of those in the highest echelons of the Department of Defence. The Committee is unable to conclude whether the leaks were committed to further harm Mr Berthelsen or whether the perpetrator made the documents public because he or she did not approve

of the manner in which the Department of Defence was responding to Mr Berthelsen's appearance before the Subcommittee on Defence Matters.

48. The Committee notes that by 14 December 1978 the question of whether or not a breach of Parliamentary Privilege had occurred was being formally considered within the Department of Defence and a detailed memorandum on this question had been commissioned from, and prepared by, a senior officer within the Department.

49. On all the evidence before it the Committee is satisfied that a number of persons within the Department of Defence individually and collectively determined not only to rebut the evidence of Mr Berthelsen but to go further and if possible to silence him, to discredit him personally, and to deter him (and others similarly minded) from offering further evidence which was critical of the Department of Defence before the Subcommittee on Defence Matters, or indeed any other Parliamentary Committee.

50. This collective response within the Department was clearly an excessive reaction and, to that extent, improper. In fairness it should also be noted that in the judgment of the Committee, Mr Berthelsen by certain later actions in 1979—particularly his gratuitous and provocative reference to the Chiefs-of-Staff Committee Minute No. 31/1974—was to some extent the author of his own continuing misfortune.

51. On the evidence the Committee is unable to make a positive finding of breach of privilege *against any individual member of the Department of Defence*, past or present.

52. The words of the Law of Scotland are apposite—as against individuals within the Department of Defence the finding would have to be Not Proven. The Committee is not prepared to dismiss out of hand the allegation that there was a conspiracy against Mr Berthelsen—equally, because of the insufficiency of evidence, the Committee is not prepared to make a positive finding of Guilty of breach of Parliamentary Privilege against any officer (past or present) of the Department of Defence.

53. The second question considered by the Committee was: Did the Office of the Auditor-General discriminate against or intimidate Mr Berthelsen?

54. The Committee noted that the Auditor-General's Office had raised no objection to Mr Berthelsen's appearance before the Subcommittee on Defence Matters on 24 October 1978. After presenting the Office with a copy of his written submission, the Office recognised his right to appear before the Subcommittee as a private citizen. As previously observed, the Committee noted that the Auditor-General had defended Mr Berthelsen's position in a letter dated 6 November 1978 after the propriety of his action had been questioned by the then Secretary of the Department of Defence.

55. The Auditor-General's Office had also taken no action in respect of the submission by Mr Berthelsen of revised written answers to the Subcommittee, extracts of which had been improperly and prematurely published in the *Bulletin* of 24 April 1979.

56. Did the action taken by the Auditor-General following publicity surrounding Mr Berthelsen's reference to the secret Chiefs-of-Staff Committee Minute No. 31/1974 in his further letter to the Subcommittee of 2 October 1979 amount to discrimination and intimidation of him in his Public Service employment?

57. In considering this question the Committee has had to give careful consideration to the position of the Auditor-General. His is an extremely onerous position. He is responsible for audits of all Commonwealth Departments and authorities and for furnishing reports on those audits to the Parliament. Whilst he is given extensive powers under the Audit Act to enable him to carry out his responsibilities he is still dependent

to a large degree on the co-operation he receives from client departments and authorities. A number of witnesses from the Auditor-General's Office made it clear to the Committee that without these good relations, Departments, if they so wished, could effectively frustrate the operations of the Auditor-General.

58. Continuing publicity surrounding Mr Berthelsen and his submissions to the Subcommittee were, in the eyes of the Auditor-General, damaging his client relationship with the Department of Defence. The *Bulletin's* revelation of Mr Berthelsen's reference to the secret Chiefs-of-Staff Committee Minute No. 31/1974 was a cause of great concern to the Department of Defence. After this was drawn to the attention of the Auditor-General he was apprehensive that the relations of his Office with the Department of Defence might be seriously at risk. The Auditor-General felt the need to maintain good working relationships not only with the Department of Defence but with all client departments and authorities. This was the determining factor in his decision to seek Mr Berthelsen's transfer to a less sensitive area of the Public Service.

59. The Auditor-General had taken no objection to Mr Berthelsen having given evidence to the Subcommittee. However, the seemingly endless media publicity surrounding his later communications with the Subcommittee was of considerable concern to the Auditor-General. Had not Mr Berthelsen's confidential communication to the Committee on 2 October 1979 been illegally released to the Press the Committee believes that the Auditor-General would not have made a decision to seek Mr Berthelsen's transfer. In this respect the Committee is bound to observe that the action of the person or persons who released this communication to the Press is particularly reprehensible and clearly did Mr Berthelsen a great disservice.

What constitutes 'evidence'

60. The Subcommittee on Defence Matters forwarded to Mr Berthelsen a copy of the evidence of Sir Arthur Tange and Sir Anthony Synnot but did not invite comment. Mr Berthelsen responded by letter dated 2 October 1979. This letter and its attachment were not sought nor formally received as evidence. The Subcommittee had 'taken note' of the contents of his letter and this letter was the subject of correspondence by the Subcommittee on 20 December 1979. The Secretary, Attorney-General's Department has advised that 'the letter dated 2 October 1979 and its attachment did not partake of the character of 'evidence' within the meaning of the privilege in question'. If this opinion prevails, unauthorised release of the letter and its attachment did not, and could not, amount to a breach of parliamentary privilege. However, the unauthorised disclosure and publication of Mr Berthelsen's letter and its attachment dated 2 October 1979 is to be deplored.

61. There are two ways in which the word 'evidence' can be defined. One is the narrow technical definition as something which is formally 'received in evidence' by a court, Parliamentary Committee or tribunal and where the material and its author is immune from legal suit. The other is the broad definition of evidence as in common speech, that is, what a person says or writes of what he knows whether or not it is formally received.

62. This Committee is bound to apply the law of privilege to the technical definition of 'evidence' and future Parliamentary Committees would be well advised to keep this point in mind. Accordingly, informal correspondence—not admitted into evidence—should be avoided.

63. Pursuant to the terms of reference a question of considerable concern to the Committee was whether or not Mr Berthelsen was actually threatened with the option of

being placed on the unattached list. Mr Berthelsen claims that he was so threatened. Officers of the Auditor-General's Office deny having done so.

64. The Committee is satisfied that Mr Berthelsen became convinced that this action was contemplated and was concerned for his future in the Public Service. The Committee is not satisfied that a veiled reference to placement on the unattached list, or comments that may have been interpreted as such, was not made to Mr Berthelsen. That Mr Berthelsen could not be placed on the unattached list without his approval and the consent of the Public Service Board is, for all intents and purposes, irrelevant to the fact that an implication may have been established. The Committee observes that a significant number of the public servants who gave evidence to it were not familiar with their rights in respect of placement on the unattached list.

65. The Committee is satisfied that in the totality of the situation in the Auditor-General's Office Mr Berthelsen suffered disadvantage in respect of his career prospects in the Public Service. The Committee is of the opinion that this is not so much the direct result of his having given evidence to the Subcommittee on Defence Matters but rather because of a certain notoriety which has attached to Mr Berthelsen due principally to accumulating media publicity about his involvement with the Subcommittee and the effect that this might have on the relationship between the Auditor-General's Office and its clients.

66. Whilst the Committee is unable to conclude that there has been a breach of Parliamentary Privilege committed by any person, it is concerned at the position in which Mr Berthelsen finds himself. It invites the attention of the Public Service Board to the circumstances of this case and to the disadvantages faced by Mr Berthelsen as a consequence. It recommends that the Public Service Board should do all within its power to restore Mr Berthelsen's career prospects in the Public Service and to ensure that he suffers no further disadvantage as a consequence of the circumstances of this case.

Findings

67. (a) On the evidence available to it, the Committee is not satisfied that a breach of Parliamentary Privilege has been proved against any person.

(b) The Committee is satisfied, however, that Mr David E. Berthelsen has been disadvantaged in his career prospects in the Public Service, particularly because of accumulating media publicity about his involvement with the Subcommittee and the effect that this might have on the relationship between the Auditor-General's Office and its clients.

Recommendation

68. The Committee recommends that the attention of the Public Service Board be drawn to the circumstances of this case and that the Public Service Board should do all within its power to restore Mr Berthelsen's career prospects in the Public Service and to ensure that he suffers no further disadvantage as a result of this case.

Prospective witnesses before Parliamentary Committees

69. The Committee declares that it will deal most seriously with any matters which are referred to it involving tampering, intimidation, discrimination or threats thereof, involving witnesses or prospective witnesses before Committees of the Parliament.

70. The Committee is concerned at the possibility that future witnesses might be deterred from appearing before Committees of the Parliament for fear that action may be taken against them for so doing. The Parliament has a clear responsibility to monitor executive administration closely. It does so to a large extent through its committees whose activities depend largely on the availability and willingness of competent witnesses to appear before them. If the Parliament fails to provide the protection to which these witnesses and prospective witnesses are entitled, the effectiveness of the Committees, and through them, the Parliament and the nation, will suffer. The Committee of Privileges is determined that this should not happen.

71. The Committee believes that the Parliament should consider the enactment of a Parliamentary Witnesses Protection Act which would both provide for the prosecution of persons who tamper with, intimidate or discriminate against witnesses who give (or have given) evidence before a Parliamentary Committee or the House; and also provide a statutory cause of action in which witnesses who have suffered intimidation or discrimination would have the right to sue for damages those responsible for the said intimidation and/or discrimination. In respect to actions against such persons, their Departments may also be joined as Defendants and may also be vicariously liable to compensate by way of damages the witness so intimidated and/or discriminated against.

72. It has also been pointed out that there is no mechanism by which breach of privilege can be referred for examination when the Parliament is not sitting and the particular circumstances of a case may require some urgent action to be taken. Consideration should be given to conferring power on the Speaker to make an interim referral of an issue to the Committee of Privileges, such action to be referred to the House for its approval at the first opportunity.

D. M. CAMERON
Chairman

10 September 1980

MINUTES OF PROCEEDINGS OF THE COMMITTEE OF PRIVILEGES

(Note: Sections of the Minutes of Proceedings relating to an inquiry upon which the Committee reported to the House of Representatives on 9 September 1980 have been omitted)

COMMITTEE OF PRIVILEGES
MINUTES OF PROCEEDINGS
PARLIAMENT HOUSE, CANBERRA
THURSDAY, 15 MAY 1980
(31st Parliament—14th Meeting)

Present:

	Mr D.M. Cameron (<i>Chairman</i>)	
Mr Hodgman		Mr Jarman
Mr Holding		Mr Yates
Mr Jacobi		

Reference to Committee

The extracts from the Votes and Proceedings indicated were reported, as follows:

- (a) No. 167—23 April 1980—recording that the following matter be referred to the Committee of Privileges: The alleged discrimination and intimidation of Mr David Berthelsen in his public service employment because of evidence given by him to a subcommittee of the Joint Committee on Foreign Affairs and Defence.
- (b) No. 168—29 April 1980—recording a resolution granting the Committee power to send for persons, papers and records when considering the matter referred to it on 23 April 1980.
- (c) No. 170—1 May 1980—recording that, during consideration of the matter referred to the committee on 23 April 1980, Mr Scholes be discharged from attendance and Mr Holding be appointed to serve in his place.

The Minutes of Proceedings of the meeting held on 20 March 1980 were confirmed.

The Chairman presented copies of material lodged by Mr Fry in raising the matter of privilege in the House of Representatives on 23 April 1980.

Resolved: On the motion of Mr Yates—That the Clerk of the House of Representatives be requested to submit a Memorandum upon the questions of privilege involved in the matter referred to the Committee on 23 April 1980.

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 23 April 1980.

The Committee deliberated.

Resolved—On the motion of Mr Holding—That this Committee, having considered the reference to it by the House of Representatives on 23 April 1980 relating to the alleged discrimination and intimidation of a witness because of evidence given by him to a Joint Committee of the Parliament, and being cognisant of its responsibilities and duties to the House of Representatives to report to that House on an alleged breach of privilege of that House, resolves to proceed with its inquiry.

Resolved—On the motion of Mr Jacobi—That the Chairman of the Committee should write to the Chairman of the Joint Committee on Foreign Affairs and Defence requesting advice whether Mr David Berthelsen gave evidence to a subcommittee of the Joint Committee on Foreign Affairs and Defence, and, if so, on what dates and whether his evidence was given at public hearings or taken *in camera*.

The Committee again deliberated.

The Committee adjourned until Tuesday, 20 May 1980, at 8 p.m.

**COMMITTEE OF PRIVILEGES
MINUTES OF PROCEEDINGS
PARLIAMENT HOUSE, CANBERRA
TUESDAY, 20 MAY 1980
(31st Parliament—15th Meeting)**

Present:

Mr D. M. Cameron (*Chairman*)

Mr Bowen

Mr Holding

Mr C. R. Cameron

Mr Jarman

Mr Hodgman

Mr Yates

The Minutes of Proceedings of the meeting held on 15 May 1980 were confirmed.

The Chairman advised the Committee that he had received a letter dated 20 May 1980 from the Chairman, Joint Committee on Foreign Affairs and Defence, advising that Mr David E. Berthelsen gave evidence to the Subcommittee on Defence Matters of the Joint Committee on Foreign Affairs and Defence on 24 October 1978 in public hearing and on 30 November 1978 *in camera*.

The committee deliberated.

Mr Holding advised the Committee of his inability to attend proposed meetings of the Committee and of his belief that he should not participate in the inquiry unless he was able to be present at all meetings of the Committee at which evidence would be taken.

Mr Holding accordingly withdrew from the Committee.

Resolved: On the motion of Mr Hodgman—

That the Committee should meet on Monday, 9 June 1980 at 10.30 a.m., and, if necessary, on Tuesday 10, Wednesday 11 and Thursday 12 June 1980 for the purpose of taking evidence in respect of the matter referred to it on 23 April 1980.

Resolved: On the motion of Mr Hodgman—

That Mr David E. Berthelsen be requested to appear before the Committee at 10.30 a.m. on Monday, 9 June 1980.

Resolved: On the motion of Mr C. R. Cameron—

That the Chairman, in consultation with Mr Bowen and Mr Hodgman, should write to the appropriate Ministers advising them of the possibility that the Committee may require certain officers of the Auditor-General's Office, the Public Service Board and the Department of Defence to give evidence to it on Monday 9, Tuesday 10, Wednesday 11 and Thursday 12 June 1980 and to produce all departmental papers and records relating to Mr David E. Berthelsen and the subject matter of the Committee's inquiry.

The Committee adjourned until Monday, 9 June 1980 at 10.30 a.m.

COMMITTEE OF PRIVILEGES
MINUTES OF PROCEEDINGS
PARLIAMENT HOUSE, CANBERRA
MONDAY, 9 JUNE 1980
(31st Parliament—16th Meeting)

Present:

Mr D. M. Cameron (*Chairman*)

Mr Bowen	Mr B. O. Jones
Mr Hodgman	Mr L. R. Johnson
Mr Jacobi	Mr Millar
Mr Jarman	Mr Yates

The Minutes of Proceedings of the meeting held on 20 May 1980 were confirmed.

The Chairman presented an extract from Votes and Proceedings No. 176 dated 22 May 1980 recording the following changes in the membership of the Committee—

- (a) during consideration of matter referred to the committee on 23 April 1980—Mr B. O. Jones in the place of Mr Holding (appointed 1 May 1980), Mr Millar in the place of Mr Lucock and Mr L. R. Johnson in the place of Mr C. R. Cameron.
- (b) during consideration of matter referred to the committee on 11 September 1979—Mr Millar in the place of Mr Lucock and Mr L. R. Johnson in the place of Mr C. R. Cameron.

The Chairman informed the Committee that on 21 May 1980 letters had been sent to the Prime Minister, as Ministerial Head of the Audit Office and the Public Service Board and to the Minister for Defence, in accordance with the Committee's resolution of 20 May 1980.

Advice had been received of the availability of the officers and departmental papers and records if required.

The Committee deliberated.

Mr David Ernest Berthelsen was called, sworn and examined.

Mr Berthelsen presented the following papers:

Chronology of events relevant to allegations of Mr D. E. Berthelsen, together with twenty-four attachments.

The witness was further examined.

Mr Berthelsen presented fifteen additional papers relevant to his allegations, together with copies of:

- (a) proposed guidelines for official witnesses appearing before Parliamentary Committees, issued by the Prime Minister; and
- (b) Department of Defence Parliamentary Instruction No. 1/79 dated 23 October 1979 concerning guidelines for provision of information to Parliamentary and Party Committees and Members of Parliament, together with annexes A to E.

The witness was further examined.

The witness withdrew.

The Committee deliberated.

The Committee adjourned until tomorrow at 9.30 a.m.

COMMITTEE OF PRIVILEGES
MINUTES OF PROCEEDINGS
PARLIAMENT HOUSE, CANBERRA
TUESDAY, 10 June 1980
(31st Parliament—17th Meeting)

Present:

Mr D.M. Cameron (*Chairman*)

Mr Bowen
Mr Hodgman
Mr Jacobi
Mr Jarman

Mr B.O. Jones
Mr L.R. Johnson
Mr Millar
Mr Yates

The Minutes of Proceedings of the meeting held on 9 June 1980 were confirmed.

Resolved: On the motion of Mr Jacobi—

That the Auditor-General be requested to make available to the Committee for its examination, all departmental papers and records relating to Mr David E. Berthelsen and the subject matter of the Committee's inquiry.

Resolved: On the motion of Mr Jacobi—

That the Secretary, Department of Defence, be requested to make available to the Committee for its examination, the following departmental papers relating to Mr David E. Berthelsen and the subject matter of the Committee's inquiry—

A letter dated 1 November 1978 to the Auditor-General from the Secretary, Department of Defence.

Minutes dated 8 and 10 November 1978 from the Acting Secretary A to the Secretary, Department of Defence.

Resolved: On the motion of Mr Hodgman—

That the Committee receive as evidence, the papers supplied by Mr K.L. Fry, M.P., to Mr Speaker on 23 April 1980 when raising the matter of privilege in respect of Mr David E. Berthelsen.

Mr David E. Berthelsen was recalled and further examined.

Mr Berthelsen presented the following paper:

Career résumé of Mr D. Berthelsen.

The witness withdrew.

The Committee deliberated.

Mr Harald Eberhard Korte, Assistant Auditor-General, was called, sworn and examined.

Mr Korte presented the following papers:

Auditor-General's Office File M80/125 relating to Mr D.E. Berthelsen's submission to the Defence Subcommittee of the Joint Committee on Foreign Affairs and Defence.

Staff assessments, interview reports and associated documents relating to Mr D.E. Berthelsen's career in the Audit Office.

The witness withdrew.

Mr Peter Forster, Assistant Commissioner, Public Service Board, was called, sworn and examined.

Mr Forster presented the following paper:

Public Service Board File No. 80/3302 relating to Mr D.E. Berthelsen, Auditor-General's Office—Request for assistance with placement.

The witness withdrew.

The Committee again deliberated.

The Chairman presented the following papers received from The Secretary, Department of Defence—

A letter dated 1 November 1978 to the Auditor-General from the Secretary, Department of Defence.

Minutes dated 8 and 10 November 1978 from the Acting Deputy Secretary A to the Secretary, Department of Defence.

The Committee again deliberated.

Resolved: On the motion of Mr Bowen—

That the Secretary, Department of Defence, be requested to make available to the Committee for examination a copy of an internal minute from the chiefs-of-staffs committee numbered 31/1974.

Resolved: On the motion of Mr Jacobi—

That the Secretary, Department of Defence, be requested to make available to the Committee for examination all departmental papers and records held by the Department of Defence relating to Mr David E. Berthelsen and the subject matter of the Committee's inquiry.

Resolved: On the motion of Mr Jarman—

That the following officers of the Auditor-General's Office be requested to appear before the Committee to present oral evidence tomorrow:

Mr A.A. Taylor, Mr H.E. Korte, Mr B. Farrow and Mr M. Harris.

Resolved: On the motion of Mr Millar—

That Mr P. Forster of the Public Service Board be requested to appear before the Committee to present oral evidence tomorrow.

Resolved: On the motion of Mr Hodgman—

That Mr A.C. Rosier, who on 25 October 1978, was senior security officer, Defence Security Branch, Russell Offices, be requested to appear before the Committee to present oral evidence tomorrow.

Resolved: On the motion of Mr Hodgman—

That the Clerk to the Committee write to the Clerk to the Joint Committee on Foreign Affairs and Defence seeking information in relation to written answers to questions supplied by Mr Berthelsen on 30 November 1978 and 4 April 1979 to the Subcommittee on Defence Matters.

The Committee adjourned until tomorrow at 9.30 a.m.

COMMITTEE OF PRIVILEGES
MINUTES OF PROCEEDINGS
PARLIAMENT HOUSE, CANBERRA
WEDNESDAY, 11 JUNE 1980
(31st Parliament—18th Meeting)

Present:

Mr D. M. Cameron (*Chairman*)

Mr Bowen
Mr Hodgman
Mr Jacobi
Mr Jarman

Mr B. O. Jones
Mr L. R. Johnson
Mr Millar
Mr Yates

The Minutes of Proceedings of the meeting held on 10 June 1980 were confirmed.

The Committee deliberated.

Mr Alan Armstrong Taylor, First Assistant Auditor-General, Auditor-General's Office, was called, sworn and examined.

The witness withdrew.

Mr Bruce Harrington Farrow, Controller, Policy, Planning and Management Branch, Auditor-General's Office, was called, sworn and examined.

The witness withdrew.

Mr Peter Forster, Assistant Commissioner, Public Service Board was recalled and further examined.

The witness withdrew.

Mr Granville Allen Mawer, Chief Executive Officer, Policy Secretariat, Department of Defence, was called, made an affirmation and was examined.

Mr Mawer presented the following papers:

Department of Defence—Departmental papers and records relating to Mr David E. Berthelsen and the subject matter of the Committee's inquiry; and
Chiefs of Staff Committee Minute No. 31/1974 (excised copy).

Resolved: On the motion of Mr Bowen—

That the Secretary, Department of Defence, be requested to arrange for Mr J. J. Sewell, Assistant Secretary, Computer Support Division, Department of Defence, to appear before the Committee at 8 p.m. today.

The witness withdrew.

Mr Harald Eberhard Korte was recalled and further examined.

The witness withdrew.

Mr Michael James Harris, Chief Executive Officer, A.D.P. (Research and Development) Section, Auditor-General's Office was called, sworn and examined.

The witness withdrew.

Mr Alan Charles Rosier, Chief Security Adviser, Office of Industrial Security, Department of Defence was called, sworn and examined.

Mr Rosier presented the following paper:

Department of Defence—Declaration of Secrecy—Form XP 101.

Resolved: On the motion of Mr Hodgman—

That submission ISC76/1053 dated 15 November 1979 of Mr A. C. Rosier, to the Secretary, Department of Defence, and the accompanying statement concerning allegations of intimidation by Mr D. E. Berthelsen, be received as evidence.

Mr Rosier thereupon presented the submission and accompanying statement.

The witness withdrew.

The Chairman informed the Committee that Mr J. J. Sewell was on long service leave overseas and was not available to appear before it today.

The Committee deliberated.

Resolved: On the motion of Mr L. R. Johnson—

That Mr D. R. Steele Craik, C.B., O.B.E., Auditor-General, be requested to appear before the Committee on Monday, 11 August 1980 at 11 a.m.

Resolved: On the motion of Mr L. R. Johnson—

That Sir Arthur Tange, A.C., C.B.E., former Secretary, Department of Defence, be requested to appear before the Committee on Monday, 11 August 1980, at 2.15 p.m.

Resolved: On the motion of Mr Hodgman—

That the Clerk to the Committee write to the Secretary, Attorney-General's Department, seeking advice as to whether the following documents should be regarded as evidence taken by, or documents presented to the Joint Committee on Foreign Affairs and Defence, as provided for in Senate Standing Order 308:

Written answers supplied by Mr D. E. Berthelsen on 30 November 1978 to the Subcommittee on Defence Matters in response to written questions directed to him on 24 October 1978.

Revised written answers to the same questions supplied by Mr D. E. Berthelsen to the Subcommittee on 4 April 1979.

A letter from Mr D. E. Berthelsen to the Chairman, Subcommittee on Defence Matters, dated 2 October 1979, and an accompanying attachment, relating to evidence given before the Subcommittee by Sir Arthur Tange and Sir Anthony Synnot on 25 July 1979.

The Committee adjourned until Monday, 11 August 1980 at 10.30 a.m.

**COMMITTEE OF PRIVILEGES
MINUTES OF PROCEEDINGS
PARLIAMENT HOUSE, CANBERRA
MONDAY, 11 AUGUST 1980
(31st Parliament—19th Meeting)**

Present:

Mr D. M. Cameron (*Chairman*)

Mr Bowen

Mr B. O. Jones

Mr Hodgman

Mr Millar

Mr Jacobi

Mr Yates

The Minutes of Proceedings of the meeting held on 11 June 1980 were confirmed.

The Chairman advised that Sir Arthur Tange, A.C., C.B.E., was overseas and was not available to appear before the committee at the present time.

The Chairman presented the following papers received from The Secretary, Department of Defence:

Department of Defence—

File 310/95532 relating to Mr D. E. Berthelsen—Papers from file DCS 342/8/598(1) relating to Mr D. E. Berthelsen's employment in Defence Communications System Division.

The Chairman informed the Committee that advice was requested from the Secretary, Attorney-General's Department, on 19 June 1980 in accordance with the Committee's resolution of 11 June 1980, but had not yet been received.

The Chairman presented the following papers:

Copy of a letter dated 29 April 1979 from Mr David E. Berthelsen to the Acting Secretary, Subcommittee on Defence Matters.

Letter dated 10 August 1980 from Mr David E. Berthelsen to the Chairman, Committee of Privileges, together with an attachment entitled 'A review of the Subcommittee on Defence Matters Inquiry'.

Resolved: On the motion of Mr Yates—

That Mr Berthelsen's letter of 29 April 1979, and the letter of 10 August 1980 with its attachment, be received as evidence.

The Committee deliberated.

Mr Duncan Robert Steele Craik, Auditor-General of the Commonwealth, was called, sworn and examined.

The witness withdrew.

The Committee deliberated.

Resolved: On the motion of Mr Hodgman—

That Mr D. E. Berthelsen be invited to give further evidence to the Committee at 9.45 a.m. tomorrow.

The Committee further deliberated.

The Committee adjourned until tomorrow at 9.30 a.m.

**COMMITTEE OF PRIVILEGES
MINUTES OF PROCEEDINGS
PARLIAMENT HOUSE, CANBERRA
TUESDAY, 12 AUGUST 1980
(31st Parliament—20th Meeting)**

Present:

Mr D. M. Cameron (*Chairman*)

Mr Bowen
Mr Hodgman
Mr Jacobi

Mr B. O. Jones*
Mr Millar
Mr Yates

* Present during consideration of matter referred to the Committee on 23 April 1980 only.

The Minutes of Proceedings of the meeting held on 11 August 1980 were confirmed.

The Chairman informed the Committee that the advice requested from The Secretary, Attorney-General's Department, was not yet available.

Mr David E. Berthelsen was recalled and further examined.

The witness withdrew.

The Committee deliberated.

Resolved:—On the motion of Mr Yates—

That the Chairman and the Clerk be empowered to make necessary arrangements to have Mr J. Sewell appear before the Committee on Monday, 1 September 1980 at 9.45 a.m., and Sir Arthur Tange, A.C., C.B.E., at 10.45 a.m. on the same day.

The Committee deliberated.

The Committee adjourned until Monday, 1 September 1980 at 9.30 a.m. unless earlier called together at the request of the Chairman.

**COMMITTEE OF PRIVILEGES
MINUTES OF PROCEEDINGS
PARLIAMENT HOUSE, CANBERRA
TUESDAY, 26 AUGUST 1980
(31st Parliament—21st Meeting)**

Present:

Mr D.M. Cameron (*Chairman*)

Mr Bowen
Mr Hodgman
Mr Jacobi
Mr Jarman

Mr L. R. Johnson
Mr B. O. Jones
Mr Millar
Mr Yates

The Chairman informed the Committee of the circumstances which had led him to call a meeting of the Committee today.

The Minutes of Proceedings of the meeting held on 12 August 1980 were confirmed.

The Chairman presented the following papers:

Opinion dated 14 August 1980 from The Secretary, Attorney-General's Department, Canberra, concerning certain of Mr Berthelsen's communications to the Subcommittee on Defence Matters.

Letter dated 13 August 1980 from Mr. D. Steele Craik responding to questions directed to him.

Letter dated 14 August 1980 from The Secretary, Public Service Board, Canberra relating to the unattached list of the Public Service.

Resolved: On the motion of Mr Jacobi—

That the three papers be received as evidence presented to the Committee.

Sir Arthur Harold Tange, A.C., C.B.E., was called, sworn and examined.

The witness withdrew.

The Committee deliberated.

The Committee adjourned until Monday, 1 September 1980 at a time to be determined.

**COMMITTEE OF PRIVILEGES
MINUTES OF PROCEEDINGS
PARLIAMENT HOUSE, CANBERRA
MONDAY, 1 SEPTEMBER 1980
(31st Parliament—22nd Meeting)**

Present:

Mr D. M. Cameron (*Chairman*)

Mr Bowen
Mr Hodgman
Mr Jacobi
Mr Jarman

Mr L. R. Johnson
Mr B. O. Jones*
Mr Millar
Mr Yates

* Present during consideration of matter referred to the Committee on 23 April 1980 only.

The Minutes of Proceedings of the meeting held on 26 August 1980 were confirmed.

Allegations of Discrimination and Intimidation

The Committee proceeding to resume its inquiry into the matter referred to it on 23 April 1980, Mr B. O. Jones took his place on the Committee.

The Chairman presented the following paper received from the Secretary, Department of Defence:

Department of Defence—File PC 110 5 873—Joint Committee on Foreign Affairs and Defence—Sub-Committee on Defence Matters—Reference on Defence Procurement—Allegations of intimidation of witnesses by Department of Defence Officers.

Resolved: On the motion of Mr Jacobi—

That the papers contained in the file be received as evidence.

Mr John Sewell, Assistant Secretary, Computer Services Division, Department of Defence, was called, sworn and examined.

Mr Sewell presented handwritten notes prepared by him concerning an A.B.C. radio broadcast in respect of material reportedly forwarded to the Subcommittee on Defence Matters by Mr D. E. Berthelsen.

Resolved: On the motion of Mr Jarman—

That Mr Sewell's handwritten notes be received as evidence.

The witness withdrew.

The Committee deliberated.

The Committee adjourned until Monday, 8 September 1980 at 9 a.m.

**COMMITTEE OF PRIVILEGES
MINUTES OF PROCEEDINGS
PARLIAMENT HOUSE—CANBERRA
MONDAY, 8 SEPTEMBER 1980
(31st Parliament—23rd Meeting)**

Present:

Mr D. M. Cameron (*Chairman*)

Mr Bowen
Mr Jacobi
Mr Jarman

Mr L. R. Johnson
Mr B. O. Jones
Mr Millar

The Minutes of Proceedings of the meeting held on 1 September 1980 were confirmed.

The Chairman submitted his Draft Report on the alleged discrimination and intimidation of Mr David E. Berthelsen.

Paragraphs 1 to 4 agreed to.

Paragraph 5 amended and agreed to.

Paragraphs 6 to 11 agreed to.

Paragraph 12 amended and agreed to.

Paragraphs 13 and 14 agreed to.

Paragraph 15 amended and agreed to.

Paragraph 16 agreed to.

Paragraph 17 amended and agreed to.

Paragraph 18 agreed to.

Paragraph 19 amended and agreed to.

Paragraph 20 amended and agreed to.

Paragraph 21 amended and agreed to.

Paragraph 22 amended and agreed to.

Paragraph 23 amended and agreed to.

Paragraph 24 amended and agreed to.

Paragraph 25 amended and agreed to.

Paragraph 26 agreed to.

Paragraph 27 amended and agreed to.

Paragraph 28 agreed to.

Paragraph 29 debated and postponed.

Paragraph 30 amended and agreed to.

Paragraph 31 agreed to.

Paragraph 32 amended and agreed to.

Paragraph 33 amended and agreed to.

Paragraphs 34 to 37 agreed to.

Paragraph 38 omitted.

Suspension of meeting: At 1.10 p.m. the meeting was suspended.

Resumption of meeting: At 7.30 p.m. the meeting was resumed.

Paragraph 39 amended and agreed to.

Paragraph 40 amended and agreed to.

Paragraph 41 omitted.

Paragraph 42 amended and agreed to.

Paragraph 43 omitted.

Paragraph 44 amended and agreed to.
Paragraph 45 amended and agreed to.
Paragraph 46 amended and agreed to.
Paragraph 47 amended and agreed to.
Paragraph 48 postponed.
Paragraph 49 amended and agreed to.
Paragraph 50 amended and agreed to.
Paragraph 51 amended and agreed to.
Paragraph 52 amended and agreed to.
Paragraph 53 agreed to.

The Committee adjourned until tomorrow at 8.30 a.m.

COMMITTEE OF PRIVILEGES
MINUTES OF PROCEEDINGS
PARLIAMENT HOUSE, CANBERRA
TUESDAY, 9 SEPTEMBER 1980
(31st Parliament—24th Meeting)

Present:

Mr D. M. Cameron (*Chairman*)

Mr Bowen
Mr Hodgman
Mr Jacobi
Mr Jarman

Mr L. R. Johnson
Mr B. O. Jones
Mr Millar

The Committee resumed consideration of the Draft Report on the alleged discrimination and intimidation of Mr David E. Berthelsen.

Paragraph 54 amended and agreed to.

Paragraph 55 agreed to.

Paragraph 56 amended and agreed to.

Paragraph 57 amended and agreed to.

Paragraph 58 amended and agreed to.

Paragraph 59 amended and agreed to.

New paragraphs 46A, 46B, 46C and 46D were, by leave, inserted.

Paragraph 44, by leave, further amended and agreed to.

Paragraph 45, by leave, further amended and agreed to.

Paragraph 46, as amended and previously agreed to, by leave, omitted.

Postponed paragraph 29 agreed to.

Paragraph 60 agreed to.

Paragraph 61 amended and agreed to.

Paragraph 62 amended and agreed to.

Paragraph 63 amended and agreed to.

Paragraph 64 amended and agreed to.

Paragraph 65 amended and agreed to.

Postponed paragraph 48 omitted.

Suspension of meeting: At 2.15 p.m. the meeting was suspended.

Resumption of meeting: At 8 p.m. the meeting was resumed.

The Chairman presented the following paper:

Letter from The Secretary, Attorney-General's Department, Canberra, dated 9 September 1980, to the Committee of Privileges, in response to a request from the Committee on 5 September 1980, for further advice in respect of the opinion of the Secretary, Attorney-General's Department, dated 14 August 1980.

Resolved: On the motion of Mr Jacobi—

That the letter from The Secretary, Attorney-General's Department, Canberra, dated 9 September 1980, be received as evidence presented to the Committee.

The Committee further considered the Draft Report on the alleged intimidation and discrimination of Mr David E. Berthelsen.

New paragraphs 45A, 45B, 45C, 45D, 45E, 45F and 45G, by leave, inserted.

New paragraphs 66 and 67, by leave, added.

Ordered: That, the Draft Report, as amended, be reprinted for consideration by the Committee at its next meeting.

Ordered: That the Memorandum prepared by the Clerk of the House of Representatives be included as part of the Committee's Report to the House.

The Minutes of Proceedings of the meeting held on 8 September 1980 were confirmed.

The Committee adjourned until a day 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, 10 SEPTEMBER 1980
(31st Parliament—25th Meeting)

Present:

Mr D. M. Cameron (*Chairman*)

Mr Bowen

Mr B. O. Jones

Mr Hodgman

Mr Millar

Mr Jacobi

Mr Yates

Mr L. R. Johnson

The Committee considered the reprinted Draft Report on the alleged discrimination and intimidation of Mr David E. Berthelsen.

Paragraph 44 amended and agreed to.

Paragraph 71 amended and agreed to.

Paragraph 72 omitted and new paragraph 72 added.

Draft Report, as amended, agreed to.

Resolved: On the motion of Mr B. O. Jones—

That the Draft Report, as amended, be the Report of the Committee to the House.

The Minutes of Proceedings of the meeting held on 9 September 1980 were confirmed.

The Committee adjourned *sine die*.

APPENDIX I

**MEMORANDUM BY THE CLERK OF THE HOUSE OF
REPRESENTATIVES**

**1980 HOUSE OF REPRESENTATIVES
COMMITTEE OF PRIVILEGES**

The alleged discrimination and intimidation of Mr David
Berthelsen in his public service employment because of
evidence given by him to a subcommittee of the Joint
Committee on Foreign Affairs and Defence

Notes prepared by the Clerk of the House of
Representatives

May 1980

CONTENTS

	<i>Page</i>
Extracts from the Votes and Proceedings	33
Constitutional provision—general character of privilege	35
Particular references in relation to matter before the Committee	36
Matters for determination by the Committee	38
The Committee of Privileges—Functions, proceedings etc.	41
Appendix I Extracts from <i>Hansard</i>	44

HOUSE OF REPRESENTATIVES COMMITTEE OF PRIVILEGES

Notes prepared by the Clerk of the House of Representatives

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 alleged discrimination and intimidation of Mr David Berthelsen in his public service employment because of evidence given by him to a subcommittee of the Joint Committee on Foreign Affairs and Defence.

Extracts from the Votes and Proceedings of the House of Representatives

No. 160 of Tuesday, 1 April 1980

- 4 PRIVILEGE: Mr Fry raised as a matter of privilege an allegation by a constituent that he had been discriminated against and intimidated in his employment in the Australian Public Service as a result of evidence given by him before a subcommittee of the Joint Committee on Foreign Affairs and Defence. Mr Fry produced documents relating to the alleged discrimination and intimidation.

Mr Speaker stated that he would examine the matter and announce whether a *prima facie* case of breach of privilege existed.

Privilege—Statement by Mr Speaker: Mr Speaker referred to the matter raised earlier this day by Mr Fry as a matter of privilege and stated that, from the information contained in the material produced, he was unable to conclude that a *prima facie* case of breach of privilege existed.

No. 167 of Wednesday, 23 April 1980

- 2 PRIVILEGE: Mr Fry rose on a matter of privilege and referred to a matter which he had first raised in the House on 1 April 1980 concerning alleged discrimination and intimidation in his employment in the Public Service of Mr David Berthelsen because of evidence given by him to a subcommittee of the Joint Committee on Foreign Affairs and Defence. Mr Fry presented additional documentary material relating to the matter which he asked Mr Speaker to consider.

Mr Speaker stated that he would consider the papers and report to the House.

- 34 PRIVILEGE—ALLEGED DISCRIMINATION AND INTIMIDATION OF WITNESS—REFERENCE TO COMMITTEE OR PRIVILEGES: Mr Speaker referred to the matter of privilege raised by Mr Fry earlier this day. Mr Speaker stated that, having considered the additional material submitted by Mr Fry, he was prepared to allow precedence to a motion by Mr Fry to refer the matter to the Committee of Privileges.

Mr Fry then moved—That the matter of the alleged discrimination and intimidation of Mr David Berthelsen in his public service employment because of evidence given by him to a subcommittee of the Joint Committee on Foreign Affairs and Defence, be referred to the Committee of Privileges.

Question—put and passed.

No. 168 of Tuesday, 29 April 1980

- 13 COMMITTEE OF PRIVILEGES: Mr Viner (Leader of the House), by leave, moved—That the Committee of Privileges, when considering the matter referred to it on 23 April 1980, have power to send for persons, papers and records.

Question—put and passed.

No. 170 of Thursday, 1 May 1980

- 12 COMMITTEE OF PRIVILEGES: Mr Viner (Leader of the House), by leave, moved—That, during the consideration of the matter referred to the Committee of Privileges on 23 April 1980, Mr Scholes be discharged from attendance on the committee and Mr Holding be appointed to serve in his place.

Question—put and passed.

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*, 19th edition.

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

House of Representatives Standing order 362

All witnesses examined before the House, or any committee thereof, are entitled to the protection of the House in respect of anything that may be said by them in their evidence.

Senate Standing order 390

All witnesses examined before the Senate, or any Committee thereof, are entitled to the protection of the Senate in respect of anything that may be said by them in their evidence.

The following references in *May* are relevant to this matter:

Obstructing witnesses

Arrest of witnesses

On 8 March 1688, the Commons resolved, "That it is the undoubted right of this House that all witnesses summoned to attend this House, or any committee appointed by it, have the privilege of this House in coming, staying and returning". Parties who arrest or procure the arrest on civil process of witnesses or other persons summoned to attend either House or any committee of either House while going to, attending, or returning from, such House or committee may be punished for contempt.

(*May* 19, p. 156)

Molestation of witnesses

It is a contempt to molest any persons attending either House or committees of either House as witnesses during their attendance in such House or committee.

The following are instances of this form of misconduct:

Assaults upon witnesses in the precincts of the House.

The use of threatening language to witnesses within the precincts of the House.

The use of insulting or abusive language to witnesses within the precincts of the House.

(*May* 19, pp. 156-7)

Tampering with witnesses

To tamper with a witness in regard to the evidence to be given before either House or any committee of either House or to endeavour, directly or indirectly, to deter or hinder any person from appearing or giving evidence is a breach of privilege.

A resolution to this effect was passed by the House of Commons on 21 February 1700, and has been regularly renewed in every succeeding session, and in numerous instances persons have been punished for offences of this kind.

Corruption or intimidation, though a usual, is not an essential ingredient in this offence. It is equally a breach of privilege to attempt by persuasion or solicitations of any kind to induce a witness not to attend, or to withhold evidence or to give false evidence.

This matter was considered in 1935 by a committee of the Commons who reported that, in their opinion, it was a breach of privilege to give any advice to a witness which took the form of pressure or of interference with his freedom to form and express his own opinions honestly in the light of all the facts known to him; and the House resolved that it agreed with the committee in their report (Report of the Select Committee on Witnesses, H.C. 84, p. vii (1934-35); C.J. (1934-35) 294).

(*May* 19, p. 157)

Acts tending directly to deter witnesses from giving evidence

Any conduct which is calculated to deter prospective witnesses from giving evidence before either House or before committees of either House is a breach of privilege. It is upon this principle that witnesses are protected from arrest, not only while going to or attending either House or committees of either House, but while returning from such House or committees.

(*May 19*, p. 157)

Molestation of witnesses on account of their attendance or testimony as witnesses

Upon the same principle any molestation of, or threats against, persons who have given evidence before either House or before committees of either House will be treated by the House concerned as a breach of privilege.

The following are instances of this kind of misconduct:

Assaulting persons for having given evidence before committees or on account of the evidence which they have given before committees.

Threatening persons with personal violence on account of the evidence which they have given before the House or committees.

Insulting and abusing a witness on account of the evidence which he has given before a committee.

Calling any person to account or passing a censure upon him, for evidence given by such person before the House or any committee thereof (Resolution of the Commons of 10 May 1733, C.J. (1732–37) 146).

Gaoler misusing prisoners in his custody in consequence of evidence given by them before committees.

In consequence of the proceedings in the case of the *Cambrian Railway Directors*, the *Witnesses (Public Inquiries) Protection Act 1892* was passed; under its provisions, persons who punish, damnify, or injure witnesses before committees of either House of Parliament on account of their evidence, unless such evidence was given in bad faith, are liable on conviction to be fined or imprisoned and ordered to pay the cost of the prosecution, as well as a sum by way of compensation to the injured persons.

(*May 19*, pp. 157–8)

Legal proceedings against witnesses

Both Houses will treat the bringing of legal proceedings against any person on account of any evidence which he may have given in the course of any proceedings in the House or before one of its committees as a breach of privilege.

The House of Commons resolved on 26 May 1818, “That all witnesses examined before this House, or any committee thereof, are entitled to the protection of this House in respect of anything that may be said by them in their evidence” (C.J. (1818) 389).

For instances in which persons have been committed or otherwise punished for bringing actions for slander in respect of evidence given before either House or before committees of either House, or for being concerned, as solicitors, in commencing or continuing such actions: (See cases cited.)

Moreover, the Courts will not entertain an action for slander based on statements made in evidence before a committee.

(*May 19*, p. 158)

MATTERS FOR DETERMINATION BY THE COMMITTEE

The matter referred to the Committee of Privileges, namely:

... the alleged discrimination and intimidation of Mr David Berthelsen in his public service employment because of evidence given by him to a subcommittee of the Joint Committee on Foreign Affairs and Defence

was raised as a matter of privilege in the House of Representatives on 1 April 1980 by the honourable Member for Fraser (Mr Fry). In doing so, Mr Fry informed the House that Mr Berthelsen alleged that he was being discriminated against and intimidated in his employment with the Commonwealth Public Service as a direct result of evidence he gave before the Joint Committee on Foreign Affairs and Defence. Mr Fry produced copies of a number of documents in support of his claim.

After considering these documents Mr Speaker later advised the House that from the information contained in the material he was unable to conclude that a prima facie case of breach of privilege existed.

In giving his decision Mr Speaker noted that on 19 March 1980 the honourable Member for Kennedy (Mr Katter), on behalf of the Joint Committee on Foreign Affairs and Defence, had made a statement to the House in relation to certain allegations of intimidation by the Department of Defence against a witness. Mr Speaker further noted that Mr Katter had informed the House that on the evidence available the subcommittee could not establish that such intimidation had taken place. Mr Speaker emphasised that on that occasion it had been an allegation of intimidation by the Department of Defence. The matter raised by Mr Fry concerned the Auditor-General's office.

On 23 April 1980 Mr Fry again raised the matter in the House. In doing so he provided additional documentary material which Mr Speaker undertook to consider. Later the same day, Mr Speaker advised the House as follows:

... I have examined this new material. The issue here raised impinges upon a fundamental principle of privilege i.e. freedom of witnesses before a committee of the Parliament. The claim is based upon a considerable volume of material and potential evidence. I have concluded that it would be proper for the Privileges Committee to examine the issue of principle raised against the facts to be elicited in this case for the future guidance of the Parliament and to determine whether any wrong has been done which amounts to a breach of privilege. Accordingly, if the honourable Member for Fraser wishes to move a motion to refer the matter to the Committee of Privileges, I am prepared to allow the motion to take precedence of other business.

Thereupon Mr Fry moved, and the House agreed, that the matter should be referred to the Committee of Privileges.

May makes it clear that 'to tamper with a witness in regard to the evidence to be given before either House or any committee of either House or to endeavour, directly or indirectly, to deter or hinder any person from appearing or giving evidence is a breach of privilege'. *May* goes on to say that 'any conduct which is calculated to deter prospective witnesses from giving evidence before either House or before committees of either House is a breach of privilege and that upon the same principle any molestation of, or threats against, persons who have given evidence before either House or before committees of either House will be treated by the House concerned as a breach of privilege'.

Before proceeding with its inquiry the Committee may wish to consider what are the privilege powers of a joint committee (such as the Joint Committee on Foreign Affairs and Defence) consisting of Senators and Members of the House of Representatives appointed by resolution of both Houses.

Section 49 of the Constitution provides for the powers, privileges and immunities of the Senate and of the House of Representatives and of the members of the committees of *each* House. It makes no reference to the powers, privileges and immunities of committees consisting of members of *both* Houses. On the other hand Section 50 of the Constitution provides that

Each House of the Parliament may make rules and orders with respect to—

- (i) The mode in which its powers, privileges, and immunities may be exercised and upheld;
- (ii) The order and conduct of its business and proceedings either *separately or jointly** with the other House.

It may be argued that *each* House having been granted the privileges of the House of Commons as at 1901 and the Constitution, in Section 50, having clearly contemplated that the Houses might act '*jointly* with the other House', the privileges granted should naturally apply to any *joint* action. This may have been the view taken by the House of Representatives Committee of Privileges when in 1973 it inquired into the premature publication in the *Sun* newspaper of the recommendations of the Joint Committee on Prices in its Report on the Stabilisation of Meat Prices (See PP. 217/73). The Report of the Committee of Privileges makes no reference to this aspect of the Committee's deliberations nor to any reservations the Committee may have had in relation to the privileges applying to the Joint Committee.

* Clerk's emphasis

On the other hand, Odgers in *Australian Senate Practice* (5th edition) (PP. 1976/1) at page 519 casts doubt on the privilege powers of joint committees:

Another objection to joint committees appointed by resolution of the Houses is that their privilege power is uncertain. For example, there is a doubt whether a joint committee may administer an oath to a witness.* Furthermore, Section 49 of the Constitution, which gives to the Houses and committees of each House the powers, privileges and immunities of the House of Commons does not refer to joint committees. Thus, if a witness before a joint committee refused to answer a question, gave false evidence, or behaved insultingly, the Houses may be ill-equipped to deal with the matter. Perhaps the penal power arising from joint committee proceedings may be exercised by joint resolution of the two Houses, but difficulties could arise when the Houses disagreed on the appropriate penalty.

* In 1941 the Joint Committee on War Expenditure raised the matter and the following opinion was given by the Solicitor-General:

Reference to Chapter XXII of the Standing Orders of the Senate and Chapter XXV of the Standing Orders of the House of Representatives makes it quite clear that a select committee may be empowered to send for persons, papers and records. If it is so empowered it may, in my opinion, summon witnesses to give evidence. I have not, however, been able to find any provisions in the Standing Orders authorising a select committee to administer an oath to a witness.

Provision is made by the *Parliamentary Witnesses' Oaths Act* 1871 of Great Britain empowering any Committee of the House of Commons to administer an oath to the witnesses examined before the Committee. The question arises whether that power is one of the powers preserved to the Senate and the House of Representatives under section 49 of the Constitution.

The Act in question is intituled an Act for enabling the House of Commons and any Committee thereof to administer oaths to witnesses. Section 1 of the Act expressly empowers the House of Commons to administer an oath to the witnesses examined at the Bar of the House and empowers any Committee of the House to administer an oath to the witnesses examined before the Committee. In my opinion, therefore, the Act confers a substantive power on the House of Commons and its Committees and by virtue of section 49 of the Constitution that power is conferred on each House of the Commonwealth Parliament and on the Committees of each such House.

The Act does not, however, confer on Joint Committees of the Lords and Commons power to administer an oath. Even if the Act did confer such power it is very doubtful whether that power would be preserved under section 49 of the Constitution, as it is not a power of a Committee of the Commons.

Question 5 should, therefore, be answered as follows: 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.

This matter was also touched on in the *Report on Parliamentary Committees—Powers over and protection afforded to witnesses*, prepared by Attorney-General Greenwood and Solicitor-General Ellicott in 1972. (PP. 1972/168, pp. 12, 30)

As far as can be ascertained no authoritative opinion has ever been given on the privileges applying to joint committees. If the Committee of Privileges entertains any doubts on this matter it may wish to seek the advice of the Attorney-General's Department before proceeding with its inquiry.

As stated by Mr Speaker, the matter raised by Mr Fry touches upon an important principle involving the Parliament's increasing use of committees to assist it in its scrutiny of Executive functions. Parliament must have an unfettered right to seek and obtain information in the proper execution of its investigatory role. It must also be prepared to safeguard the position of witnesses or prospective witnesses before it or its committees.

The present case raises serious issues in respect of the witness concerned. If the allegations of discrimination and intimidation are found to be correct, the Committee has a responsibility to recommend that the House take action to remedy the situation. It must do so not only for the protection of the particular person involved but to secure the position of potential future witnesses and their willingness to assist committees of the Parliament.

In conducting its inquiry it would appear to be necessary for the Committee to establish formally that Mr Berthelsen had in fact, given evidence to a subcommittee of the Joint Committee on Foreign Affairs and Defence. A convenient means of ascertaining this fact would be for the Committee to invite Mr Katter as Chairman of that subcommittee to appear before it. Having so determined, the Committee might then consider calling Mr Berthelsen to provide it with the evidence which he claims amounts to discrimination and intimidation of him in his employment in the Public Service.

Should the Committee consider that Mr Berthelsen has established a case which needs to be answered it would seem necessary that officers of the Public Service should be called in order that the Committee can elicit the facts of the matter.

It should be noted that on 29 April the House of Representatives empowered the Committee to send for persons, papers and records during the course of this Inquiry. Accordingly, there is no impediment to the Committee calling desired witnesses. However, should it wish to call Senators or officers of the Senate who were responsible for administering the inquiry of the subcommittee of the Joint Committee on Foreign Affairs and Defence, the requirements of House of Representatives Standing Order 359 would need to be satisfied.

THE COMMITTEE OF PRIVILEGES: FUNCTIONS, PROCEEDINGS ETC.

Standing order

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

May 19th edn, pp. 644–5, deals 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 deliberation 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.

(H. of C. Journals 1947-48, p. 23)

* Clerk's emphasis

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.

(*May 19*, pp. 167-8)

(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 19*, 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

House of Representatives 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.

J. A. PETTIFER
Clerk of the House of
Representatives

May 1980

HANSARD EXTRACTS

Wednesday, 19 March 1980

JOINT COMMITTEE ON FOREIGN AFFAIRS AND DEFENCE

Report

Mr KATTER (Kennedy)—by leave—On 22 November 1979, the Joint Committee on Foreign Affairs and Defence tabled its report 'Australian Defence Procurement'. In the course of the investigations of the Sub-Committee on Defence Matters allegations were made to the Sub-committee that there had been intimidation by the Department of Defence of a prospective witness and a witness. The nature of the allegations was the subject of a separate hearing of the Sub-committee on Defence Matters. Subsequently, the Department of Defence was given an opportunity for those of its officers involved to reply to these allegations. The replies were forwarded by the Minister for Defence on 19 November 1979. The Sub-committee received conflicting views on whether intimidation of the prospective witness and the witness actually took place. It understands the apprehension of those public servants in regard to what they believe to have been intimidation. But it also appreciates the sensitivity of the Department of Defence to unfortunate Press publicity arising out of submissions placed before the Sub-committee. On the evidence available the Sub-committee cannot establish that such intimidation took place in relation to the Sub-committee's investigations. Therefore, the Committee and the Sub-committee believe that further pursuit of the matter is unlikely to lead to a definite conclusion. The Committee and the Sub-committee consider that it is essential that parliamentary committees should, at all times, have full access to all relevant evidence and that witnesses should have free access to committees to give evidence. However, this must be done within the accepted rules relating to the disclosure of classified or other restricted information.

Mr SCHOLES (Corio)—by leave—The matters on which the honourable member for Kennedy (Mr Katter) has just reported are matters which are of some concern to me and of some concern to members of the Joint Committee on Foreign Affairs and Defence. One of the witnesses based most of his claims of intimidation on matters which were not before the Committee and which has risen some considerable time before the Committee even considered the subject matter from which his complaints arose. That witness and another witness, Mr Berthelsen, both were, and are, of the very strong opinion that they were intimidated and are being discriminated against in matters relating to their employment because of activities which they undertook before a parliamentary committee. The truth or otherwise of these matters is not for me to establish and it is not possible for me to establish.

Certain factors, however, cannot be ignored by this Parliament if, in fact, parliamentary committees are to continue to have any form of effective inquiry capacity in areas of sensitivity where government and the Public Service is concerned. My understanding is—a statement was made before the Committee—that the evidence given by Mr Berthelsen whose case, I think, is the prime one at least in relation to the allegation of intimidation was derived from public sources. On the day following the giving of that evidence he was asked to sign security documents which he had previously signed. That cannot be taken as evidence of intimidation nor would it be possible for someone to establish a case on that basis. It is also a strange coincidence. But, subsequently to that, Mr Berthelsen has been subjected to a number of activities which may or may not derive from his appearance before the committee. These activities do threaten his

future employment as an officer of the Auditor-General's Department which reports directly to this Parliament and which, as a consequence, threaten the ability of committees of this Parliament to conduct inquiries where evidence of public servants which may be contrary to the views of more senior members of the Public Service is required.

It is a matter of some seriousness and a matter which has not been resolved by this Committee because it was not possible—nor—and I say this advisedly—was there substantive evidence able to be produced that intimidation took place. There was, surrounding this matter, considerable newspaper publicity, the responsibility for which may rest with any of the parties involved. At least one allegation contained a matter of certain written documentation between an officer of one department and the head of another department. My understanding is that currently, Mr Berthelsen is on the transfer list or on a request for transfer list from his Department. There are difficulties in governments dealing with what it would see as persons who are unreliable in sensitive areas. I acknowledge this. But the Parliament also has the problem of determining whether it can protect those people who come before its committees and who give honest information which embarrasses persons who have total control over their future promotions and careers. It is a matter which I raise now because I think it is of real consequence to the future operation and capacities of parliamentary committees. This case has been closed, as I would see it, unsatisfactorily because it was impossible to reach a satisfactory resolution of it. It has not been to the Parliament's benefit that that has happened.

Mr KILLEN (Moreton—Minister for Defence)—by leave—When this matter was brought to my attention I, of course, investigated it. I was satisfied with the response that I got from the officers of the Department of Defence that no intimidation had occurred. Now the Chairman of the Sub-committee on Defence Matters has reported to the House that the Sub-Committee has been unable to find any evidence to substantiate the allegation. The person who made the charge has the whole of the onus on him to discharge. He cannot say: 'I make a charge and it is up to you to disprove it'. But this is not the occasion for dilating on the way parliamentary committees work. I hold very, very strong views as to the totally unsatisfactory way in which some parliamentary committees conduct their business. I think it is high time, if these committees are to proliferate and be active, that they take into consideration the means whereby those people who appear before them are adequately protected. I await the opportunity, when the report of my friend from Kennedy is being discussed, to expand on that.

I think that parliamentary committees which are involved in wide-ranging examinations and discussions should have attached to them a parliamentary counsel to examine and to cross-examine witnesses. I think that when records of some people who appear before parliamentary committees are revealed to the House honourable members will be astonished to think that they have been able to secure for themselves thoroughly unmerited reputations—before the Committee for a start and in the public arena. This is a very grave matter. I have always held to the view that it is the authority of this Parliament that counts and not a committee outside. I am no admirer of the congressional system of government. That is the way in which I have been brought up. I admire the Westminster system of government, not the congressional system of government. I fear that both sides of this House are seeking to commingle the two. If the establishment of a committee system is desired, I implore those honourable members of goodwill to try to find ways and means of protecting those who appear before the committees and to protect also the reputation of the Parliament.

Mr HURFORD (Adelaide)—by leave—The Minister for Defence (Mr Killen) mentioned that he would have something more to say when the report of the Joint Committee on Foreign Affairs and Defence on 'Australian Defence Procurement' was

before this Parliament for debate. I make the request to him that he move, as he is the only Minister in the House capable—

Mr Killen—May I point out to the honourable member that a motion is before the House relating to the report of the Joint Committee on Foreign Affairs and Defence. I have to respond to that report and the debate will ensue.

Mr HURFORD—In view of those remarks I will not continue with my suggestion that a motion be proposed to the effect that the House take note of the report presented by the honourable member for Kennedy (Mr Katter). I would ask the Minister to think about that subject so that we may include the subject of this report in any consideration that occurs later in this House.

Mr SHIPTON (Higgins)—by leave—I am disappointed that the honourable member for Corio (Mr Scholes) felt that the matter had been closed unsatisfactorily. As I understand it, he was a member of the Joint Committee on Foreign Affairs and Defence and a part of the decision-making machinery which decided that in the statement it should be stated to the House that on the evidence available the sub-committee cannot establish that such intimidation took place in relation to the sub-committees's investigations. I feel that I should state to the House that members of the Opposition and members of the Government on the sub-committee and subsequently on the Joint Committee in fact approved of this statement that has been made today.

In relation to the comments by the honourable member for Corio on evidence on sensitive areas from Government officials to the Committee and to sub-committees I must say to the House that I am satisfied at the present time that we are getting adequate briefings in this area. Both the Middle East sub-committee and the Indo-China sub-committee I know have had confidential briefings from security agencies and I am not aware that information that has been requested is in fact being denied to the Joint Committee. *I thank the House for its indulgence.*

Mr SCHOLES (Corio)—Mr Deputy Speaker, I wish to make a personal explanation.

Mr DEPUTY SPEAKER (Mr Millar)—Does the honourable member claim to have been misrepresented?

Mr SCHOLES—Yes, in the interpretation by the honourable member for Higgins (Mr Shipton) of the remarks that I have made. The honourable member said that in saying the matter had been unsatisfactorily resolved I had indicated some dissatisfaction with the report. The fact is that something can be unsatisfactorily resolved without there being a capability of satisfactorily resolving the situation. I also point out that satisfaction as expressed by the honourable member for Higgins in respect of evidence coming before committees is, I think, limited to evidence from those people who are agreeing with and appearing with Government support. There is a quite different situation where a public servant seeks to give a contrary point of view.

Tuesday, 1 April 1980

Mr FRY (Fraser)—Mr Speaker, I wish to bring to your notice a question of privilege.

Mr SPEAKER—The honourable gentleman may proceed.

Mr FRY—I have been approached by a constituent, Mr David Berthelsen, with a complaint that he is being discriminated against and intimidated in his employment with the Commonwealth Public Service as a direct result of evidence he gave before the Joint Committee on Foreign Affairs and Defence. Mr Berthelsen has provided me with

copies of a number of documents which I believe may constitute a case of breach of privilege for a witness giving evidence before a committee of the Parliament. These documents include a statutory declaration and copies of correspondence between Mr Berthelsen and his employers, the Commonwealth Public Service. As I believe that this case has serious implications for the protection of Public Service witnesses appearing before parliamentary committees and for the freedom of committees to call such witnesses, it would be appreciated if you would examine these documents at your earliest convenience, Mr Speaker, and advise the House of your views.

Mr SPEAKER—I call upon the honourable gentleman to provide all the documents. Those documents will be taken by the Clerk. I will examine the matter and at the earliest opportunity announce whether I consider that there is a prima facie case of breach of privilege.

Mr SPEAKER—Earlier today the honourable member for Fraser (Mr Fry) raised as a matter of privilege the alleged discrimination and intimidation in his employment within the Auditor-General's office in the Public Service of Mr David Berthelsen. The matter is alleged to have arisen out of evidence given by Mr Berthelsen to a Sub-committee of the Joint Committee on Foreign Affairs and Defence in its inquiry into defence procurement. I have noted that on 19 March the honourable member for Kennedy (Mr Katter) on behalf of the Joint Committee on Foreign Affairs and Defence made a statement to the House in relation to certain allegations of intimidation by the Department of Defence against a witness. In that statement the honourable member informed the House that on the evidence available, the Sub-committee could not establish that such intimidation had taken place. I should emphasise that that was an allegation of intimidation by the Department of Defence.

In raising the matter today the honourable member for Fraser informed the House that Mr Berthelsen had complained that he was being discriminated against and intimidated in his present employment in the office of the Auditor-General. I have carefully examined the papers presented today. I am limited in my consideration to the material before me. It is not my role to become an investigator or to draw any conclusion except from the material before me. From the information contained in that material and what was said by the honourable member for Fraser, I am unable to conclude that a prima facie case of breach of privilege exists.

Wednesday, 23 April 1980

PRIVILEGE

Mr Fry (Fraser)—Mr Speaker, I would like to bring to your notice a matter of privilege.

Mr SPEAKER—The honourable gentleman may proceed.

Mr FRY—On 1 April, I raised a matter of privilege on behalf of Mr David Berthelsen, who claimed that he was being discriminated against and intimidated in his employment in the Public Service as a result of giving evidence before a Sub-Committee

of the Joint Committee on Foreign Affairs and Defence. On that occasion I submitted material to you. After consideration of that material you ruled that you were unable to conclude that a prima facie case of breach of privilege existed. Mr Speaker, I now submit further material, which I would like you to consider, to support Mr Berthelsen's claims. I believe that these documents indicate that certain actions have been taken against Mr Berthelsen for having criticised security arrangements in the Department of Defence in evidence given to the Sub-Committee. These documents also show, in my view, that officers of the Department of Defence and the Auditor-General's Department have collaborated in those actions in a way which constitutes a breach of the privilege which Mr Berthelsen considered he was entitled to in giving evidence before the Sub-Committee.

I also believe that Mr Berthelsen acted from the highest motivation and in the public interest in attempting to alert a committee of this Parliament to what he regarded as serious deficiencies in the security arrangements of the computer system of a government department which he became aware of in the course of his duties. The experience of Mr Berthelsen does, I believe, raise important questions of principle concerning the freedom of public servants to give evidence before committees of the Parliament and the freedom of those committees to call witnesses as well as the principles involved in the manner in which senior public servants should respond to criticism of their administration. I would appreciate your early consideration of this material.

Mr SPEAKER—The honourable gentleman will provide papers to the Clerk. I will consider them and announce my reaction to them later today.

Mr SPEAKER—This morning the honourable member for Fraser (Mr Fry) rose on a matter of privilege. He referred to a matter which he had first raised in the House on 1 April 1980 concerning the alleged discrimination and intimidation in his employment in the Public Service of Mr David Berthelsen because of evidence given by him to a subcommittee of the Joint Committee on Foreign Affairs and Defence. On that occasion I stated that, from the material placed before me, I was unable to conclude that a prima facie case of breach of privilege existed. The honourable member for Fraser this morning presented additional material which he asked me to consider in relation to the matter. I have examined this new material. The issue here raised impinges upon a fundamental principle of privilege, that is freedom of witnesses before a committee of the Parliament. The claim is based upon a considerable volume of material and potential evidence. I have concluded that it would be proper for the Privileges Committee to examine the issue of principle raised against the facts to be elicited in this case for the future guidance of the Parliament and to determine whether any wrong has been done which amounts to a breach of privilege. Accordingly, if the honourable member for Fraser wishes to move a motion to refer the matter to the Committee of Privileges, I am prepared to allow the motion to take precedence of other business.

Mr FRY (Fraser) (5.33)—In the light of your decision, Mr Speaker, I move:

That the matter of the alleged discrimination and intimidation of Mr David Berthelsen in his public service employment because of evidence given by him to a subcommittee of the Joint Committee on Foreign Affairs and Defence be referred to the Committee of Privileges.

Question resolved in the affirmative.

