

House of Representatives

Committee of Privileges

Report concerning unauthorised publication of material
concerning the Public Accounts Committee

MAY 1994

MEMBERS OF THE COMMITTEE

MR R W SAWFORD, MP (CHAIRMAN)

HON A S PEACOCK, MP (DEPUTY CHAIRMAN)

MR K J ANDREWS, MP

MR P R CLEELAND, MP

HON A C HOLDING, MP¹

HON L S LIEBERMAN, MP

MR P J McGAURAN, MP

HON M J R MACKELLAR, MP²

MR L B McLEAY, MP³

HON L R S PRICE, MP⁴

MR H V QUICK, MP⁵

MR A M SOMLYAY, MP⁶

1. Nominee of the Leader of the House
2. Nominee of the Deputy Leader of the Opposition until 18 February 1994
3. Mr McLeay has absented himself from consideration of this reference due to his membership on the Public Accounts Committee
4. Appointed by the House to serve in place of Mr Brown during consideration of matters referred on 28 October and 17 November
5. Appointed by the House to serve in place of Mr Simmons during consideration of matters referred on 28 October and 17 November
6. Nominee of the Deputy Leader of the Opposition from 24 February 1994

The complaint

1. On 27 October 1993 Mr L.J. Scott, MP, Chairman of the Joint Committee of Public Accounts raised as a matter of privilege articles in two newspapers, *The Australian* and *The Australian Financial Review*, and comments by Mr L. Oakes on a WIN Television evening news program on 25 October. The article in *The Australian* was published on 21 October and the articles in *The Australian Financial Review* were published on 21 and 25 October - see Attachment A. Mr Scott advised the House that the articles in the report in question appeared to reveal a knowledge of the contents of a draft report and/or deliberations of the Joint Committee of Public Accounts. Mr Scott informed the House that the Joint Committee had considered the matter at some length and was of the view that the publication of the material in question had caused substantial interference with the committee's work. No advice could be given as to the source of the disclosure - Attachment B.
2. On 28 October Mr Speaker advised the House that he was willing to allow precedence to a motion in respect of the matter, whereupon the following motion was moved and agreed to (see Attachment C):

That the matter of articles in *The Australian* of 21 October 1993, *The Australian Financial Review* of 21 and 25 October and comments by Mr L. Oakes on the WIN evening news of 25 October which appeared to reveal a knowledge of the contents of a draft report and/or deliberations of the Joint Committee of Public Accounts be referred to the Committee of Privileges.

Relevant law

3. Senate standing order 37 provides:

The evidence taken by a committee and documents presented to it which have not been reported to the Senate, shall not, unless authorised by the Senate or the committee, be disclosed to any person other than a member or officer of the committee.

4. *Australian Senate Practice* states:

The publication of a committee's report before its presentation to the Senate is unquestionably a breach of privilege. Unless authorised by the Senate or the committee, the rule relating to premature publication-also-prohibits-any deliberations of a committee and any proceedings of a committee being referred to or disclosed by Senators or others, or described in the press, before being reported to the Senate¹.

5. House of Representatives standing order 340 also prohibits the disclosure of publication of evidence taken by, documents presented to and proceedings and reports of committees have not been authorised. The practice of the Parliament is for joint committees to follow Senate committee procedures, subject to particular variations such as may be necessitated by the provisions of relevant legislation or resolutions². The unauthorised disclosure or

publication of evidence, papers or proceedings of a joint committee is thus an accepted category of offence³. Since 1987 it has been necessary for actions which may amount to a contempt to be assessed in terms of the provisions of section 4 of the *Parliamentary Privileges Act 1987* which provides:

Conduct (including the use of words) does not constitute an offence against a House unless it amounts, or is intended or likely to amount, to an improper interference with the free exercise by a House or committee of its authority or functions, or with the free performance by a Member of the Member's duties as a Member⁴.

Conduct of inquiry

6. The Committee received a memorandum from the Clerk of the House on the matter - see Attachment D. It sets out the basic constitutional and legislative provisions relevant to the complaint and summarises precedents.
7. The Committee invited the Chairman of the Joint Committee of Public Accounts to make a submission as to the facts concerning the distribution and consideration of the committee's draft report. The Chairman was asked what elements in the reports apparently revealed a knowledge of particular meetings. He was also invited to provide information or make comments as to the effect of the apparent disclosures on the work of the committee. The Committee wrote to other members of the Joint Committee of Public Accounts, and to the Secretary to the committee, asking each if he or she had any information that might assist the Committee and any views they would like to present to it - the terms of the letters are set out at Attachment E.

Evidence received

8. A detailed response was received from Chairman of the Joint Committee on 14 December 1993. Mr Scott's submission outlines steps taken by the secretariat to ensure the confidentiality of drafts of the committee's report. He also advised of the details of consideration of the draft report in question by the Sectional Committee in the 36th Parliament and in the present Parliament, and consideration by the full committee in the present Parliament. The letter went on to conclude by referring to the effect that the apparent disclosures had had on the work of the committee. It provided a good deal of detailed information for the Committee.
9. The letters received from committee members and the committee secretary did not enable the Committee of Privileges to identify the sources of the disclosure. Because of the terms of the responses from some members of the Joint Committee (which indicated a willingness to give evidence in person to the Committee) the Committee decided to invite three Members and one Senator to give oral evidence on the matter. In accordance with the practice previously followed by the Committee, the House was advised of the desire to receive evidence from Senator Parer, Vice Chairman of the Joint Committee of Public

Accounts⁵, and a formal request was subsequently transmitted by the House to the Senate⁶. On 17 December 1993 the Senate authorised Senator Parer to appear before the Committee should he think fit⁷. Messrs Scott, Taylor and Vaile gave evidence on 17 December 1993 and evidence was heard from Senator Parer on 24 February 1994. Witnesses were examined on oath or after having made an affirmation. In accordance with the practice of the Committee witnesses were advised the Committee did not receive hearsay evidence, it only wished to be informed of matters within the direct knowledge of witness themselves. Witnesses were allowed to be accompanied by an assistant or adviser during their evidence, and three witnesses took advantage of this.

10. While the evidence received by the Committee did not enable it to identify the source or sources of the disclosures, the evidence suggested that the contents of reports:

- in *The Australian* on 21 October revealed a knowledge of discussions which had taken place at private meetings of the sectional committee;
- in *The Australian Financial Review* of 21 October could have been a result of speculation based on publicly available material, although the author could have had access to or information about an earlier draft report;
- in *The Australian Financial Review* of 25 October in the article titled "Bishop Checked in Dissent Attempt" indicated that the author had a knowledge of discussions which had taken place at private meetings of the sectional committee;
- on the WIN evening news on 25 October revealed a knowledge of discussions which had taken place at private meetings of the sectional committee.

11. In their oral evidence Messrs Scott, Vaile and Taylor and Senator Parer spoke about the effect that actions in question had had on the work of the committee. Mr Scott stated:

".....at our very next meeting people were very guarded in what they were saying to the extent that there was quite a deal of hostility there. If people were not going to be able to have an open and frank discussion in a private committee meeting across political lines, they were very concerned at just how, effectively, due consideration could be given to a report if everything we were going to say in a private meeting were to be subject to public scrutiny by the media. it was widely expressed by members of the committee.*"⁸

On the issue of the final stages of the report consideration Mr Scott stated:

".....Now at this stage, with this taxation report which was before us at the time, we had all but finished our deliberations anyway. In my view, there would not be any changes that we have made as a result

of the media speculation. But what did concern us is the ongoing work of the committee, because this is only one report. With any other reports, or considerations of the committee at any stage, there is *always going to be this concern that people are going to run off and talk about things publicly, when we are just having a private discussion over issues.*⁹

Senator Parer, Vice Chairman of the Joint Committee, expressed his concerns as follows:

*'.....One of the bad things about it is that people start being suspicious of one another. Of course, as you said earlier, people start to suspect a particular person may or may not be right, and it creates an atmosphere which is not really conducive, particularly somewhere like the public accounts committee, which has had a long and excellent reputation as being a particularly bipartisan one.....'*¹⁰

In response to a later question as to what the atmosphere on the committee was like then (December), Mr Scott stated:

*'.....I think things have settled down—there is not much doubt about that—from the hostility that went on at this time. It does not have the same harmony as it had prior to these sorts of things happening. I do not think there is much question about that. People are concerned.....'*¹¹

Mr Scott spoke of attempts to put "all this behind us" etc., as the following exchange makes clear:

Mr Les Scott—.....I think we are committed to putting all this behind us and getting on with the interests of the committee.

Mr Price—Are you confident that you will succeed?

Mr Les Scott—Yes. There is certainly a willingness from the vice-chairman and myself for that to happen.¹²

12. Mr Scott emphasised that the matter was a very serious one from the Committee's point of view, stating:

'.....It is a very serious matter from the committee's point of view where, if a committee cannot operate in a bipartisan way, particularly a committee of the nature of the Joint Committee of Public Accounts, without being concerned that pressure is going to be on it, I think it really goes to how committees are going to operate.

I regret having to bring this before the privileges committee, but we did give it extremely serious consideration, and we felt that that was the only avenue left open to us. We particularly want to make the point that *this sort of behaviour should not be tolerated under any circumstances...*¹³

13. The Committee accepts that the Joint Committee of Public Accounts has a long and proven history of bipartisanship, it has been a committee on which

Members have taken very seriously the need for confidentiality. This Committee acknowledges the efforts made by members of the Joint Committee of Public Accounts to "put such matters behind them". Nevertheless, while it may be that the acts of disclosure and publication complained of will not be found to have had an ongoing damaging effect on the work of the committee, this does not excuse or justify the actions of the person or persons responsible.

Findings

14. The Committee finds that confidential deliberations of the sectional committee of the Public Accounts Committee have been disclosed without authorisation by a person or persons with access to the information. If such person or persons acted deliberately he or she (or they) were guilty of a serious breach of the prohibitions. The Committee takes a serious view of such actions which, as a predecessor committee has stated, display an offensive disregard for the committee itself and others associated with it, and ultimately a disregard for the rules and conventions of the Houses¹⁴. Unfortunately the Committee has been unable to ascertain the identity of the person or persons responsible on this occasion.
15. The Committee finds:
 - that the publication of the article in *The Australian* of 21 October ascribed to Mr George Megalogenis revealed a knowledge of discussions which took place at private meetings of the sectional committee, the publication of which had not been authorised;
 - that the references in the article in *The Australian Financial Review* of 25 October headed "Bishop Checked in Dissent Attempt" revealed a knowledge of discussions which had taken place at private meetings of the sectional committee, the publication of which had not been authorised;
 - that the references complained of on the WIN evening news of 25 October indicated a knowledge of discussions which had taken place at private meetings of the sectional committee the publication of which had not been authorised.
16. On the evidence available to it, the Committee is not able to make a finding in respect of the article in *The Australian Financial Review* of 21 October or on the article in *The Australian Financial Review* of 25 October headed "The Trouble with the Tax Office".

Recommendation

17. In light of its findings, the Committee is unable to make any recommendation on the particular matters complained of, although in the sections which follow it makes proposals for the consideration of the House in order, it would hope, to assist in any future cases.

Observations

18. The unauthorised disclosure of committee proceedings and sometimes draft reports is not an infrequent happening in the Commonwealth Parliament. It is of little consolation to note that such matters appear to occur in other Parliaments as well - indeed in 1985 the House of Commons Committee of Privileges conducted a thorough review of the issue and proposed the adoption of new procedures¹⁵.
19. While the Committee acknowledges that not all Members or observers share the view that the present rules should be maintained, the fact is that each House has prohibitions on the unauthorised disclosure of committee proceedings and evidence. As we see it the concerns are to ensure that:
- the ability of a particular committee to gather evidence, sometimes on sensitive matters, is not damaged;
 - the efforts made by a committee to reach agreement on a particular matter is not made more difficult by the premature disclosure of evidence, draft reports, or the detail of discussions. Such disclosure can, as well as destroying the trust that is desirable between members of a committee, expose committee members to representations and pressures additional to those arising in the course of the normal inquiry processes.

In addition, there have been concerns that continuing unauthorised disclosures can harm the committee system itself, for example, if it becomes clear that evidence or material presented to parliamentary committees may not be held in confidence witnesses and prospective witnesses may become more reluctant to participate in committee inquiries.

20. The Committee acknowledges the difficulty that can be faced in seeking to ascertain the sources of such disclosures. Those guilty are unlikely to identify themselves. Media representatives can be expected to claim that their professional code of ethics prevents them from revealing the identity of such sources, although it is important to recognise that neither House has accepted the existence of such professional rules or conventions as justifying the refusal to reveal sources. The Committee is concerned that while the present rules remain the House should be prepared to act against Members or others responsible for disclosure should they be identified - these are the person(s) most culpable in these matters, in our view. It is also important that where it is necessary to do so the Houses are willing to proceed against those who knowingly publish the material in question. The Houses have a range of penalty options available in the case of Members found to have committed a contempt, but they are not without remedy in respect of other persons. One option is the withdrawal of access to the building. A mechanism could be set in place under which, should it be established that a particular person or organisation has deliberately published such material and known that this was

against the relevant rules, the persons in question would have their Parliament House passes withdrawn for a specified period.

21. Although the Committee appreciates that it is likely that many media personnel *working in the building have some understanding of the rules in this area*, it considers that it would be desirable for a presentation to be offered to members of the Parliamentary Press Gallery to enable them to be briefed on procedural matters generally, and particularly on the position concerning the unauthorised disclosure of committee evidence and proceedings. It recommends that arrangements be made to hold such a briefing.
22. The Committee notes that since September 1990 successive Speakers have required committees from which there have been unauthorised disclosures to undertake some preliminary consideration of the issues. Speaker McLeay introduces these changes following the adoption of new procedures in the House of Commons, *after a thorough review by its Committee of Privileges of the subject of leaks from committees*¹⁶. On 7 May 1992 Speaker McLeay affirmed his thinking, spelling out the following steps:
- at the first opportunity after such a matter comes to light, the matter should be raised in the House - not in detail, but merely identifying the committee in question and the nature of the concern;
 - the Speaker would then indicate that the matter should be considered by the committee itself;
 - the committee in question would then need to consider whether there had been substantial interference with its work, with the committee system or with the functions of the House, and it should take whatever steps it can to ascertain the source;
 - should a committee conclude that substantial interference had occurred, a special report, which could be in the form of a statement, should be presented to the House - this should explain why the committee had *considered that substantial interference had occurred and it should outline the steps the committee had taken to ascertain the source.*¹⁷
23. ~~These procedures have been followed by Speaker Martin~~¹⁸, and we also note that similar views have been taken in the Senate¹⁹. We note however that, unlike the position in the House of Commons, the procedures in the House of Representatives have not been endorsed formally by the House.
24. In our view it is extremely important that the most thorough consideration be given to such matters by the particular committees involved. We acknowledge the difficulties faced by committees in such circumstances - unauthorised disclosures may occur at the very conclusion of an inquiry, relationships between members of a committee may be strained and it may be difficult to reach conclusions on such matters as the effect of unauthorised disclosure or

publication. Nevertheless, the problem, at source, is essentially one for the members of a committee and it is entirely appropriate that committees themselves undertake the most careful and thorough consideration of these matters. We also consider that if a committee feels that substantial interference has occurred and that a matter should be pursued a report in the normal manner (ie. a written report) would be more appropriate than a statement to the House. The Committee endorses the position taken by Speakers McLeay and Martin on these matters, although in the Committee's view, it would be advantageous to have specific procedures adopted by resolution of the House. A suggested form of words is attached at "Attachment F". The Committee recommends that consideration be given to formalising this requirement in terms such as those indicated.

ROD SAWFORD
Chairman

5 May 1994

NOTES

1. *Australian Senate Practice*, 6th edition, p. 1025.
2. Parliamentary Privilege, Resolutions agreed to by the Senate on 25 February 1988.
3. Op cit, section 6(16) - *Unauthorised disclosure of evidence etc.*
4. Act No. 21 of 1987.
5. House of Representatives, *Hansard*, 15 December 1993, p. 4081.
6. House of Representatives, *Votes and Proceedings*, No. 42 of Wednesday, 15 December 1993.
7. House of Representatives, *Votes and Proceedings*, No. 44 of Friday, 17 December 1993.
8. Transcript of evidence taken on Friday, 17 December 1993, p. 9.
9. Transcript of evidence taken on Friday, 17 December 1993, pp 9-10.
10. Transcript of evidence taken on Thursday, 24 February 1994, p. 26.
11. Transcript of evidence taken on Friday, 17 December 1993, p. 10.
12. Transcript of evidence taken on Friday, 17 December 1993, p. 11.
13. Transcript of evidence taken on Friday, 17 December 1993, p. 12.
14. House of Representatives Committee of Privileges report relating to Telecommunications Interception Committee - Parliamentary Paper No. 135, 1987, p. 11.
15. H.C. 555 (1984-85).
16. H.C. 555 (1984-85); May 21st edition, p. 124. The procedures in the House of Commons are not identical to those outlined by Speaker McLeay. In the House of Commons committees present written reports on these matters, and if they find that substantial interference has occurred, the matter stands referred to the Committee of Privileges.
17. House of Representatives, *Hansard*, 7 May 1992, p. 2661.
18. House of Representatives, *Hansard*, 28 October 1993, p. 2773.
19. Senate, *Hansard*, 2 March 1994, p. 1211; Senate Committee of Privileges, 20th Report, December 1989.

Libs reject Bishop attack on tax chief

By GEORGE MEGALOGENIS

HIGH-profile Liberal Senator Bronwyn Bishop has been rebuffed by Liberal members of the Public Accounts Committee, who have rejected her allegations against the former commissioner of taxation, Mr Trevor Boucher.

The committee's long-awaited report is understood to praise Mr Boucher's contribution in transforming the tax office from an inefficient paper-pushing department into a modern, professional organisation.

The tactfully worded reference is understood to have been insisted on by Labor and Liberal members who wanted to remove any hint of a slur on Mr Boucher's character following his much-publicised clashes with Senator Bishop in committee hearings last year.

"He did a good job... (the committee) didn't want any hint of a slur on his character that could be questioned down the track," a source said.

Although the report has not been completed, the joint committee is aiming to have it ready for tabling in federal Parliament next Thursday.

It is understood Senator Bishop wanted to include a reference to her accusations involving Mr Boucher in the report.

But she was warned by Liberal members to "lay off" or they would join with Labor members on the committee to "publicly disassociate" themselves from her claims.

Senator Bishop told *The Australian* yesterday she could not speak about what was in the report "because that would be in contempt of the Parliament".

"I can't believe that a fellow member of the committee would act to breach the contempt rule," she said.

A Liberal member of the committee, Mr Bill Taylor, said he rejected the claim that Senator Bishop had been rebuffed by Liberal members of the committee.

Mr Taylor acknowledged that the report contains a positive reference

to Mr Boucher, but stressed that he could not comment further.

"Mr Boucher's contribution in the tax field is recognised in a format that would be acceptable to all members of the committee," he said.

"(But) he and his replacement (Mr Michael Carmody) and all the tax office officials have got to face up to the report in many other areas."

Senator Bishop, who has made no secret of her ambition to lead the Liberal Party, raised her public profile last year with her claims that the tax office had become politicised under Mr Boucher's eight-year reign as tax commissioner.

Mr Boucher's final appearance before the committee last October degenerated into a shouting match between Senator Bishop and the then Labor committee chairman, Mr Gary Punch.

Mr Punch took issue with Senator Bishop's assertion of an elaborate conspiracy involving Mr Boucher's surprise announcement just a few days earlier that he would resign his position to take up a foreign posting.

Senator Bishop pressed Mr Boucher on the links between his resignation and the tax crackdown announced a month earlier by the Treasurer, Mr Dawkins, to raise an extra \$1.7 billion in revenue.

The Leader of the Opposition, Dr Hewson, commented only this week that much of Senator Bishop's reputation had been built on her cross-examination of public servants in committee hearings.

"I think a lot of people remember the exchange she had with the tax commissioner," Dr Hewson told the Nine Network's Sunday program.

"I think a lot of people have said they would like to have been able to do the same thing themselves - be in the chair and have a chance to cross-examine the tax commissioner."

Senator Bishop is seeking preselection for the northern Sydney beaches seat of Mackellar, which has been vacated by former Fraser Government minister Mr Jim Carlton.

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AUSTRALIAN 21/10/93

decision would impose an additional administrative burden on business, which would now have to set different rates of tax on... The concern of... of betrayal of... trails... But other cr...

PM may as

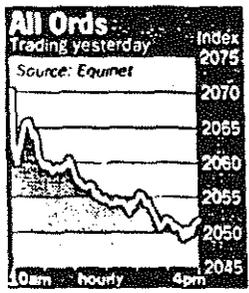


IN REVIEW 21/10/93

THE AUSTRALIAN

TAXPAYERS' RIGHTS

Thursday, October 21, 1993



Small fall not a worry: brokers

Prices fell in a second day of correction on the share market yesterday, with the All Ords dropping steadily to finish down 23.8 points to 2051.7. Most brokers saw the 1.1 per cent fall as a healthy response to the recent bull run. About \$410.5 million worth of shares were traded. The local market mainly followed the lead from overseas. *Markets, Page 28*

Indonesian reform
Indonesia will unveil a major economic reform package within a week aimed at maintaining economic growth and attracting more foreign investment.

Tax set for shake-up

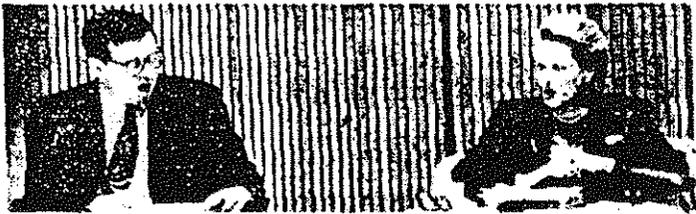
By MICHAEL DWYER

A tax ombudsman and a taxpayers' bill of rights should be established, according to a major report on the Australian Taxation Office being prepared by the powerful Public Accounts Committee.

The report of the federal parliamentary committee, after a two-year inquiry, is also expected to suggest the government speed up the planned simplification of the thousand-page Income Tax Assessment Act.

The report is also understood to make recommendations about the creation of privilege for registered tax practitioners similar to that between lawyers and their clients. The report is due to be released next week.

The committee's investigation represents the most thorough parliamentary examination of the sometimes controversial practices of the ATO.



TAXING TIMES: Mr Punch and Senator Bishop agree to disagree

Its hearings were sometimes volatile, most notably the public brawling between the previous chairman, Mr Punch, and Senator Bishop.

There was also a clash between Senator Bishop and the then Tax Commissioner, Mr Trevor Boucher, over alleged ATO persecution of Liberal politicians and over other alleged breaches of taxpayer privacy.

Other issues likely to be canvassed by the committee, now under the chairmanship of a Labor backbencher, Mr Les Scott, include the rulings system introduced by the ATO as part of its self-assessment regime.

The committee includes members of the House of Representatives and the Senate. It met last night to wrap up deliberations on the report.

This included a briefing by its independent consultant, Mr Peter Dowling, who is a partner of Ernst & Young.

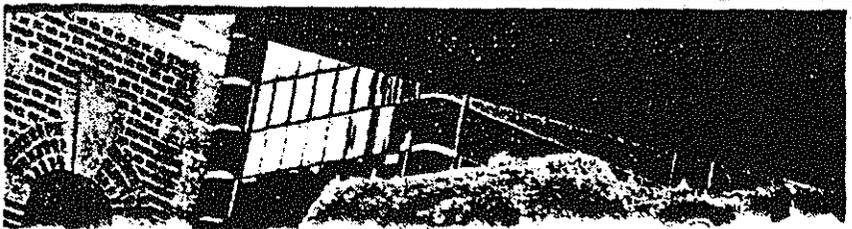
A draft taxpayers' bill of rights, prepared by the Taxation Institute of Australia, was one of the key submissions made to the committee.

Rights in the draft bill included that of taxpayers to a full explanation of the basis of any assessment imposing a tax liability; the right to obtain confidential advice from any recognised adviser; and the right to be represented at all times when dealing with the ATO.

The tax ombudsman would be an independent office to help resolve complaints by taxpayers against the ATO. It would be able to make findings and possibly determine compensation.

Any shake-up of the ATO from the committee's report may take into

Continued page 4



Big business performing

HOUSE OF REPRESENTATIVES RECORD
37th PARLIAMENT 2nd SESSION
27 OCT 1993
11/10/93
C183

not enabled to impose penalties on taxpayers if they paid no sales tax at all.

"If sales tax payers do not pay their September sales tax by October 21, the Commissioner of Taxation may not be able to impose any penalties to enforce payment," Mr Grant said.

The loophole in the law arises because the Budget legislation amending the Sales Tax Assessment Act effectively wipes clean any liability for tax at the rate of 20 per cent and imposes a new liability at the rate of 21 per cent.

If tax at the rate of 21 per cent has not been paid since Budget night, Section 68 of the act would normally impose a



RETROSPECTIVE TAX BLOCKED: Senator Harradine

late payment penalty of 16 per cent.

But Section 129 of the same act eliminates this penalty, provided the tax is paid within 28 days after the amending legislation receives royal assent.

According to Mr Grant, this means that companies with large scheduled sales tax payments due today can hold

over this money for a month with no threat of a penalty from the tax office.

The revelation of a major loophole in tax legislation came as the Federal Government yesterday wrapped up the majority of its outstanding tax package.

Legislation on the wine tax compromise deal, the fuel excise increase, and the

...the tax office cannot access.

The industrial action, initiated by the Public Sector Union, involves work bans by staff not to bank cheques or deal with clients.

Most of the money held up by the industrial bans related to the \$1.5 billion which the tax office was to have received from companies on September 21, when they lodged their monthly PAYE payments and sales tax instalments.

Mr Grant said that the collection of sales tax in the post-Budget period could often cause problems or raise confusion because changes did not have legislative backing.

"Wholesalers often have to ask themselves the question of whether they charge the new taxes ..."

Car registration plunge takes shine off survey results

By CHRISTINE WALL

A PLUNGE in new-car registrations last month has taken the shine off a series of business surveys this week suggesting economic growth is set to quicken.

The Dun & Bradstreet business expectations survey issued yesterday was the third this week pointing to a pick-up in domestic economic activity, with business optimism at its strongest since mid-1989.

Expectations of stronger orders, sales, profits, employment and prices in the December quarter were evident in the latest survey, which covered 1,000-plus executives in manufacturing, wholesaling and retailing businesses.

Employment expectations are also at their highest since 1989, with durables manufacturing showing the best prospects.

But echoing Reserve Bank concerns about upcoming price pressures, Dun & Bradstreet also warned of a sharp lift in expectations of future price rises among business.

"The rise in price expectations is unfortunate," the chief economist, Dr Joseph Dunca, said yesterday.

"Unless inflationary expectations are curtailed, Decem-

ber quarter 1993 could be the end of Australia's inflation rate and the ringing of the fall in its international competitiveness.

After more than two years where more firms surveyed by Dun & Bradstreet cut than raised them, the survey showed a strong net proportion of companies putting prices up.

The Reserve Bank on Tuesday of prices in the pipeline flowing indirect tax increases and devaluation of the dollar.

The bank said moderation in wage growth was needed.

Significantly, it noted recent signs of consumer strength "has not been maintained" — a point apparently supported by figures on motor vehicle registrations issued by the Bureau of Statistics yesterday.

The number of registrations crashed last month down 23.4 per cent as seasonal factors were taken into account, and 18.9 cent lower in raw terms compared with the previous month.

PAC recommends a taxation shake-up

From page 1

account the findings of a report from the Australian Tax Research Foundation released yesterday.

The ATRF report on tax ethics, prepared by the University of NSW's Dr Stan Ross, was critical of the way in which the ATO likes to refer to taxpayers as their "clients", as no client relationship actually exists.

"When a taxpayer simply seeks tax advice from the ATO there is, perhaps, justification for using the term, but in the context of an audit it is inappropriate," the

ATRF report said. "A tax officer cannot offer either loyalty or fidelity to a taxpayer under investigation."

The report was also critical of the requirement needed to be registered as a practitioner by the Tax Agents Board.

"Presently there is no requirement to pass a written examination to become a tax agent," it said.

Dr Ross said it would be highly desirable to require such an examination for registered tax agents who are not qualified as accountants.

"There is a need for

detailed government tax standards because there are a large number of tax practitioners who are not guided nor controlled by the standards of either the legal or accountancy professions. The present system favours lawyers who are incompetent tax practitioners."

Dr Ross recommended that the Tax Agents Board be renamed the Tax Practitioners Board and its members be made completely independent from ATO control or influence.

But the report said any reforms in relation to ethical behaviour would require a

rebuilding of the mutual trust between the ATO and business.

"This mutual trust broke down during the tax-avoidance era of the late-1970s to the mid-1980s," it said. "It has only been recently that the relationship between the tax office and tax practitioner has again become co-operative."

The research director of the Taxation Institute of Australia, Mr Geoff Peterson, said business groups were keen for the issue of simplification of the tax laws to be the overriding recommendation of the committee.

 Baillieu Knight Frank

ACROSS THE NATION - AROUND THE WORLD

Kareela Shopping Centre

 Baillieu Knight Frank

ACROSS THE NATION - AROUND THE WORLD

Retail investment opportunity

THE TROUBLE with the TAX OFFICE

Taxpayers should have rights. Or so the Public Accounts Committee believes. This important parliamentary committee is due to report this week after a two-year investigation of the Australian Taxation Office. It is expected to recommend radical reforms. MICHAEL DWYER reports.

The Australian Taxation Office likes to refer to it as its own Road to Damascus: a 10-year, \$1.2 billion modernisation program that will see the agency shed 3,000 of its staff. But the internal somersaults resulting from this modernisation are more warm-up exercises compared with what lies just around the corner for the ATO.

Later this week, the Federal Parliament's influential Public Accounts Committee is expected to release the results of its two-year inquiry into the tax office. A separate study by the Boston Consulting Group, which seems likely to recommend some radical administrative changes, is long overdue.

The Public Accounts Committee, which has been under the chairmanship of Labor backbencher Les Scott since the March elections, has spent the past few weeks putting the finishing touches to its report. Private indications from committee members, who are reluctant to talk openly about the report for fear of breaching parliamentary privilege, suggest a number of controversial recommendations are likely to be adopted. These include the establishment of a tax ombudsman and a taxpayers' bill of rights, as well as placing pressure on the Government to put on both its long-promised bid to simplify Australia's 1,000-page Income Tax Assessment Act.

Even more controversial could be a recommendation for the extension of the doctrine of legal professional privilege to cover registered tax practitioners.

The ATO seems likely to take any of these changes in its stride. After decades of being perceived to be run, like the Australian Customs Service, by an inward-looking and less-than-effective Catholic mafia, the ATO has undergone radical changes in recent years. In the mid-1980s, the ATO was subjected to a major review by the Australian National Audit Office. The subsequent Cullen report, released in 1987, recommended the ATO give a higher priority to job design and training issues.

Under the high-profile Commissioner of Taxation Trevor Boucher, the ATO took up the opportunity to modernise with a zeal. Boucher, who spent almost 40 years with the ATO before he moved to Paris as Australia's Ambassador to the OECD, adopted an almost evangelical approach to the modernisation of his bureaucracy. "We are achieving; we are world class. If there are footsteps in the sand for national tax administration to follow, it is very likely they will be ours," he told the PAC inquiry last year.

The ATO's first submission to the PAC reflects an organisation still coming to grips with its place in the modern corporate world. But like Boucher, the submission itself is surprisingly frank. "During the late 1970s and early 1980s, the ATO was an organisation under siege. Tax avoidance became a national sport. Rather than being a referee, we had to play the game with one hand tied behind our back. The judicial umpire took a literalist view of the rules, favouring the would-be stouder. By the mid-1980s, our computer systems were aging in systems terms."

During the 1970s and early 1980s, 10 million returns would roll annually into the ATO in the early part of the financial year. Close to 50 per cent of ATO's staff were devoted to simply processing returns. "Within the ATO, the prevailing culture was essentially traditional command and control, conservative, highly ethical and built around secrecy," the ATO submission to the PAC said.

"During the early 1980s, rapid advances were taking place in the computer industry... However, the ATO, with its internal focus, was preoccupied with maintaining business as usual while coping with tax-avoidance schemes. Inadequate resources were invested in the investigation of evolving technology."

Practitioners generally support the changes that have occurred so far in the ATO, although they still see the modernisation process as far from over. The tax office they would most like to see would be one driven less by paranoia over avoidance and less obsessed with revenue collection for its own sake.

"At this point in time, what has been achieved is remarkable, but there is always room for improvement," said Geoff Peterson, technical director of the Taxation Institute of Australia.

One of the incongruities Peterson suggests should be removed is the way in which the ATO likes to refer to taxpayers as its "clients." "It's a concept which is always going to give rise to difficulties," he said. A recent report on tax ethics prepared for the Australian Tax Research Foundation by the University of NSW's Dr Stan Ross concurs. "When a taxpayer simply seeks tax advice from the ATO, there is, perhaps, justification for using the term, but in the context of an audit it is inappropriate," the ATRF report said. "A tax officer cannot offer either loyalty or fidelity to a taxpayer under investigation."

Peterson said that in the past three years, since the introduction of the TaxPack, an impression had been created among the public

on settlements and prosecutions operated. "The factors concerning settlements and the duty to prosecute came under criticism in 1992 when the ATO offered large tax discounts to big corporations over disputed claims if they settled before the 30th of June," he said.

In effect, these were negotiated settlements and the ATO was accused of being willing to carry out this policy in order to help the Government reduce its large deficit. Internal ATO documents leaked to the press in late 1992 also expressed concern that the tax office was too willing to settle complex and large-scale audits for a negotiated figure rather than prosecute. "Sometimes, according to tax office sources, the policy not to prosecute is made under political pressure from the Government, for example, so as not to cause a large company to go into bankruptcy."

Peterson said most of the problems business was having with the tax office came back to the complexity of current tax law, likely to be a key



KEY REFORMER: Commissioner of Taxation Michael Carmody

Photo: PALANI MOHAN

that the ATO was now far more responsive to individual taxpayers. "But the ability of the tax office to lay out all the information that ought to be available to taxpayers still creates a very great concern," he said.

The executive director of the Corporate Tax Association, Mr Bob Bryant, agrees that the tax office still has some way to go in order to get business back on side. "They like to say they offer a world-class service, but our experience is that we don't receive it," he said.

Bryant has two major concerns with the current administration of the ATO. Firstly, he claimed there was a lack of balance in tax administration, with far too much of the operations being revenue-driven, particularly in the ATO's audit program. He suggested there was a lack of accountability on the part of the commissioner — something he suggested could change by making the commissioner answerable to a board of directors.

The fundamental philosophy the ATO has adopted towards the collection of tax revenue also creates problems. "We realised in the mid to late 1980s that the key to the modern ATO was not simply new technology, but a complex cultural change process, at the heart of which was our people," the ATO submission to the PAC said. "We needed to seize the opportunities provided by new technology to free up people from routine processing and to redirect them to more value-added, revenue-raising activities."

But despite modernisations, the cost of collecting tax by the ATO has actually become more expensive in recent years. Although not up to date, the ATO's own figures conclude that the cost of collecting \$100 of tax revenue rose from around 94c in 1982-83 to \$1.14 in 1990-91. This was expected to have blown out to \$1.25 in 1991-92.

Not only is tax collection seemingly more costly, but the ATO's audit program of large businesses continues to flail its relationship with business. Dr Ross found in his report for the ATRF that there were considerable inconsistencies in the way tax office guidelines

The sweep of the new broom

ONE of Cicero's lesser-known accomplishments was his prosecution of over-zealous tax collectors, through an extortions court unique to the ancient Roman world.

Such protection of taxpayers from those who exact their dues was further refined by the code of laws enacted under the Emperor Constantine in 313 AD.

This code provided for civil remedies against judges found to be derelict in defending taxpayers against abuses, with a penalty of 30 pounds of gold assessed against the judge and payable to the taxpayer.

The modern tax collectors have less to worry about in this regard than their ancient counterparts. But tax collection in the late 20th century is fraught with new problems.

The Australian Taxation Office is now charged with administering tax legislation several thousand pages long, often with little of the legal and technical firepower of tax-avoiding adversaries.

So with the increasing complexity of the tax system has come the need for a far more contemporary management style and administrative structure.

Less than a year into his new role as Commissioner of Taxation, Michael Carmody has set himself the task of providing the tax office with that style and structure.

Carmody has been the key official guiding the tax office through its 10-year modernisation program over recent years, seeing it as his chance to stamp his authority on one of Australia's largest government agencies.

And the new commissioner has also been instrumental in pushing through the radical administrative reforms of the tax office recommended by a thorough internal review

section of this week's PAC report. The Federal Government's commitment to the simplification of the 1,000-page Income Tax Assessment Act was first made by the then Treasurer, Mr Keating, in February 1990. But little has been done since.

"The tax office is currently involved in a vast exercise to improve its technical capacity to deal with these complex issues. This is a fair enough response, but the problem of complexity is really a problem of their own making," Peterson says. "If the tax system was fundamentally reformed, a lot of the problems and a lot of the need for higher technical skills would presumably disappear. At the moment, the complexity of the system is self-perpetuating. The longer the system goes on without major reform, the more the need for high-level technical skills."

Bryant also takes up Peterson's argument concerning the complexity of the tax system as it currently stands. "The actual legislation is overly cluttered because since the mid 1980s there has been a paranoia about any possible leakages from the system," he said. "As a result, any new legislation which is put up is cluttered with these anti-avoidance protections."

Bryant said the legislation introduced on the fringe benefit tax was a good example. The legislation in Australia ran to about 200 pages. But the equivalent New Zealand law was only 20 pages. "For simplification to ever work, the tax office will have to stop jumping at shadows out of fear that leakage might occur. So much is now driven by hypotheticals."

conducted over the last 12 months by the Boston Consulting Group.

The Boston Group recommended the tax office's structure of more than a dozen different divisions be abolished and replaced with four branches: one for the Child Support Agency; one for individual taxpayers; one for business taxpayers; and a fourth for collections.

"The tax office has set up a business tax services group to trial run what Carmody sees as a new 'holistic' approach to tax collection.

Options are also being considered by the tax office's management board for more concrete implementation of the new structure throughout the entire agency.

And the professions who deal constantly with the tax office are happy with the approach Carmody has taken to date.

"It's too early to completely judge him, but he is obviously in the process of developing his own management style," says Geoff Peterson, technical director of the Taxation Institute of Australia.

"It's clear there are many issues where he is far more relaxed than his predecessor and that is starting to come through with how the ATO deals with technical issues.

"There is a willingness to be more flexible than was previously the case."

"There is also less brinkmanship under Carmody," Peterson says. "There is now a willingness to head off issues at an early stage rather than let them fester."

"When the structural changes that Carmody is overseeing are fully implemented, the full effects of his management style will come through."

□ Michael Dwyer



Bishop checked in dissent attempt

By MICHAEL DWYER

MAVERICK Liberal Senator Bronwyn Bishop has been refused reading to prepare a report dissenting from the Public Accounts Committee's inquiry into the Australian Taxation Office.

At a stormy meeting late last week, the PAC was also understood to have refused a request by Senator Bishop to defer indefinitely the release of its 200-page report.

Such a deferral would have meant the report would probably not have been released until after Senator Bishop's preselection battle for the federal seat of MacKellar later this year.

It is understood that Senator Bishop has been particularly critical of the strong endorsement the committee's report gives to reforms of the ATO initiated by the former Commissioner of Taxation, Mr Trevor Boucher.

Mr Boucher, who has since been appointed as Australia's permanent representative at the OECD in Paris, was the subject of intense questioning by Senator Bishop during committee hearings.

Senator Bishop accused the ATO under Mr Boucher of having deliberately targeted Liberal politicians as part of its intensive audit program.

Other Liberal and National Party members of the PAC, chaired by Labor backbencher Mr Les Scott, have been reluctant to support Senator Bishop in her move to produce a dissenting report.

In its 40-year history, the PAC has produced a dissenting report on only a handful of occasions.

The committee's report, expected to be finally handed down on Thursday after nearly two years of hearings and deliberations, is believed to contain more than 150 recommendations.

Key recommendations in the report, foreshadowed in *The Australian Financial Review* last week, include the establishment of a tax ombudsman and a call for simplification of the 2,000-page Income Tax Assessment Act.

Other recommendations dealing with the establishment of a taxpayers' bill of rights and the creation of a privilege for tax practitioners are believed to have been watered down by the committee in its final deliberations.

However, it is still expected to recommend that accountants be granted some form of privilege in relation to tax matters, although not as broad as that enjoyed by lawyers.

□ The trouble with the tax office, page 15

Team attack on \$1.7bn fraud bill

By ROWAN CALLOCK

THE best way to tackle Australian fraud — which costs up to \$12 billion a year — is through multi-disciplinary teams involving lawyers, accountants, information-technology experts and police.

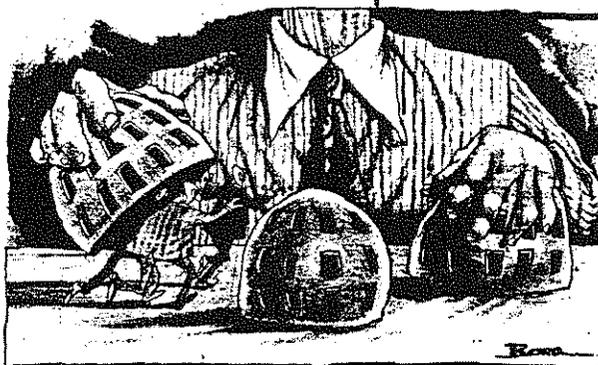
The head of Victoria's Corporate Crime Group, Commander Allen Bowles, told the Australian Society of Certified Practising Accountants' State congress in Melbourne at the weekend that in the past decade "business ethics and practices of dishonesty have reached the lowest point."

"Recent estimates of the cost of fraud within Australia are mind-blowing," he said. The Insurance Council of Australia has estimated that pay-outs resulting from fraudulent claims will be \$1.7 billion a year, with \$620 million of this for workers' compensation, \$200 million for motor vehicles, \$100 million for households and \$62 million for firms.

Federal Police have estimated public-sector fraud at \$9 billion, including \$3 billion for tax, \$2 billion for social welfare, \$2.5 billion for Customs duties, \$800 million for defence and \$700 million for health.

Commander Bowles said that the cost of fraud far exceeded that of any other type of criminal offence.

Police, using their traditional investigative resources, were no longer equipped to handle such complex matters. Victoria's multi-disciplin-



ary approach "put investigative agencies on a level playing field with corporate criminals who had available to them the best legal and accounting advice."

Consultants were needed in some instances to supplement the core unit of multi-disciplinary investigators.

Such strategies reduced the time taken to investigate and to bring a case to criminal hearing after arrest, and ensured better liaison with high standards of briefs to the Director of Public Prosecutions.

Victoria's Corporate Crime Group had three solicitors and three accountants. And the management of an investi-

gation relied heavily on information technology.

"One of the first tasks associated with any investigation is how to record, store, retrieve and analyse the documentation," Commander Bowles said.

Investigators were provided with laptop computers so "they will no longer be prisoners of their office," he said. "Witnesses will be attended to wherever they may be located."

Information is transmitted by modem to a central database so that other investigators have access to it.

But Commander Bowles said: "I am still not satisfied with the service that police

offer the business community when fraud is reported.

"There is an inordinate amount of time spent on assessing reported fraud, often without seeking the assistance of professionals such as financial investigators and lawyers."

He pointed out that the Australian Securities Commission and the Australian Taxation Office could view documents without needing search warrants — but the police required warrants even to view information from "friendly and willing sources" in fraud cases.

"Unfortunately, the criminal law has lagged far behind the sophisticated methods of

commit Clerk complex wiretapping." Commander Bowles said.

"The technology available to corporate crooks today is state-of-the-art. And fraud does not recognize geographical boundaries as do law enforcement agencies."

Although prominence was given to the \$250 million National Safety Council fraud, other fraud investigations in Victoria involve about \$1 billion.

"A growth area which has the potential for fraud is the superannuation industry" — encompassing an estimated \$300 billion by the year 2000, Commander Bowles said. Two major superannuation frauds had already been reported to police in Victoria.

And as a result of international and local intelligence, Commander Bowles expects more cases to follow, "unless stringent steps are put in place to monitor the industry."

Another trend has been "advance fee scams", whereby investors are invited to provide an initial investment in order to obtain larger funds.

"The scams have resulted in substantial amounts of money being advanced with very little protection," Commander Bowles said.

Victoria is considering amalgamating its Fraud Squad, Corporate Crime Group and Assets Recovery Unit into a group with about 150 staff who will attend an annual four-week economic crime course.

IRC wage-fixing review to add fuel to debate

By GATNY BOLT

THE Industrial Relations Commission will make a last-minute entry today into the intense debate over industrial reform in Australia when it releases the results of its watershed review of the wage-fixing system.

The release of the decision this afternoon by a seven-member Full Bench will come three days before the Federal Government's industrial legislation is expected to be introduced to Parliament.

The Australian Chamber of Commerce and Industry's legal officer, Mr Reg Hamilton, said there were likely to be many areas of overlap, including the future role of awards, the relationship between awards and enterprise agreements and the role of unions in agreements at non-unionised workplaces.

The Full Bench's decision could also set a new test for relations between the ACTU and the Government, since it should point to whether the tribunal will support the first \$3 safety-net pay rise set out in the latest Accord.

In the midst of the recent public split between the Accord partners, the ACTU said it would review its commitment to the pact in December, with the IRC's decision among three factors to be taken into account.

The others were progress on differences over Budget measures and the Government's proposed industrial reforms, both largely resolved.

An ACTU assistant secretary, Ms Jennie George, said recently that the Government had given it a commitment that other ways would be looked at to compensate low-



COMPENSATION: Ms George agrees options limited

paid workers if the IRC refused to arbitrate safety-net pay rises.

Ms George acknowledged the Government's options were limited by its deficit-reduction target.

In two months of hearings that ended last month, the ACTU and the Federal Government both called on the IRC Full Bench to abandon its long-standing practice of issuing wage-fixing principles, because of the increasing decentralisation of the industrial system.

They said the IRC should broadly endorse the Accord, which sets out enterprise bargaining as the main vehicle for wage rises and workplace reform, but supports three small arbitrated rises, with no trade-offs, for workers unable to get consent agreements.

But the ACCI said such a system would require the commission to place "an extraordinary amount of trust" in the Accord to deliver productivity while keeping a lid on wages. Meanwhile, the Government faces last-minute negoti-

ations this week over the industrial legislation.

The Democrats — whose support will be needed to get the package through the Senate — said on Friday they wanted the Government to change its planned requirement for the IRC to notify unions when an application is made for a non-union enterprise agreement.

They also want to reduce to 48 hours a proposed 72-hour delay before legal sanctions can be sought against secondary boycotts.

The Minister for Industrial Relations, Mr Brereton, said later he would discuss their concerns with the Democrats but reiterated that the Government "had the balance just about right" and the 72-hour provision was "fairly well thought through".

The legislation will make unprecedented use of the Commonwealth's external affairs power to introduce national minimum standards on wages, termination of employment, parental leave and equal pay for equal work.

What is a superannuation guarantee voucher?

The Australian Tax Office (ATO) will be issuing vouchers to those employees whose employer did not provide the minimum superannuation support under the Superannuation Guarantee legislation (provided the amount is greater than \$20), and instead have paid a superannuation guarantee charge to the ATO.

The voucher will detail the amount of superannuation credit available. A person receiving a voucher must then find a complying superannuation fund that will accept the voucher on their behalf. In most cases, the likely choice will be a fund to which the person already belongs.

When a superannuation fund receives a request to accept a voucher, it must fulfil certain obligations. It must provide the person who has submitted the voucher with a written notice of receipt. It must also, within 14 days of receiving the

voucher, either seek payment of the credit from the ATO or advise the person they are unable to accept the voucher.

Superannuation funds that intend accepting vouchers, and their governing rules allow them to do so, will need to ensure the correct treatment of credits received with respect to tax, preservation and vesting.

National Mutual Corporate Superannuation Services can assist superannuation funds by providing professional advice, whether it be on superannuation guarantee vouchers or any other aspect of fund administration. For more information, contact one of our Superannuation Specialist Consultants in your capital city.



Melbourne: 287 3356, Sydney: 563 2414, Brisbane: 227 2423, Adelaide: 217 9746, Perth: 227 7761, Hobart: 201 572

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TRANSCRIPT - WIN NEWS

25 OCTOBER 1993

[This transcript is taken from a tape recording, and freedom from errors, omissions or misunderstandings cannot be guaranteed]

NEWSREADER: Bronwyn Bishop has become involved in a major row over parliamentary Committee reports on the Tax Office. In opposition to other Committee members, Senator Bishop says the report is unacceptable - this latest controversy coming amid continued talk of her leadership ambitions.

LAURIE OAKES: Bronwyn Bishop was in Brisbane addressing another capacity crowd of admirers. 'Go for it', shouted one of them.

BRONWYN BISHOP: I hear that message.

UNIDENTIFIED: Bronwyn Bishop is going for the Federal seat, and if she secures it I don't think anyone has any doubts that there will be a leadership challenge on next year.

BRONWYN BISHOP: I am saying to you that the question of the leadership is just not at issue, that I want to join Dr Hewson's team in the Lower House.

LAURIE OAKES: She was more concerned about embarrassing information leaking from the parliamentary Committee inquiring into the Tax Office, the same Committee which helped make her a household name when she ripped into the then Tax Commissioner, Trevor Boucher, last year.

TREVOR BOUCHER: Oh, that's outrageous, Mr Chairman.

LAURIE OAKES: It's been revealed that last Thursday night, when the Committee was putting the finishing touches to its report, Senator Bishop clashed heatedly with Chairman Les Scott and one of her Liberal colleagues, Ken Aldred. I'm told that Senator Bishop, who hadn't attended the previous late night sessions putting the recommendations into shape, said she did not accept the report. She claimed it was too pro-Tax Office. Mr Scott is reported to have told her angrily that since he became chairman he'd barely seen her, and it was irresponsible of her to announce at the last minute that the report was unacceptable.

During the table-thumping confrontation, Mr Aldred said there'd been plenty of opportunity for Committee members to make comment and criticism. He found Senator Bishop's behaviour remarkable.

BRONWYN BISHOP: I'm quite amazed that there is report of what happens in the Committee being leaked. I find that quite improper.

LAURIE OAKES: Laurie Oakes, Canberra.

PRIVILEGE

Mr LES SCOTT (Oxley)--Mr Speaker, I wish to raise with you a matter of **privilege** concerning the work of the Joint Committee of Public Accounts. Articles in the *Australian* on Thursday, 21 October 1993, the *Australian Financial Review* on Thursday, 21 October 1993 and the *Australian Financial Review* on Monday, 25 October 1993 have made references to a draft report of the committee and, in the case of the article in the *Financial Review* of 25 October, a private meeting of the committee. In addition, an item on the WIN evening news on Monday, 25 October 1993 also purported to reveal private proceedings of the committee.

The committee has considered these matters at some length. The view of the committee is that publication of the material in question has caused substantial interference with its work. It views this matter most seriously and has resolved that I should raise this matter as a matter of **privilege**. The committee has also considered the question of the source of the disclosure but can give no advice as to the source. I ask that you consider this matter under the provisions of standing orders 95 and 96 with a view to the matter being referred to the Standing Committee of Privileges. I submit copies of the articles in question together with a video copy of the WIN news item.

Mr SPEAKER--I will take up the matters raised by the honourable member.

PRIVILEGE
Public Accounts Committee

Mr SPEAKER--Yesterday the honourable member for Oxley raised a matter of **privilege** in this place. The honourable member referred to articles published in the *Australian* on 21 October and the *Australian Financial Review* on 21 and 25 October concerning the Joint Committee of Public Accounts. He also referred to a news report on the WIN evening news on 25 October. The items appeared to reveal details of a forthcoming report of the committee and of its private deliberations.

The honourable member indicated that the public accounts committee had considered these matters and that the committee was of the view that the publication of the material had caused substantial interference with its work. The unauthorised disclosure or publication of the contents of a draft report or the private deliberations of a committee can be regarded as a contempt.

On 7 May last year my predecessor made a statement outlining the procedures he proposed to follow in relation to complaints in this area. He stated that the House should be informed of the matter briefly at the earliest opportunity even if that was before the committee in question considered the problem. It appears that this point was not followed in the present case, although the apparent desire of the committee to meet and consider the matter before taking any action is understandable, and I would not decline to give precedence to a motion on the ground that the complaint was not raised at the earliest opportunity. In the circumstances, and having regard to the consideration already given to the matter by the Joint Committee of Public Accounts, I am prepared to allow precedence to a motion.

PRIVILEGE
Public Accounts Committee

Mr LES SCOTT (Oxley)--Mr Speaker, in light of your comments, on behalf of the Joint Committee of Public Accounts, I move:

That the matter of articles in the *Australian* of 21 October 1993, the *Australian Financial Review* of 21 and 25 October and comments by Mr L. Oakes on the WIN evening news of 25 October 1993 which appeared to reveal a knowledge of the contents of a draft report and/or deliberations of the Joint Committee of Public Accounts be referred to the Committee of Privileges.

motion be agreed to.

Mr Mack--I call for a division

Mr SPEAKER--I hear only one voice.

Question resolved in the affirmative.

Mr Mack--In accordance with standing order No. 193, I wish my dissent to be recorded in the *Votes and Proceedings* and *Hansard*.

INQUIRY CONCERNING THE PUBLIC ACCOUNTS COMMITTEE

Memorandum by the Clerk of the House of Representatives

THE REFERENCE

On 28 October 1993 the House agreed to the following motion:

That the matter of articles in the *Australian* of 21 October 1993, the *Australian Financial Review* of 21 and 25 October and comments by Mr L Oakes on the WIN evening news of 25 October which appeared to reveal a knowledge of the contents of a draft report and/or deliberations of the Joint Committee of Public Accounts be referred to the Committee of Privileges.

The matter was raised in the House on 27 October by Mr L J Scott, Chairman of the Public Accounts Committee. Mr Scott informed the House that the committee had considered the matter at some length, that it was of the view that the publication of the material in question had caused substantial interference with the committee's work but that the committee could give no advice as to the source of the disclosure¹.

THE TASK BEFORE THE COMMITTEE

Presumably the Committee would first wish to inform itself as to the relevant parliamentary law and precedents. It would then need to ascertain the facts in this particular matter.

Having ascertained the facts the Committee would need to reach some conclusions as to the matter. It would presumably consider the question of intent, although the terms of section 4 of the *Parliamentary Privileges Act 1987* seem to make it clear that it is not technically necessary to establish an intent to cause improper interference. Technically, it would be sufficient, at least in terms of the Act, to establish that certain conduct amounted or was intended or likely to amount to improper interference.

GENERAL PROVISIONS RELATING TO PRIVILEGE AND CONTEMPT

A detailed explanation of the law and practice of the House relating to privilege and contempt is set out in House of Representatives Practice². The nature of privilege is explained and the area of absolute privilege or immunity described, with particular reference to the *Parliamentary Privileges Act 1987*. Reference is also

made to the power of the House to punish contempts and the following definition of contempt is quoted from May³:

...any act or omission which obstructs or impedes either House of Parliament in the performance of its functions, or which obstructs or impedes any Member or officer of such House in the discharge of his duty, or which has a tendency, directly or indirectly, to produce such results may be treated as contempt even though there is no precedent of the offence.

More information on this point is set out at pages 701-3 of House of Representatives Practice⁴.

Section 4 of the Parliamentary Privileges Act 1987 provides:

Conduct (including the use of words) does not constitute an offence against a House unless it amounts, or is intended or likely to amount, to an improper interference with the free exercise by a House or committee of its authority or functions, or with the free performance by a Member of the Member's duties as a Member⁵.

In effect this provision sets a threshold: to be a contempt an action must amount to or be intended or likely to amount to improper interference with the free exercise by a House or a committee of its authority or functions or with the free performance by a Member of the Member's duties as a Member etc.

PARTICULAR REFERENCES RELEVANT TO THE PRESENT REFERENCE

House of Representatives standing order 340 provides:

The evidence taken by any select committee of the House and documents presented to and proceedings and reports of such committee, which have not been reported to the House, shall not, unless authorised by the House, be disclosed or published by any Member of such committee, or by any other person.

House of Representatives Practice states:

...the publication or disclosure of evidence taken in camera, of private deliberations and of draft reports of a committee before their presentation to the House, have been pursued as matters of contempt...⁶.

Senate standing order 37 provides:

The evidence taken by a committee and documents presented to it which have not been reported to the Senate, shall not, unless authorised by the Senate or the committee, be disclosed to any person other than a member or officer of the committee.

Australian Senate Practice states:

The publication of a committee's report before its presentation to the Senate is unquestionably a breach of privilege. Unless authorised by the Senate or the committee, the rule relating to premature publication also prohibits any deliberations

of a committee and any proceedings of a committee being referred to or disclosed by Senators or others, or described in the press, before being reported to the Senate⁷.

Senate resolution

On 25 February 1988 the Senate passed a series of resolutions known as the privilege resolutions. One resolution listed actions that the Senate may treat as contempts ('without derogating from its power to determine that particular acts constitute contempts'), and included the following provision:

Unauthorised disclosure of evidence etc

A person shall not, without the authority of the Senate or a committee, publish or disclose:

- (a) a document that has been prepared for the purpose of submission, and submitted, to the Senate or a committee and has been directed by the Senate or a committee to be treated as evidence taken in private session or as a document confidential to the Senate or the committee;
- (b) any oral evidence taken by the Senate or a committee in private session, or a report of any such oral evidence; or
- (c) any proceedings in private session of the Senate or a committee or any report of such findings,

unless the Senate or a committee has published, or authorised the publication of, that document, that oral evidence or a report of those proceedings⁸.

A complicating factor that has been mentioned sometimes in the past has been the responsibility for pursuing an issue arising from the work of a joint committee. Technically, joint committees are creatures of each House and issues of contempt or privilege concerning joint committees have been considered in each House - the House Committee of Privileges has considered the possible intimidation of a witness who had been involved in an inquiry by the (then) Joint Committee on Foreign Affairs and Defence and the unauthorised disclosure of information in relation to the Joint Select Committee on Telecommunications Interception and the Joint Standing Committee on Migration Regulations. On the other hand, the Senate Committee of Privileges is currently considering a matter to do with a witness who had given evidence to the Joint Committee of Public Accounts during a previous inquiry. It also has a reference concerning the alleged unauthorised disclosure of information concerning the Joint Standing Committee on Migration.

In its report on the 1986-87 Telecommunications Interception Committee inquiry, the House of Representatives Committee of Privileges stated:

The committee took the view that the joint committee was a creature of both Houses and that, even if there were some doubts as to the actual powers of such joint committees - for example in respect to their authority to administer an oath - the question of contempt in connection with a joint committee was an entirely different matter. The powers of the Houses insofar as contempt is concerned are such that either House could regard a matter involving a joint committee as a contempt and the committee therefore took the view that it was quite within its power to consider, and report to the House on, a matter of contempt involving a joint committee⁹.

PRECEDENTS

Precedents exist in both the House of Representatives and the Senate for the unauthorised disclosure or publication of committee material or proceedings being considered as matters of privilege or contempt. In addition, several complaints of this type have been referred to the House of Commons Committee of Privileges since 1960.

Senate precedents

Two cases are particularly relevant, but two others may be of interest.

Foreign Affairs, Defence and Trade Committee

In 1989 the Senate's Committee of Privileges reported on a reference concerning the alleged unauthorised disclosure of a committee report (the Senate Foreign Affairs, Defence and Trade Committee's report on visits by nuclear powered or armed vessels). During the inquiry a Senator advised the Committee of Privileges that she had provided information to media representatives under embargo, but there was a delay in tabling the report, leading to publication of certain details in the media prior to tabling. In this case the Committee of Privileges found that, while it was open to the committee and the Senate to find that a contempt had been committed, in all the circumstances such a finding should not be made¹⁰.

Select Committee on Drug Trafficking and Drug Abuse

In 1971 the Sunday Australian and the Sunday Review published articles containing findings and recommendations of the Senate Select Committee on Drug Trafficking and Drug Abuse in Australia.

The matter was referred to the Committee of Privileges which heard evidence from the editors of both newspapers, and the Chairman of the committee in question. The Privileges Committee found that the publications constituted a breach of privilege and recommended that the editors be required to attend before the Senate to be reprimanded¹¹. The Senate subsequently adopted the committee's report, the editors were required to attend before the Senate, and the Deputy-President administered a reprimand¹².

National Times case

In June 1984 The National Times published purported evidence taken by, and documents submitted to, the Senate Select Committee on the Conduct of a judge. The matter was raised in the Senate by the Chairman of the committee and subsequently referred to the Committee of Privileges. The committee heard evidence from members of the committee, the secretary of the committee, and two of the witnesses who had given evidence to the committee. In addition, evidence was received from representatives of The National Times. The committee found that the publication of the purported evidence, documents and proceedings constituted a

serious contempt of the Senate, that the editor and publisher should be held responsible and culpable, that a journalist was also culpable and that the unauthorised disclosure, by persons it had not been able to identify, of in-camera proceedings constituted a serious contempt of the Senate¹³.

The Senate, on 27 October 1984, adopted the report of the committee and subsequently referred to the Committee of Privileges, as the committee had proposed, the question of penalty. In a subsequent report, the committee recommended that the Senate not proceed to the imposition of a penalty at that time but that if the same or a similar offence were committed by any of the media for which John Fairfax & Sons were responsible, the Senate should, unless at the time there were extenuating circumstances, impose an appropriate penalty for the present offence. The "good behaviour" period proposed was for the remainder of the session. On 23 May 1985 the Chairman moved that the Senate adopt the recommendations of the committee, but debate on the motion was adjourned and was not resumed¹⁴.

Select Committee on Health Legislation and Health Insurance

In December 1989 the Senate referred to its Committee of Privileges the alleged disclosure of a submission to its Select Committee on Health Legislation and Health Insurance. It appears that during that inquiry some organisations had made copies of their submissions available before the committee authorised their publication. Representatives of the Australian Private Hospital's Association learnt that a copy of their submission was in the hands of a senior public servant. The Committee of Privileges found, on the evidence, that, although it would be open to the committee to find that a contempt had been committed, in the circumstances and having regard to the policy of restraint in matters of contempt, such a finding should not be made¹⁵.

House of Representatives precedents

The Sun case

In 1973 The Sun newspaper published material relating to the contents of a draft report of the Joint Committee on Prices. The matter was raised in the House and subsequently referred to the Committee of Privileges. The committee found that a breach of privilege had occurred, and that the editor and journalist were guilty of a contempt of the House and recommended that an apology be required to be published. The House agreed with the findings of the committee, but in view of the editor's death no further action was taken insofar as the publication of an apology was concerned¹⁶. The Speaker communicated with the President of the Press Gallery on the general issue, as was recommended.

Daily Telegraph case

During the Daily Telegraph case in 1971 the Committee of Privileges became aware that there had been an apparent disclosure of part of its proceedings. The committee found that a breach of the standing orders and a breach of privilege

appeared to have been committed, and deplored the action, but no action was taken and the source of the disclosure was not ascertained by the committee¹⁷.

Telecommunications Interception Committee (Joint Committee)

In 1986-87 the committee dealt with the Telecommunications Interception Committee case. Articles in several newspapers allegedly revealing private deliberations and prospective recommendations of the Joint Select Committee on Telecommunications Interception were referred to the committee. The committee questioned all members of the joint committee, including Senators (having made a special report to the House asking it to ask the Senate to give leave to Senators to give evidence). It also questioned the committee's staff, and several journalists. Nobody admitted to the disclosures and the journalists refused to reveal their sources (one journalist said he had had three sources)¹⁸. The committee concluded, *inter alia*, that:

- confidential deliberations had been disclosed without authorisation by persons with access to the information and that, if such persons acted deliberately, they were each guilty of a serious contempt;
- the various acts of publication constituted contempts.

On the matter of publication the committee, noting the evidence of the joint committee's Chairman that the publication had in no way impeded the committee's work, sought the guidance of the House as to penalties. It recommended that, if the House believed penalties were warranted, it should refer the matter back to the committee, and it also recommended the House should refer back to it the question of penalty for three witnesses who had refused to reveal their sources. No action was taken by the House on the report.

Migration Regulations (Joint Committee)

In November 1990 the Committee of Privileges reported on the publication of a newspaper article which revealed details of a confidential submission to the Joint Standing Committee on Migration Regulations. During its inquiry the Committee of Privileges became aware that it was possible that the submission in question may have been disclosed by persons other than those associated with the committee, that is, by those responsible for the submission or others who may have been aware of the submission. The committee therefore contacted the community group responsible for the submission to seek further information. It learned that a draft of the submission had been circulated (it was probable that at least 60 persons had copies of the submission); that the sponsors did not inform members that the submission was confidential but they were urged not to circulate the submission; and that copies of the submission had been sent to two other organisations and two persons.

The committee found that there was a large number of possible sources of disclosure and that those persons who may have come into possession of the submission would

not have been aware of the parliamentary prohibition on publication of submissions. *The committee concluded that it was unlikely that further investigations would result in a more satisfactory conclusion.*

In view of the findings the Committee of Privileges recommended that no further action be taken by the House¹⁹.

More recent House of Commons (UK) precedents

The Economist case

In 1975 The Economist published a substantial amount of information from a draft report (on a proposed taxation measure) to be considered by a select committee. The matter was referred to the Committee of Privileges which commented that the unauthorised disclosure of the contents of a draft report could not be regarded as other than damaging to the work of Parliament. The source of the disclosure was not ascertained, but the committee expressed the view that the person who provided the information was the principal offender. Nevertheless, the committee found that the editor and the reporter of The Economist had acted irresponsibly and recommended that they each be excluded from the precincts for 6 months. This recommendation was not, however, adopted by the House²⁰.

Major review of the area

In 1985 the House of Commons Committee of Privileges conducted a major review of this aspect of contempt, considering the problem in the context of the comprehensive system of committees by then existing in the House of Commons. The Committee of Privileges made detailed recommendations for the consideration of such matters, and recommended a new mechanism, which provided, inter alia, that when such problems arise:

- the committee concerned should seek to discover the source of the leak, with the Chairman of the committee writing to all members and staff to ask if they could explain the disclosure;
- the committee concerned should come to a conclusion as to whether the leak was of sufficient seriousness, having regard to various factors, to constitute substantial interference, or the likelihood of such, with the work of the committee, or the functions of the House;
- if the committee concluded that there had been substantial interference or the likelihood of it, it should report to the House and the special report would automatically stand referred to the Committee of Privileges; and

- if the Committee of Privileges found that a serious breach of privilege or contempt had been committed, and confirmed that substantial interference had resulted or was likely and was contrary to the public interest, the committee might recommend that appropriate penalties be imposed on members or other persons²¹.

Test case - Environment Committee

The first case to be dealt with under the new procedures involved a report in The Times revealing contents of a draft report on radioactive wastes prepared by the Chairman of the Environment Committee. The Environment Committee could not find the source, but reported to the House that the publication had caused serious interference with its work. The report stood referred to the Committee of Privileges, which heard evidence from the Chairman of the committee, and from representatives of The Times.

By a majority of 11 to 1, the Committee of Privileges agreed that damage was done by the leak and that this constituted substantial interference. It found that serious contempts had been committed by both the person who was responsible for the disclosure, who remained unknown, by the journalist and by the editor. The committee rejected an argument that the publication was in the public interest, observing that the interests of The Times were being equated with the public interest the journalists had been claiming to uphold. The committee recommended the reporter be suspended for six months from the parliamentary lobbies and that The Times should be deprived of one of its lobby passes for the same period. The report came before the House for consideration, but the House rejected a motion to agree with the recommendations, resolving instead:

"That this House takes note of the First Report of the Committee of Privileges; believes that it would be proper to punish an Honourable Member who disclosed the draft report of a select committee before it had been reported to the House; but considers that it would be wrong to punish a journalist merely for doing his job"²².

BASIC PRINCIPLES IN SUCH CASES

The matters complained of would not, if established, constitute a breach of any specific right or immunity enjoyed by the Houses, their committees or Members. Rather, a question of contempt arises. The accepted definition of contempt has been quoted above.

Whilst it is accepted that the House may treat a matter involving unauthorised disclosure or publication as a contempt, and whilst there are a number of precedents for matters to be so treated, it is important to consider the reasons for the prohibition on disclosure and publication.

The 1985 report of the House of Commons Committee of Privileges already quoted outlines a number of the competing considerations. It outlines arguments put from

the point of view of those involved with committees, and also from the point of view of the media. Accepting that there will often be substantial variations between particular cases, but commenting on those of a more serious nature, the committee argued that the nature of damage fell under three heads:

- the damage that could be done to the process of seeking agreement, or as much agreement as possible, in a select committee, noting that attempts might sometimes be made to deliberately seek through publicity to influence a committee's decisions;
- a danger to the committee system as a whole - 'if members of committees are shown to be incapable of treating their proceedings as confidential, those who give evidence in confidence to select committees might become more reluctant to do so'; and
- damage by undermining the trust and goodwill among members of committees.

The committee noted the general views of the media:

- that the very need for prohibitions in this area was questioned by the media, that the prohibitions were unworkable and that they should be abolished;
- that the media considered its function was to publish news and information for the public on all matters of public interest, including the work of select committees;
- the view of the media that if some matters were meant to be confidential then the responsibility for keeping them confidential rested with members of committees and if members leaked information to the media, journalists had no reason to refrain from publication; and
- if a leak was received, it was editors' policy to publish if they thought it desirable to do so on journalistic grounds unless on other grounds it would appear to be damaging to the national interest.

(See also remarks of Mr Mack in the House [*House of Representatives Debates*, 19 September 1990, pp. 2185-7]).

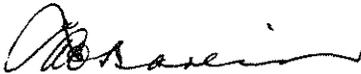
MATTERS FOR CONSIDERATION

There would seem to be three main aspects in this reference: the question of disclosure, the question of publication, and the question of effect.

Historically it seems to have been very difficult to ascertain the source of any disclosure(s) of confidential committee information or papers. In its report on the Telecommunications Interception case the committee recognised the culpability of such persons, saying that if they could be identified the House would be well advised to take exemplary action. As to publication, there are precedents for a finding of contempt in respect of persons found to have published such material. May notes, however:

Although successive Committees of Privileges have concluded that such interference with the work of select committees and contraventions of the Resolution of 1837 are a contempt of the House and damaging to the work of the Parliament, in none of the recent cases involving draft reports has it been possible to identify those responsible for the original disclosure. In the absence of such information, Committees of Privileges have usually not been willing to recommend exercise of the House's penal powers against those who gave wider publicity to the disclosure, and when they have done so the House has not been prepared to agree²³.

With regard to the issue of effect, the possible adverse effects of such disclosures have been noted above and Mr Scott has advised the House in general terms of the Public Accounts Committee's conclusion in this regard. Section 4 of the Parliamentary Privileges Act would require the committee to satisfy itself as to whether the act or acts in question amounted or were intended to amount to an improper interference with the free performance of the committee's authority or functions.



L M BARLIN
Clerk of the House

9 December 1993

NOTES

1. House of Representatives *Hansard*, 27 October 1993, p. 2654.
2. *House of Representatives Practice* (2nd edition), AGPS, Canberra 1989 (chapter 19).
3. May (21st Edition) p. 115.
4. Op cit pp. 701-3.
5. Act No. 21 of 1987.
6. *House of Representatives Practice* (2nd edition), p. 713.
7. *Australian Senate Practice*, 6th edition, p. 1025.
8. *Senate Journals*, 1988-89/535.
9. PP 135 (1987).
10. PP 461 (1989).
11. PP 163 (1971).
12. *Senate Journals*, 1970-72/612
13. PP 298 (1984); PP 239 (1985).
14. *Senate Journals*, 1985-87/317.
15. Committee of Privileges (Senate) - 22nd report (May 1990).
16. PP 217 (1973); *Votes and Proceedings* 1973-74/518.
17. PP 242 (1971).
18. PP 135 (1987).
19. PP 429, 1990.
20. HC 22 (1975-76); CJ 1975-76/64.
21. HC 555 (1984-85).
22. HC 376 (1985-86); The Parliamentarian, July 1986, pp. 102-3.
23. May, 21st edition, pp 123-4.

COMMITTEE OF PRIVILEGES

17 November 1993

1-

Dear 2-

On 28 October 1993 the House agreed to the following motion:

That the matter of articles in the *Australian* of 21 October 1993, the *Australian Financial Review* of 21 and 25 October and comments by Mr L Oakes on the WIN evening news of 25 October which appeared to reveal a knowledge of the contents of a draft report and/or deliberations of the Joint Committee of Public Accounts be referred to the Committee of Privileges.

A copy of each of the articles in question, and of a transcript of the WIN news item, is attached for your information.

This matter was raised in the House by the Chairman of the Joint Committee of Public Accounts, Mr L J Scott, MP (*Hansard*, House of Representatives, 27 October 1993, p. 2654).

The Committee of Privileges has resolved that I write to all Members of the Joint Committee on Public Accounts, and the Committee Secretary, to ask whether they have any information concerning the circumstances giving rise to the apparent unauthorised disclosure(s), and also whether they have any views they would like to present to this committee. It would be appreciated if you could provide a response to this request by Friday, 10 December.

Yours sincerely

signed 16/11/93

ROD SAWFORD
Chairman

ATTACHMENT F

SUGGESTED RESOLUTION CONCERNING THE CONSIDERATION OF THE UNAUTHORISED DISCLOSURE OR PUBLICATION OF COMMITTEE EVIDENCE OR PROCEEDINGS

1. Notwithstanding the provisions of standing orders 95, 96 and 97A, a complaint concerning the unauthorised disclosure or publication of evidence taken by a committee, or proceedings of a committee or documents concerning a committee, must be raised at the first opportunity at a meeting of the committee in question; and the House must be advised that the matter is to be raised, or has been raised, with the committee.
2. A committee concerning which a complaint of unauthorised disclosure or publication has been made must consider whether the matter has caused substantial interference with its work, with the committee system or with the work of either House, or whether it is likely to have such an effect.
3. If a committee wishes to consider such a matter further, it must seek to ascertain the source of any unauthorised disclosure and in order to do so letters must be written to all members of the committee and its staff asking if they have any knowledge as to the source of the disclosure.
4. If a committee concludes that the unauthorised disclosure or publication in question has caused substantial interference, or is likely to do so, it must set out its findings, together with the reasons why it has reached such a conclusion, and any other relevant information or opinion it may have on the matter, in a Special Report which must be presented to the House at the first available opportunity. Such a Special Report should also provide details of the steps the committee has taken to ascertain the source of any unauthorised disclosure and it should include copies of replies received from members of the committee and its staff.
5. A Special Report from a committee pursuant to these provisions shall be considered by the Speaker who must advise the House in the normal manner as to whether, in the Speaker's opinion, a *prima facie* case has been made out.

COMMITTEE OF PRIVILEGES

MINUTES OF PROCEEDINGS

Parliament House - Canberra
Tuesday, 16 November 1993

PRESENT: Mr Sawford (Chairman); Mr Peacock; Mr Andrews;
Mr Cleeland; Mr MacKellar

APOLOGIES: Mr Brown; Mr Lieberman; Mr McGauran; Mr Simmons

The meeting opened at 3.42pm.

The Chairman reported procedural advice from Dr Wooldridge, Deputy Leader of the Opposition, nominating Mr MacKellar to serve on the committee as his nominee.

Minutes

The minutes of the meeting held on 13 May were confirmed.

Reference concerning Public Accounts Committee

The Chairman presented extracts from the *Votes and Proceedings*, Nos 31 and 32 of 27 and 28 October 1993.

The Committee deliberated.

Resolved (on the motion of Mr Peacock) that the committee:

- (1) invite a memorandum from the Clerk in connection with the reference;
- (2) write to the Chairman of the Joint Committee of Public Accounts inviting a submission as to the facts concerning the distribution and consideration of the draft report, and asking what elements apparently revealed a knowledge of particular meetings and inviting information or comments as to the effect of the apparent disclosures on the work of the committee; and
- (3) write to the members of the Public Accounts Committee, and to the Secretary to the committee, asking if they had any information that might assist the committee and any views that they would like to present to it.

The Committee deliberated.

At 3.51pm the committee adjourned until 4.30pm on Tuesday, 14 December.

Confirmed.

CHAIRMAN

COMMITTEE OF PRIVILEGES

MINUTES OF PROCEEDINGS

Parliament House - Canberra
Tuesday, 23 November 1993

PRESENT: Mr Sawford (Chairman); Mr Peacock; Mr Andrews;
Mr Cleeland; Mr Holding; Mr Lieberman; Mr McGauran;
Mr McLeay

APOLOGIES: Mr Brown; Mr Simmons

The meeting opened at 4.51pm.

Mr Holding reported that he had been nominated by Mr Beazley to participate in the Committee's inquiries.

Minutes

The minutes of the meeting held on 16 November were amended and confirmed.

Reference concerning Mr Sciacca

The Chairman presented extracts from the *Votes and Proceedings*, No. 34 of 17 November 1993 concerning the reference involving Mr Sciacca.

The Committee deliberated.

Mr Peacock moved— That the committee:

- (1) invite a written submission from Mr Sciacca in connection with the reference; and
- (2) invite a memorandum from the Clerk of the House on the matter.

The Committee deliberated.

Mr Holding moved as an amendment— That paragraph (1) be omitted and the following paragraph substituted:

- (1) Mr Sciacca to appear before the committee at 5.00pm on Thursday, 25 November.

Amendment agreed to.
Motion as amended agreed to.

The Committee deliberated.

At 5.23pm the committee adjourned until 5.00pm on Thursday, 25 November 1993.

Confirmed.

CHAIRMAN

COMMITTEE OF PRIVILEGES

Minutes of Proceedings
Parliament House - Canberra
Tuesday 14 December 1993

PRESENT: Mr R W Sawford MP (Chairman)
Hon A S Peacock MP
Mr K J Andrews MP
Mr P R Cleeland MP
Hon L S Lieberman MP
Mr P J McGauran MP
Mr L B McLeay MP
Hon L R S Price MP
Mr H V Quick MP

The meeting opened at 5.05pm.

Minutes

The minutes of the meeting held on 25 November 1993 were confirmed.

Correspondence

The Chairman presented the following items of correspondence:

- letter dated 17 November from Mr W L Taylor MP
- letter dated 18 November from Senator W Parer
- letter dated 18 November from Senator B Cooney
- letter dated 18 November from Mr L B McLeay MP
- letter dated 23 November from Senator the Hon M Reynolds
- letter dated 23 November from Mr M A J Vaile MP
- letter dated 7 December from Mr K J Aldred MP
- letter dated 9 December from Mr T Rowe
- letter dated 10 December from Hon R J Brown MP
- letter dated 14 December from Mr L J Scott MP
- letter dated 14 December from Mr L J Scott MP (as Chairman of the Joint Committee of Public Accounts)
- letter dated 10 December from Mr A Robinson of 197 Kent Street, Hughes, ACT 2607

Resolved (on the motion of Mr Peacock) that the correspondence be received as evidence.

Reference concerning Mr Sciacca

The Committee deliberated.

Resolved (on the motion of Mr Andrews) that Mr Robinson be invited to appear before the Committee to give evidence at 9.30am on Friday 17 December.

The Committee deliberated.

Resolved (on the motion of Mr McLeay) that the letter dated 10 December from Mr Robinson be published to Mr Sciacca.

Reference concerning the Public Accounts Committee

Mr McLeay withdrew from the meeting (being a Member of the Joint Committee of Public Accounts).

The Committee deliberated.

Resolved (on the motion of Mr Peacock):

- (1) that the Committee invite Mr L J Scott MP, Mr W Taylor MP and Mr M Vaile MP to appear before the Committee to give evidence on Friday 17 December;
- (2) that steps be taken to arrange for Senator Parer to be invited to appear before the Committee on Friday 17 December.

The Committee deliberated.

At 5.45pm the Committee adjourned until 9.30am on Friday 17 December 1993.

Confirmed.

CHAIRMAN

COMMITTEE OF PRIVILEGES

MINUTES OF PROCEEDINGS

Parliament House - Canberra
Friday, 17 December 1993

PRESENT: Mr Sawford (Chairman); Mr Peacock; Mr Andrews;
Mr Cleeland; Mr Holding; Mr Lieberman; Mr McGauran;
Mr Price; Mr Quick

The meeting opened at 9.47am.

Minutes

The minutes of the meeting held on 14 December were confirmed.

Correspondence

The Chairman presented extracts from the *Votes and Proceedings* Nos. 42 and 43 of 15 and 16 December respectively informing the committee of the reference to it concerning mail services and of the appointment of Mr Sinclair in place of Mr Lieberman for that inquiry.

The Chairman presented the following items of correspondence:

- letter dated 15 December from Senator Bishop;
- letter dated 15 December from Mr C Haviland, MP;
- letter dated 15 December from Mr E Fitzgibbon, MP;
- letter dated 16 December from Mr A Griffin, MP.

Resolved (on the motion of Mr Quick) that the correspondence be received as evidence.

Reference concerning the Public Accounts Committee

The Committee deliberated.

Mr L J Scott, MP, Chairman of the Joint Committee of Public Accounts (accompanied by Mr Grant Harrison, Committee Secretary) was called, sworn and examined.

The witness withdrew.

The committee deliberated.

Mr W L Taylor, MP, a member of the Joint Committee of Public Accounts (accompanied by Mr Andrew Power of his office) was called, sworn and examined.

The meeting was suspended from 10.50am until 11.00am.

The meeting resumed.

The witness withdrew.

Mr M A J Vaile, MP, a member of the Joint Committee of Public Accounts (accompanied by Mr Oakeshott of his office) was called, sworn and examined.

The committee deliberated.

Reference concerning Mr Sciacca

Mr Anthony John Robinson (advised by Mr William Redpath, solicitor) was called, made an affirmation and was examined.

Mr Robinson presented an extract from the report of the Joint Select Committee on Parliamentary Privilege of New South Wales.

The witness withdrew.

The committee deliberated.

At 2.05pm the committee adjourned until 8.00pm on Friday, 17 December 1993.

Confirmed.

CHAIRMAN

COMMITTEE OF PRIVILEGES

MINUTES OF PROCEEDINGS

Parliament House - Canberra
Friday, 17 December 1993
(second meeting)

PRESENT: Mr Sawford (Chairman); Mr Peacock; Mr Andrews;
Mr Cleeland; Mr Holding; Mr Lieberman; Mr McGauran;
Mr Price; Mr Quick

The meeting opened at 8.18pm.

Minutes

The minutes of the first meeting held on 17 December were amended and confirmed.

Correspondence

The Chairman presented a letter dated 17 December from Mr L.J. Scott, MP, Chairman of the Joint Committee of Public Accounts.

Resolved (on the motion of Mr Andrews)— That the letter be received as evidence.

Reference concerning Mr Sciacca

The committee deliberated.

At 9.34pm the committee adjourned until 11.00am on Saturday, 18 December 1993.

Confirmed.

CHAIRMAN

COMMITTEE OF PRIVILEGES

MINUTES OF PROCEEDINGS

Parliament House - Canberra
Tuesday, 21 December 1993

PRESENT: Mr Sawford (Chairman); Mr Peacock; Mr Andrews;
Mr Cleeland; Mr Holding; Mr Lieberman; Mr McGauran;
Mr MacKellar; Mr Price; Mr Quick

The meeting opened at 3.11pm.

Minutes

The minutes of the meeting held on 18 December were confirmed.

The Chairman presented an extract from the *Votes and Proceedings*, No. 44 dated Friday 14 December 1993 concerning the appearance of Senator Parer.

Reference concerning Mr Sciacca

The committee deliberated. _____

The meeting was suspended from 3.15pm until 3.35pm

The Chairman presented a draft report.

Mr Cleeland moved that—

- (1) The Committee has concluded that as a result of the actions of Mr Robinson in causing ACT writ of summons SC617/93 to be issued and served on Mr Sciacca, Mr Sciacca has been constrained in the performance of his duties as a Member.
- (2) It is open to the Committee to make a finding of contempt on the basis that an action has amounted, or been likely to amount to, an improper interference with the free performance by a Member of a Member's duties as a Member. The Committee considers that it is open to it to make such a finding in respect of the actions of Mr Robinson, even though it accepts that Mr Robinson did not intend to commit a contempt. It seeks his further submission on this point before proceeding to complete its report to the House.

Debated ensued.

Mr MacKellar moved as an amendment— That the following words be omitted—

"The Committee considers that it is open to it to make such a finding in respect of the actions of Mr Robinson, even though it accepts that Mr Robinson did not intend to commit a contempt."

and the following words substituted:

The question of improper interference is of central concern.

Debate ensued.

Mr Andrews moved as an amendment to the amendment— That the following words be omitted from the amendment—

"even though it accepts that Mr Robinson did not intend to commit a contempt"

Debate ensued.

Amendment to the amendment agreed to.

Amendment, as amended, agreed to.

Motion, as amended, agreed to viz.:

- (1) The Committee has concluded that as a result of the actions of Mr Robinson in causing ACT writ of summons SC617/93 to be issued and served on Mr Sciacca, Mr Sciacca has been constrained in the performance of his duties as a Member.
- (2) It is open to the Committee to make a finding of contempt on the basis that an action has amounted, or been likely to amount to, an improper interference with the free performance by a Member of a Member's duties as a Member. The question of improper interference is of central concern, even though it accepts that Mr Robinson did not intend to commit a contempt. It seeks his further submission on this point before proceeding to complete it's report to the House.

At 4.22pm the committee adjourned *sine die*.

Confirmed.

CHAIRMAN

COMMITTEE OF PRIVILEGES

MINUTES OF PROCEEDINGS

Parliament House - Canberra
Tuesday, 8 February 1994

PRESENT: Mr Sawford (Chairman); Mr Peacock; Mr Brown,
Mr Cleeland; Mr Holding; Mr Lieberman; Mr McGauran;
Mr MacKellar; Mr Quick; Mr Simmons

The meeting opened at 5.30pm.

Minutes

The minutes of the meeting held on 21 December were confirmed.

Reference concerning Mr Sciacca

The Chairman presented a letter dated 1 February 1994 from Mr W. Redpath.

Resolved (on the motion of Mr Cleeland) - That the committee agree to allow until the end of February to receive a further submission.

Reference concerning Public Accounts Committee

Resolved (on the motion of Mr Lieberman) - That Senator Parer be invited to give evidence at ~~next~~ the meeting. +

At 5.45pm the committee adjourned until 11.00am, Thursday 24 February 1994.

Confirmed.

CHAIRMAN

COMMITTEE OF PRIVILEGES

MINUTES OF PROCEEDINGS

Parliament House - Canberra
Tuesday, 24 February 1994

PRESENT: Mr Sawford (Chairman); Mr Peacock; Mr Andrews; Mr Brown,
Mr Holding; Mr Lieberman; Mr Quick; Mr Sinclair

The meeting opened at 11.05am.

Minutes

The minutes of the meeting held on 8 February were confirmed.

The Chairman presented an extract from the *Votes and Proceedings*, No. 44 of Friday, 17 December 1993 advising of a resolution of the Senate authorising Senator Parer to appear before the Committee.

Reference concerning Public Accounts Committee

The Committee deliberated.

Senator W.R. Parer, a member of the Joint Committee of Public Accounts, was called, sworn and examined.

The witness withdrew.

The Committee deliberated.

At 12.25pm the committee adjourned until 9.00am, Thursday 3 March 1994.

Confirmed.

CHAIRMAN

COMMITTEE OF PRIVILEGES

MINUTES OF PROCEEDINGS

Parliament House - Canberra
Thursday, 3 March 1994

PRESENT: Mr Sawford (Chairman); Mr Peacock; Mr Andrews;
Mr Brown, Mr Cleeland; Mr Holding; Mr Lieberman;
Mr McGauran; Mr Quick; Mr Simmons; Mr Somlyay

The meeting opened at 9.05am.

Minutes

The minutes of the meeting held on 24 February were confirmed.

The Chairman advised the Committee that Mr A.M. Somlyay, MP, had been nominated by Dr M.R.L. Wooldridge, MP, Deputy Leader of the Opposition, to serve on the Committee.

Papers

The Chairman presented a letter dated 23 February from Mr Redpath, solicitor for Mr A. Robinson forwarding an opinion prepared by Mr John Dowd, QC, and Mr B. Connell.

Resolved (on the motion of Mr Cleeland) - That the submission be received as evidence.

Reference concerning Public Accounts Committee

The Committee deliberated.

Reference concerning Mr Sciacca

The Committee deliberated.

At 10.04 the committee adjourned until 11.00am, Thursday 24 March 1994.

Confirmed.

CHAIRMAN

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