



**HOUSE OF REPRESENTATIVES  
COMMITTEE OF PRIVILEGES**

**REPORT ON THE MATTER  
REFERRED TO THE COMMITTEE  
ON 23 NOVEMBER**

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COMMONWEALTH OF AUSTRALIA  
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REFERRED TO THE COMMITTEE  
ON 23 NOVEMBER,  
INCORPORATING TWO DISSENTING REPORTS**

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**MEMBERS OF THE COMMITTEE**

Mr G Gear, MP (Chairman)

Hon. N A Brown, QC, MP

Mr D M Cameron, MP

Mr G Campbell, MP

Mr P R Cleeland, MP

Hon. W C Fife, MP

Hon. A C Holding, MP

Mr D J C Kerr, MP

Mr P C Millar, MP

Mr P K Reith, MP

Mr R E Tickner, MP

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**Dissenting report - Mr N A Brown**

**Minutes of proceedings**

1. On 23 November the House agreed to the following resolution:

That the allegation against the honourable Member for Hotham be referred to the Committee of Privileges.
2. Having considered the terms of the reference of the House, the Committee resolved as follows:
  - (1) That the allegation referred to it comprise the address made to the House by the Member for Bruce on 23 November 1989, recorded at Hansard page 2804-6.
  - (2) That the allegation by the honourable Member for Bruce concerns the character and conduct of the honourable Member for Hotham in his capacity as a Member of the House.
  - (3) That Mr Aldred be invited to address the Committee at the earliest opportunity.
3. The honourable Member for Bruce, Mr Aldred, was advised of the terms of the resolutions quoted at paragraph (2) above, and appeared before the Committee and made a statement to it on 28 November.
4. The Committee resolved, on 29 November -

That Mr Aldred be invited to appear before the Committee at 8.30 am tomorrow to make any further statement and to answer questions in respect of his use of the procedures of the House during the Grievance Debate on 23 November.
5. Mr Aldred appeared before the Committee again on 30 November, made a further statement and was questioned by Members of the Committee.
6. The Committee notes that the allegation contained in the speech by the honourable Member for Bruce (Mr Aldred) during Grievance Debate on 23 November amounts to a serious imputation against and personal reflection on the honourable Member for Hotham, but that the circumstances of the speech created difficulties for the Chair in the application of the rules of the House.
7. The Committee notes that there is often an inclination on the part of Members to bypass the correct forms of the House in the making of charges and allegations.

8. The Committee believes that it has not been charged with the responsibility of making a determination of the substance or otherwise of the statements in the statutory declaration which contained the allegation against the honourable Member for Hotham and notes that, in the ultimate, it does not have the capacity to conduct an authoritative investigation into the allegation itself.
9. The Committee reports to the House its conclusions that
  - (a) whilst acting on the basis of information presented to him, the honourable Member for Bruce, if of the view that the allegation should have been brought before the House, should also have been alert to the requirement that such a matter ought to be put forward by means of a substantive motion open to debate and which would admit of a distinct vote of the House;
  - (b) as a matter of urgency the attention of all Members should be drawn to the requirements of the standing orders and practices of the House which govern the matter of reflections on and charges against Members; and
  - (c) the great privilege of freedom of speech carries with it a heavy obligation that it be exercised with great care and responsibility and that the misuse of this privilege in making charges against other persons, whether Members or not, could be held by the House to be not only an abuse but a contempt. Having regard to the experience of the honourable Member for Bruce the Committee finds that the honourable Member has offended against the rules of the House. Accordingly the Committee recommends that the honourable Member should, at the first parliamentary opportunity, be required to apologise to the House for his serious breach and recommends that the House requires him to withdraw the allegation.

G GEAR  
Chairman  
30 November 1989



COMMITTEE OF PRIVILEGES -

A DISSENTING REPORT BY MR PETER REITH MP

1. A question arises as to the validity of the Resolution of the House to establish jurisdiction in the Committee of Privileges. According to Pettifer House of Representatives Practice "any Member may rise in the House at any time to speak upon a matter of privilege suddenly arising".

For the House to immediately debate any motion moved in relation to the matter raised requires the Speaker to form the opinion that a prima face case of Breach of Privilege has been made out and that the matter has been raised at the earliest opportunity.

On this occasion the Speaker failed to form an opinion on the question and gave the Motion precedence. The normal practice of the House is for the Speaker to reserve his comments on the matter of privilege and, at a later time, make a short statement as to whether a prima face case has been made out.

This sensible practice ensures that the House has a proper opportunity to carefully reflect upon the matter raised and it discourages precipitous action by the House.

The events surrounding this referral highlight the importance of that practice being adhered to.

The Motion therefore was void ab initio and thus incapable of vesting jurisdiction in the Privileges Committee.

2. During his evidence, Mr Aldred raised a question as to whether it was appropriate that Mr Holding should remain a member of the Committee during the hearing of the reference.

Mr Aldred claimed that Mr Holding had misrepresented Mr Aldred in Mr Holding's address to the House on the motion of referral. Whilst the Committee discussed the matter, it was clear that a majority was not prepared to pursue the issue raised by Mr Aldred.

When the Committee first met to discuss the Resolution, Mr Con Sciacca was nominated as the representative of the Leader of the House pursuant to Standing Order 25. At the second meeting of the Committee, Mr Holding attended and presented a letter from the Leader of the House nominating Mr Holding as the Leader's representative. The Committee was not advised of a resignation of Mr Sciacca or the withdrawal of his appointment.

It is important that the Committee of Privileges should be constituted in accordance with the Standing Orders.

In speaking to the Motion before the House, Mr Holding stated (at page 2837 of Hansard) "let those who allege prove". "What more prima face case can one have than someone saying that a Member of this Parliament is a traitor not merely to this institution but also to his country. That is the allegation."

These comments by Mr Holding could easily be interpreted by any objective third party as evidence that he had formed a firm view as to the propriety of the remarks made by Mr Aldred. Under those circumstances, Mr Holding should not have been a member of the Committee.

3. The procedures adopted by the Committee, and the actions of a number of the members of the Committee, all substantiate the view that Mr Aldred did not receive a fair and impartial hearing. In fact the Committee acted, in a number of respects, contrary to the recommendations of the 1984 Joint Standing Committee Report on Privileges. Some of the matters which substantiate this concern are as follows:
  - a) The Committee failed to define precisely the matters which it proposed to deliberate upon and thus denied Mr Aldred the basic right to be informed of the Committee's concerns.
  - b) On one occasion, Mr Aldred was misled by a Committee member as to the nature of the Committee's deliberations and was required to withdraw a question put to Mr Aldred on the grounds that it was misleading.
  - c) One member, during questioning, informed Mr Aldred that he was requested to attend the Committee to meet a "charge" and that member was required to withdraw.
  - d) One member attempted to deny Mr Aldred the right to consult his adviser and the Chairman was forced to intervene on a point of order to state Mr Aldred's rights.
  - e) One member cast reflections on Mr Aldred and was forced to withdraw those reflections as being unparliamentary.
  - f) The majority voted against a motion which sought to obtain legal advice from the Clerk of the House which is the usual practice of the Committee.
  - g) The outline and substance of the Committee's majority report was prepared and circulated to members of the Committee prior to Mr Aldred giving his evidence today - 30 November 1989. Furthermore, during the course of Mr Aldred giving evidence a number of the Committee members left and returned intermittently to conduct other business. They therefore did not hear all Mr Aldred's evidence. At the time the majority finally adopted their report, the transcript of Mr Aldred's evidence given today was not available and so some members came to a view without all the facts before them. At one stage, during remarks by Mr Aldred, three members of the Committee caucused behind the Chairman and carried on a

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conversation whilst the witness, Mr Aldred, was addressing the Committee. In addition, Mr Aldred made it quite clear that he was prepared to answer questions from the Committee but not before he had legal advice. The Committee resolved not to meet in Melbourne next Monday - by which time Mr Aldred may have been able to obtain proper representation and he was therefore denied the opportunity to put further facts before the Committee.

Mr Aldred said that he had spoken to his solicitor who advised that as the question of parliamentary privilege raised complex legal issues then he would need more than the 24 or 48 hours notice that the Committee was able to give Mr Aldred.

h) The majority were clearly determined to rush the Committee's deliberations. At the time of preparing this report, minutes of today's meetings are not available. However, they will show one amendment moved by Mr Holding. The circumstances surrounding Mr Holding's moving of the amendment reveal the manner in which the Committee deliberated. Just prior to Mr Holding moving his amendment, the Committee was about to vote upon a final resolution. At that time, the Secretary was moved to point out that the resolution then before the Chair may in fact be in breach of the Parliamentary Privileges Act 1987. In other words, the Committee having resolved not to take legal advice placed itself in a position of recklessly pursuing the issue without due regard to the law.

i) The majority were not prepared to give adequate time to those members of the Committee who indicated that they wished to lodge a minority report. When the Committee sat today it commenced at 8:30 am and, with the exception of one brief intermission, Question Time and about half an hour before 3:50 pm, it spent the whole day on the reference, and thus leaving about an hour prior to 5 pm for the preparation of this report including its typing and production.

j) During today's hearing Mr Aldred put a number of questions to the Committee as to its procedures. Essentially, the questions asked whether the Committee intended to abide by those recommendations of the 1984 Joint Standing Committee Report on Privileges which enumerate the processes which should be taken to ensure that persons appearing before the Committee are accorded natural justice. Whilst the Chairman attempted to partially answer some of the questions raised by Mr Aldred, the majority were obviously of the view that it was not necessary to accord the principles of natural justice to this case.

In summary, on the above issues, Mr Aldred was denied natural justice but, in any event, no breach of privilege could properly be made out against him because the motion of reference was invalid; Mr Aldred was denied adequate time to obtain legal advice and to prepare his case; the Committee failed to specify its reference even though requested to do so by Mr Aldred and even though Committee members had a draft of the conclusion which

they finally came to before them; the procedures of the Committee were technically flawed; insufficient substantive evidence was presented to support the allegation and, finally, the Committee was not properly constituted.

4. It was apparent that the remarks made by Mr Aldred in the Grievance Debate made on 23 November 1989 do not constitute a Breach of Privilege. Whilst obviously accepting this view, the majority were not prepared to acknowledge this publicly in their report.

The majority finally rested their conclusions on the grounds that Mr Aldred was not entitled to make the remarks that he did make without moving a substantive motion. It was said that Mr Aldred had breached established practice. Further, it was clear that the majority believed that Mr Aldred had breached Standing Order 78. The Committee was not prepared to take advice from the Clerk of the House on the scope of that Standing Order, nor were they prepared to take advice on the consequences of allegedly breaching practice.

As the matter was clearly not a matter of privilege, a further question of the jurisdiction of the Committee is raised. The Committee of Privileges is not charged with the responsibility of adjudicating on questions relating to the conduct of the House. It therefore acts *ultra vires* in making its recommendations to the House.

#### CONCLUSION

Under the Bill of Rights 1688, Members of the House may not be impeached or questioned in any court or place out of Parliament. This right of freedom of speech must be jealously guarded and not wittled away by precipitous and ill-considered judgements.

I therefore strongly dissent from the majority report. It is my recommendation to the House that it takes no further action on this matter.

In the event that the House wishes to consider the majority's recommendation, I further recommend that the House give members of the Committee the opportunity to submit a more detailed and considered report.



PETER REITH  
CANBERRA  
30 NOVEMBER 1989

MINORITY REPORT - MR N A BROWN

1. On 23 November 1989, the Honourable Member for Bruce, Mr Aldred, made a speech in the House during the Grievance Debate. He was speaking in support of the Motion "That Grievances be noted". Mr Aldred's speech dealt first with the Yugoslav Welfare Association and secondly with the activities in Australia of the Yugoslav Secret Service, the SDB. When dealing with the latter subject, Mr Aldred read from a statutory declaration made by Mr Tomislav Bosnjak. That statutory declaration said, amongst other things:

"That the Informant told me it is a well-known fact in the various ethnic communities from Yugoslavia and also known to him that the person in question is often visited at his home by officials from the Yugoslav Consulate in Melbourne." and, later,

"That the Informant told me that the Person in Question is the Federal Member for Hotham Lewis Kent."

2. Mr Aldred's speech is to be found at pages 2804 to 2806 of the Hansard of 23 November 1989.

3. After Question Time on 23 November, the Minister for the Arts, Tourism and Territories (Mr Holding) raised a matter of privilege arising from the Honourable Member for Bruce's speech.

4. Mr Holding's speech is to be found at pages 2835 to 2836 of the Hansard for 23 November 1989. The Leader of the House moved the following motion:

"That the allegation against the honourable member for Hotham be referred to the Privileges Committee for consideration."

The motion was carried.

5. The Privileges Committee has met on several occasions to deal with the reference.

6. At its meeting on 30th November 1989, the Committee resolved to present the Report that has now been tabled.

7. I strongly disagree with the Majority Report. I do this for the following reasons.

8. First, the deliberations of the Committee leading to the conclusions expressed in the Majority Report have been thoroughly unsatisfactory in almost every respect. It must be said very clearly that the Committee did not come to grips with the essential issue referred to it and has not disposed of it. The Committee has not dealt fairly with the Honourable Member for Bruce. The Committee has not given elementary justice to the Honourable Member for Bruce and has utterly failed to discharge its responsibility.

9. Secondly, the Committee has never made any formulation of the alleged matter of privilege despite the fact that it was asked to do so by Mr Reith and me at the beginning of the proceedings. The only attempt at such a formulation was that made by the Committee when it decided that:

"That the allegation referred to it comprise the address made to the House by the Member for Bruce on 23 November 1989, recorded at Hansard page 2804-6."

That formulation tells us nothing about:

- a. which heading of privilege it is said that the matter falls under; and
- b. how is it said that there has been a breach of privilege by Mr Aldred or by anyone else.

10. Thirdly, Mr Aldred has been denied the opportunity to obtain legal representation, despite the fact that he expressly asked for this opportunity on two occasions. I believe that he should have been given a reasonable opportunity to obtain advice before being expected to answer questions and defend himself from an adverse finding against him.

11. Fourthly, the Majority Report reaches no conclusions on whether a breach of privilege has been committed. As such, it has failed to discharge its responsibility to the House.

12. Fifthly, not only has the Committee not reached any conclusions on the matter of privilege, but it has chosen to proceed to deal with the complaint on the basis of a breach of the rules of the House. There must be a serious question of whether the Committee has any jurisdiction to deal with such a matter.

13. Sixthly, it is doubtful whether the Honourable Member for Bruce did in fact commit a breach of Standing Orders or of the rules of the House in general.

14. He asked for leave to table the Statutory Declaration and was granted it. When he tabled the Statutory Declaration no point of order was taken against him. No objection was made to his speech or his tabling of the Statutory Declaration by the Minister in charge of the House (Mr West), by the Acting Speaker or by any other Member. This was so, despite the fact that according to Mr Aldred's evidence, the Minister examined the Statutory Declaration.

15. On at least one interpretation of the Standing Orders, in the absence of a point of order being taken, the Honourable Member for Bruce was within his rights in tabling the Statutory Declaration.

16. In particular, it must be said that the Honourable Member for Bruce, contrary to the conclusion reached by the majority of the Committee, created no difficulties for the Chair.

17. The Minister in charge of the House could have examined the Statutory Declaration before deciding to grant leave to table it.

18. He apparently did consider it and granted leave.

Likewise, the Acting Speaker could have examined the Statutory Declaration and have ruled that it was contrary to the Standing Orders for it to be tabled. But he likewise did not deter the Honourable Member from tabling the Statutory Declaration.

19. It is therefore untrue to say that the Honourable Member for Bruce created any difficulties for the Chair.

20. Even if this is wrong, in the case of doubt, it is an extreme and unjustified step to conclude that the Honourable Member for Bruce made a serious imputation against the Honourable Member for Hotham, that he created difficulties for the Chair, that he offended against the rules of the House or that his breach was a serious one.



21. Especially is this so when remarks of the sort made by the Honourable Member for Bruce against the Honourable Member for Hotham are not by any means rare. To single him out, to allege that he committed a breach of privilege and to conclude that he has offended against the rules of the House, is an extreme case of discrimination against him when no such action is taken against other Members who make similar remarks. It is doubly bad to do this and at the same time to deny him time to prepare his defence.

22. In any event, on the facts, the substance of what the Honourable Member for Bruce read from the Statutory Declaration was that officials from the Yugoslav Consulate often visited the Honourable Member for Hotham at his home. He did not accuse the Honourable Member for Hotham of being a paid agent of a foreign power or a traitor. To describe the statement that the Honourable Member for Bruce made as being an offence against the rules of the House is an exaggeration and an unwarranted conclusion.

23. In conclusion, the Committee has failed to discharge its responsibilities, has not done elementary justice by the Honourable Member for Bruce and has reached a conclusion that is not justified by the facts.



N A BROWN

30 NOVEMBER 1989

COMMITTEE OF PRIVILEGES

MINUTES OF PROCEEDINGS

Parliament House - Canberra

Monday, 27 November 1989

(35th Parliament - 2nd meeting)

PRESENT:

Mr Gear (Chairman)	Mr Kerr
Mr N A Brown	Mr Millar
Mr D M Cameron	Mr Reith
Mr Campbell	Mr Tickner
Mr Cleeland	
Mr Fife	

The Committee met at 12.35 pm.

The Chairman reported advice from the Leader of the House nominating Mr Sciacca to serve in his place.

The following extract from the Votes and Proceedings was presented by the Chairman -

No. 152 - 23 November 1989 - Privilege Allegation against the Honourable Member for Hotham (Mr Kent) - Reference to Committee of Privileges

The Committee deliberated.

Mr N A Brown, Mr Fife and Mr D M Cameron each made personal statements in connection with the reference.

The Committee deliberated.

At 1.55 pm the Committee adjourned until 8.30 pm this day.

Confirmed.

Chairman

COMMITTEE OF PRIVILEGES

MINUTES OF PROCEEDINGS

Parliament House - Canberra

Monday, 27 November 1989

(35th Parliament - 3rd meeting)

PRESENT:

Mr Gear (Chairman)	Mr Holding
Mr N A Brown	Mr Kerr
Mr D M Cameron	Mr Millar
Mr Campbell	Mr Reith
Mr Cleeland	Mr Tickner
Mr Fife	

The Committee met at 8.37 pm.

The Chairman reported advice from the Leader of the House nominating Mr Holding in place of Mr Sciacca.

The Chairman drew attention to the provisions of standing order 26 concerning the place of the Deputy Leader of the Opposition and ascertained that the Committee was agreeable for Mr Fife to serve in this place.

Minutes of the meeting earlier this day were confirmed.

The Committee deliberated.

Resolved (on the motion of Mr Millar)

That the allegation referred to it comprise the address made to the House by the Member for Bruce on 23 November 1989, recorded at Hansard page 2804-6.

Resolved (on the motion of Mr Holding)

That the allegation by the honourable Member for Bruce concerns the character and conduct of the honourable Member for Hotham in his capacity as a Member of the House.

Resolved (on the motion of Mr Holding)

That Mr Aldred be invited to address the Committee at the earliest opportunity.

At 9.47 pm the Committee adjourned until 4.00 pm on Tuesday, 28 November, or such other time as may be notified by the Chairman.

Confirmed.

Chairman

COMMITTEE OF PRIVILEGES

MINUTES OF PROCEEDINGS

Parliament House - Canberra

Tuesday, 28 November 1989

(35th Parliament - 4th meeting)

PRESENT:

Mr Gear (Chairman)	Mr Holding
Mr N A Brown	Mr Millar
Mr D M Cameron	Mr Reith
Mr Campbell	Mr Tickner
Mr Cleeland	
Mr Fife	

The Committee met at 4.15 pm.

The Committee deliberated.

Minutes of the evening meeting of 27 November were confirmed.

The Committee deliberated.

Mr Kenneth James Aldred, a Member of the House was called and sworn.

Mr Aldred was accompanied by the Hon. I B C Wilson, MP, as adviser.

Mr Aldred made a statement.

The witness and Mr Wilson withdrew.

The Committee deliberated.

The witness was re-called and continued his statement with Mr Wilson present.

The witness was examined.

The witness and Mr Wilson withdrew.

The Committee deliberated.

Mr N A Brown asked that the fact that he had not been present when three resolutions were passed at the last meeting of the Committee be recorded in the minutes.

At 5.34 pm the Committee adjourned until 10.15 am tomorrow, Wednesday, 29 November.

Confirmed.

Chairman

COMMITTEE OF PRIVILEGES

MINUTES OF PROCEEDINGS

Parliament House - Canberra

Wednesday, 29 November 1989

(35th Parliament - 5th meeting)

PRESENT:

Mr Gear (Chairman)	Mr Fife
Mr N A Brown	Mr Holding
Mr D M Cameron	Mr Millar
Mr Campbell	Mr Reith
Mr Cleeland	Mr Tickner

The Committee met at 10.17 am.

Minutes of the evening meeting of 28 November were confirmed.

The Committee deliberated.

Mr Cleeland moved -

That Mr Aldred be advised that the Committee has determined that the substance of the Committee's deliberations is limited to the use of the forms and procedures of the House of Representatives.

The Committee deliberated.

Motion, by leave, withdrawn.

Mr Campbell moved -

That Mr Aldred be invited to appear before the Committee at 8.30 am tomorrow to make any further statement and to answer questions in respect of his use of the procedures of the House during the Grievance Debate on 23 November.

Question - put

Ayes 6

Noes 3

Mr D M Cameron  
Mr Campbell  
Mr Cleeland  
Mr Holding  
Mr Millar  
Mr Tickner

Mr N A Brown  
Mr Fife  
Mr Reith

And so it was resolved in the affirmative.

Mr N A Brown moved -

That the Member for Bruce be invited to appear before the Committee on Monday, 4 December, if required, in Melbourne to make his further statement and answer questions.

Mr Campbell moved, as an amendment, to omit "Monday, 4 December" and substitute "Tuesday, 5 December".

Mr Holding moved -

That debate on the motion and on the amendment be adjourned -

Question - That the debate be adjourned - put

Ayes 5

Noes 3

Mr D M Cameron

Mr N A Brown

Mr Campbell

Mr Fife

Mr Cleeland

Mr Reith

Mr Holding

Mr Tickner

And so it was resolved in the affirmative.

At 12.30 pm the Committee adjourned until 8.30 am tomorrow, Thursday, 30 November.

Confirmed.

**Chairman**