House of Representatives

Committee of Privileges

Report on article in the Melbourne *Sunday Herald* dated 16 September 1990 concerning Joint Standing Committee on Migration Regulations, incorporating a dissenting report

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MR J H SNOW, MP

HON W E SNOWDON, MP

*(Nominee of the Leader of the House)

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1. On 17 September 1990 Dr Theophanous, Chairman of the Joint Standing Committee on Migration Regulations raised, as a matter of privilege, an article in the Melbourne *Sunday Herald* of 16 September which, Dr Theophanous advised, appeared to reveal a knowledge of a submission to the joint committee which the committee had determined should be treated as confidential. Dr Theophanous stated that the committee had determined that the article had constituted substantial interference with the work of the committee. A copy of the article is at 'A'. A copy of the *Hansard* record of Dr Theophanous' statement is at 'B'.

2. Mr Speaker considered the complaint and reported to the House later on 17 September. Mr Speaker stated that he was prepared to accord precedence to a motion in respect of the matter, but suggested that the committee itself should first consider taking steps to seek to ascertain the source of the disclosure. A copy of the *Hansard* record of Mr Speaker's statement is at 'C'.

3. As suggested, the matter was then considered by the Joint Standing Committee on Migration Regulations, and on 18 September Dr Theophanous reported to the House on behalf of the committee. Dr Theophanous advised that at the meeting, as Chairman, he had asked two questions of seven members of the committee, and the committee's staff. The questions were -

> Have you, on any occasion, provided or assisted or allowed to be provided, to Mr Daly or any other journalist information confidential to the committee?
>
> Have you supplied to Mr Daly or any other journalist material which is confidential to the committee or material which is covered by parliamentary privilege?

Dr Theophanous reported -

> 'All members, including myself, answered no to these questions.'

Dr Theophanous stated that the committee's staff members had also responded in the negative. The Chairman stated that it was the view of the committee that the publication had seriously impeded the deliberations and work of the committee, and he asked that priority be given to a motion to refer the matter to the Committee of Privileges - see 'D' attached.

4. On 19 September, on the motion of Dr Theophanous, the House agreed to the following resolution:

That the article headed "Lift ban on HIV partners - gay lobby" by Mr M Daly in the Melbourne *Sunday Herald* of 16 September 1990 be referred to the Committee of Privileges.

A copy of the *Hansard* record of the debate on this motion, and an amendment moved by Mr Peacock, is at 'E'.

5. Conduct of inquiry
The committee received a memorandum from the Clerk of the House on the matter - see Attachment F. It sets out the basic constitutional and legislative provisions relevant to the complaint, and summarises precedents from the House of Representatives and the House of Commons (UK).

6. The committee had before it Dr Theophanous' statements to the House and his explanation of the steps that the Joint Standing Committee on Migration Regulations had taken in seeking to ascertain the source of the disclosure, and the results of those actions. The committee considered that it was also possible that the submission in question, or details of its contents, might have been disclosed by persons other than those associated with the committee, for instance, by those responsible for the submission or other persons who may have become aware of its contents. The committee therefore contacted a representative of the Gay and Lesbian Immigration Task Force (GLITF) seeking information as to the circulation given to the submission before and after it was lodged, information on steps taken to ensure its confidentiality and information as to whether those who may have had access to its details were made aware of its confidentiality.

7. On 5 November a response was received from GLITF - see G attached. In analysing this response the committee considered that the following points were particularly relevant -

(a) GLITF had made a submission to the Joint Select Committee on Migration Regulations on 22 January 1990, and later, on 11 July, lodged the same submission with the Joint Standing Committee, which was established in the new Parliament;

(b) GLITF did not ask that the submission be kept confidential (not that this fact means that the submission should not have been treated as confidential);

(c) a draft of the submission was circulated amongst GLITF members - to quote GLITF -

'The submission was developed by a sub-committee of our Sydney branch. In January 1990, a draft was circulated for comment amongst our members in Sydney, Melbourne, Adelaide and Canberra. It is probable that at least 60 members viewed and retained copies of either the draft or the final version.'

(d) although GLITF urged members not to circulate its submission, it did not inform its members that the submission was confidential, and it appears that those responsible were not aware of the Parliamentary rule in this matter;

(e) GLITF sent copies of its submission to two other organisations and to two persons.

8. The committee recognised that in addition to the dissemination of the draft and final version of the GLITF submission for which GLITF was responsible, even further dissemination, perhaps in complete ignorance of the rules and practices of the House in these matters, may have resulted from the initial extensive distribution.

9. The committee also recognised that as an identical submission had been presented by GLITF to the Joint Select Committee on Migration Regulations in January, it was theoretically possible that disclosure had been made by a person or persons associated with the select committee.

10. Clearly, in view of the extensive dissemination of the submission, there is a large number of possible sources of disclosure. Further, it is possible, indeed probable, that a number of those persons who would have had access to a copy of the draft or final submission would not have been aware of the parliamentary prohibition on publication of submissions before or unless their publication is authorised by the committee in question. The extent of the publication of the submission was such, however, that this committee concluded that it was quite unlikely that further inquiry would enable it to bring the matter to a more satisfactory conclusion.

11. **Findings**

Whilst it is possible that one or more persons involved with the disclosure(s) and publication of the details of the submission may have committed a contempt, the committee has concluded that, in the circumstances of the widespread

dissemination of the submission, and the apparent ignorance of the relevant parliamentary rules on the part of many involved, it is at least equally probable that the person or persons responsible for the disclosure(s) did not act with deliberate intent to breach the prohibition on unauthorised disclosure.

12. Recommendation

The committee recommends that, in light of its findings, no further action should be taken by the House in the present case.

15 November 1990

(G GEAR)
Chairman

ATTACHMENT A

Lift ban on HIV partners — gay lobby

From MARTIN DALY,
National Correspondent,
Canberra

A leading Australian homosexual lobby has asked the Federal Government to allow HIV positive partners of Australians to enter the country and gain permanent residence.

In a confidential petition to a key parliamentary committee, the Gay and Lesbian Immigration Task Force has called for HIV positive partners from "committed relationships" to be assessed for residency on compassionate grounds.

"HIV seropositivity should not be an automatic bar to temporary or permanent residence in Australia," the submission to the Joint Standing Committee on Migration Regulations said.

"This exclusion does not allow for each application to be considered individually, and takes no account of the emotional needs of either partner."

The change is one of a number sought by the taskforce to give homosexual partners rights similar to heterosexual spouses.

Last year, the Joint Select Committee on Migration Regulations recommended that a homosexual visa category be deleted from draft immigration regulations.

The Immigration Minister, Mr Hand, will make a decision by December on whether to grant visas on the basis of "emotional interdependence", which would cover homosexual partners.

The select committee has already reported a view that a "companionship" visa should be provided under circumstances where "a sexual relationship is not necessarily involved".

The recommendation is expected to be supported by the Liberals.

The issue of gay migration is considered so sensitive that the gay lobby and some members of the migration committee did not want the petition to the Government publicised because of the controversy that could result.

About 100 gay men and women are allowed into the country each year to join their partners.

Other taskforce recommendations are:

- That applicants be given permission to work while applications are being processed because they would otherwise face financial hardship.
- That homosexual illegals who are deported or who have left voluntarily should be given the same right of return as granted to partners of heterosexual Australians.

PRIVILEGE

Dr THEOPHANOUS (Calwell)—I rise on a matter of privilege on behalf of the Joint Standing Committee on Migration Regulations. At a meeting earlier today the Committee discussed an article by Mr Martin Daly which appeared in the Melbourne *Sunday Herald* on 16 September entitled 'Lift ban on HIV partners . . .'. The Committee views this article particularly seriously as it appears to reveal a knowledge of a submission to the Committee which the Committee had determined should be treated as confidential. The Committee is most concerned by this article and has determined by resolution that it constitutes substantial interference with the work of the Committee. Accordingly, on behalf of the Committee I therefore ask you, Mr Speaker, that priority be given to a motion to refer this article to the Committee of Privileges.

I present a copy of the article. The Melbourne *Sunday Herald* is published by the Herald and Weekly Times Ltd, Flinders Street, Melbourne. The Committee has had only a limited opportunity to give further consideration to the matters that I brought to your attention, Mr Speaker, on 11 September. In light of your decision on them the Committee will address these matters as soon as practicable.

Mr SPEAKER—I will give consideration to the matter raised by the honourable member for Calwell and will report back to the House at a later hour.

PRIVILEGE

Mr SPEAKER—I would like to make some comments on the matter of privilege raised by the honourable member for Calwell earlier today. Honourable members will recall that the honourable member raised as a matter of privilege an article by Mr M. Daly in the Melbourne *Sunday Herald* of 16 September which the honourable member stated revealed details of a submission the Joint Standing Committee on Migration Regulations had determined should be kept confidential.

As I indicated to the House on 11 September, there are precedents for the disclosure of confidential committee documents being pursued as matters of privilege. I note that the Joint Committee has concluded that the article has constituted substantial interference with its work and that it wishes the matter to be referred to the Standing Committee of Privileges.

Having considered the article and the honourable member's remarks, I am prepared to accord precedence to a motion in respect of the matter. Nevertheless, the procedure of the House of Commons in these matters, to which I drew attention last week, as well as requiring the relevant committee to form a view as to the damage done by the disclosure, requires that committee itself to seek to ascertain its source. The honourable member for Calwell has advised that the Committee was giving consideration to the matters raised on 11 September. Before proceeding further with the article complained of today, I believe that the Committee itself should consider taking whatever steps it may wish to in order to ascertain the source of this latest disclosure.

As this is the second occasion in four sitting days on which such a complaint has been raised, perhaps I should reiterate the points I made last Tuesday and expand on them. Before doing that, however, I might counsel the Committee that it might be in its interests to investigate this matter as soon as possible.

I noted last Tuesday that since 1985-86 the British House of Commons had followed a specially developed procedure in these matters. If disclosure of the proceedings or draft reports of a committee is made, the committee concerned seeks to discover the source of the leak and to assess whether it constitutes or is likely to constitute a substantial interference with its work, with the select committee system, or with the functions of the House. If the committee considers that there has been or is likely to be such interference, the committee reports to the House accordingly.

This is the attitude I propose to take for the remainder of the Budget sittings. When a committee becomes aware of the unauthorised disclosure or publication of material, I propose that the Chairman, or another member acting for the committee, should inform me as soon as practicable. What I envisage is that the committee concerned would then follow procedures such as those applying in the House of Commons. If, as a result of its consideration of a matter, a committee presents a special report to the House stating that substantial interference has occurred and outlining the steps it has taken to ascertain the source of the problem, the Speaker would still be able to accord priority to a motion because he had been advised when the matter first came to light—that is, when the committee Chairman or member advises me accordingly.

To enable members to have an opportunity to consider the special report from the committee before a motion is proposed, I would intend that a motion to refer the matter to the Committee of Privileges should not normally be moved until the next sitting day. That would give members of the House a chance to see the committee's report and to form an opinion of the report prior to the matter being debated, if necessary, in the House.

I should make it clear to honourable members that I am not in any way reducing their rights to raise complaints under the established procedures. Rather, I am spelling out to the House the particular position I propose to take in respect of complaints of the kind raised last Tuesday and again today by the honourable member for Calwell. This will give members an opportunity to form a view as to whether these procedures are worthwhile pursuing in this House.

PRIVILEGE

Dr THEOPHANOUS (Calwell)—I rise on behalf of the Joint Standing Committee on Migration Regulations to respond further on the matters of privilege which I raised on 11 and 17 September.

I have referred to Mr Speaker three newspaper articles which could constitute breaches of privilege. While the two earlier articles may have given a false impression to the public of the determinations and decisions of the Committee, the Committee is of the view that they did not constitute substantial interference with the final recommendations which the Committee reached. Nevertheless, the Committee is concerned that such leaks did occur. Under the circumstances the Committee will not persist with the referral of the matters raised on 11 September to the Committee of Privileges.

However, the Committee feels that the article published in the *Sunday Herald* on 16 September 1990 is of a much more serious nature and has the potential to undermine the Committee's future deliberations, especially in its dealings with third parties. This is particularly so when information either sought or provided is done so on a confidential basis.

The Committee is therefore deeply concerned that a senior journalist, who either knew or ought to have known the serious nature of publishing a document which was forwarded to the Committee on a confidential basis or material which was provided during the course of an in camera hearing to the Committee, should subsequently publish such material or extracts from such material.

I note Mr Speaker's preparedness to accord precedence to a motion in respect of this matter following the Committee taking whatever steps it could in order to ascertain the source of this latest disclosure.

The Committee met this afternoon to ascertain as best it could the source of this latest disclosure. As Chairman, I asked two questions of each member present—Senators Cooney, McKiernan, Olsen and Spindler and the honourable member for Melbourne Ports (Mr Holding), the honourable member for Dundas (Mr Ruddock) and the honourable member for Adelaide (Dr Catley)—to which responses were received immediately. The questions were: Have you, on any occasion, provided or assisted or allowed to be provided, to Mr Daly or any other journalist information confidential to the Committee?

Have you supplied to Mr Daly or any other journalist material which is confidential to the Committee or material which is covered by parliamentary privilege?

All members, including myself, answered no to these two questions. The honourable member for Dundas added the following comment:

> To the best of my knowledge and recollection I have not, but, in my role as Shadow Minister for Immigration, I have spoken to a number of journalists over a long period of time.

The staff of the secretariat had the same two questions put to them and they, too, have responded in the negative.

The view of the Committee is that the publication has seriously impeded the deliberations and work of the Committee, and I therefore request that a motion to refer the matter to the Committee of Privileges be moved on the next sitting day.

PRIVILEGE

Dr THEOPHANOUS (Calwell) (3.45)—I move:

That the article headed 'Lift ban on HIV partners—gay lobby' by Mr Daly in the Melbourne *Sunday Herald* of 16 September 1990 be referred to the Committee of Privileges.

Very briefly, yesterday I made a statement to the House in relation to this matter. The Joint Standing Committee on Migration Regulations at its meeting followed the procedure which you, Mr Speaker, outlined in relation to this matter.

After following the procedure we were still of the view that the article was of such a serious nature and warranted such serious interference with the work of the Committee—in particular, with the possibilities not only of that Committee but other committees in relation to confidential information before parliamentary committees—that it warrants immediate reference to the Committee of Privileges.

Mr MACK (North Sydney) (3.46)—I think this is an unfortunate motion. I think that by continuing the controversy it will serve only to continue to polarise community attitudes towards migration. The essential reason there is so much paranoia on this question is that a large percentage of the Australian community feels that it is powerless. People feel, rightly or wrongly, that immigration policy for some time has been driven by special interests

and elitism. This motion helps reinforce that.

The motion arises out of the publication on 16 September by the Melbourne *Sunday Herald* newspaper of an article by journalist Martin Daly. The article concerns the entry and residence in Australia of persons with HIV infection who are partners of Australian residents. The Joint Standing Committee on Migration Regulations apparently directed that evidence given to the Committee, on which the newspaper article may have been based, should be given confidentially.

In commenting on this matter on 17 September, Mr Speaker, you indicated that for the remainder of the Budget session you advocated a certain procedure for dealing with breaches of privilege affecting committees. You indicated that you would require the Committee to present to the House a special report and you said that this report would:

> . . . give members of the House a chance to see the Committee's report and to form an opinion of the report prior to the matter being debated.

The Committee in this case has not presented a report that members have had 'a chance to see'. There is no such document. The Chairman has merely offered a few words in the chamber which gave no real idea of the basis for the determination of the Committee that a substantial interference with its work had occurred. That is the question—the substantial interference.

The Committee Chairman has not justified the Committee's decision to confer confidentiality on the evidence. It is apparently taken as read that such a matter should be dealt with confidentially, but I would like to suggest that there are competing considerations. The public has a right to know how public policy on immigration or any other matter is being formulated. Matters of particular sensitivity, such as the identity of witnesses who may be prejudiced by publicity can be maintained in confidence. There is no rationale for keeping from the public the details of broad policy questions under consideration, as seems to be the case here.

The article the subject of the motion reported on policy issues. It did not name any individual. It did not name the particular group which made the confidential submission to the Committee. That particular group has a public profile. Its aims are not secret. It is very unlikely that a community group set up openly to achieve certain policy changes will suffer because it becomes widely known that it has made precisely the sorts of representations that one might expect it to make to the Committee.

The Committee has resolved that the publication constitutes substantial interference with the work of the Committee. That was reported to the House by the Chairman. The Parliamentary Privileges Act 1987 provides in section 4 that an essential element of the offence alleged to have occurred is that the conduct amounts, or is intended or is likely to amount, to an improper interference with the free exercise by the Joint Standing Committee on Migration Regulations of its authority or functions.

Your direction, Mr Speaker, very wisely went somewhat further. You indicated that the Committee should resolve that the conduct was a substantial interference. In either case it is not at all obvious that any such conduct has occurred. The Committee Chairman has not told the House how the Committee's authority has been interfered with in any way that is likely to lead to any real detriment. The Chairman has not shown the House that the Committee's functions have been impaired. It has not been shown how the conduct which has occurred here will substantially interfere with the Committee's work or damage the public interest. All that has been shown is a technical breach.

Arraigned against this mere technical breach of confidentiality are much more important considerations. A journalist in his newspaper has told the public something they should know and have a right to know about the full nature of public policy. Immigration policy is an area where confidentiality has little place. The public must be kept fully informed of the activities and deliberations of their parliamentary representatives.

To try to form immigration policy in secrecy is a sure prescription for fear and paranoia. This question of breach of privilege would not have arisen in the first place if the Joint Standing Committee on Migration Regulations had adopted a more open procedure. Closed meetings and confidential documents are surely, as everyone knows in this building, a fiction. History proves that over and over again. All it does is serve to keep the general public in the dark.

I can understand the annoyance of the Committee but I think that it has acted hastily and it is even appearing to be petulant in this matter. It is continuing to conduct what looks like a witch-hunt. It only reinforces the impression of the public that public policy on immigration is being made in a clandestine manner. It is certainly not in the public interest.

Mr PEACOCK (Kooyong) (3.55)—I move:

That the following words be added to the motion:

'and that the matter of an article entitled "The murder story that won't go to press" written by Tom Burton, published in the *Sydney Morning Herald* of Saturday 14 July 1990, be referred to the Committee of Privileges.

On Monday you, Mr Speaker, referred a 'borderline case' to the Committee of Privileges seeking its advice. The matter that I wish to have added to the motion has been canvassed by me previously.

Dr Theophanous—I rise on a point of order, Mr Speaker. This is quite against procedure. A member cannot introduce a new matter. There cannot be an addendum to the motion. This is a new matter of privilege that the honourable member for Kooyong is trying to raise in relation to this matter. It should be dealt with in a separate motion.

Mr SPEAKER—The point of order is out of order.

Mr PEACOCK—I point out that in my view this is in addition to the motion sending a matter to the Committee of Privileges. It in no way negates the matter being moved by the honourable member for Calwell (Dr Theophanous). Simply, he wishes to send a matter to the Privileges Committee and I ask that it look at something in addition. I in no way negate his motion. I simply amend it with this additional matter.

I was indicating that the matter that I believe should be sent to the Committee has been canvassed by me previously. In asking your opinion, Mr Speaker, I proffered all relevant details known to me about the matter. You will recall, Mr Speaker, that when I raised the matter I refrained from moving a motion.

After duly considering the matter, on 23 August, pursuant to standing order 96 you delivered your opinion on the matter, stating that a prima facie case had not been made out and as a consequence you were not prepared to give precedence to a motion under that standing order.

You will recall further, Mr Speaker, that at the time you delivered your opinion, whilst respecting the conclusion you had reached, I indicated that I would be looking at the matter to see whether it could be taken further. Accordingly, I have now moved this amendment in the terms mentioned to allow for the matter to be considered by the Privileges Committee.

It is my submission that having regard to the nature of the allegations made in the article in question the best forum at this juncture to resolve the matter is through the deliberations of the Committee of Privileges with a view to the Committee reporting to this House so that the House can then determine whether a breach of privilege has been made out.

In making this submission there are three matters that I wish to address. First, in giving your reasons, Mr Speaker, in support of your opinion that a prima facie case had not been made out, you made reference to section 4 of the Parliamentary Privileges Act 1987 which provides that a complaint will not constitute a breach of privilege unless the conduct in question 'amounts, or is intended or is likely to amount, to an improper interference . . . with the free performance by a member of the member's duties as a member'. In that context you stated, Mr Speaker, that to the best of your knowledge there was no evidence that the arti-

cle in question had obstructed or interfered with the proper operation of the House.

With respect, the words of section 4 are wider than that. I particularly refer to the phrase 'likely to amount' appearing in that section. This phrase imports an objective test which in the circumstances does not for the purposes of standing order 96 require the production of any concrete evidence that such an interference has taken place, hence the words 'likely to amount to'. It is my submission that taken on their face the only conclusion that can be reached is that these allegations, if they remain unanswered, are 'likely to amount' to an improper interference with the free performance by a member of the member's duties as a member.

Mr Speaker, a case touching upon section 4 was raised recently with you in a complaint by the honourable member for Corio (Mr Scholes). After considering the provisions of section 4 and the nature of the complaint raised you indicated that the honourable member had raised a 'borderline case' and then went on to say that this House 'would benefit from the advice of the Committee of Privileges'.

Having regard to the gravity and enormity of the allegations I raised that there was some complicity in a murder by a member of the Cabinet and that a journalist had talked with witnesses about this matter, what a contrast between the matter that has been referred to the Privileges Committee and the matter that I have brought into the House. Really and truly, a letter from a solicitor to a member is prima facie, at this juncture, viewed as improper. Ipso facto I could walk outside this House and defame someone. The person could understandably have a solicitor write a letter to me and that, to date, would be interpreted as improper. But if a journalist writes that there is a person who has been an accessory to or committed a murder and that he has talked with the witnesses ranks even less than a mere solicitor's letter, then it seems to me there is either something wrong in the determinations to date or something strange and rotten in the state of Denmark.

The second matter which I wish to address is the relevance of section 6 of the same Act. In delivering your opinion, Mr Speaker, you quite rightly pointed out that the effect of this provision is that the species of defamatory contempt which once occupied much of the business of this House and the House of Commons had been abolished. In other words, a statement which is only—I emphasise the word 'only'—defamatory may not constitute a contempt of this House.

This was a point that I clearly acknowledged when I raised this matter on 21 August. At the time I went on to give reasons as to why I hold the view that the allegations in question amount to more than merely defamatory or critical comments and therefore fall outside the ambit of section 6. Indeed you yourself, Mr Speaker, acknowledged that these allegations 'may not only be defamatory, they also imply a most serious charge'.

I have had an opportunity of consulting the report of the Joint Select Committee on Parliamentary Privilege to which I earlier referred. Paragraphs 6.14 and 6.21 discuss the rationale behind the recommendation that defamatory contempts be abolished. In making this recommendation the Committee was of the view that ordinarily where defamatory comments have been made which would constitute a contempt of Parliament there will be other means of redress available and in this respect noted some examples.

First, identified members who are the subject of defamatory statements will have recourse to civil litigation. Second, identified members will have other means of satisfaction such as the right of rebuttal or correction within Parliament or the making of complaints to the Australian Press Council. Third, as a 'last resort', certain provisions of the Crimes Act 1914 may be invoked.

In reaching its conclusions, the Joint Select Committee did not consider the problem of allegations being made against unidentified members of parliament. In such a case there simply is no alternative means of redress available. It is therefore my submission that this particular case

clearly falls outside the intended ambit of section 6.

In delivering an opinion on this, Mr Speaker, you quite rightly pointed out that there must be something more to the allegations besides mere criticism or defamatory comments. This point was not overlooked by the Joint Select Committee. It noted that where a matter—and I quote:

> . . . constitutes intimidation or attempted intimidation, full power to deal with such a matter as a contempt would remain.

Those are the Committee's words, not mine: full power would remain in such circumstances. It is my submission that these allegations do constitute an attempted intimidation.

The third matter I wish to address, Mr Speaker, is your comment that the appropriate body to deal with this matter would be the police. Unfortunately, the brief history of this matter indicates that this may not be the case.

I will briefly recount the sequence of events. Immediately after these allegations were made, the Government suggested—through the Attorney-General (Mr Duffy), as I recall, and the Prime Minister (Mr Hawke)—that the author should provide the relevant information to the Australian Federal Police or the National Crime Authority. In response, the author indicated that to the best of his knowledge the authorities were aware of the matter and had the necessary information should they wish properly to investigate it.

Subsequent to that, the National Crime Authority and the Federal Police indicated that they had no information linking an unnamed Federal Cabinet Minister to an alleged murder. In addition, both authorities stated that they were not investigating the allegations made by Mr Burton.

The Government says that this is a matter for the police, the Speaker of the House says that it is a matter for the police, but the police force does nothing about it. The Attorney does not even get on the phone—and I know that he has some limited powers in this arena—and even suggest, as is his right, that Government policy in favour of law enforcement might require at least a telephone call to the journalist, if not a discussion with him about the witnesses with whom he has discussed the matter. I realise that the restrictions on the Attorney are such that he cannot direct the police as such, but he can tell them what Government policy is, which I assume until this incident became public was in favour of law enforcement. It takes a touch of exquisite genius to say, 'I am in favour of law enforcement but I don't want the police to interview anybody'. A simple interview is all that is needed, and even that is not transpiring.

In summary, Mr Speaker, whether a breach of privilege or a contempt of parliament has been made out is not for me, you or the Attorney to decide; it is a matter for this House. It is my submission that it is only after the Committee of Privileges has investigated and considered the matter that the House will be in a position to make such a determination. To put it mildly, it is an outrage that a journalist can write that the defamation laws alone prevent him from naming a Cabinet Minister who was involved with a Mr Big in a murder, that no-one on the other side of the chamber wants to do anything about it, and that the Committee of Privileges, which is charged with looking at some solicitor's letter, is not even deemed appropriate to look at whether this is contemptible, in contempt or in breach of the Parliament in any way at all. It is quite an outrage.

The bottom line is that if all the law and any of the elements that I have referred to here are excluded, one thing—if one possesses it—will lead one to an inevitable conclusion, and that is simple common sense. The fact that an allegation has been made that a Cabinet Minister has been involved, in one form or another, in a murder which ought not be investigated will lead one solely to the conclusion that the Committee of Privileges should be looking at this matter.

As you have sought guidance on the term 'improper', Mr Speaker, in circumstances where a solicitor acting for an allegedly aggrieved person could be

deemed to have acted improperly, in terms of gravity surely the circumstances that I put before the House must exceed that issue by very great moment. We cannot pass over the allegation that a member of the Cabinet may have been involved in, or after the fact of, murder where the journalist claims he has spoken to witnesses.

Mr SPEAKER—Is the amendment seconded?

Mr *Fife*—I second the amendment and reserve my right to speak.

Mr BEAZLEY (Swan—Leader of the House) (4.06)—I oppose the amendment moved by the honourable member for Kooyong (Mr Peacock) to the proposition moved by the honourable member for Calwell (Dr Theophanous). There was a call by the honourable gentleman who has just spoken for common sense. It would be useful to apply a little here when we consider the authority and role of the Committee of Privileges in what constitutes something likely to amount to improper interference with the free exercise by a House or committee of its authority or functions and the very relevant restrictions entailed in section 6 (1).

If we can argue here by way of analogy, if I were to take the honourable member for Kooyong out into a public place and shoot him dead, on the matter of common sense does anybody seriously wonder whether it would be a matter for the Privileges Committee or for the police? If I were to do that, then there would be no doubt in the mind of any other member of the House that a proposition would not be moved in this place that my behaviour ought to be referred to the Privileges Committee to see whether or not that constituted improper interference, even though quite manifestly it would in those circumstances.

Mr Peacock—That assumes that the police would investigate, you fool. It does assume the police would investigate. That proposition——

Mr SPEAKER—Order! The honourable member for Kooyong was heard without interruption. The honourable member for Kooyong should hear the Minister without interruption.

Mr BEAZLEY—It would constitute a dramatic and improper interference by me of the honourable member's capacity to carry out his duty. But the remedy that would be sought in that instance would be by reference to the police force. If I did something further than that and took any member of the general public outside the precincts of the Parliament and shot him dead, when this matter was duly reported by the media in the press gallery that I had done that and that it ought to be a matter for investigation, would it seriously be considered by anyone here that there had been improper interference with some member's capacity to carry out his duty without interference or that that matter should be investigated by the police? There is a simple answer to that, too. It would never enter into the minds of anyone, either inside this Parliament or outside it, that the most sensible course of action for us to pursue would be that the Committee of Privileges ought to look at my behaviour in that regard.

Mr Duffy—Even if you were suspected of doing it.

Mr BEAZLEY—Even if I were suspected of doing it and I was seen leaving the crime, obviously that would not be a matter that, sensibly, would be before the Committee of Privileges.

The honourable member for Kooyong contrasted his particular areas of concern in that article with the situation raised by the honourable member for Corio (Mr Scholes). I quite agree with him that the offence of murder certainly must be ranked ahead of that of defamation, libel or whatever. If that were the only matter that ought to be considered or the criteria by which things were referred to the Parliamentary Committee of Privileges—that is, the level of offence, its seriousness or whatever—he would have a case. The point about the position of the honourable member for Corio which you, Mr Speaker, considered marginal but nevertheless something that might be usefully considered by the Committee, was that it concerned a lawyer's letter to him sug-

gesting that comments that he had made were defamatory of the lawyer's client and that if he persisted in making those comments, action would be taken, and asking him to desist.

As you said, Mr Speaker, that is a marginal case. We do not have star chamber rights in this place or in our constituencies. Nevertheless, quite obviously there is more of a case to be made with regard to the question of interference with a member's capacity to act than is entailed here. Where, in the particular article to which the honourable member for Kooyong (Mr Peacock) refers, is there an element to it, either directly or indirectly, which calls into question the capacity of any member of Parliament to function effectively in this place? Where in it is there any element of intimidation of a member of Parliament to undertake a particular course of action other than he would exercise in his own free will and judgment? There is none, of course.

Yet, that element must be present. I refer to the relevant sections of the Parliamentary Privileges Act 1987. Firstly, the overriding section, section 4, states:

> 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 member.

How does the existence of that report constitute something which is likely to amount to an improper interference of duties? Which particular member of the Cabinet—no individual is named—what element of the Cabinet acting collectively, what particular performance by individual Cabinet members in their capacity as members of the House is interfered with by the allegations contained in that letter? If the Australian Federal Police do not have information on this matter—and I understand from what the honourable gentleman said they do not—then, clearly, there is an obligation on anyone who thinks he knows anything about the matter and who considers it a matter for federal jurisdiction to present it to the Federal Police.

If the matter has been presented to other police forces and they have chosen to act or not to act on it, then it is a matter for those police forces. Presumably, they do so exercising a judgment about the validity of what it is that has been handed to them. There are enough wild allegations in politics for us not necessarily to jump at every particular item that comes up and decide that the matter has to be viewed with great seriousness. There is, of course, an obligation on a police force, if evidence is presented to it, to act in connection with the materials that have been handed to it. Given that no action has been taken, or at least none as far as we know, then that may be as a result of the fact that the police think that none ought to be taken. Whether they choose to act or not, as far as this House is concerned, the question is obviously not a matter of privilege. It may well be a matter for condemning police forces or being upset about the state of justice in our community today, but it is not a matter for the Parliamentary Privileges Committee.

Section 6 (1) of the Act, as amended in 1987, continues:

> Words or acts shall not be taken to be an offence against a House by reason only that those words or acts are defamatory or critical of the Parliament, a House, a committee or a member.

That decisively removes from any sensible consideration of the Privileges Committee the proposition that the honourable member for Kooyong has raised. The Privileges Committee will have its hands full trying to work out what it is that the honourable member for Corio (Mr Scholes) has a grievance about. It will also have to consider the matters raised by the honourable member for Calwell (Dr Theophanous) in relation to the hearings of the Joint Standing Committee on Migration Regulations. It may well be that in any person's reasonable judgment about what constitutes an offence, if an offence has indeed occurred that constitutes a particularly sinful or heinous act, that person would come to a conclusion that if there was any truth in the story to which the honourable member for Kooyong refers, it would be worse than

either of the issues that concern the honourable member for Calwell and the honourable member for Corio.

The matters raised by those honourable members are not matters for the police forces. One relates to the conduct of a committee of the House and the other to the conduct of a member of the House. They are matters to be considered by the Privileges Committee. This matter is clearly a matter for the police. If the honourable member for Kooyong feels that he has some useful information about this that he would like to present to the police, he so should do so and cease wasting the time of this chamber.

Dr THEOPHANOUS (Calwell) (4.16)—I wish to reply briefly to the comments of the honourable member for North Sydney (Mr Mack) in this discussion. The honourable member stated that the processes of the Joint Standing Committee on Migration Regulations are not open and public. The honourable member is new to this House. He is probably not aware that this Standing Committee is the first standing committee on migration established by this House. It has published a lot of material, much of which, unfortunately, has not been taken up by the media. If there is a desire for a public debate on immigration, then a lot of the public evidence and a lot of the public material ought to be taken up.

The overwhelming proportion of material coming before the Committee is not confidential. So, I would say that the impression the honourable member for North Sydney tried to create, that, in fact, the committee was hiding something, is quite false. Whether or not a submission is to be treated as confidential is determined by all the members of the Committee, who represent all political parties in both chambers of this Parliament. The honourable member for North Sydney should be aware that a determination was made in this case, not only because of the sensitivity of the material, but also because it was part of the request which was made by the group wishing to present the evidence to the Committee.

The honourable member said that no reasons were given in the report I presented to the House yesterday. That is not correct. Yesterday, I stated:

> However, the Committee feels that the article published in the *Sunday Herald* of 16 September 1990 is of a much more serious nature and has the potential to undermine the Committee's future deliberations, especially in its dealings with third parties. This is particularly so when information either sought or provided is done so on a confidential basis.
>
> The committee is therefore deeply concerned that a senior journalist, who either knew or ought to have known the serious nature of publishing a document which was forwarded to the Committee on a confidential basis or material which was provided during the course of an in camera hearing to the Committee should subsequently publish such material or extracts from such material.

This is a very serious matter. The honourable member for North Sydney has asked why any material on immigration should be confidential. It is quite clear that there are many instances where material is determined to be confidential because it refers to individual cases, or because, in the opinion of the Committee, even if it refers to more general matters, it would be easy to identify the person giving the material. Other parliamentary committees, as well as this one, often take the view that such material ought to be presented in confidence so that committee members can have an overall appreciation of the matter. I reject the honourable member's argument. I urge the House to support the original motion.

Question put:

That the amendment (Mr Peacock's) be agreed to.

The House divided.

(Mr Speaker—Hon. Leo McLeay)

Ayes	58
Noes	67
Majority	9

AYES

Aldred, K. J.	Hicks, N. J. (Teller)
Anderson, J. D.	Howard, J. W.
Andrew, J. N. (Teller)	Jull, D. F.
Bailey, F. E.	Kemp, D. A.
Beale, J. H.	Lloyd, B.
Bradford, J. W.	Mackellar, M. J. R.
Braithwaite, R. A.	McArthur, F. S.
Broadbent, R. E.	McLachlan, I. M.
Brown, N. A.	Miles, C. G.
Burr, M. A.	Moore, J. C.

AYES

Cadman, A. G.	Nehl, G. B.
Carlton, J. J.	Nugent, P. E.
Chaney, F. M.	Peacock, A. S.
Charles, R. E.	Prosser, G. D.
Cobb, M. R.	Reid, N. B.
Costello, P. H.	Riggall, J. P.
Cowan, D. B.	Rocher, A. C.
Dobie, J. D. M.	Ronaldson, M. J. C.
Downer, A. J. G.	Ruddock, P. M.
Edwards, Harry	Scott, Bruce
Fife, W. C.	Shack, P. D.
Filing, P. A.	Sharp, J. R.
Fisher, Peter	Smith, W. L.
Ford, F. A.	Soalyay, A. M.
Gallus, C. A.	Truss, W. E.
Goodluck, B. J.	Tuckey, C. W.
Hall, Steele	Wilson, I. B. C.
Halverson, R. G.	Woods, Bob
Hawker, D. P. M.	Wooldridge, M. R. L.

NOES

Baldwin, P. J.	Jenkins, H. A.
Beazley, K. C.	Johns, G. T.
Beddall, D. P.	Jones, Barry
Bevis, A. R.	Kelly, R. J.
Bilney, G. N.	Kerin, J. C.
Blewett, N.	Langmore, J. V.
Brereton, L. J.	Lavarch, M. H.
Brown, Robert	Lindsay, E. J.
Campbell, G.	Mack, E. C.
Catley, R.	Martin, S. P.
Courtice, B. W.	McHugh, J.
Crean, S. F.	Melham, D.
Groeciо, J. A.	Morris, Allan
Dawkins, J. S.	Newell, N. J.
Duffy, M. J.	O'Keefe, N. P.
Duncan, P.	O'Neil, L. R. T.
Elliott, R. P.	Price, L. R. S.
Fatin, W. F.	Punch, G. F.
Ferguson, L. D. T.	Sawford, R. W.
Fitzgibbon, E. J.	Scholes, G. G. D.
Free, R. V.	Sciacca, C.
Gayler, J.	Scott, Les
Gear, G. (Teller)	Simmons, D. W.
Gibson, G. D.	Snow, J. H.
Gorman, R. N. J.	Snowdon, W. E.
Grace, E. L. (Teller)	Staples, P. R.
Griffiths, A. G.	Theophanous, A. C.
Hand, G. L.	Tickner, R. E.
Holding, A. C.	Walker, F. J.
Hollis, C.	West, S. J.
Howe, B. L.	Willis, R.
Hulls, R. J.	Woods, Harry
Humphreys, B. C.	Wright, K. W.
Jakobsen, C. A.	

PAIRS

Hewson, J. R.	Hawke, R. J. L.
Reith, P. K.	Keating, P. J.
Taylor, W. L.	Scott, John
Connolly, D. M.	Darling, E. E.
McGauran, P. J.	Dubois, S. C.
Atkinson, R. A.	Edwards, Ronald
Cameron, Ewen	Lee, M. J.
Webster, A. P.	Crawford, M. C.
Sinclair, I. McC.	Kerr, D. J.
Sullivan, K. J.	Charlesworth, R. I.

Question resolved in the negative

Mr SPEAKER—The question now is that the motion moved by the honourable member for Calwell be agreed to. All those of that opinion please say aye, against say no. I think the ayes have it. I hear only one voice. No division is required.

Mr Mack—Mr Speaker, can I have my name recorded in *Hansard* as voting against the motion?

Mr SPEAKER—The honourable member for North Sydney can have his name recorded as dissenting.

Original question resolved in the affirmative.

ATTACHMENT F

9 October 1990

INQUIRY INTO REFERENCE BY THE HOUSE TO THE COMMITTEE OF PRIVILEGES OF ARTICLE IN THE MELBOURNE SUNDAY HERALD DATED 16 SEPTEMBER 1990

Memorandum by the Clerk of the House of Representatives.

This memorandum has been prepared for the use of the House of Representatives Committee of Privileges in connection with its inquiry into the reference to it of the article headed 'Lift ban on HIV partners - gay-lobby' by Mr M Daly in the Melbourne Sunday Herald of 16 September 1990.

THE REFERENCE

On 17 September Dr Theophanous, as Chairman of the Joint Standing Committee on Migration Regulations, raised as a matter of privilege an article in the Melbourne Sunday Herald of 16 September which, he advised, appeared to reveal a knowledge of a submission to the committee which the committee had determined should be treated as confidential. He advised that the committee had determined by resolution that 'it' constituted substantial interference with the work of the committee. A copy of the article is at 'A' and a copy of the Hansard record of Dr Theophanous' statement is at 'B'.

The Speaker responded later in the day, stating that he was prepared to accord precedence to a motion in respect of the matter, but suggesting that the committee itself should first consider taking whatever steps it might wish to take to ascertain the source of the disclosure. A copy of the Hansard record of Mr Speaker's statement is at 'C'.

On 18 September, Dr Theophanous made a statement in the House on behalf of the committee. He advised that at a meeting of the committee, as Chairman, he had asked two questions of seven members of the committee, and the staff, on the question of disclosure but that the source had not been ascertained, and he asked that priority be given to a motion to refer the matter to the Committee of Privileges - see 'D' attached.

On 19 September Dr Theophanous moved a motion to refer the matter to the Committee of Privileges. This was debated, an amendment moved and negatived, and the original motion agreed to - see 'E'.

CONSTITUTIONAL PROVISIONS - GENERAL CHARACTER OF PRIVILEGE AND CONTEMPT

House of Representatives Practice quotes May's definition of parliamentary privilege as:

> ... the sum of the peculiar rights enjoyed by each House collectively as a constituent part of the High Court of Parliament, and by members of each House individually, without which they could not discharge their functions, and which exceed those possessed by other bodies or individuals. Thus privilege, though part of the law of the land, is to a certain extent an exemption from the ordinary law.[1]

It goes on to explain the source of the privilege powers of the Houses of the Commonwealth Parliament:

> The Commonwealth Parliament derives its privilege powers from section 49 of the Constitution which provides that:
>
> > The powers, privileges, and immunities of the Senate and of the House of Representatives, and of the members and the committees of each House, shall be such as are declared by the Parliament, and until declared shall be those of the Commons House of Parliament of the United Kingdom, and of its members and committees, at the establishment of the Commonwealth.
>
> In addition, section 50 of the Constitution provides that:
>
> > Each House of the Parliament may make rules and orders with respect to -
> >
> > (i.) The mode in which its powers, privileges, and immunities may be exercised and upheld;
> >
> > (ii.) The order and conduct of its business and proceedings either separately or jointly with the other House.[2]

Statutory provisions -

In 1987 the Parliament enacted comprehensive legislation under the head of power constituted by section 49 of the Constitution. The *Parliamentary Privileges Act 1987* provides that, except to the extent that the Act expressly provides otherwise, the powers, privileges and immunities of each House, and of the Members and the committees of each House, as in force under section 49 of the Consitution immediately before the commencement of the Act, continue in force.[3]

BREACH OF PRIVILEGE AND CONTEMPT

The privileges of the Houses, their committees and Members are rights and immunities that are part of the law of the land. An infraction or attempt or threat of infraction of one of these rights or immunities may be described as a breach of privilege.

The Houses also possess the power to take action to protect themselves, their committees and members from actions which, whilst perhaps not breaching any specific right or immunity, obstruct or impede, or threaten to obstruct or impede. A good example is disobedience of an order of a House.

Halsbury's Laws of England states -

> The power of both Houses to punish for contempt is a general power similar to that possessed by the superior courts of law and is not restricted to the punishment of breaches of their acknowledged privileges.[4]

May describes contempt as follows:

> Generally speaking 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. It is therefore impossible to list every act which might be considered to amount to a contempt, the power to punish for such an offence being of its nature discretionary.[5]

Save for the changes made by the *Parliamentary Privileges Act 1987*, the Houses of the Commonwealth Parliament have the powers, privileges and immunities of the House of Commons as at 1901. Amongst those powers is the power to hold various actions or omissions as contempts. This is not to say that a recurrence now, or in the future, of any act or omission which is the same or very similar to an act or omission held by the House of Commons to be a contempt in the years before 1901 must now be determined in the same way. It is the power to punish contempts which is inherited; the application of the power is for the judgment of the House, usually in light of advice from the Committee of Privileges.

One particularly important qualification on the power to punish for contempts was introduced by the *Parliamentary Privileges Act 1987*. Section 4 provides that:

> 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 member.

This important provision should be taken into account at all stages in the consideration of possible contempts. The House has not, to date, made decisions which indicate its interpretation of the meaning of the provision, although it has often been referred to in the House. It is also important to recognise that the Act does not codify or enumerate acts or omissions that may be held to constitute contempts.

PARTICULAR REFERENCES RELEVANT TO THE MATTER REFERRED TO THE COMMITTEE

By convention joint committees follow the Senate standing orders relating to select committees, mirroring the case in the United Kingdom where joint committees operate under the standing orders of the House of Lords for select committees.[6]

Standing orders

Standing order 37 of the Senate 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.

(Standing order 340 of the House of Representatives is similar and 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.)

Statutory provision

Section 13 of the *Parliamentary Privileges Act 1987* provides that:

> A person shall not, without the authority of a House or a committee, publish or disclose -
>
> (a) a document that has been prepared for the purpose of submission, and submitted, to a House or a committee and has been directed by a House or a committee to be treated as evidence taken in camera; and
>
> (b) any oral evidence taken by a House or a committee in camera, or a report of any such oral evidence,
>
> unless a House or a committee has published, or authorised the publication of, that document or that oral evidence.

Penalties under the section are $5 000 in the case of a natural person and $25 000 in the case of a corporation.

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 proceedings.

House of Representatives Practice states:

> *Unauthorised publication of evidence*
>
> It has been regarded as a contempt for any person, including the originator, to publish or disclose oral or documentary evidence received by a committee until the evidence has been reported to the House or its publication has been authorised by the committee or the House. The restriction on publication of a document, including a submission, applies once the document comes into the committee's possession, that is, when it is received by the committee, or by the secretary of the committee.
>
> Committees exercise discretion in dealing with breaches of these provisions. Indeed, none of the occasional cases of unauthorised publication of evidence has been reported to the House. However, committees have at times deemed it necessary to stress to those concerned the seriousness of their action.[7]

May states:

Premature publication or disclosure of committee proceedings

> 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 agree.[8]

One footnote in May is also worthy of note:

> Written evidence already circulated to third parties before being sent for by a committee may be referred to in the House or elsewhere before being reported, notwithstanding that it was marked confidential on reaching the committee (HC Deb (1984-85) 69, c349-350, 351). See also Local Government (Access to Information) Act 1985, ss 1 and 2 of which oblige local authorities to make publicly available papers - which may include draft Memoranda to be submitted to select committees - under consideration at public meetings of the authority.[9]

Australian Senate Practice states:

> As with evidence, documents presented to a committee must not be disclosed prior to being reported to the Senate - unless authorised by the committee pursuant to standing order 308 or section 2 (2.) of the Parliamentary Papers Act.

A witness or prospective witness would be in breach of privilege if he, without the committee's permission, disclosed a document presented to the committee.[10]

MATTERS OF PRIVILEGE AND CONTEMPT INVOLVING JOINT COMMITTEES DOES THE COMMITTEE HAVE THE AUTHORITY TO CONSIDER THIS MATTER?

One complicating factor in respect of the present reference is that it has arisen in connection with a joint committee. Section 49 of the Constitution provides that the powers, privileges and immunities of the Senate and the House and all Members and committees 'of each House' shall be such as are declared, and until declared shall be those of the UK House of Commons, and of

its members and committees at the establishment of the Commonwealth. Section 50 of the Constitution goes on to provide that each House may make rules and orders with respect to the mode in which its powers, privileges and immunities may be exercised and upheld, and the order and conduct of its business and proceedings 'either separately or jointly with the other House'.

In Australian Senate Practice some doubts are raised as to the 'privilege powers' of joint committees:

> ... Another objection to joint committees appointed by resolution of the Houses is that their privilege power is uncertain. For example, there is a doubt whether a joint committee may administer an oath to a witness. Furthermore, section 49 of the Constitution, which gives to the Houses and committees of each House the powers, privileges and immunities of the House of Commons does not refer to joint committees. Thus, if a witness before a joint committee refused to answer a question, gave false evidence, or behaved insultingly, the Houses may be ill-equipped to deal with the matter. Perhaps the penal power arising from joint committee proceedings may be exercised by joint resolution of the two Houses, but difficulties could arise when the Houses disagreed on the appropriate penalty.[11]

It may, however, be considered that because section 49 confers on each House the powers, privileges and immunities of the House of Commons as at 1901 and because section 50 provides for the Houses to act jointly, the powers, privileges and immunities possessed by committees of each House must be held to apply also to joint committees.

Some of these questions arose in 1941 in connection with the Joint Committee on War Expenditure. An opinion was provided by the Solicitor-General, and inter alia, it concluded that a joint committee authorised to send for persons, papers and records has the power to summon witnesses, but that it was doubtful whether a joint committee had the power to administer oaths.[12]

It is also noted that for the purposes of the *Parliamentary Privileges Act 1987* (which is not a complete codification however) 'committee' is defined as including a joint committee (s.3).

It should be noted that on three occasions in the past the Committee of Privileges of the House has considered matters involving a joint committee. The reference involving The Sun newspaper in 1973 concerned the Joint Committee on Prices. The second case occurred in 1980 when the House referred to the committee the alleged discrimination against, and intimidation of, a witness because of evidence given by him to a sub-committee of the Joint Committee on Foreign Affairs and Defence. The Committee of Privileges at the time considered the question of

whether it was able to deal with the matter involving a joint committee and concluded that it had jurisdiction. In its report on the 1986-87 Telecommunications Interception Committee inquiry, the Committee of Privileges stated:

> The committee took the view however 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 committee.[13]

PRECEDENTS

Precedents exist in both the House of Representatives and the Senate for the unauthorised disclosure or publication of committee material or proceedings being raised 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. Only two precedents in the Commonwealth Parliament deal with the unauthorised publication of submissions, the others all concern the disclosure of proceedings or draft reports. Both occurred in the Senate. One useful precedent has also been found in the House of Commons for the disclosure of evidence taken in-camera being investigated by the Committee of Privileges.

Senate precedents

Two cases are particularly relevant.

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 Senate.

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 present 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 resumed.[14]

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 made.[15]

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). It appears that 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 made.

A fourth precedent is less relevant again. 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 reprimanded. The Senate subsequently adopted the committee's report, the editors were required to attend before the Senate, and the Deputy-President administered a reprimand.[16]

House of Representatives precedents
All precedents in the House of Representatives concern the disclosure of proceedings or draft reports, and not of evidence or submissions. Nevertheless they are of interest.

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 concerned. The Speaker communicated with the President of the Press Gallery on the general issue, as was recommended.[17]

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 committee.[18]

Telecommunications Interception 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. The committee concluded, inter alia -

- 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 (one journalist said he had had three sources);

- 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.[19]

House of Commons (UK) precedents and review

Dalyell case

The nearest precedent appears to be the Dalyell case of 1968. A select committee had taken evidence in-camera. A proposal that the evidence (taken at a research establishment and concerning defences against chemical warfare) should not be published until the committee had completed its inquiry was rejected, but witnesses were told, in the interest of helping achieve frankness, that the committee would consider 'with the utmost sympathy' any requests for omission. Proof copies of the evidence were sent to members of the committee with a reminder that they were for the special use of Members. Details were however published in The Observer and the matter referred to the Committee of Privileges. A Member, Mr Dalyell, (appearing at his own request) stated that he had given a journalist his copy of the proof minutes of evidence.

The Committee of Privileges found that Mr Dalyell was guilty of a breach of privilege and of a serious contempt and recommended that he should be reprimanded. A reprimand was administered by the Speaker in due course.

The committee found that the journalist and editor concerned had committed a contempt of the House, but in all the circumstances they recommended that no further action be taken.[20]

The Economist case

A major case occurred in 1975, albeit concerning a draft report and not evidence. The Economist published a substantial amount of information from a draft report to be considered by a select committee. The matter was referred to the Committee of Privileges which found that it had caused damage to Parliament, and that it constituted a contempt. The source of the disclosure was not revealed but the committee found that the editor and reporter of The Economist had acted irresponsibly and recommended that they both be excluded from the precincts for 6 months. This recommendation was not, however, adopted by the House.[21]

1985 review

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 existing by then 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 persons.[22]

(It was this procedure that Mr Speaker commended when Dr Theophanous raised his concerns in the House).

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, and 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.'[23]

BASIC PRINCIPLES IN SUCH CASES

The matter complained of by Dr Theophanous would not, if established, constitute a breach of any specific right or immunity enjoyed by the Houses, their committees or Members. Rather, if established, a question of contempt would arise. 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 prohibitions on disclosure and publication.

The 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 prohibition was 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.[24]

(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.

Disclosure

On the question of disclosure, the Chairman of the joint committee has stated that -

- the article complained of 'appears to reveal a knowledge of a submission to the committee which the committee had determined should be confidential';

- the joint committee had met on 18 September to 'ascertain as best it could the source'. Dr Theophanous has advised that, as Chairman, he had asked two questions of each member present (Senators Cooney, McKiernan, Olsen and Spindler and Messrs Holding and Ruddock and Dr Catley), to which responses were received immediately. The questions were;

'Have you, on any occasion, provided or assisted or

allowed to be provided, to Mr Daly or any other journalist information confidential to the committee?'

and

> 'Have you supplied to Mr Daly or any other journalist material which is confidential to the committee or material which is covered by parliamentary privilege?'

Dr Theophanous advised the House that all members, including himself, had answered 'no' to these two questions and that Mr Ruddock had added the following comment:

> 'to the best of my knowledge and recollection I have not, but, in my role as Shadow Minister for Immigration, I have spoken to a number of journalists over a long period of time.'

Dr Theophanous said that the staff of the secretariat had had the same two questions put to them and they too had responded in the negative.

The Chairman's statement does not make any reference to whether the joint committee considered other possibilities such as that the submission was disclosed by a person or persons or an organisation not connected with Parliament. Neither does it comment on matters such as the security of the committee's records.

It is noted that the penalties available under the *Parliamentary Privileges Act 1987* are only available if a committee has directed that a document be treated as confidential - that is, if a positive action or decision is required (s.13). (The part of the resolution of 25 February 1988 already quoted is worded similarly). The provisions of s.13 of the 1987 Act create a new, criminal, offence and should be seen, it is considered, as strengthening and supplementing the means by which such problems are dealt with - that is, they are not seen as displacing the ability of either House to act in the traditional manner in such a situation. If a committee has not taken a positive decision to direct that a submission be treated as confidential, then only the ability to proceed on the basis of possible contempt is available.

<u>Publication</u>

On the question of publication, the only information or comment is the Chairman's statement -

> The committee is therefore deeply concerned that a senior journalist, who either knew or ought to have known the serious nature of publishing a document which was forwarded to the committee on a confidential basis or material which was provided during the course of an in-camera hearing to the committee, should subsequently publish such material or extracts from such material (18 September).

In the nature of these matters usually it is a straightforward matter to ascertain responsibility for actual publication when

these matters come to notice. It is invariably more difficult to uncover the source of the information, the usual position being that media representatives decline to reveal the source or sources of their information.

CONSIDERATION BY THE COMMITTEE

The committee has been charged by the House with the responsibility of advising it in relation to this matter. It would seem that the committee would need to consider the basic law involved, whatever principles and precedents it may consider relevant, and the circumstances and details of the particular matter complained of.

The committee must have regard to the provisions of section 4 of the *Parliamentary Privileges Act 1987*, but it may also wish to have regard to the general approach, in recent times, to matters of privilege and contempt in the House of Commons.

On 6 February 1978 the House of Commons, in a significant decision, agreed with a recommendation of its Committee of Privileges, which had reviewed the major changes recommended by the 1966-67 Select Committee on Parliamentary Privilege. In particular, the House agreed with a recommendation that it -

> .....should follow the general rule that its penal jurisdiction should be exercised (a) in any event as sparingly as possible and (b) only when the House is satisfied that to exercise it is essential in order to provide reasonable protection for the House, its Members or its officers, from such improper obstruction or attempt at or threat of obstruction as is causing, or is likely to cause, substantial interference with the performance of their respective functions.[25]

No decision has been made to adopt such a policy in the House of Representatives although it was recommended in the 1984 report of the Joint Select Committee on Parliamentary Privilege.[26] This approach has however been cited in the House by successive Speakers, and it has been adopted by resolution in the Senate.[27]

In discharging its responsibilities, the committee has substantial powers. In the first place, by virtue of section 49 of the Constitution, the UK Parliamentary Witnesses' Oaths Act 1871 applies. That Act enabled committees of the House of Commons to administer oaths to witnesses and that power is enjoyed by the Committee of Privileges.

Secondly, the committee has power to 'send for persons, papers and records' - that is, it has the power to compel the attendance of witnesses and the production of documents. These powers are backed by the authority of the House itself.

The scope of any inquiry by the committee comprises not only the specific matter, but also the facts relevant to it.

Committees of Privileges both in the UK and Australia have, as well as making findings on particular complaints, made recommendations to the House as to what action it might take.

Examples have included -

- that no contempt or breach is involved;
- that the dignity of the House is best maintained by taking no action;
- that the matter could constitute a contempt but it is inconsistent with the dignity of the House to take action;
- that a technical contempt had been committed but further action would give added publicity and be inconsistent with the dignity of the House;
- that a contempt of the House had been committed but, in view of the (humble) apology tendered, no further action is recommended;
- that although it would be open to find that a contempt had been committed, in the circumstances and having regard to ..... such a finding should not be made;
- that a contempt of the House had been committed but the matter was not worthy of occupying the further time of the House;
- that no further action be taken against the editor provided that, within such time as the House may require, he publishes in a prominent position in his newspaper an apology to the following effect ....
- that the company concerned, the advertising agency and the editor of the newspaper in which the advertisement was published are guilty of a (serious) contempt and should be (severely) reprimanded;
- that a serious contempt (breach) has been committed and the House should.....

There is, nothing binding about this list, and the committee may express its findings and any recommendations as it chooses.

(A R BROWNING)
Clerk of the House

ENDNOTES

1. House of Representatives Practice, A R Browning (ed) AGPS, Canberra, 1989, p.682
2. Op cit, p.682
3. Act No. 21 of 1987, s.5
4. Halsbury's Laws of England, 4th edn, vol 34, para 1500
5. May, 21st edn, p.115
6. House of Representatives Practice, p.626; May p.667
7. May, pp.679-80
8. May, pp. 122-4
9. May, p.123
10. Australian Senate Practice, (J R Odgers) PP 1 (1975) 505
11. Op cit, p.519
12. Opinion of Solicitor-General, 8 August 1941
13. PP 135 (1987) 4
14. PP 298 (1984); PP 239 (1985); J 1985-87/317
15. Committee of Privileges (Senate) - 22nd report (May 1990)
16. PP 163 (1971); J 1970-72/612
17. PP 217 (1973); VP 1973-74/518
18. PP 242 (1971)
19. PP 135 (1987)
20. HC 357 (1967-68)
21. HC 22 (1975-76); CJ 1975-76/64
22. HC 555 (1984-85)
23. HC 376 (1985-86), The Parliamentarian, July 1986, pp.102-3
24. HC 555 (1984-85), The Parliamentarian, July 1986, pp.102-3
25. HC 417 (1976-77) iii-iv

26. PP 219 (1984)

27. J 1987-89/ 520, 536

ATTACHMENT G

GLITF

GAY & LESBIAN IMMIGRATION TASK FORCE

GPO Box 415
Sydney NSW 2001

2 November 1990

B.C. Wright
Secretary
Committee of Privileges
House of Representatives
Parliament House
Canberra ACT 2600

Dear B.C. Wright

I am responding to your letter of 12 October to Philip Summerbell of our Victorian branch, as he is currently on leave. With regard to your questions as to the extent of the circulation of our submission to the Joint Standing Committee on Migration Regulations, I respond as follows:

1. The Gay and Lesbian Immigration Taskforce has made submissions to two Parliamentary Committees. The first submission was sent on 22 January 1990 to the Joint *Select* Committee on Migration Regulations. The second submission was sent on 11 July 1990 to the Joint *Standing* Committee on Migration Regulations which replaced the Select Committee. The submissions were identical.

2. I enclose a copy of the covering letter which accompanied the submission to the Select Committee (Attachment A). As you will see, it makes no request for the submission to be kept confidential. As the Taskforce did not orally address this Committee, the question of an in-camera hearing to supplement our submission did not arise.

3. I also enclose a copy of the covering letter which accompanied the submission to the Standing Committee (Attachment B). I draw your attention to the last paragraph which asks for an in-camera hearing. No request is made that the document itself be kept confidential.

4. The first three pages of the transcript of our in-camera evidence before the Standing Committee on 27 July clarifies that the Taskforce was requesting an in-camera hearing simply in order to avoid any media distortion of our oral evidence and of the Committee's questions and responses. Our representatives specifically agreed to the incorporation of our covering letter of 11 July and our submission of January 1990 into the transcript of evidence by the Acting Chairman of the Committee.

5. I answer your questions regarding our knowledge of our submission's circulation as follows:

    - The submission was developed by a sub-committee of our Sydney branch. In January 1990, a draft was circulated for comment amongst our members in Sydney, Melbourne, Adelaide and Canberra. It is probable that at least 60 members viewed and retained copies of either the draft or the final version. We submit that this procedure was the only one which we, as a democratic organisation, could have followed.

- We did not inform our members that the submission was confidential, although we urged them not to circulate it. We were not, at that time, aware of the rule that any submission to a Parliamentary Committee is confidential until the Committee places it on the public record. The public notice calling for submissions made no reference to this standard parliamentary procedure, and we remained ignorant of it until receipt of our submission was acknowledged by the Secretary of the Committee.

- As a consequence of this ignorance of the parliamentary rule, we also sent a copy of our submission to several other organisations and people at the same time as we sent it to the Select Committee in January. To the best of our recollection, these were:

  - the National Immigration Forum (of which we are a member);

  - the Minister for Immigration;

  - the Central Operations Branch and the Procedures Branch of the Department of Immigration in Canberra; and

  - Senator Bruce Childs, who has been a long-term supporter of the Taskforce.

6. Although you do not ask about the circulation of the transcript of our in-camera hearing of 27 July, we will also report on this for your information. The transcript was seen by the four Taskforce members who represented our association at that hearing for perusal and comment. These members are Bronwyn Parry, Philip Summerbell, George Rodrigues and John Neill. These members also showed the transcript to two other members of the Taskforce, Betty Hounslow and myself, who act as the group's primary advisers on the technicalities of the complicated migration regulations. None of us showed the transcript to any other people.

7. Finally, I inform you that my enquiries have revealed no further information which could shed light on the source of the article by M. Daly in the Melbourne *Sunday Herald* of 16 September. Although the size and geographical dispersal of our membership makes it impossible for me to categorically state that no-one in our organisation was responsible for the article, I believe that it is highly improbable given our standing policy of avoiding publicity in the mass media wherever possible.

I trust this response is satisfactory to the Committee.

Yours sincerely

C S Dumasia

Cyrus Dumasia

Attachment A

GLITF

GAY & LESBIAN IMMIGRATION TASK FORCE

22 January 1990

Joint Select Committee
on Migration Regulations
Parliament House
Canberra ACT 2600

Dear

This submission is from the Gay and Lesbian Immigration Task Force (GLITF). It concerns the situation of non-Australian partners of homosexual Australian citizens and residents applying for permanent residence since the Migration Legislation Amendment Act 1989 came into force.

This national submission represents the views of GLITF ACT, NSW, SA and Victoria.

We understand that the intention of the Committee, in rejecting the proposed inclusion of homosexual applications within the format of the Regulations, was that Ministerial discretion would be retained for partners of homosexual Australians applying for permanent residence.

To date, despite careful consideration of the Act and Regulations, and lengthy talks with senior officials of DILGEA Central Office in Canberra, no effective way has been found for this to happen.

Our submission attempts to clarify the difficulties faced by such applicants, and makes a number of recommendations with a view to overcoming the fundamental structural and procedural difficulties we now face.

The new Law and Regulations have dramatically changed the situation for many homosexual couples. A number of couples face imminent separation as a result of these changes. Many more face great uncertainty regarding their future and the possibility of remaining together in Australia.

We urge you to carefully consider the rights and best interests of homosexual Australians with non-Australian partners. Incorporating homosexual partners in the Regulations would set existing policy in law. The applications would then be handled through the normal channels of delegation according to written established criteria. This would be administratively effective, and would establish the same certainty for homosexual Australians and their partners as heterosexual Australians have in regard to immigration.

• ACT
PO Box 429
Civic Square ACT 2608

• NSW
GPO Box 415
Sydney NSW 2001

• SA
PO Box 110
Woodville SA 5011

• VIC
PO Box 6004
Melbourne VIC 3004

Failing clear incorporation of homosexual applicants within the Regulations, we request that urgent consideration be given to our recommendations for amendments to the Regulations. These amendments would fulfil the intention of the Committee regarding the exercise of Ministerial discretion for homosexual applicants.

We also request the opportunity to make an oral submission to the Committee.

Yours sincerely

C. S. Dumasia Sarah Martin

Cyrus Dumasia and Sarah Martin
GLITF NSW for GLITF ACT, NSW, SA and Victoria

Attachment B

GAY & LESBIAN IMMIGRATION TASK FORCE

P.O. Box 2387
Richmond South
Victoria 3121
11 JULY 1990

Ms Robina Mills
Secretary
Joint Standing Committee on
Migration Regulations
Parliament House
Canberra ACT 2600

Re: INQUIRY INTO REGULATIONS UNDER THE MIGRATION ACT 1958

Dear Ms Mills,

We refer to your letter dated 13 June 1990 and send herewith our submission to the Joint Standing Committee on Migration Regulations.

Please note this submission was previously forwarded to the earlier Parliamentary Committee on Migration Regulations in January 1990.

The situation of partners of homosexual Australians under the new law remains unchanged, in that the Regulations have not been amended to allow for grant of permanent residency. Some interim arrangements have however, been put in place to allow the grant of temporary permits to partners already in Australia, pending the final decision of the Minister on the substantive policy question

INTERIM CONCESSIONAL ARRANGEMENTS

The DILGEA has issued 2 policy circulars to cover the position of visitors and illegal entrants as follows :

A. Visitors
To ensure that the permits of legal visitors do not lapse prior to a substantive policy decision, they may now apply for a further Temporary Entry Permit on the basis of their genuine homosexual relationship with an Australian citizen or permanent resident. (This is covered in topic 5 of the subject "Transitional Arrangements - Homosexual Partners" of the Procedures Advice Manual.)

GAY & LESBIAN IMMIGRATION TASK FORCE

Interim Concessional Arrangements (cont'd)

B. Illegal Entrants

Policy Circular 1702 provides for illegal entrants to regularise their status by making an application for a further Temporary Entry Permit based on a genuine homosexual relationship with an Australian citizen or permanent resident, subject to meeting the criteria established in the Regulations.

We ask the Committee to note that these concessions to the non-Australian partners of homosexual Australians do not match the concessions offered to the partners of heterosexual Australians. The latter, whether visitors or illegal entrants, are eligible for grant of permanent residency, whereas homosexual partners are limited to temporary residency. This discriminatory treatment in the concessional provisions mirrors the discrimination currently inherent in the permanent provisions of the new law.

THE SITUATION UNDER THE NEW LAW

As set out in the attached submission and argued by the National Immigration Forum at the hearing by the previous Committee (Tuesday 13 February 1990, pages 146-152), homosexual partners of Australians are now structurally excluded from the grant of permanent residency. This arises because no specific Regulation has been created to cover this situation, and because the previously available category of "compassionate grounds" has been tightened and is now exhaustively defined.

The only possibility for the grant of Permanent Residency resides "outside the Regulations", via the exercise of Ministerial discretion. However, this discretion can only be exercised after the exhaustion of review rights. Applicants who are not awarded review rights, cannot access Ministerial discretion. In the permanent schema established by the Review Regulations, neither visitors nor illegal entrants have appeal rights. This effectively excludes the overwhelming majority of our applicants from Ministerial discretion in that most applicants previously applying for permanent residency as homosexual partners

GAY & LESBIAN IMMIGRATION TASK FORCE

did so as holders of visitors' permits. This situation arose because, under the old law, there was no provision for the Australian to sponsor the migrant entry of their partner. This will remain the situation under the new law unless substantial changes are made.

We urgently request the Committee to consider our situation carefully. The changes to Ministerial discretionary powers mean that applications for permanent residency by the genuine partners of homosexual Australians can no longer be handled in the "old way". We submit that this necessitates the creation of a Regulation which allows these applications to be considered on their merits - either by the creation of a specific migrant entry and change of status Regulation, or by broadening the "compassionate" criteria.

We ask the Committee to understand that adopting such a course does not imply support or approval of homosexuality per se. It would simply acknowledge the reality of the fact that between 5% and 10% of Australians are homosexuals, and a small proportion of them fall in love and wish to make their life with a non-Australian. The only way in which the established rights of these Australian citizens and permanent residents can be safeguarded is to amend the Migration Regulations. We submit that this is simply elementary natural justice.

G.L.I.T.F. would welcome the opportunity to elaborate our concerns with the Committee in-person. We repeat our request made to the previous Committee that we be granted an "in-camera" hearing.

Yours sincerely,

Philip Summerbell
for and behalf of G.L.I.T.F.

DISSENTING REPORT BY HON. N.A. BROWN QC MP

1. I wish to dissent from the Report of the Committee for the following reasons.

2. First, I do not believe that the Committee has adequately discharged its duty to the House by making the Report it has. The Committee's duty is to investigate a reference thoroughly, report to the House on the result of its investigations and then to make whatever recommendations it believes to be appropriate.

In this case, the Committee has made only the most cursory enquiry into the facts and has, in effect, concluded that it would be an unproductive task to undertake further enquiries. I believe that the House is entitled to expect that the Committee had pursued its enquiries further before it reached the conclusion that further enquiries would be unproductive.

3. Secondly, the Committee's conclusion is not supported by the facts. The organisation that made the submission did not circulate 60 copies of its submission to the Joint Standing Committee. It made a submission to the earlier Joint Select Committee and circulated 60 copies of a draft of that submission. It made that submission to the Joint Select Committee on 22 January 1990. It apparently sent the same submission to the Joint Standing Committee on 11 July 1990. It gave evidence to the Joint Standing Committee on 27 July 1990. The article in the Sunday Herald, which was based on the submission, was published on 16 September. It is extremely unlikely that any of the recipients of the draft in January who were minded to "leak" the document would have waited from January until September to do so. It is far more likely that the source of the "leak" was much closer to home and that it took place at the time the Joint Standing Committee was considering its report, which it presumably was doing prior to 16 September. That being so, it cannot be said that the circulation of 60 copies of a draft in January is a good reason for not investigating a "leak" that probably occurred in September.

4. Thirdly, the Committee's conclusions depend in large part on whether those involved knew that there was a prohibition on the unauthorised disclosure of submissions to Parliamentary committees. Paragraph 10 of the Report says that it was "possible" that they would not have been aware of the prohibition and then that it was "probable" that they were not aware of it.

The Committee's finding is then that those involved were "apparent(ly) ignorant" of the prohibition.

It is true that the organisation itself maintains that it was not aware of the prohibition, but there is no evidence that others who may have been involved were not aware of the prohibition. This is part of the same problem that arises from the fact that, in my view, the Committee has terminated its enquiry too soon.

5. Fourthly, even if those involved were ignorant of the prohibition, that does not mean that the unauthorised disclosure of the submission was not a contempt or a breach of privilege. It is relevant only to the recommendation the Committee might make and the penalty the House might impose. Furthermore, the unauthorised disclosure of information has now been elevated to such an art form that it is more likely than not, that those responsible knew full well that what they were doing was wrong.

6. Fifthly, it must be said that unless the Committee and the House take a more robust view on pursuing unauthorised disclosures, such disclosures will continue and will seriously damage the work of the Parliament and its Committees.

7. Finally, the Joint Standing Committee and its Chairman, after deliberation, expressed the view that the unauthorised disclosure seriously impeded the deliberations and work of the Committee. In those circumstances, I believe that the Privileges Committee should continue with its enquiries.

N.A. BROWN

3 DECEMBER 1990

PARLIAMENT OF AUSTRALIA
HOUSE OF REPRESENTATIVES

PARLIAMENT HOUSE
CANBERRA, A.C.T. 2600
TEL. 77 7111

COMMITTEE OF PRIVILEGES
MINUTES OF PROCEEDINGS

Parliament House - Canberra
Thursday, 20 September 1990

(36th Parliament - 2nd meeting)

PRESENT:

Mr Gear (Chairman)	
Mr N A Brown	Mr Johns
Mr Costello	Mr Reith
Mrs Crosio	Mr Snow
Mr Dobie	Mr Snowdon

The committee met at 9.05 pm.

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

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

> No. 18 - 19 September 1990 - the reference to the committee of an article in the Melbourne Sunday Herald of 16 September 1990.

The Chairman reported receipt of advice from Mr Beazley nominating Mr Holding to serve on the committee at the meeting.

The committee deliberated.

Resolved (on the motion of Mr Brown) - That a submission be sought from the Clerk on the matter referred to the committee on 18 September.

The committee deliberated.

The committee adjourned at 10.02 pm until 9.00 pm on Thursday, 11 October 1990.

Confirmed.

CHAIRMAN

COMMITTEE OF PRIVILEGES

MINUTES OF PROCEEDINGS

Parliament House - Canberra

Thursday, 11 October 1990

(36th Parliament - 3rd meeting)

PRESENT: Mr Gear (Chairman)

Hon N A Brown	Mr Johns
Mr Costello	Mr Lavarch
Hon J A Crosio	Mr Reith
Hon J D M Dobie	Mr Snow
	Mr Snowdon

The committee met at 9.10 pm.

The minutes of the meeting of 20 September were confirmed.

The Chairman presented a letter dated 11 October from the Leader of the House nominating Mr Lavarch to serve on the committee during its current inquiries.

Reference of article in Melbourne Sunday Herald concerning Joint Standing Committee on Migration Regulations

The committee deliberated.

Mr Reith moved - That the secretary ascertain the name of the person who had lodged the submission in question and write to that person seeking information in connection with the disclosure of the submission, whether prior to or after it was lodged with the Joint Standing Committee on Migration Regulations.

Ayes, 4	Noes, 2
Hon J Crosio	Hon N A Brown
Mr Lavarch	Mr Costello
Mr Reith	
Mr Snowdon	

And so it was resolved in the affirmative.

At 11.05 pm the committee adjourned until 8.15 pm, Thursday, 18 October 1990.

CONFIRMED

(G GEAR)
Chairman

PARLIAMENT OF AUSTRALIA
HOUSE OF REPRESENTATIVES

PARLIAMENT HOUSE
CANBERRA, ACT 2600
TEL. (06) 277 7111

COMMITTEE OF PRIVILEGES
MINUTES OF PROCEEDINGS

Parliament House - Canberra
Thursday, 8 November
(36th Parliament - 5th meeting)

PRESENT: Mr Gear (Chairman)

Hon J A Crosio
Mr Johns
Mr Snow

The committee met at 8.18 pm.

The minutes of the meeting of 18 October were confirmed.

Reference concerning the Joint Standing Committee on Migration Regulations

The Chairman presented a letter from the Hon N A Brown apologising that he could not attend the meeting and concerning the reference.

The committee deliberated.

RESOLVED (on the motion of Mr Snow) -

> That, having considered the letter dated 2 November 1990 from Mr C Dumasia of the Gay and Lesbian Immigration Task Force (GLITF), the committee should report to the House that, whilst a breach of privilege may have occurred, the facts that GLITF did not request confidentiality for its submission and that it circulated its submission to some 60 persons means that the committee could have no confidence that further investigations would bring the matter to a satisfactory conclusion.

At 8.28 pm the committee adjourned until 8.15 pm, Thursday, 15 November 1990.

CONFIRMED

(G GEAR)
Chairman