



**Legislative Assembly
Privileges Committee**

**Progress Report on Complaint
made by the
Treasurer**

June 1991

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**Legislative Assembly
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made by the
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TOGETHER WITH APPENDICES
AND EXTRACTS FROM THE
PROCEEDINGS OF THE COMMITTEE

Ordered by the Legislative Assembly to be printed 6 June 1991

TABLE OF CONTENTS

	Page
Extracts from the Votes and Proceedings of the Legislative Assembly	(ii)
Report of Progress	1
List of Appendices	
Appendix A - Extract from Proof of Hansard of debate in the Legislative Assembly on Tuesday, 28 May, 1991.	
Appendix B - Memorandum from the Clerk of the Legislative Assembly dated 31 May, 1991 concerning complaint raised by the Hon. the Treasurer.	
Appendix C - Memorandum from the Clerk of the Legislative Assembly dated 29 May, 1991 concerning personal or pecuniary interest of Members of the Committee.	
Appendix D - Memorandum from the Clerk of the Legislative Assembly dated 4 June, 1991 concerning interests of Members of the Committee.	
Appendix E - Divisions in Committee.	
Appendix F - Facsimile copy of Press Release issued by the Leader of the Opposition and forwarded to the Treasurer.	

(ii)

**EXTRACTED FROM THE VOTES AND PROCEEDINGS OF THE
LEGISLATIVE ASSEMBLY**

THURSDAY, 3 NOVEMBER 1988

- 8 PRIVILEGES COMMITTEE** - Motion made, by leave, and question - That a Select Committee be appointed to inquire into and report upon complaints of breach of privilege referred to it by the House; such Committee to consist of Mr Evans, Mr Lieberman, Mr McDonald, Mr Matthews, Mr Perton, Mr Sheehan (*Northcote*) and Dr Vaughan; and that the Committee have power to send for persons, papers and records; to sit on days on which the House does not meet and to move from place to place; four to be the quorum (*Mr Fordham*) - put and agreed to.
-

WEDNESDAY, 23 NOVEMBER 1988

- 4 PRIVILEGES COMMITTEE - MEMBERSHIP** - Motion made, by leave, and question - That Mr Perton be discharged from attendance on the Privileges Committee and Mr Maclellan be appointed in his stead (*Mr Fordham*) - put and agreed to.
-

(iii)

TUESDAY, 28 MAY 1991

- 2 **COMPLAINT** - Mr Speaker informed the House that the Honourable the Treasurer had lodged with him written notification of a complaint against the Leader of the Opposition alleging that he had attempted to intimidate members in the conduct of their duties - and, Mr Speaker being of the opinion that the complaint should be given precedence -

Motion made and question - That the complaint made by the Honourable the Treasurer on 27 May 1991 be referred to the Privileges Committee for examination and report (*Mr Roper*) - after debate, put.

The House divided.

AYES, 45

Mr Andrianopoulos	Mrs Hill	Mrs Ray	Mr Spyker
Mr Baker	Mrs Hirsh	Mr Roper	Mr Thomson
Mrs Barker	Mr Jolly	Mr Rowe	Mr Trezise
Mr Batchelor	Mr Kennan	Mr Sandon	Dr Vaughan
Mr Cain	Mr Kennedy	Mr Seitz	Mr Walsh
Mr Cole	Ms Kirner	Mr Sercombe	Mrs Wilson
Mr Crabb	Mr Leighton	Mrs Setches	
Mr Cunningham	Mr McCutcheon	Mr Sheehan	
Mr Ernst	Mr McDonald	(<i>Ballarat South</i>)	
Mr Fordham	Mr Mathews	Mr Sheehan	
Mr Gavin	Mr Micallef	(<i>Northcote</i>)	<i>Tellers</i>
Mr Hamilton	Mr Norris	Mr Shell	Mr Dollis
Mr Harrowfield	Mr Pope	Mr Simmonds	Mrs Garbutt

NOES, 39

Mr Austin	Mr Jasper	Mr Perrin	Mr Tanner
Mr Bildstien	Mr John	Mr Pescott	Mrs Wade
Mr Brown	Mr Kennett	Mr Plowman	Mr Wallace
Mr Clark	Mr Lea	Mr Reynolds	Mr Weideman
Mr Coleman	Mr Leigh	Mr Richardson	Dr Wells
Mr Cooper	Mr McGrath	Mr Ross-Edwards	
Mr Delzoppo	(<i>Lowan</i>)	Mr Smith	
Mr Dickinson	Mr McGrath	(<i>Glen Waverley</i>)	
Mr Gude	(<i>Warrnambool</i>)	Mr Smith	
Mr Hayward	Mr McNamara	(<i>Polwarth</i>)	<i>Tellers</i>
Mr Heffernan	Mr Maughan	Mr Steggall	Mr Elder
Mr Honeywood	Dr Napthine	Mr Stockdale	Mr Perton

And so it was resolved in the affirmative.

(iv)

WEDNESDAY, 29 MAY 1991

- 8 **PRIVILEGES COMMITTEE** - Motion made and question - That this House grant leave to permit the Privileges Committee to meet and take evidence during the sittings of the House in relation to the matter referred to the Committee for examination and report by this House on 28 May 1991 (*Mr Roper*) - put and agreed to.
-

THURSDAY, 30 MAY 1991

- 6 **PRIVILEGES COMMITTEE - EVIDENCE** - Motion made, by leave, and question - That Standing Order No. 208 be suspended so far as to allow the Privileges Committee to publish the evidence and documents received in its present Inquiry upon such terms and conditions as it thinks fit (*Mr Roper*) - put and agreed to.
-

REPORT OF PROGRESS

Pursuant to Standing Order 205 which states:

"A Select Committee may report its opinion or observations from time to time, or report the minutes of evidence only, or proceedings from time to time."

the Privileges Committee reports progress and expresses its intention to provide to the House a final report on its investigation during the Spring Sitting 1991.

Committee Room,
6 June, 1991.

TELEVISIONING OF PROCEEDINGS

Tuesday, 28 May 1991

ASSEMBLY

1

 Tuesday, 28 May 1991

The SPEAKER (Hon. Ken Coghill) took the chair at 2.5 p.m. and read the prayer.

TELEVISIONING OF PROCEEDINGS

The SPEAKER — Order! I desire to make an announcement in respect of a matter of privilege, but before doing so I advise the House that I have approved a request from Channel 10 to film proceedings today concerning the matter of privilege.

Mr McNamara — The kangaroo court starts.

Mr Kennan interjected.

The SPEAKER — Order! Filming will be conducted in conjunction with programs from other channels, including the 7.30 Report, under the usual guidelines.

PARLIAMENTARY PRIVILEGE

The SPEAKER — I have received a letter from the honourable member for Brunswick, the Treasurer, concerning a matter of Parliamentary privilege as follows:

Dear Mr Speaker,

I wish to raise with you a matter of privilege.

On 23 May 1991, I received from the Leader of the State Opposition, the Hon. Jeff Kennett, MP, addressed to me, a facsimile copy of a statement issued earlier that day by Mr Kennett. The statement said, in part:

If the government has not caused a State election to be announced by Wednesday, 29 May 1991, then all sitting Australian Labor Party members of the Victorian Parliament who retire from Parliament after that date and prior to the next State election, or who stand as a candidate at the next election and subsequently lose their seat will be denied any access to the taxpayer-funded component of their Parliamentary superannuation entitlement.

However, any sitting ALP member who contests the next election and is returned to Parliament will be deemed to have public support for their entire Parliamentary service and therefore their superannuation entitlement on eventual retirement or defeat will not be affected.

ALP members in the Legislative Council who are not up for re-election at the next election will also be affected by this measure.

The denial of the public component of the ALP members' superannuation will be achieved through special legislation. This will be introduced by the coalition government and made retrospective for the entire Parliamentary service of all ALP Parliamentary members.

If the government does allow:

a significant number of retirements by government members;

its defeat on the floor of the House; or

its resignation

in time for the date of the next State election to be announced by midnight, Wednesday, 29 May 1991 and the subsequent prorogation of Parliament the next day to allow the passing of the Supply Bill by the Legislative Council, then all superannuation entitlements for members who retire or lose their seats at the subsequent election will be guaranteed.

It is clear that Mr Kennett has attempted to intimidate members, including myself, in the conduct of their duties and that such a threat is a breach of privilege.

I ask you to consider this matter and confirm that there is a prima facie case of a breach of privilege in order to give precedence for a motion to be moved to refer the matter to the Privileges Committee.

Yours sincerely,

Tom Roper

Member for Brunswick

Treasurer.

In the broad sense the head of privilege under which the complaint is founded relates to freedom from molestation. I refer honourable members to *May*, the twenty-first edition, at page 95. Within that broad head of privilege are many cited circumstances which can be considered to affect this freedom. These acts which

may be considered as contempts are referred to in pages 126 to 129 of *May*, twenty-first edition, and in particular the threat of proposing to visit a pecuniary loss on a member, on account of his conduct in Parliament, has been considered a contempt. I refer honourable members to the *Journal of the House of Commons 1898* at page 381.

A Victorian case in 1882 — the Ramsay case — was considered by the Speaker at that time and ruled that a prima facie case for precedence to be granted was present. The consideration of this case related to an alleged threat by a Minister to the member, Ramsay, that union action would be taken against his private business interests. A motion was proposed in the House for the matter to be referred to the Privileges Committee and, following an apology by the Minister, the motion was withdrawn. I refer honourable members to *Hansard* of 22 September 1882 at pages 555 to 558.

It is my view that the present complaint is similar in nature to those referred to above and, accordingly, can well be considered to fall within the ambit of that aspect of privilege. Accordingly, I have decided that a prima facie case has been made out that the matter should be given precedence by the House.

Mr McNAMARA (Leader of the National Party) — On a point of order, Mr Speaker, a Clerk approached the Deputy Leader of the National Party and asked whether we had any objection to the filming of proceedings. I understood when you addressed the matter that you mentioned there had been a request from the media for this matter to be filmed. Do I take it you advised the media prior to advising the House that this matter was coming forward?

Also, I understand that you initially advised the media you were not going to allow proceedings to be filmed. You have now advised that you will. Has pressure been put on you, Mr Speaker, by members of the government to ensure — —

Honourable members interjecting.

The SPEAKER — Order! The Leader of the National Party has raised a point of order as is his right and he is entitled to be heard. The Chair is entitled to be able to hear him.

Mr McNAMARA — Since, from what I have been told, you have had two opinions yourself on this matter within the past couple of hours — firstly, not to allow the media to film the proceedings on the privilege matter and subsequently to allow it — I should like to know whether you have had any pressure put on you in an improper fashion by members of the government — indeed, any fashion at all — and whether any improper threats were made against you, your office or the position you hold as Speaker of this House.

Mr Kennan interjected.

The SPEAKER — Order! The Deputy Premier is making it difficult for the Chair to concentrate.

Mr McNAMARA — There is no need to get agitated about this!

Honourable members interjecting.

The SPEAKER — Order! The honourable member for Evelyn is well aware of the rules of the Standing Orders. I ask him to remain silent. I ask the honourable member for Richmond to remain silent to allow the Leader of the National Party to round off his point of order.

Mr McNAMARA — I want to make sure the comments I make are properly recorded. I do not intend to alter my *Hansard* like the Deputy Premier!

Honourable members interjecting.

The SPEAKER — Order! If the Leader of the National Party wishes to raise a point of order he should do so directly and ignore interjections and also confine his remarks to matters relevant to the point of order.

Mr McNAMARA — I am concerned by the advice I have received that you have changed your view, Mr Speaker. I am not concerned that we are having these proceedings recorded. My concern is that some threats or persuasions have been used against you and your office. I ask you to advise the House why you changed your decision in the last hour or so to allow this charade and kangaroo court to proceed.

We are concerned about the high office of Speaker of this Chamber. I should like you, Mr Speaker, to advise members of the Chamber what pressures have been put on you personally.

The SPEAKER — Order! There has been absolutely no pressure whatever put on me in respect of any matters related to the current proceedings. Earlier this day I received an approach from representatives of the media asking whether, in the event that a matter of privilege did come before the House today, permission for filming would be granted. At no stage was the press given any prior indication as to what was in my mind.

In accordance with the normal processes I sought the attitudes of the parties to such a request in the event of a privilege matter proceeding this day. There was some confusion about the advice from one of the parties and when that confusion was resolved I advised the press and the television channels that permission would be granted for filming to proceed as I have just announced.

Mrs Hirsh interjected.

Mr PERTON (Doncaster) — On a point of order, Mr Speaker, the honourable member for Wantirna has used an unparliamentary term to which I take exception and I call upon her to withdraw it immediately.

The SPEAKER — Order! The Chair is unaware of the particular term but if the honourable member for Doncaster has taken exception I ask the honourable member for Wantirna whether she will withdraw the term used.

Mrs HIRSH (Wantirna) — Obviously — —

Mr Leigh — Be a man and withdraw.

Mrs HIRSH — Obviously the honourable member has taken notice of what I have said and, given that, I will withdraw, whether it is true or not.

Mr PERTON (Doncaster) — On a further point of order, that was not an unconditional withdrawal and not couched in the appropriate terms.

The SPEAKER — Order! I ask the honourable member for Wantirna to make an unqualified withdrawal.

Mrs HIRSH (Wantirna) — I withdraw.

Mr ROPER (Treasurer) — I move:

That the complaint made by the Treasurer on 27 May 1991 be referred to the Privileges Committee for examination and report.

The SPEAKER — Order! Who seconds the motion?

Mr CRABB (Minister for Conservation and Environment) — I second the motion.

Mr ROPER (Treasurer) — When I was elected to Parliament I never thought it would be my regrettable task to move such a motion, a motion to refer such an unprecedented and appalling threat against members to the Privileges Committee. As members of this House we are faced with one of the most fundamental assaults on Parliamentary democracy we have seen in this country or in any other civilised countries with which we prefer to compare ourselves.

Our Parliamentary and democratic society does not expect Parliamentarians to be threatened with reprisal or punishment, as the Leader of the Opposition did last Thursday, if they exercise their consciences and decision-making powers.

Last Thursday I received on my facsimile machine a press statement from the Leader of the Opposition marked specifically for my attention. This unusual action by the Leader of the Opposition was clearly intended to personalise the threat made earlier in the day. I understand that other members were similarly and personally threatened.

An honourable member interjected.

Mr ROPER - This happens to be a serious and important matter and if you do not understand that then that is your problem.

The fax said in part:

If the government has not caused a State election to be announced by midnight, Wednesday, 29 May 1991, then all sitting Australian Labor Party members of the Victorian Parliament who retire from Parliament after that date and

prior to the next State election, or who stand as a candidate at the next election and subsequently lose their seat will be denied any access to the taxpayer funded component of their Parliamentary superannuation entitlement.

It went on to say:

However, any sitting ALP member who contests the next election and is returned to Parliament will be deemed to have public support for their entire Parliamentary service —

That is very grand of him, given that some of my colleagues have now been elected up to nine or ten times with public support —

and therefore their superannuation entitlement on eventual retirement or defeat will not be affected.

It then said:

ALP members in the Legislative Council who are not up for re-election at the next election will also be affected by this measure.

The denial of the public component of the ALP members' superannuation will be achieved through special legislation. This will be introduced by the coalition government, and made retrospective for the entire Parliamentary service of all ALP Parliamentary members.

The fax then went on in the terms that you, Mr Speaker, read out earlier to make clear what the Leader of the Opposition would regard as a reaction to the measure that would persuade him to withdraw the threat.

I well recall the comments of Mr Speaker Wheeler when he commented on privilege on 22 March 1978:

May, at pages 149 and 150, summarises the position concerning the relevant head of privilege and it is clear that not only the offer of a money bribe or of other advantages but also alternatively attempts at intimidation are regarded as falling within the scope of contempt of Parliament.

The intention of the Leader of the Opposition is clear and unambiguous. This is not intimidation from outside the Parliament but from within.

In case the nature of the intimidation was not understood, on the evening of Thursday, 23 May the Leader of the Opposition appeared on Channel 9 news and said:

We are giving you five days now in which to decide how you want to arrange your financial affairs.

It is an interesting comment from the Leader of the Opposition — it is very generous! The comment regrettably demonstrates the fact that the Leader of the Opposition not only does not understand the privileges of the House but wishes to totally ignore and trample on them.

No member of this House could be under any illusion as to the intention of the Leader of the Opposition: he is clearly proposing to visit a pecuniary loss on honourable members on account of their conduct in Parliament. That action is specifically set out as contempt at page 124 of the 21st edition of *Erskine May's Parliamentary Practice*.

As you, Mr Speaker, mentioned a parallel but less general matter was found to satisfy requirements for a prima facie case by Mr Speaker Edmunds following a complaint by the then honourable member for Balwyn. That these threats are conditional on the Leader of the Opposition being elected at some subsequent election does not diminish the threat.

The Parliamentary superannuation entitlements of honourable members are set out in the Parliamentary Salaries and Superannuation Act and are a contract between each honourable member and the Crown. Under that contract we are required to pay 11.5 per cent of our salaries to the fund and as a consequence we and our families are entitled to receive legally defined benefits on certain contingencies such as death, disability, defeat or retirement.

In that contract honourable members are not different from the community as a whole, and I remind honourable members, particularly those opposite, of what Peter Cole-Adams said in an article that appeared in the *Age* of 25 May under the heading "Super opportunism":

It would set a precedent that should alarm every government and, for that matter, private sector employee.

Consider what the employer, in this case the State, contribution to superannuation is. It is not a golden handshake or redundancy settlement, let alone a discretionary parting gift from a grateful boss to a loyal servant. It is deferred pay, something that has already been earned by the employee and provided for by the employer.

It is part of the contract of employment. This is as true of the Parliamentarians' superannuation scheme as it is of those available to workers in industry.

The view put forward by Mr Cole-Adams, who is obviously attacked by honourable members opposite, has been endorsed widely by those who have examined the statement of last week. Even this morning, the Reverend John Howells, speaking after the Anglican synod's condemnation of the threat, made it clear that the way the Leader of the Opposition was acting was clearly such as to place at risk all members of our community, not just particular members of this Parliament.

Mr Elder — Are you on the synod?

Mr ROPER — I remind the honourable member for Ballarat North of what the Reverend John Howells said, as I am sure the honourable member needs to understand. He said:

These days superannuation is increasingly the way in which people provide for their retirement and it involves a contract between the employer and employee and this should be safe and secure for the people and to have security questioned and threatened, in this case for political reasons, but if it can be done then it could be done for industrial reasons or when there was a personal problem.

Who will contract to provide services, commence major developments or lend money if their business is subject to the retrospective whim of a Leader of the Opposition? Who will work for the Crown if their salaries and superannuation can be cancelled at the whim of the political party in power at the time?

Mr Spyker — Of a madman!

Mr ROPER — Yes, a madman in this particular area — I suppose that is a defence.

Superannuation arrangements in the public and private sectors are a contract, and contractual obligations must be met at the appropriate time.

The Leader of the Opposition threatens that members of the Parliamentary Contributory Superannuation Fund, currently all equal, will lose that equality according to their political allegiance. Unless they bow to his intimidation by tomorrow night, he will seek to deprive them of their entitlements. The Leader of the Opposition makes no suggestion of a judicial process.

Mr Kennan — He would sack the judges, anyway!

Mr ROPER — Just thuggery, not fair play. That needs to be emphasised: just thuggery, not fair play.

The attempt by the Leader of the Opposition at intimidation of members is both dangerous and premeditated. The processes of its development were laid bare last Thursday morning on radio station 3AW. I quote from an interview:

KENNETT — Well, the procedure has already started. I have just briefed a couple of my staff members who have gone through the documentation and they're excited.

He did not mention anything about taxation. He continued:

I will be having a leaders' meeting at 11 o'clock just to bring the coalition leadership together again, with the exception of the three that are over in China representing our interests and the coalition shadow Cabinet will meet at 11.30. The coalition itself will meet at 1.30 and I expect to be announcing to the public at 3 o'clock the fourth stage in this overall strategy.

In answer to another question he said:

Well, with the exception of the other leadership members and one staff member it has been totally withheld.

Earlier he had actually said he had met with a couple of staff members. He added:

In other words, no-one else, no shadow Cabinet, no-one outside the Parliamentary leadership group has had a clue.

The interview continued:

MITCHELL — Oh well, they must all be speculating on it when they talk about it.

KENNETT — Yes.

MITCHELL — Is it dramatic?

KENNETT — Yes.

MITCHELL — Is it the most dramatic thing in Victorian politics for some years?

KENNETT — Yes.

MITCHELL — How long?

KENNETT — I can never remember anything as dramatic as this ever being done.

It is almost as if he should have had his sign on saying, "Stay tuned!"

I remind the House that all honourable members, in their different ways, and with their different views, came to Parliament to serve Victorians. Nowhere is this more clearly spelt out than in the Minister's oath of office.

I, and presumably the Leader of the Opposition before me, affirmed that I would "at all times and in all things discharge the duties of my office according to the law, and to the best of my knowledge and ability without fear, favour or affection".

The Leader of the Opposition wants to overturn those vital principles.

Mr Kennan — He thinks it's funny.

Mr ROPER — Yes, he thinks it is very amusing. The Leader of the Opposition, who laughs foolishly, wants to overturn this system. He wants to overthrow the Westminster system with politics of retribution and revenge.

The House, when considering this matter, should consider the effect of this proposal on individual members of Parliament. For example, my colleague, the Minister for Sport and Recreation and the honourable member for Geelong North, was first elected to Parliament in 1964. After 27 years of distinguished and devoted service in Geelong and Victoria, his entitlements - we are told by the Leader of the Opposition - are now at risk if he does not act as the opposition demands.

I suggest the Leader of the Opposition speaks in particular to the sporting community which will tell him clearly about the huge contribution the honourable member for Geelong North has made both as a member of Parliament and more particularly as Minister. There are members opposite who also believe that as well.

The wife of the honourable member for Dandenong, Julia Blake, puts the choice facing her husband graphically:

... Terry is scrupulously honest. He has two choices, he either refuses to take the bribe, loses his pension or he crosses the floor of the House to vote with Jeff Kennett. He then becomes corrupt for the first time in his life at the hands of the man who wants to be the next Premier of this State.

Well I hope he doesn't. I don't want my husband to be corrupted. I'd rather go without the money.

Who knows whether the threats made against government members may not in the future be extended to Liberal and National party members who incur the wrath of the honourable member for Burwood.

Let anyone who doubts the seriousness of this matter look at the coverage it has received over the past few days and look at the outrage expressed by groups of people in the community of all political persuasions.

Mr Bildstien interjected.

Mr ROPER — Really the honourable member for Mildura must be pulling his leg or trying to pull some other leg to suggest it is an orchestrated program. The *Geelong Advertiser* on Friday asked:

What other draconian measures, for instance, might a Premier Kennett deploy against others — and the public — if they pose a threat to his power? And power is the key word in this whole controversy. Mr Kennett appears more obsessed with winning it than he does with tackling the many problems facing Victoria.

To use the threat of this action to induce me and other honourable members to resign from Parliament is a clear and unequivocal contempt of Parliament. Honourable members need to be clear that it is a clear and unequivocal contempt of Parliament.

If a person wanted to secure your vote or an absence from a vote and offered you a bribe he would be guilty of contempt. If instead of bribing you he threatened you with violence he would be guilty of a contempt of Parliament. If instead of a bribe or violence he threatened confiscation of your property he would be guilty of contempt of Parliament.

That is exactly what the Leader of the Opposition has done. He has threatened to remove the entitlements of selected members of Parliament unless they carry out his wishes. That constitutes, by the standards of our Parliamentary system, a breach of privilege and a contempt of Parliament.

The matter must now be dealt with by the Privileges Committee of this House so that all honourable members can continue to carry out their duties, free from blackmail and intimidation. I strongly urge the passage of the motion.

Mr I. W. SMITH (Polwarth) — On a point of order, Mr Speaker — —

Honourable members interjecting.

The SPEAKER — Order! I suggest that if the Ministers for transport and police and emergency services wish to remain for the debate, they remain silent.

Mr I. W. SMITH — My point of order is that I ask you to rule on this matter: I have looked at the list of members on the Privileges Committee and I notice that the honourable member for Whittlesea, Mr Macdonald, and the honourable member for Oakleigh, Mr Mathews, are serving members of the Privileges Committee. I should have thought that those members had a direct pecuniary interest in the outcome of the Privileges Committee deliberations, and therefore would render themselves ineligible. I ask you to rule on their suitability, on those grounds, to hear the charges levied by the Treasurer.

Further to my point of order, Mr Speaker, I direct your attention to Standing Order No. 2 on page 12 of the *Standing Orders and Rules of the Legislative Assembly*, under "General Rules" which states:

No member shall be entitled to vote in the House, in Committee of the Whole, or in a Select Committee upon any question in which he has a direct pecuniary interest, and the vote of any member so interested shall be disallowed.

The SPEAKER — Order! Honourable members will be interested to know that this question was dealt with in 1978 when a matter was raised by the then Leader of the Opposition, Mr Frank Wilkes, and at that time the ruling, which I intend to uphold, was that members in the categories described by the honourable member for Polwarth are not ineligible. The purpose of a Privileges Committee is a fact finding purpose. It does not make a decision. The final decision, if any, is to be made by the House. There is no point of order.

Mr KENNETT (Leader of the Opposition) — The proceeding today is the act of a discredited, dishonest, dispirited and leaderless government. It purports to raise a matter of Parliamentary privilege but it is nothing more than a miserable attempt to silence the critics of this administration.

Right from the outset, I have a message for the Victorian Labor Party: firstly, I will not be silenced; secondly, the coalition will not be silenced; and thirdly, the people of Victoria will not be silenced.

The proceeding today is not a matter of privilege, it is an extraordinary abuse of the forms of Parliament by a desperate government. It is driven by motivations of malice, fear, greed and self-interest — the hallmarks now of this Victorian Labor government.

Never has the description "indefensible calamity" been more relevant to the Australian Labor Party. Mr Speaker, if you want a message for that, look at the person who has raised this matter with you: the third most senior government Minister, the Treasurer, the man who currently seeks Parliamentary approval retrospectively for \$35 million of public moneys from the Consolidated Fund that was spent without the authority of Parliament. The Auditor-General has said of this Treasurer that he has entered into a range of illegal, artificial financial transactions involving public moneys. It is not the coalition that should be in the dock today but the Treasurer and all the members of the Labor Party.

The coalition argues that this motion is an abuse of the Parliamentary process and a misuse of Parliament. This House is the last refuge in Victoria where the Australian Labor Party can claim majority support. Nowhere else in Victoria - not in the Parliament of Victoria but only in this House - does this group of men and women claim majority support, and through it control of the Privileges Committee.

The government, through this motion, wants to gag the coalition and deny the public its voice in this place, because the policy enunciated the other day was not the policy I put together, but a policy of the coalition.

Honourable members interjecting.

The **SPEAKER** — Order! The Treasurer was heard with very little interruption and the Leader of the Opposition is similarly entitled to be heard without interruption. It is becoming difficult even for the Chair to hear some of the honourable member's remarks, and I particularly ask the Minister for Agriculture and the Minister for Police and Emergency Services to remain silent because I do not wish to deny them the opportunity of participating in the proceedings.

Mr **KENNETT** — As I was saying, the motion seeks not just to gag the coalition, but to deny the public a voice in this House. The government will not debate the substantive issue, which is the need for a fresh election.

The Treasurer, in his letter to you, Mr Speaker, which was kindly passed on to me before the debate started, states that the coalition has intimidated the Labor Party members, including himself. The actions of the coalition cannot be regarded as contempt in the sense of either bribery or intimidation. The Victorian Parliament is a sovereign legislature and it has the constitutional powers to enact any law it sees fit on whatever ground it sees fit. That is obviously why government members are so upset, because they realise what I say is correct. Ultimately the public will decide this issue, and what we have proposed can be put into place. I am trying to explain why it can be done and why it will be done.

Within the constitutional power this Parliament can enact any law it wishes on whatever ground it sees fit. This great power flows from its character as a democratically elected Assembly of the Victorian people. In order that Parliament be free to exercise that power on whatever grounds and to whatever end it believes to be appropriate, it necessarily follows that members of Parliament must be free to advocate whatever change in the law they feel to be appropriate and to fearlessly articulate the reasons why such a course is to be followed. On this fundamental basis my announcement that the future coalition government would legislate in a particular way if specific action is not taken by government members of Parliament cannot be condemned.

All the coalition advocates is the passage of an Act of Parliament, which is the highest constitutional act of the State of Victoria. It cannot be a contempt of Parliament to assert that a future Parliament can and will make such legislation as it sees fit on such grounds as it sees fit; otherwise the freedom of the Parliament is a sham.

If the coalition's position today is determined, as it probably will be because the government has the numbers, as a contempt, consider how this House may react when next environmentalists call for particular legislation and threaten that they will campaign against political parties or individual members of Parliament. Is that a contempt? Is that intimidation? Or will such people be called to the Bar of the House? What about when the Premier's personal friends, Mr John Halfpenny, or Mr Wally Curran, or the Victorian Branch of the Australian Federated Union of Locomotive Enginemen, which is on strike today, state that if particular changes are made to the law they will strike? Are they then to be charged with contempt? Is that intimidation?

To take the government's argument to its logical conclusion, what is one to say of the practice of the Australian Labor Party whereby a member of Parliament faces expulsion and loss of preselection with all the attendant financial consequences if he or she follows his or her conscience on a particular matter and votes against the party line in Parliament? If the government is so concerned about the intimidation of members of Parliament, it should look closer to home in bringing charges of contempt.

What is the Treasurer so upset about, as outlined in the letter he sent to you, Mr Speaker?

Mr **Baker** interjected.

The **SPEAKER** — Order! The Minister for Agriculture.

Mr **KENNETT** — We have announced a policy in advance of an election and that policy asks the public to decide which, if any, of the ALP members of Parliament they believe to have discharged their duties well and should therefore be rewarded for their outstanding service and achievements in government. In short, we are making government members accountable to their employers — to the public.

I was interested in the Treasurer's comments about the relationship between the employer and the employee. I shall say more about that in a moment. It should not be forgotten that we are employed by the public. It is not your money, and it is not my money — we are talking about the public's money, and the public is entitled to hold us all accountable. What is so extraordinary about being accountable? Most people in the community are accountable.

Further, the opposition has given the government and its members until midnight tomorrow right to rearrange, if they wish, their financial affairs. What could be fairer? We could have announced the policy without giving them any time at all, so the moment we go and give them a break to rearrange their financial affairs they are upset about it!

Let me further announce now to the House and to the public that that deadline will not be extended. The opposition believes all Parliamentarians are accountable to those who employ them, the public. It has asked the government in the letter — —

Mr Thomson interjected.

Mr KENNETT — The opposition has asked the government to allow a change in the Constitution so that a fresh election can be held without a constitutional crisis. The government has refused that offer three times. The Premier said on air last week and earlier this week that she did not have the authority to go to an election. That is not so. The Constitution of this place is decided upon by both Houses of Parliament.

If there is goodwill and if the government wants to be accountable to the public, Parliament can change the Constitution. It is not good enough for the Premier to go around saying she has not got the power and cannot do anything about it. Of course she can. The trouble is she is not prepared to. The reality is that the Premier is not prepared to take into account the very real needs of this community right through the State who are overwhelmingly calling for a fresh start.

Later today the opposition will give the government yet another opportunity to put the interests of the people ahead of its own.

Honourable members interjecting.

Mr KENNETT — If it refuses, as appears it will, judging from the sounds that are coming from the government benches, it should accept responsibility for its actions and any loss of the public component of its superannuation if the public so directs in responding to the opposition's policy at the next election.

The opposition has done the right thing in giving the government a chance. All it is saying is that, given the condition of this State, the government has a responsibility to go to the people. If the government were prepared to do that it would allow an election to be held within three years and avoid a constitutional crisis. It can be done. It would assure that the office of Governor is never asked or called in to arbitrate. No public servants, their families or members of the public would be disadvantaged; neither would members of the government and their families or members of the Labor Party and their families.

All the opposition is saying is that there is overwhelming evidence, be it among the community — —

Mr Thomson — You can't wait, that's the only problem!

The SPEAKER — Order! The honourable member for Pascoe Vale is out of order.

Mr KENNETT — The opposition is more than happy to wait. The question is whether, if it waits, more damage is done to the State and the community by you lot remaining in office. That is the key. The honourable member for Pascoe Vale who made such a contribution to the Parliament two weeks ago says we can't wait.

The real question here is — and it should be a test for all members of this House regardless of what side they are on — what is right now in the best interests of the people of Victoria? Is it to cling to office or is it to take on board the decline in private sector investment? Is it the lack of confidence by the business community? Is it the doubling in unemployment? Surely the public are entitled to a fresh start.

If the government were prepared to agree to this particular strategy of changing the Constitution, which it can, the Premier and her government could quite obviously remain the government in office during the conduct of any election campaign.

I have said and I say again if the government decides to reject this offer — and that is its option — it has to accept the consequences of what follows. It cannot argue, if we go into this election and the public gives us a clear message, if this policy is put in place.

Mr Speaker, in the Treasurer's letter to you he clearly does not express concern about the retrospective nature of our policy. He is currently seeking retrospective approval from Parliament for the way he treated the

over-expenditure of public money. The concern of the government members today is not about public money but about their entitlement to more of the public's money. This motion is to try to silence us as the government continues to fail to be accountable to the public.

The real question the Victorian public should be answering is clearly: where has the Labor government's concern been when it has lost public moneys through its own mismanagement and incompetence and failed to disclose it to the public? In fact, it has tried to cover up the facts.

Mr Spyker interjected.

Mr KENNETT — How much was it? It was \$4 million.

Honourable members interjecting.

The SPEAKER — Order! Again I ask the Minister for Transport to remain silent. I ask the Leader of the Opposition to ignore interjections and I ask him to keep his remarks relevant to the motion before the House.

Mr KENNETT — My remarks are relevant because the Treasurer is saying that this is a matter of privilege; that it is a matter of intimidation that we seek to take away government members' entitlements. If this is not to be a jumped-up kangaroo court, where was the government's concern when it lost thousands of millions of dollars of taxpayers' money?

The SPEAKER — Order! On the motion.

Mr KENNETT — It is on the motion, Sir. When the honourable member for Footscray oversaw the loss of \$100 million of VEDC — —

The SPEAKER — Order! I advise the Leader of the Opposition that he must relate his remarks to the motion before the Chair. This is not an opportunity for an attack on unrelated matters concerning other members or other people.

Mr KENNETT — This motion was not put by me; it was put by the government whose members are more concerned with their loss of access to public moneys. Therefore, Sir, to call into account the loss of public moneys is relevant. Because of the losses and the deceit, we are putting forward this policy. The government and its members must be accountable for what they have lost and that is the whole basis of the policy we have put forward.

Between them the honourable members for Bundoora and Doveton have lost thousands of millions of dollars of taxpayers' money. Where was the concern? What about the people who lost their jobs? The Minister for Conservation and Environment, in his first portfolio, botched up an early retirement scheme in the public transport sector at a cost of tens of millions of dollars. What about the sale of rolling stock that the public owned that we now lease back?

Ms Kirner interjected.

Mr KENNETT — The Premier asks what that has to do with democracy. The government was in a special position of trust. I guess that is why we are in this position today. When the losses of public money are recounted, the Premier of the State interjects: what has it to do with democracy? The public of Victoria has had a gutful of the way this government has lost public assets but the Premier sits there and asks what it has to do with democracy.

What about the people who have been affected by the bad decisions of the Deputy Premier who failed to act on Pyramid and then imposed a 3 cents a litre cost on all Victorians to make up his failure? Is not part of democracy how he does his job? What about the \$100 million he lost through the Met ticket scam?

All government members in this House have presided over the greatest loss of public assets in the history of this State. Yet they ask us what right we have to put forward a policy that will have employers hold us to account. The Premier asks what that has to do with democracy. It has everything to do with democracy.

What is clearly being demonstrated today, as always, is that the government is greedy; it is motivated by self-interest. The government is not interested in being held accountable. Over the past eight years that the government has been losing public moneys, it has continued to deny and refused to accept responsibility.

Now, when for the first time it may be held to account, the government screams and comes in here and moves a motion concerning privilege.

The bottom line is that not once did the government express concern for the loss of public moneys with which it was entrusted. Not once! Nor has it expressed concern for the growing social problems facing the community as a result of its economic mismanagement and deceit, particularly the increase in unemployment.

Yet now, when the government may be held to account to the public, when it wants to hang on to another \$15 million of public moneys, when it has lost thousands of millions of dollars, it says that is unfair.

All the opposition has done is to enunciate a policy. It has put down a policy for the people of Victoria to decide upon, and the people of Victoria will decide upon it at the next election. I have no doubt that when the next election comes, whenever it is, members of the government in this place may lose \$15 million or part thereof, being the public component of their superannuation entitlements. But that will be decided by the electorate.

The moment the opposition mentions such a policy the government screams intimidation. It screams privilege. It seeks to silence the democratically elected opposition from representing the community interest. It is the government that should be in the dock. It is the government that will be held to account when the day comes.

Today, through this motion, the government has displayed not only its absolute disregard for this place and its forums but also for the public it was elected to serve. In every act the government has put its own interests before the public interest. In every thought the government's first instinct is for its own survival, and the public be damned!

Today the government seeks to accuse the coalition of a breach of Parliamentary privilege, but it is the government, which is in a position of privilege and trust, that has betrayed that trust.

Nothing exemplifies that better than the fact that based on the numbers in this House I, as the representative of the coalition, may be sent to the Privileges Committee, a committee to the ranks of which only a few weeks ago the government tried to appoint the honourable member for Thomastown - yet the honourable member for Thomastown has already admitted to lying and to having been involved in the Nunawading Province re-election scam.

The SPEAKER — Order! I ask the Leader of the Opposition to withdraw his reflection on the honourable member for Thomastown.

Honourable members interjecting.

Mr KENNETT — Mr Speaker, he said it. He admitted it. How can I withdraw something if he admitted it himself?

The SPEAKER — Order! I ask the Leader of the Opposition to withdraw.

Mr KENNETT — I withdraw. The government obviously controls this House and through this House the Privileges Committee. Therefore many would argue that the result of deliberations here today or in a week or two's time is a foregone conclusion. The government has the numbers in this House — and we accept that — but this is the only place where it has the numbers!

I say to the failed Premier, the discredited Treasurer and to all members of the government that they should have the courage not to pass the matter now to the Privileges Committee but to take control of the matter here and now. It is in their hands. Have the Parliament resolve the matter, rather than sending it to the Privileges Committee. If you will, censure me today, or expel me today — —

Honourable members interjecting.

Mr KENNETT — The government will not, just as the Premier, the Treasurer and the Minister for Conservation and Environment backed away from taking criminal proceedings against me.

It all boils down to the fact that the Privileges Committee is the only place other than this House where the government has control of the numbers, so it believes it is the only place where I should be tried. If that is so, put me in the dock; put the opposition in the dock!

Mr Pope interjected.

Mr KENNETT — The Minister for Labour said, "Don't bet on it". It is obvious from what you are saying that you are moving to take criminal action. Are you going to take criminal action?

Mr Pope interjected.

Mr KENNETT — If you are, do it.

Honourable members interjecting.

Mr KENNETT — This is the only place where the government feels secure because only here does it have majority control.

Ms Kirner interjected.

Mr KENNETT — Regardless of what happens — —

Ms Kirner interjected.

Mr KENNETT — Got you this time", says the Premier. I can tell you, I am sweating about that!

Ms Kirner interjected.

Mr KENNETT — It really worries me; I am really sweating about that.

Honourable members interjecting.

Mr KENNETT — The school bell will ring shortly.

Ms Kirner interjected.

Mr KENNETT — Mr Speaker, the Premier says by interjection that I have had it. If I have had it I am feeling very relaxed and well, I assure you. Whatever the government — —

Ms Kirner interjected.

Mr KENNETT — Through you, Sir, I challenge the Premier to get up next and make a contribution.

Ms Kirner interjected.

Mr KENNETT — Over the past few weeks you have allowed everyone else to carry the leadership — —

The SPEAKER — Order! The Leader of the Opposition, through the Chair.

Mr KENNETT — I am being provoked by interjection! If there were a leader of government — —

Honourable members interjecting.

The SPEAKER — Order! It is impossible for honourable members to hear the Leader of the Opposition because of vociferous interjections, from a relatively small number of members. I ask all honourable members to remain silent so that the Leader of the Opposition can be heard.

Mr KENNETT — Whatever the government does today and whatever may happen before the Privileges Committee, nothing will silence the coalition and nothing will stop it from carrying out its duties and responsibilities.

Ms Kirner interjected.

Mr KENNETT — That is very difficult to ignore! I challenge the Premier to get up next. You be a leader! You show it! Over the past couple of weeks the Premier has not been a leader. That has fallen to the Deputy Premier and to the Treasurer.

The SPEAKER — Order! On the motion.

Mr KENNETT — Regardless of which side we are on we are in Parliament to protect the public interest. Importantly, we on this side of the House are here to protect the people of Victoria from this scandalous and incompetent government; and we will honour our contract with the Victorian people.

PARLIAMENTARY PRIVILEGE

Tuesday, 28 May 1991

ASSEMBLY

13

Every Victorian knows that the government no longer has the capacity or the commitment to begin the rebuilding of this State. Every Victorian knows that the actions of the government have caused the crisis of confidence in this State, which has also affected the national economy.

The 45 members of the Parliamentary Labor Party in this House in real terms are now the ones who go into the dock because the public has forsaken them. Now their duty is to go to the polls and give every Victorian family and every Victorian business new hope and a fresh start.

At the end of the day each and every one of the government members will be held accountable not by the coalition but by the public of Victoria at the next election and if the honourable members on the other side do not believe it, let me say it again: every member on the other side will be held accountable by the Victorian electorate at the next election. We have given them the option to put the public interest first and if they refuse that, do not come back — —

Mr Norris interjected.

Mr KENNETT — It is not another threat; it is a recognition that according to the way Parliament is put together, members have the right to articulate policies and ultimately the public will decide. Now the public will decide based on this government's clear greed, where it has put self interest before the thousands of millions of dollars of taxpayers' money that it has lost.

House divided on motion:

Mr I. W. SMITH (Polwarth) (*Speaking covered*) — On a point of order, Mr Speaker, the members on the government side who are also members of the Privileges Committee and who also have pecuniary interests in this matter have remained in the Chamber to vote. They therefore should exclude themselves from membership of that committee.

The SPEAKER — Order! There is no point of order. Similar points of order have been resolved in the past. Honourable members are entitled to remain in the House.

Ayes, 45

Andrianopoulos, Mr
Baker, Mr
Barker, Mrs
Batchelor, Mr
Cain, Mr
Cole, Mr
Crabb, Mr
Cunningham, Mr
Dollis, Mr (*Teller*)
Ernst, Mr
Fordham, Mr
Garbutt, Mrs (*Teller*)
Gavin, Mr
Hamilton, Mr
Harrowfield, Mr

Hill, Mrs
Hirsh, Mrs
Jolly, Mr
Kennan, Mr
Kennedy, Mr
Kimer, Ms
Leighton, Mr
McCutcheon, Mr
McDonald, Mr
Mathews, Mr
Micallef, Mr
Norris, Mr
Pope, Mr
Ray, Mrs
Roper, Mr

Rowe, Mr
Sandon, Mr
Seitz, Mr
Sercombe, Mr
Setches, Mrs
Sheehan, Mr A.J.
Sheehan, Mr F.P.
Shell, Mr
Simmonds, Mr
Spyker, Mr
Thomson, Mr
Trezise, Mr
Vaughan, Dr
Walsh, Mr
Wilson, Mrs

Noes, 39

Austin, Mr
Bildstien, Mr
Brown, Mr
Clark, Mr
Coleman, Mr
Cooper, Mr
Delzoppo, Mr
Dickinson, Mr
Elder, Mr (*Teller*)
Gude, Mr
Hayward, Mr
Heffernan, Mr
Honeywood, Mr

Jasper, Mr
John, Mr
Kennett, Mr
Lea, Mr
Leigh, Mr
McGrath, Mr J.F.
McGrath, Mr W.D.
McNamara, Mr
Maughan, Mr
Napthine, Dr
Perrin, Mr
Pertin, Mr (*Teller*)
Pescott, Mr

Plowman, Mr
Reynolds, Mr
Richardson, Mr
Ross-Edwards, Mr
Smith, Mr E.R.
Smith, Mr I.W.
Steggall, Mr
Stockdale, Mr
Tanner, Mr
Wade, Mrs
Wallace, Mr
Weideman, Mr
Wells, Dr

Motion agreed to.



31 May 1991.

MEMORANDUM

TO: **PRIVILEGES COMMITTEE**
FROM: **CLERK OF THE LEGISLATIVE ASSEMBLY**

COMPLAINT RAISED BY THE HON. THE TREASURER

On Tuesday, 28 May 1991, Mr. Speaker announced that he had received a written complaint the previous day from the Honourable the Treasurer (Mr. Roper) alleging that the Hon. Leader of the Opposition (Mr. Kennett) had breached parliamentary privilege. (See Attachment A).

Following his announcement to the House and reading of the letter received, Mr. Speaker indicated he was satisfied that the matter of the complaint should be accorded precedence and, in conformity with the practice of the House, Mr. Roper moved:

"That the complaint made by the Treasurer on 27 May 1991 be referred to the Privileges Committee for examination and report."

In so moving, Mr. Roper outlined the matters upon which he based his complaint. (1)

Mr. Kennett responded to the allegation and spoke to the motion which was subsequently agreed to on Division(2). The complaint therefore, stands referred to the Committee.

BASIS OF PRIVILEGE

Parliamentary Privilege is based upon the law and custom of the UK Parliament developed over the centuries and is recognised as part of the common law. Privilege is thus defined 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

(1) Hansard daily edition, 28 May 1991. pp 3-7.

(2) Ibid pp.7-13.

House individually, without which they could not discharge their functions, and which exceed those possessed by other bodies or individuals." (3)

APPLICATION OF PRIVILEGE TO VICTORIA

Since 1856 the Victorian Parliament has applied the rights, powers and immunities vesting in the UK Parliament. Section 19 of the *Constitution Act* 1975 provides statutory recognition of privilege whereby each of the Victorian Houses "shall hold enjoy and exercise the like privileges immunities and powers as at the 21st day of July 1855 as were held enjoyed and exercised by the House of Commons".

Recourse to these powers has been had by the Victorian Parliament on numerous occasions since 1857. In the Legislative Assembly more than 50 cases have been considered either by the House or its Committee.

PRIVILEGE CLAIMED

The evolution of parliamentary privilege has seen the claim by Parliament and acceptance of the following rights:

- Freedom of speech,
- Freedom from arrest or molestation,
- The right of the House to have the attendance and service of its Members,
- The right to regulate its own internal affairs and procedures without interference by the Courts, and
- The right to punish persons found guilty of breaches of these privileges or other contempts.

"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 their duty, or which has a tendency, directly or indirectly, to produce such results may be treated as a contempt even though there is no precedent of the offence. " (4).

THE COMPLAINT

From the proceedings in the House, the nature of the complaint is based on a public announcement by the Leader of the Opposition that, "If the Government has not caused a State Election to be announced by midnight Wednesday, 29 May 1991, that all sitting Australian Labor Party Members of the Victorian Parliament who retire from Parliament after that date and prior to the next State Election, or who stand as a candidate at the next election and subsequently lose their seat will be denied any access to the taxpayer funded component of their Parliamentary superannuation entitlement."

Mr. Roper indicated that he regarded the statement as an attempt to intimidate Members in the conduct of their duties and that also there was a clear intention to "personalise the threat". This latter claim was based on the alleged actions of Mr. Kennett in sending a facsimile of his press statement marked specifically for the attention of Mr. Roper.

(3) May 21st Edition, p.69.

(4) May, 21st Edition, p.115.

CONTEMPTS - THREATS, INTIMIDATION

There are several cases, both in the UK and Victoria, which address the question of the House or its Members actually or potentially being obstructed or impeded by an act purported to threaten or intimidate. Examples of actions of this nature are as follows:

Victorian Cases:

1866 (Byrne)

Complaint made by Member (Langton) that another Member (Byrne) used threatening language to Langton. Byrne questioned and withdrew. Motion moved that Byrne be committed to the custody of the Serjeant-at-Arms. Byrne called into House - expressed his regret.

Motion withdrawn. (Votes & Proceedings 1866; 1st session; p.43).

1868 (Tobin)

Member informed House that Tobin threatened him with horse-whipping if Member named him again in the House. Tobin ordered to attend Bar of the House. Letter from Tobin to Speaker read in which Tobin regretted having made statement.

Expression of regret accepted as satisfactory to the House and order calling for Tobin to attend at the Bar of the House read and discharged. (Votes & Proceedings 1868; pp 281, 283 and 284).

1982 (Simpson)

Member Ramsay, by letter to the Speaker, complained that the Minister for Property and Services (Simpson) had threatened union action against Ramsay's company. Speaker ruled prima facie case and permitted Member to move motion referring matter to the Privileges Committee.

After explanation by the Minister, the motion by leave, withdrawn. (1982 Hansard pp. 555-558. 22.9.82).

UK Cases

1898 (Mullingar Board of Guardians)

Complaint was made by Member (O'Brien) of threats published in Newspaper on 22 July 1898 against another Member (Hayden). The nature of the threat by the Board was to take future action to have Hayden's newspaper deprived of advertisements and to exclude representatives of that newspaper from meetings of the Board as a result of speech made in the House by Hayden.

House resolved that the actions of the Board constituted breach of privileges of the House. (C.J. 1898 p.381).

1965 (Threatening letters)

Complaint made by Member (Allaun) of anonymous threatening letters sent to certain Members. The nature of the threat was that actions of certain Members would be treated as treason by a future administration.

Committee of Privileges found that the document constituted a breach, but recommended no further action be taken. The House accepted the recommendation. (H.C. Report 228; 1964-65).

1975 (Scargill)

Member (Cunningham) complained that a resolution of the Yorkshire Area Council of the National Union of Mine Workers and the subsequent announcement thereon setting guidelines for "sponsored" Members breached the privileges of the House.

The Committee found that the action constituted a serious contempt, but as the resolution had since been nullified and repudiated by the Union, no further action was recommended. The House concurred. (H.C. Report 634; 1974-75).

A handwritten signature in black ink, appearing to read 'R.K. Boyes', written in a cursive style.

R.K. Boyes
Clerk of the Legislative Assembly.

ATTACHMENT A

ELECTORATE OFFICE
178 LYGON STREET
EAST BRUNSWICK 3057
TELEPHONE 390 8888
FACSIMILE 388 0035



LEGISLATIVE ASSEMBLY
PARLIAMENT HOUSE
MELBOURNE, VIC. 3002
TELEPHONE: 851 8911
EXT.

TOM ROPER
MLA FOR BRUNSWICK

27 May 1991

The Hon. Ken Coghill, MP
Speaker of the Legislative Assembly
Parliament House
MELBOURNE VIC 3002

Dear Mr. Speaker,

I wish to raise with you a matter of privilege.

On 23 May 1991, I received from the Leader of the State Opposition, the Honourable Jeff Kennett, MP, addressed to me, a facsimile copy of a statement issued earlier that day by Mr. Kennett. The statement said, in part:

"If the Government has not caused a State election to be announced by midnight, Wednesday, 29 May 1991, then all sitting Australian Labor Party Members of the Victorian Parliament who retire from Parliament after that date and prior to the next State election, or who stand as a candidate at the next election and subsequently lose their seat will be denied any access to the taxpayer funded component of their Parliamentary superannuation entitlement.

However, any sitting A.L.P. Member who contests the next election and is returned to Parliament will be deemed to have public support for their entire Parliamentary service and therefore their superannuation entitlement on eventual retirement or defeat will not be affected.

A.L.P. Members in the Legislative Council who are not up for re-election at the next election will also be affected by this measure.

The denial of the public component of the A.L.P. Members' superannuation will be achieved through special legislation. This will be introduced by the Coalition Government, and made retrospective for the entire Parliamentary service of all A.L.P. Parliamentary Members.

If the Government does allow:

- . a significant number of retirements by Government Members;
- . its defeat on the floor of the House; or
- . its resignation

in time to allow for the date of the next State Election to be announced by midnight, Wednesday, 29 May 1991 and the subsequent prorogation of Parliament the next day to allow the passing of the Supply Bill by the Legislative Council, then all superannuation entitlements for Members who retire or lose their seats at the subsequent election will be guaranteed."

It is clear that Mr. Kennett has attempted to intimidate members, including myself, in the conduct of their duties and that such a threat is a breach of privilege.

I ask you to consider this matter and confirm that there is a prima facie case of a breach of privilege in order to give precedence for a motion to be moved to refer to the matter to the Privileges Committee.

Yours sincerely,



TOM ROPER
MEMBER FOR BRUNSWICK
TREASURER



NOTES FOR THE PRIVILEGES COMMITTEE.

PERSONAL OR PECUNIARY INTEREST OF MEMBERS OF THE COMMITTEE

The complaint of the Treasurer considered by the House and referred to the Committee on 28 May is based on the contention that an attempt has been made to intimidate Members in the conduct of their duties.

The alleged threat purports to influence Members to take certain action or to suffer the consequences of loss of superannuation entitlements at some time in the future.

In examining the matter referred by the House, Members of the Committee should consider the following:

- (1) Whether such considerations will raise the question of a direct pecuniary interest in respect of that Member and thus place at risk any vote by him on the matter.
- (2) Whether the circumstances of the complaint are such that the Member may be considered to have a personal interest in the matter or the outcome thereof.

PECUNIARY INTEREST

Standing Order No. 2 indicates that a Member shall not be entitled to vote in the House, in Committee of the whole, or a Select Committee upon any question in which he has a direct pecuniary interest; and the vote of any Member so interested shall be disallowed.

The recognised definition of what is a pecuniary interest derives from the 1811 Ruling of Mr. Speaker Abbot.

"This interest must be a direct pecuniary interest and separately belonging to the persons whose votes were questioned and not in common with the rest of His Majesty's subjects; or on a matter of state policy." (May 21st Ed. p.354)

As the alleged threat specified certain Members of the House only, it might be seen that any Member falling within that category may have a direct pecuniary interest. Accordingly, it becomes crucial to determine what proceedings and questions Members of the Committee will be required to address.

The focus of the Committee inquiry is essentially whether a threat has been made and, if so, whether that threat has a tendency to interfere with the proceedings of the House or has the potential to do so.

My preliminary view is that a Committee Member is not called upon to make any decision that could affect his superannuation entitlements and thus equate to a direct pecuniary interest. This would more likely be a question to be resolved if and when such a Bill to remove the superannuation benefits was being considered by the House. Accordingly, it would seem to me that the question of a direct pecuniary interest does not arise in proceedings to be undertaken by the Committee.

PERSONAL INTEREST

Act No. 9223 Members of Parliament (Register of Interests) Act 1978 provides a code of conduct under Section 3 which requires a Member to make a full disclosure to the Parliament on any material interests, whether or not of a pecuniary nature, if he proposes to speak in the Parliament on such a matter. It is the practice for Members to make such a disclosure prior to speaking in the House in these circumstances.

Whilst the code does not refer specifically to Committees, I would regard the principle as being appropriate for application to proceedings in Committee. In the absence of any definitive evidence of its application in Victoria, recourse

should be had to UK practice. Following the 1974 report of the Select Committee on Members Interests (Declarations), the following practice applies:

"A Member is required to declare his interests when putting a question to a witness before the Standing Committee, whether a meeting is in public or private. He is also required to declare his interests at deliberative meetings of Standing Committees; any such declarations are recorded and published in the minutes of proceedings of the Committee. In practice, a single declaration made by a Member at the start of an inquiry and duly minuted, is considered sufficient to cover all the subsequent deliberations of the Committee during that inquiry." (May 21st Ed. pp. 385 - 386)

Members of the Committee may wish to consider the implications of a challenge to their right to participate in and vote on matters before Committee on the grounds of direct pecuniary interest or personal interest. On the face of it, it would seem to me that Members would better protect their positions against such claims if any interest, perceived or imagined, was openly declared.



R.K. Boyes
Clerk of the Legislative Assembly.

29 May 1991.



LEGISLATIVE ASSEMBLY
PARLIAMENT HOUSE
MELBOURNE, VIC. 3002
TELEPHONE 651 8911
EXT

4 June 1991.

Dr. G.M. Vaughan, M.P.
Chairman,
Privileges Committee,
Parliament House
Melbourne.

Dear Mr. Chairman,

Further to your letter of this date seeking advice on the position of a Member of the Committee who considers he is affected by the subject matter of the complaint raised by Mr. Roper against the Leader of the Opposition, I wish to comment as follows:

As outlined in my memorandum of 29 May, I indicated that it was my view that the proceedings of the Committee and decisions consequent thereon would not pose a direct pecuniary interest for Committee Members.

I am still strongly of the view that it is the question of privilege arising from the alleged threat rather than the subject matter contained in the threat that is the primary concern of the Committee. Neither Standing Order No. 2 nor the practice of the House demands that a Member should refrain from taking part in a vote unless a direct pecuniary interest is involved. The inhibition applied in those cases does not extend to interests of a non-pecuniary nature.

It is not for me to advise of the propriety or otherwise of a Member participating in the present inquiry, even where there may appear to be a personal interest involved. It is essentially an individual matter which must be determined by each Member.

As previously stated on 29 May, the Member's position is clearly identified where a declaration of personal interest has been made. I am led to believe that Members have made such declarations in relation to this inquiry.

Yours sincerely,

A handwritten signature in black ink, appearing to read "R.K. Boyes".

R.K. Boyes
Clerk of the Legislative Assembly.

APPENDIX E

DIVISIONS

The following extracts from the Minutes of the Proceedings of the Committee show Divisions which took place during the course of the Inquiry.

TUESDAY, 4 JUNE, 1991

Motion made and question proposed - That any Member of the Committee who feels intimidated by matters which were the subject of the complaint should not proceed further with the Inquiry (Messrs. Lieberman/Maclellan) and after debate -

Motion made and question - That the question be put (Messrs. Sheehan/McDonald).

The Committee divided.

(Chairman - Dr. Vaughan)

AYES	NOES
Mr. Mathews	Mr. Evans
Mr. McDonald	Mr. Lieberman
Mr. Sheehan	Mr. Maclellan

The numbers being equal, the Chairman cast his vote with the Noes.

And so it passed in the negative.

Debate resumed on the original question.

Question that the motion be agreed to put.

The Committee divided.

(Chairman - Dr. Vaughan)

AYES	NOES
Mr. Evans	Mr. Mathews
Mr. Lieberman	Mr. McDonald
Mr. Maclellan	Mr. Sheehan

The numbers being equal, the Chairman cast his vote with the Noes.

And so it passed in the negative.

Motion made and question proposed - That strangers be admitted while the Committee was taking evidence (Messrs. Evans/Maclellan) and after debate put.

The Committee divided.

(Chairman - Dr. Vaughan)

AYES	NOES
Mr. Evans	Mr. Mathews
	Mr. McDonald
	Mr. Sheehan

Abstentions: Messrs. Maclellan and Lieberman.

And so it passed in the negative.

THURSDAY, 6 JUNE, 1991

Motion made and question proposed (Messrs. Sheehan/Mathews) -

That the Committee report progress;

That this Report would include Minutes of Evidence received to date;

That the Committee indicate its intention to make a final report in the Spring Session 1991; and

That in order to facilitate the Tabling of this Report, the Committee request Members of the Committee and witnesses to correct transcripts by 6.00 p.m. today and after debate -

Motion made and question - That the question be put (Messrs. Sheehan/McDonald).

The Committee divided.

(Chairman - Dr. Vaughan)

AYES

Mr. Mathews
Mr. McDonald
Mr. Sheehan

NOES

Mr. Evans
Mr. Lieberman
Mr. Maclellan

The numbers being equal, the Chairman cast his vote with the Noes.

And so it passed in the negative.

Debate resumed on the original question.

Question that the motion be agreed to put.

The Committee divided.

(Chairman - Dr. Vaughan)

AYES

Mr. Mathews
Mr. McDonald
Mr. Sheehan

NOES

Mr. Evans
Mr. Lieberman
Mr. Maclellan

The numbers being equal, the Chairman cast his vote with the Ayes.

And so it was resolved in the affirmative.

Motion made and question proposed (Mr. Mathews) - That Clause 1 stand part of the Report, and after debate Mr. Maclellan moved that all words after "That" be omitted with the view to inserting "the Interim Report be presented without the Minutes of Evidence on the grounds of fairness to witnesses in that it would be grossly unfair to report Minutes of Evidence which are incomplete", and after debate -

Question that the amendment be agreed to put.

The Committee divided.

(Chairman - Dr. Vaughan)

AYES
Mr. Evans
Mr. Lieberman
Mr. Maclellan

NOES
Mr. Mathews
Mr. McDonald
Mr. Sheehan

The numbers being equal, the Chairman cast his vote with the Noes.

And so it passed in the negative.

Question that the motion be agreed to put.

The Committee divided.

(Chairman - Dr. Vaughan)

AYES
Mr. Mathews
Mr. McDonald
Mr. Sheehan

NOES
Mr. Evans
Mr. Lieberman
Mr. Maclellan

The numbers being equal, the Chairman cast his vote with the Ayes.

And so it was resolved in the affirmative.

Motion made and question - That the Report be the Report of the Committee (Mr. Mathews)
put -

The Committee divided.

(Chairman - Dr. Vaughan)

AYES
Mr. Mathews
Mr. McDonald
Mr. Sheehan

NOES
Mr. Evans
Mr. Lieberman
Mr. Maclellan

The numbers being equal, the Chairman cast his vote with the Ayes.

And so it was resolved in the affirmative.

LIBERAL
VICTORIA

F A C S I M I L E

The Parliamentary Liberal Party

Date . . . 23.05.91

To Fax No . . . 650 5421

Attention . . . Hon Tom Roper
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Transmission of . . . 6 . . . pages (including this page)

Message . . . Press Statement from the
. . . leader of the opposition
.
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NEWS RELEASE

STATEMENT BY THE HON. JEFF KENNETT, M.P.
LEADER OF THE STATE COALITION

Today on behalf of the Victorian public, I announce the strongest measure ever imposed by an Opposition Party in Australia against an incumbent government.

The performance of the current Victorian Labor Government is without parallel in post-war Victorian political history.

By any measure, the Victorian Labor Government has substantially:

- . eroded Victoria's economic base;
- . decimated our assets;
- . increased the debt burden of every Victorian;
- . increased unemployment, particularly among young people;
- . deceived the public;
- . undermined confidence within the State; and
- . failed to accept responsibility for its mismanagement and deceit.

The Auditor-General, an independent servant of government, has exposed a damning catalogue of illegal, improper and artificial financing transactions that have been contrived by Mrs Kirner and her Government to disguise the true extent of Labor's damage to the fabric of government and society in Victoria.

/2...

Victorian Coalition

Parliament House, Spring Street, Melbourne, 3002

Ph: (03)651 8851 Fax: (03) 651 8996

- 2 -

This web of deceit, cover-up and maladministration is fact. It commenced under John Cain's leadership and has continued under Mrs Kirner who has been a key figure in every major decision of government over the past two and a half years.

Over the past few weeks, the Coalition has provided the Labor Government with a number of opportunities to create the climate for an immediate election without blocking Supply.

On each occasion, the Government rejected the Coalition's offer. The public has been denied three times its right to the most precious and valued democratic act of all - a new election.

In short, the Labor Government has put its self interest and that of its Parliamentarians ahead of the public interest.

Without an election, the psychological and economic recessions will continue until the public is offered a fresh start under a new government.

By remaining in office the Government further intensifies Victoria's economic crisis, entrenches unemployment and delays recovery.

Accordingly, and because of the Government's intransigence, I am able to advise the public of our next step to force this Government to finally accept responsibility for its actions, and force it to account.

- 3 -

If the Government has not caused a State election to be announced by midnight, Wednesday, 29 May, 1991, then all sitting Australian Labor Party Members of the Victorian Parliament who retire from Parliament after that date and prior to the next State election, or who stand as a candidate at the next election and subsequently lose their seat will be denied any access to the taxpayer funded component of their Parliamentary superannuation entitlement.

However, any sitting A.L.P. Member who contests the next election and is returned to Parliament will be deemed to have public support for their entire Parliamentary service and therefore their superannuation entitlement on eventual retirement or defeat will not be affected.

A.L.P. Members in the Legislative Council who are not up for re-election at the next election will also be affected by this measure.

The denial of the public component of the A.L.P. Members' superannuation will be achieved through special legislation. This will be introduced by the Coalition Government, and made retrospective for the entire Parliamentary service of all A.L.P. Parliamentary Members.

If the Government does allow:

- . a significant number of retirements by Government Members;
- . its defeat on the floor of the House, or
- . its resignation

in time to allow for the date of the next State Election to be announced by midnight, Wednesday, 29 May 1991 and the subsequent prorogation of Parliament the next day to allow the passing of the Supply Bill by the Legislative Council, then all superannuation entitlements for Members who retire or lose their seats at the subsequent election will be guaranteed.

- 4 -

If the Government does not respond to this ultimatum, then the Coalition will seek a mandate from the people of Victoria whenever the next election is held, be it in 8 weeks or 8 months to withdraw by legislation the public component of A.L.P. Members' superannuation entitlement.

This will result in a saving in excess of \$15 million for the Victorian public.

Government Members must accept that as members of the Board currently charged with the responsibility of running the State of Victoria, they have directed the economic destruction of this State through their own mismanagement and deceit.

Further by refusing to accept responsibility for their actions, they are not entitled to the very generous taxpayer funded component of their superannuation as a "reward" for failure.

Generally, as a principle, the Coalition Parties are opposed to retrospective legislation. But such is the magnitude of the deceit, cover-up and maladministration of this Government and the damage it is rendering to Victoria by selfishly hanging on to office, that in every sense, our actions are reasonable and responsible.

The legislation to deny A.L.P. Members the public component of their superannuation will be a major feature of the next State election campaign.

At the end of the day, it is the public who will make the final judgement as to both our actions in Coalition and the performance and record of the Labor Government. What is at stake is the public's right to determine the management of their State.

- 5 -

The Coalition makes no apology whatsoever for this decision to deny any retiring or defeated A.L.P. politician personal access to public funds. The decision - unprecedented in Australian politics - was not lightly taken.

I stress that the decision is fixed and firm. The deadline is set and firm. Having taken this step we are committed and determined to proceed.

It is time for the Government to go and go quickly and let the people speak.