

1985

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

Presented and read a first time, 21 May 1985

(*Mr Spender*)

A BILL

FOR

An Act to declare the powers, privileges and immunities of the Senate and of the House of Representatives, and of the members and the committees of each of those Houses, and for other purposes

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

PART I—PRELIMINARY

Short title

- 5 **1.** This Act may be cited as the *Parliament (Powers, Privileges and Immunities) Act 1985*.

Commencement

- 2.** This Act shall come into operation on the day on which it receives the Royal Assent.

10 **Interpretation**

- 3. (1)** In this Act, unless the contrary intention appears—
“Clerk” means the Clerk of the Senate or the Clerk of the House of Representatives, as the case requires;

“committee”, in relation to a House, means a committee, other than a committee of the whole, of that House, or a committee of both Houses;

“House” means the Senate or the House of Representatives;

“member”, in relation to a House, means, in the case of the Senate, a Senator; 5

“Presiding Officer” means the President of the Senate or the Speaker of the House of Representatives, as the case requires.

(2) A reference in this Act to a breach of a privilege of a House includes a reference to a breach of a privilege of a member or committee of that House.

(3) Where a committee of a House appoints two or more of its members to be a committee (in this sub-section referred to as the “relevant committee”), whether described as a sectional committee, a sub-committee or otherwise, the relevant committee shall be deemed, for the purposes of this Act, to be a committee of that House. 10

(4) A reference in this Act to an offence against a House is a reference to— 15

(a) a breach of a privilege of that House; or

(b) a contempt of that House.

Officers of a House

4. For the purposes of this Act and of any other law relating to a power, privilege or immunity of a House, or of a member or committee of a House, a person (other than a member of a House) shall be taken to be an officer of a House (in this section referred to as the “relevant House”) if, and only if— 20

(a) the person is the Clerk of the relevant House;

(b) the Presiding Officer of the relevant House has, by writing signed by the Presiding Officer, designated the person as an officer of the relevant House; or 25

(c) the person is included in a class of persons designated by the Presiding Officer of the relevant House, by writing signed by the Presiding Officer, as a class of persons who are officers of the relevant House.

PART II—POWERS, PRIVILEGES AND IMMUNITIES 30

Powers, privileges and immunities generally

5. Subject to any Act, the powers, privileges and immunities of each House, and of the members and the committees of each House, are the powers, privileges and immunities of the House of Commons of the Parliament of the United Kingdom, and of its members and committees, respectively, as at the establishment of the Commonwealth. 35

Defence of absolute privilege

6. (1) For the purposes of the law of defamation, a publication made in the course of a debate or proceeding in the Parliament is absolutely privileged.

(2) Without limiting the generality of sub-section (1), the reference in that sub-section to a publication made in the course of a debate or proceeding in the Parliament includes a reference to—

(a) a publication made by—

- 5 (i) a member of a House;
(ii) an officer of a House; or
(iii) a person ordered or authorized by a House to appear before or to attend that House,

being a publication made—

- 10 (iv) in, or in the presence of, that House;
(v) in the course of a sitting of that House, wherever the sitting is held; and
(vi) for the purpose of transacting the business of that House;

15 (b) a publication, in accordance with the procedures of a House, of a written reply made by a Minister to a question asked in that House, in accordance with those procedures, by a member of that House;

(c) in a case where a publication of—

- 20 (i) a motion that is intended to be moved in a House by a member of that House;
(ii) a question that is intended to be asked in a House, in accordance with the procedures of that House, by a member of that House;
(iii) a draft of a motion or question of the kind referred to in sub-paragraph (i) or (ii);
25 (iv) a draft of a speech that is intended to be made in a House by a member of that House; or
(v) a draft of a written reply that is intended to be made as mentioned in paragraph (b) to a question asked in a House,

30 is reasonably necessary for the purposes of the proper functioning of that House in relation to the moving of the motion, the asking of the question, the making of the speech or the making of the reply, as the case may be—that publication; and

35 (d) a publication made in the course of a communication between a member of a House and an officer of that House, being a communication concerning a publication or proposed publication that is or will be, otherwise than by virtue of this paragraph, a publication made in the course of proceedings in the Parliament.

(3) A reference in paragraph (2) (a) to a House includes a reference to—

- (a) a committee of a House; and
40 (b) a group that consists of members, or of members and officers, and that has been appointed by, or with the authority of, a House or both Houses for the purpose of performing particular functions, or of representing that House or both Houses.

(4) A reference in sub-section (3) to a member or officer is a reference to a member or officer, as the case may be, of a House.

(5) For the purposes of the law of defamation, a publication by an officer of a House to—

- (a) a member, or another officer, of that House; or
- (b) a person employed by a member of that House,

of a document laid before that House is absolutely privileged.

(6) For the purposes of sub-section (5), a document shall be deemed to have been laid before a House if it has been dealt with in such a manner that, by virtue of the rules and orders of that House, it is to be deemed to have been presented to that House.

(7) Nothing in this section limits the scope or application of a right, power, privilege or immunity in relation to proceedings in the Parliament that a person has by virtue of section 5 or any other law.

Arrest of members on civil process, and requirements by courts and other bodies that members and officers attend as witnesses

7. (1) A person is not guilty of an offence against a House by reason only that the person arrests on civil process, or causes to be arrested on civil process, a member of that House, unless the arrest takes place on a relevant day in relation to the member.

(2) A person is not guilty of an offence against a House by reason only that the person requires a member or officer of that House to attend on a particular day as a witness before a court, or before any other body having power to require the attendance of witnesses before it, unless that day is a relevant day in relation to the member or officer, as the case may be.

(3) A certificate in writing that is signed by the Presiding Officer of a House and states that—

- (a) a specified person is a member or officer of that House;
- (b) a specified day is, or specified days are, a day or days on which that House is or was scheduled to sit; and
- (c) in a case where the certificate states that the specified person is an officer of that House—it is the duty of the specified person to attend that House on the specified day, or on each of the specified days, as the case may be,

is *prima facie* evidence of those matters.

(4) A certificate in writing that is signed by the Presiding Officer of a House and states that—

- (a) a specified person is a member or officer of that House;
- (b) a specified day is, or specified days are, a day or days on which a specified committee of that House is or was scheduled to sit; and

(c) it is the duty of the specified person to attend that committee on the specified day, or on each of the specified days, as the case may be, is *prima facie* evidence of those matters.

(5) In this section—

5 “relevant day” means—

(a) in relation to a member of a House—

(i) a sitting day of that House;

10 (ii) a sitting day of a committee of that House, being a sitting day on which the member has a duty to attend that committee; or

(iii) any of the 5 days immediately preceding, or of the 5 days immediately succeeding, a sitting day of a kind referred to in sub-paragraph (i) or (ii); and

(b) in relation to an officer of a House—

15 (i) a sitting day of that House, or of a committee of that House, being a sitting day on which the officer has a duty to attend that House or committee, as the case may be; or

20 (ii) any of the 5 days immediately preceding, or of the 5 days immediately succeeding, a sitting day of a kind referred to in sub-paragraph (i);

“sitting day” means—

25 (a) in relation to a House—a day on which the House is or was scheduled to sit, whether the House sits or sat on that day or not; or

(b) in relation to a committee of a House—a day on which the committee is or was scheduled to sit, whether the committee sits or sat on that day or not.

Defamatory contempts

30 8. Where a person publishes particular matter, the fact that that matter, or matter included in that matter, is defamatory, or is calculated to bring the Parliament, a House, or a member or committee of a House, into disrepute, or to lower the dignity or authority of the Parliament, of a House, or of a member or committee of a House, shall be disregarded for the purpose of determining
35 whether the person is guilty of an offence against a House.

House not to expel member

9. (1) A House does not have power to expel a member of that House.

(2) Nothing in sub-section (1) affects the power of a House—

(a) to suspend a member of that House; or

40 (b) to punish a member of that House, otherwise than by expulsion, for an offence against that House.

Penalties for offences against House

10. (1) Where a House resolves that a natural person (whether or not a member of that House) is guilty of an offence against that House, that House may resolve that the person be punished for the offence—

- (a) by a fine of an amount specified in the resolution, being an amount not exceeding—
 - (i) except in a case where sub-paragraph (ii) applies—\$5,000; or
 - (ii) in a case where there is in force a resolution of that House that specifies an amount for the purposes of this sub-paragraph—the last-mentioned amount; or
- (b) by imprisonment for a period specified in the resolution, being a period not exceeding 6 months.

(2) Where a House resolves that a body corporate is guilty of an offence against that House, that House may resolve that the body corporate be punished for the offence by a fine of an amount specified in the resolution, being an amount not exceeding—

- (a) except in a case where paragraph (b) applies—\$10,000; or
- (b) in a case where there is in force a resolution of that House that specifies an amount for the purposes of this paragraph—the last-mentioned amount.

(3) A resolution under sub-section (1) that a person be punished for an offence against a House by imprisonment for a specified period shall—

- (a) contain a statement to the effect that the person has committed a breach of a privilege of that House and set out particulars of the facts, as found by that House, by virtue of which that House has found the person guilty of such a breach; or
- (b) contain a statement to the effect that the person has committed a contempt of that House other than a contempt constituted by a breach of a privilege of that House and set out particulars of the facts, as found by that House, by virtue of which that House has found the person guilty of such a contempt,

as the case requires, and shall provide for—

- (c) the arrest of the person;
- (d) the commitment of the person to custody;
- (e) the keeping of the person in custody during the specified period; and
- (f) the issue of warrants by the Presiding Officer of that House in relation to the matters referred to in paragraphs (c), (d) and (e).

(4) A resolution under sub-section (1) or (2) that a person be punished by a fine shall—

- (a) specify a period within which the person is to pay the fine; and
- (b) state that the fine is payable to the Presiding Officer of the House within the specified period.

(5) Failure of a resolution under sub-section (1) or (2) to comply with sub-section (3) or (4), as the case requires, does not affect the validity of the resolution.

5 (6) Where a House resolves under sub-section (1) or (2) that a person be punished by a fine, the amount of the fine—

(a) is a debt due by the person to the Commonwealth;

(b) shall be paid—

10 (i) in a case where the resolution specifies a period within which the person is to pay the fine—before the end of that period; or

(ii) in any other case—before the end of the period of 14 days commencing on the day on which the House so resolves,

to the Presiding Officer of that House; and

15 (c) to the extent to which it remains unpaid at the end of that period, may be recovered in the Federal Court of Australia by the Presiding Officer, suing on behalf of and in the name of the Commonwealth.

Warrants

11. (1) Where a House resolves under sub-section 10 (2) that a person be punished by imprisonment, the Presiding Officer of the House shall, as provided by the resolution, sign and issue a warrant or warrants.

20 (2) A warrant issued under sub-section (1) shall set out the terms of the resolution pursuant to which it is issued, but failure of a warrant to comply with this sub-section does not affect the validity of the warrant.

Review of resolutions under section 10 and warrants under section 11

25 12. (1) Where the Presiding Officer of a House has issued a warrant pursuant to a resolution of that House under sub-section 10 (1), being a resolution that a person be punished by imprisonment for a specified period, the person may, at any time before the end of that period, apply to the High Court for a declaration under sub-section (2) in relation to the warrant.

30 (2) On an application by a person under sub-section (1) in relation to a warrant issued pursuant to a resolution of a House, the High Court may—

(a) in a case where the resolution does not contain a statement of the kind referred to in paragraph 10 (3) (a) and does not contain a statement of the kind referred to in paragraph 10 (3) (b);

35 (b) in a case where the resolution does not purport to set out particulars of the facts, as found by that House, by virtue of which that House has found the person guilty of an offence against that House;

(c) in a case where—

40 (i) the resolution contains a statement to the effect that the person has committed a breach of a privilege of that House;

(ii) the resolution sets out particulars (in this paragraph referred to as the “relevant particulars”) purporting to be particulars of the kind referred to in paragraph 10 (3) (a); and

(iii) the facts disclosed by the relevant particulars would not, if proved, be capable in law of constituting a breach of such a privilege;

(d) in a case where—

(i) the resolution contains a statement to the effect that the person has committed a contempt of that House other than a contempt constituted by a breach of a privilege of that House;

(ii) the resolution sets out particulars (in this paragraph referred to as the “relevant particulars”) purporting to be particulars of the kind referred to in paragraph 10 (3) (b); and

(iii) if the facts disclosed by the relevant particulars were proved, the conduct of the person, as so disclosed, when considered together with the other facts so disclosed, would not constitute a recognized contempt of that House within the meaning of sub-section (3); or

(e) if the warrant does not comply with sub-section 11 (2),
—make a declaration accordingly.

(3) The reference in paragraph (2) (d) to a recognized contempt of a House within the meaning of this sub-section is a reference to a contempt of that House—

(a) that is included in a recognized category of contempts of that House;
or

(b) that is constituted by conduct of a kind declared, by a resolution of that House that is in force, to be conduct capable of constituting a contempt of that House,

but does not include a contempt constituted by a breach of a privilege of that House.

(4) Where, on an application under sub-section (1), the High Court decides to make no declaration under sub-section (2), the High Court shall dismiss the application.

(5) The High Court shall have original jurisdiction to hear and determine applications under sub-section (1).

(6) Notwithstanding section 15 of the *Judiciary Act 1903*, the jurisdiction conferred by this section shall be exercised by a Full Court constituted by 3 or more Justices of the High Court sitting together.

(7) Notwithstanding sections 31, 32 and 33 of the *Judiciary Act 1903*, the High Court shall not, on an application under sub-section (1)—

(a) make a judgment or order, or grant a remedy, other than—

(i) an order or a procedural character (including an order for costs); or

(ii) a declaration under sub-section (2); or

(b) direct the issue of a writ.

(8) Subject to sub-section (10) of this section, a resolution of a House under sub-section 10 (1) or (2), or a warrant issued pursuant to a resolution of a House under sub-section 10 (1), shall not, whether directly or indirectly, be called into question or subjected to review—

- 5 (a) in proceedings before any court or tribunal; or
(b) without in any way limiting the generality of paragraph (a), on an application for a writ of *habeas corpus*.

(9) A power, privilege or immunity of a House, or of a member or committee of a House, under section 5—

- 10 (a) is not affected by anything in sub-section (8) of this section; and
(b) does not affect the operation of sub-section (10) of this section.

(10) On an application under sub-section (1) of this section in relation to a warrant issued pursuant to a resolution of a House, the warrant, the resolution, or both, may be called into question or subjected to review.

- 15 (11) A reference in this section to a warrant issued pursuant to a resolution of a House under sub-section 10 (1) includes a reference to an instrument issued by the Presiding Officer of a House, being an instrument that purports to be such a warrant.

House may rescind resolution that person be punished by imprisonment

- 20 13. (1) A House that has resolved under sub-section 10 (1) that a person be punished by imprisonment for a specified period may, at any time before the end of that period, rescind by resolution the resolution under sub-section 10 (1).

- 25 (2) Where a House rescinds under sub-section (1) of this section a resolution of that House under sub-section 10 (1), a warrant issued under sub-section 11 (1) pursuant to the resolution ceases to have effect.

(3) The making of a declaration under sub-section 12 (2) in relation to a resolution of a House under sub-section 10 (1) does not oblige the House to rescind the resolution.

30 Precincts of the Parliament

14. (1) Subject to sub-section (2), the precincts of the Parliament are—

- (a) the area of land delineated by hatching on the plan set out in the Schedule; and
(b) the buildings from time to time erected on that area of land.

- 35 (2) If each House, by resolution, declares that a specified part of the area of land referred to in paragraph (1) (a), or a specified part of a specified building erected on that area of land, is not within the precincts of the Parliament, the part so specified is not within the precincts of the Parliament while both resolutions are in force.

- 40 (3) Sub-sections (1) and (2) have effect for the purposes of any law.

(4) For the avoidance of doubt, it is hereby declared that—

(a) the *Public Order (Protection of Persons and Property) Act 1971* applies to and in relation to all parts of the precincts of the Parliament; and

(b) the precincts of the Parliament are Commonwealth premises for the purposes of that Act. 5

(5) The President of the Senate shall control and manage so much of the precincts of the Parliament as consists of the Senate Chamber, its immediate environs and the areas allocated for the accommodation of, or for use primarily by, Senators. 10

(6) The Speaker of the House of Representatives shall control and manage so much of the precincts of the Parliament as consists of the House of Representatives Chamber, its immediate environs and the areas allocated for the accommodation of, or for use primarily by, members of the House of Representatives. 15

(7) The Presiding Officers of the Houses shall jointly control and manage the remainder of the precincts of the Parliament.

PART III—PROTECTION OF PARLIAMENTARY WITNESSES

Privileges of witnesses

15. A person summoned to appear, or appearing, before a House, or a committee of a House, as a witness— 20

(a) has, in addition to any protection and privileges that the person has apart from this sub-section, the same protection and privileges; and

(b) is, in addition to any liabilities to which the person is subject apart from this sub-section, subject to the same liabilities in any civil or criminal proceeding, 25

as a witness in proceedings in the High Court.

Protection of witnesses

16. (1) A person shall not interfere with another person for the reason, or for reasons including the reason, that the other person has appeared, or is about to appear, as a witness, or has given particular evidence (being evidence lawfully given), before a House or a committee of a House. 30

Penalty—

(a) in the case of an offence committed by a natural person—\$5,000 or imprisonment for one year; or 35

(b) in the case of an offence committed by a body corporate—\$25,000.

(2) Where—

(a) a person interferes with another person in contravention of sub-section (1); and

(b) the other person suffers loss or damage as a result of the contravention, the first-mentioned person is liable to pay to the other person damages in respect of that loss or damage.

5 (3) In proceeding under sub-section (2), the matters referred to in paragraphs (2) (a) and (b) may be established on the balance of probabilities.

(4) Jurisdiction is conferred on the Federal Court to hear and determine matters arising under this section.

10 (5) Where a person (in this sub-section referred to as the "offender") interferes with another person in contravention of sub-section (1), the Federal Court, upon convicting the offender of an offence in respect of the contravention, may, in addition to imposing a penalty for the offence, order the offender to pay to the other person damages which the offender is liable to pay to the other person under sub-section (2) in respect of the contravention, but a person is not entitled to recover more than once under this section in respect of
15 particular loss or damage.

(6) For the purposes of this section, a person shall be taken to interfere with another person if, and only if, the first-mentioned person—

- (a) threatens or intimidates the other person;
- (b) uses violence to, or inflicts injury on, the other person;
- 20 (c) causes or procures violence to the other person;
- (d) causes or procures damage, loss, disadvantage or prejudice to the other person, whether in relation to employment or any other matter; or
- (e) causes or procures the punishment of the other person.

25 (7) Nothing in this section affects a power, privilege or immunity of a House, or of a member or committee of a House, under section 5.

PART IV—AMENDMENTS OF THE PUBLIC ACCOUNTS COMMITTEE ACT 1951 AND THE PUBLIC WORKS COMMITTEE ACT 1969

Amendment of *Public Accounts Committee Act 1951*

30 17. Section 19 of the *Public Accounts Committee Act 1951*¹ is repealed.

Amendment of the *Public Works Committee Act 1969*

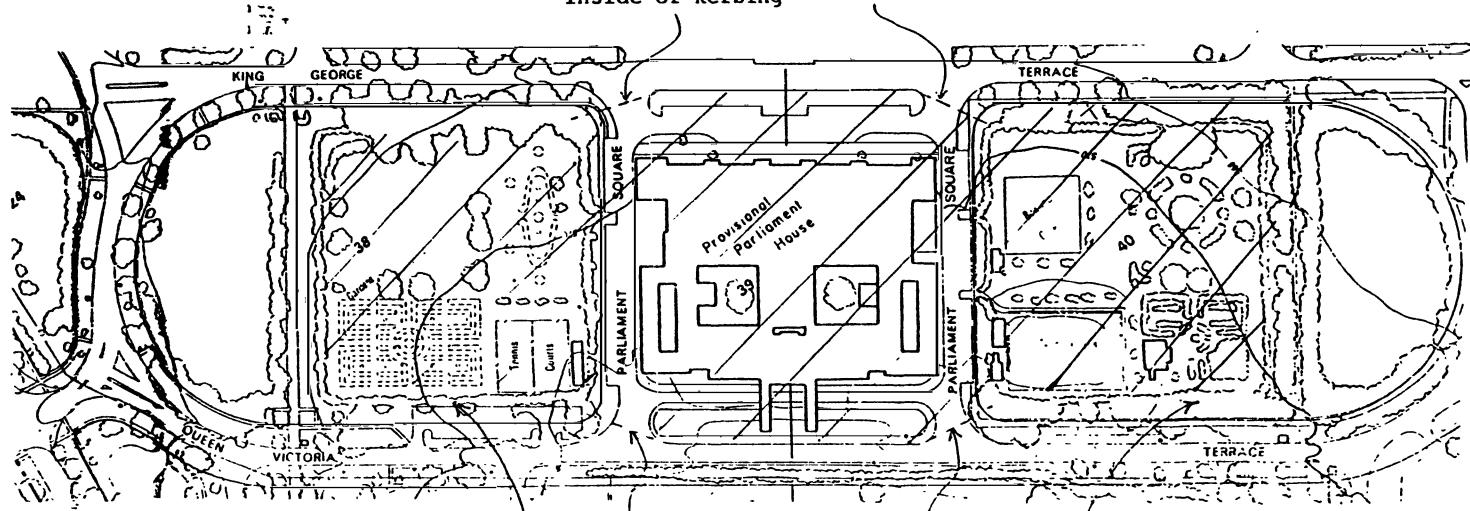
18. Sections 25 and 32 of the *Public Works Committee Act 1969*² are repealed.

SCHEDULE

PRECINCTS OF THE PARLIAMENT

All that area of land and buildings (hatched) enclosed within the boundary lines described hereon.

A line from outside hedge to inside of kerbing

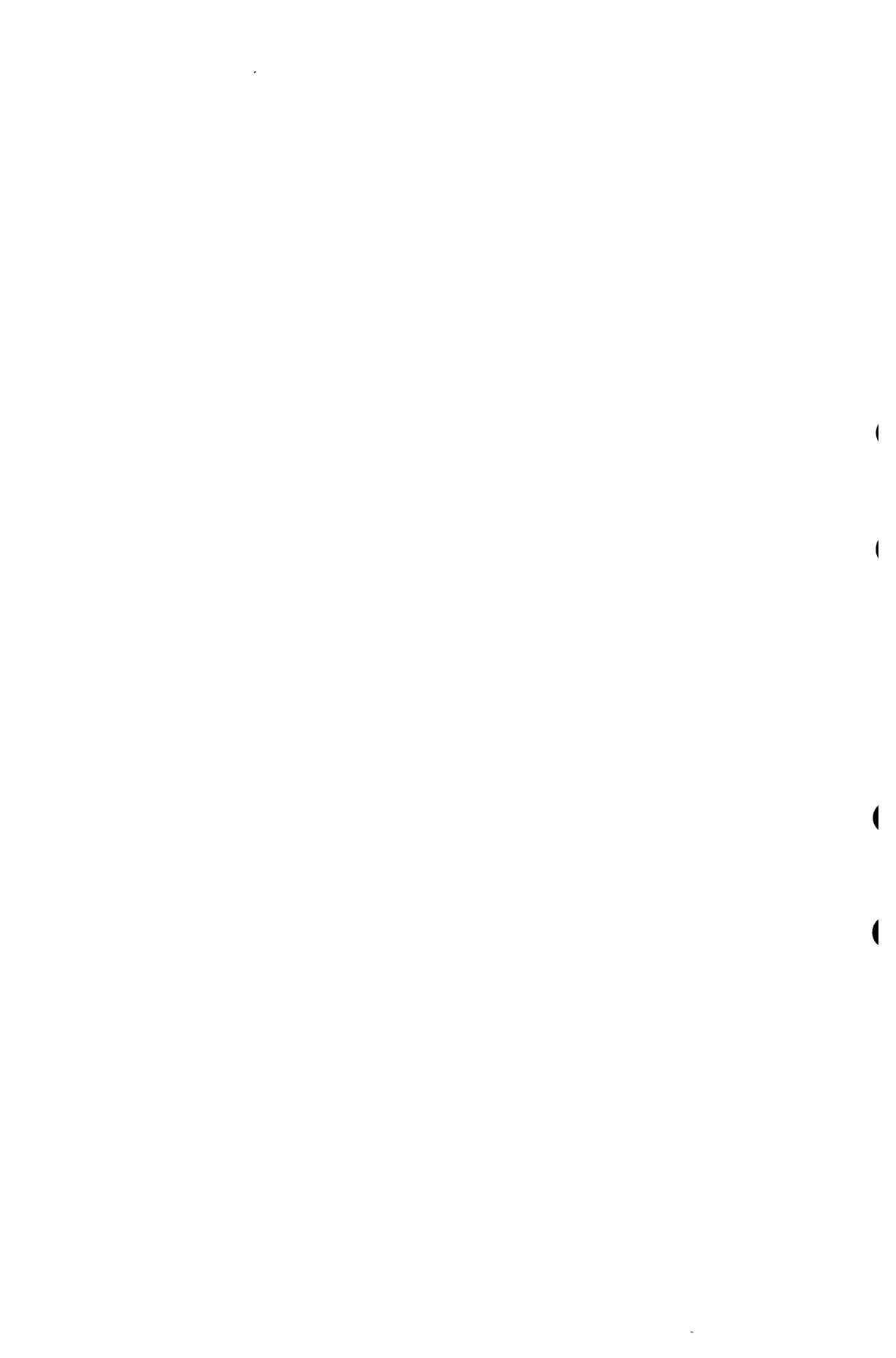


A line from outside of hedge to inside of kerbing

Outside edge of hedge surrounding Parliamentary gardens

NOTES

1. No. 60, 1951, as amended. For previous amendments, see No. 79, 1965; No. 93, 1966; No. 216, 1973; No. 70, 1976; No. 36, 1978; No. 187, 1979; No. 80, 1982; and Nos. 111 and 114, 1983.
2. No. 92, 1969, as amended. For previous amendments, see No. 57, 1972; Nos. 140 and 216, 1973; No. 48, 1974; No. 20, 1981; No. 80, 1982; and No. 39, 1983.



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