

Papers and documents

PAPERS PRESENTED TO THE HOUSE

In order to exercise effectively its responsibility to oversight the activities of the Executive Government, the Parliament needs to be kept informed of the Government's activities. The presentation of papers and reports by Ministers is very important to Parliament in fulfilling its critical role. It demonstrates the accountability of the Government to the Parliament and, through it, to the community. Papers presented to the House are important primary sources of information from which a Member may draw in asking questions and in making a useful contribution to debate.

The fundamental right of Parliament of access to information concerning the activities of government is often given expression in legislation where, for example, Acts of Parliament require government departments and statutory bodies to present reports, including financial reports, of their activities to the Parliament. Information is also provided in other ways¹, principally through answers to questions on notice and without notice, in the course of debate, and by means of statements by Ministers on government policy or activities. The House itself has a right, expressed in the standing orders², to seek information in documentary form and has on occasions exercised that right. The right of Members to information is also acknowledged by the Government.

Annual reports for virtually all federal government departments and authorities are presented to the Parliament, and this situation was arrived at after pressure and recommendations from within Parliament.³

Method of presentation

Papers and documents are presented to the House in a number of ways. They can be presented by the Speaker, pursuant to statute, by command of the Governor-General, pursuant to standing orders⁴ and by leave of the House.

The more important papers are usually tabled during the period of time set aside in the routine of business following Question Time. However, a Minister may present a paper at any time when other business is not before the House.⁵ Leave is required for a paper to be presented at any other time (*and see* p. 558). It is the practice of the House that the Speaker may present a paper at any time, but not so as to interrupt a Member who is speaking. Papers may be presented in the committee of the whole.⁶

Under a resolution of the House effective from March 1988, procedures were introduced whereby by 12 noon on each sitting day a schedule of papers to be presented is made available to the Manager of Opposition Business, and circulated to Members in the Chamber at the first opportunity. Following questions one Minister presents the papers as listed, and the papers so listed are recorded in the

1 See also Ch. on 'The role of the House of Representatives'.

2 S.O. 316.

3 E.g. 'Inquiry into the purpose, scope and distribution of the Parliamentary Papers Series', *Report of Joint Committee on Publications*, PP 216(1977)14, H.R. Deb. (24.11.78)3456-7.

4 S.O. s 316, 317, 319, 321.

5 S.O. 102.

6 VP 1987-89/105, 113.

Votes and Proceedings and Hansard. Papers are presented individually if a schedule has not been circulated, if they are not listed on a schedule or if a statement is to be made in connection with a paper.⁷

By the Speaker

The standing orders provide that papers may be presented to the House by the Speaker.⁸ The reports of those committees of which he or she is chairman, or joint chairman, are presented by the Speaker.⁹ The Speaker presents the reports of parliamentary delegations of which he or she is the leader¹⁰, the reports of conferences of Commonwealth Speakers and Presiding Officers¹¹, and the reports of conferences of Presiding Officers and Clerks of the Parliaments.¹² The Speaker tables papers dealing with parliamentary activities¹³, and, pursuant to the Public Service Act, the annual reports of Parliamentary Departments under his or her overall control or under the joint control of the Speaker and the President.¹⁴

The Commonwealth Banking Corporation Board¹⁵ and the Reserve Bank Board¹⁶ must each send a copy of their annual report, together with a report of the Auditor-General on their financial statements, to the Speaker and the President to be laid before the House of Representatives and the Senate. The Audit Act requires the Auditor-General to transmit to each House of the Parliament reports prepared under that Act.¹⁷ Having furnished information to the Prime Minister in relation to an investigation, the Commonwealth Ombudsman may also forward copies of a report concerning the investigation to the President and the Speaker for presentation to Parliament.¹⁸ These reports are tabled in the House by the Speaker in his or her role as the representative of the House in its external relations with authorities outside the Parliament.¹⁹

The Speaker may also communicate to the House letters and documents addressed to the Speaker, such as replies to expressions of congratulation or condolence made by the House²⁰, or messages of the same kind from foreign countries and other legislatures²¹, letters acknowledging a vote of thanks of the House²², or relating to the rights and privileges of the House or its Members, such as communications notifying the House of the arrest or imprisonment of a Member.²³ In 1988 the Acting Speaker tabled a copy of a letter from a Deputy President of the Conciliation and Arbitration Commission seeking the appointment of a joint select committee to inquire into his situation. Another letter from the same person was presented on 28 February 1989.²⁴ A document communicated to the House by the Speaker may be read and entered in the Votes and Proceedings or simply recorded as being received. Unless tabled by specific action of the Speaker²⁵, documents of this kind are not regarded as having been formally tabled.²⁶

7 VP 1987-89/302-3.

8 S.O. 319.

9 In the 35th Parliament the Speaker was chairman or joint chairman of the Joint Committee on the Broadcasting of Parliamentary Proceedings, the Joint Committee on the New Parliament House, and the House Committee sitting as a joint committee with the House Committee of the Senate.

10 VP 1978-80/1159.

11 VP 1978-80/676.

12 VP 1978-80/1025.

13 See 'Bills not passed into law', VP 1978-80/602; 'History of Hansard', VP 1970-72/1236.

14 Annual reports of the Department of the House of Representatives, VP 1985-87/392, 1144. Annual reports of the Department of the Parlia-

mentary Library, VP 1985-87/513, 1425. Annual reports of the Parliamentary Reporting Staff, VP 1985-87/443, 1162. Annual reports of the Joint House Department, VP 1985-87/392, 1389.

15 *Commonwealth Banks Act 1959*, s. 121 (3).

16 *Reserve Bank Act 1959*, s. 81 (3).

17 *Audit Act 1901*, ss. 48G, 53 (1).

18 *Ombudsman Act 1976*, s.17; VP 1985-87/392.

19 See Ch. on 'The Speaker, the Chairman of Committees and Officers'.

20 VP 1978-80/981.

21 VP 1978-80/930, 977.

22 VP 1932-34/583.

23 VP 1970-72/517.

24 VP 1987-89/809, 1025.

25 VP 1967-68/10.

26 And see *May*, pp. 233-4.

Pursuant to statute

Papers tabled pursuant to statute are those papers required to be presented to the Parliament by virtue of provisions in Acts of the Parliament. Save for the presentation of papers listed under the provisions effective from March 1988, the more important papers are presented by a Minister who has the responsibility for administering the relevant Act or, in the case of a departmental annual report presented pursuant to the Public Service Act, by the Minister responsible for the department. If the responsible Minister is a Member of the other House, papers are presented by the Minister representing that Minister.

A number of types of papers are covered by the term statutory papers. For example, a statutory authority is usually required by its enabling legislation to present a report on its operations each financial year, and this report is normally required to be accompanied by financial statements and the report of the Auditor-General on those statements.²⁷

Some authorities are required to investigate and report on specific matters and to present their reports to the Parliament.²⁸ A number of statutes require that the Minister responsible for the administration of an Act report to the Parliament on the operations of that Act²⁹, and many Acts providing for grants, or financial assistance, to the States require that statements of guarantees and payments, and financial agreements, be tabled in the Parliament.³⁰

Since 1986 annual reports of government departments have been presented pursuant to statute, following amendments to the Public Service Act³¹ providing that reports should be prepared and presented to Parliament each year³² in accordance with guidelines from time to time presented to Parliament by the Prime Minister, after approval by the Joint Committee of Public Accounts.³³

The Acts Interpretation Act requires that where any Act confers the power to make regulations, those regulations shall be laid before each House of the Parliament.³⁴ As well as regulations there are statutory requirements for the tabling of many other instruments of a similar nature. They include such papers as notifications of the acquisition of land, ordinances, by-laws, rules of court, determinations, statutes of academic institutions, and certain appointments to the Public Service.

By command of the Governor-General

Command papers, which are papers tabled nominally by command of His or Her Excellency the Governor-General, are tabled in the House by Ministers (or by Assistant Ministers).³⁵ In some cases command papers are forwarded to the Clerk for recording in the Votes and Proceedings as papers deemed to have been presented.

The term 'command paper' covers those reports and other documents, not required by statute to be tabled, which the Government considers important enough to present to the House for the information of Members. In many cases it is an exercise in the accountability of the Executive to the Parliament. For example, the

27 Some authorities report for 12 month periods other than the financial year; see Royal Military College of Australia, VP 1985-87/514, 1103. Some authorities are not required to table financial statements; see Aboriginal Land Commission (Aboriginal Land Rights (Northern Territory) Act), VP 1985-87/636, 1692.

28 See *Australian Science and Technology Council Act 1978*, s. 6(2); *Industries Assistance Commission Act 1973*, s. 29 (2) (dealing with reports of the Temporary Assistance Authority); *Law Reform Commission Act 1973*, s. 37.

29 See *Housing Assistance Act 1978*, s. 15; *Air Navigation Act 1920*, s. 29.

30 See *States Grants (Technical and Further Education) Act 1974*, s. 30 (1); *Urban and Regional Development (Financial Assistance) Act 1974*, s. 8.

31 *Public Service Act 1922*, s. 25 (6-9).

32 For the year ended 30 June.

33 VP 1987-89/221. Guidelines incorporated in Senate Hansard, S. Deb. (18.11.87) 1921-4.

34 *Acts Interpretation Act 1901*, s. 48.

35 S.O. 319.

annual reports of Public Service departments, before there was a statutory requirement to present them to Parliament, were tabled as command papers.³⁶ In other cases it is an acknowledgment of the fundamental right of access of Members to information concerning government policy or activity, and within this framework command papers cover a virtually unlimited range of subject matters. They include reports of royal commissions, treaties, agreements and exchanges of notes with foreign countries, reports of committees of inquiry established by the Government, and ministerial statements. The term 'command paper' with regard to papers presented to the Australian Parliament does not have the same significance as the term used in the United Kingdom Parliament where such papers are printed as a separate Command Paper series. The term in Australia is purely technical, referring to the manner of presentation, and has no wide usage. Since 1983 papers have not been identified in the Votes and Proceedings as being presented by command.

Deemed to have been presented

In 1962, the Standing Orders Committee recommended an amendment to the standing orders which was designed to save the time of the House by providing that a miscellany of papers, mainly statutory papers which were presented by the Clerk, be deemed to have been presented if they are delivered to the Clerk and recorded in the Votes and Proceedings. The words added to the standing orders by the House were 'Papers may be presented in the House, or may instead be delivered to the Clerk who shall cause them to be recorded in the Votes and Proceedings. Papers so delivered to the Clerk are deemed to have been presented to the House on the day on which they are recorded in the Votes and Proceedings'.³⁷

In recommending this amendment, the Standing Orders Committee drew the attention of the House to doubts that could arise in relation to the tabling requirements of the Acts Interpretation Act and further recommended that the Act be amended to ensure that the new procedures in the standing orders did not conflict with statutory requirements. In 1963, the Acts Interpretation Act was amended to make the proposed new procedures for the presentation of papers legally effective.³⁸

The types of statutory papers which are delivered to the Clerk for recording in the Votes and Proceedings are listed at page 557. In addition, it is not uncommon for command papers to be delivered to the Clerk for tabling. The most recurrent examples are the texts of treaties, agreements, and so on, with foreign countries.³⁹

By leave

Other than providing for the tabling of committee reports, the standing orders make no provision for private Members to table papers and documents. Any private Member (unless presenting a parliamentary committee report) wishing to table a paper must obtain leave of the House to do so⁴⁰, and leave must be granted without any dissentient voice.⁴¹ This rule also applies to Ministers when other business is before the House.⁴² Other business does not include Question Time, a personal explanation or the making of a ministerial statement. Leave is not required to present an explanatory memorandum to a bill.⁴³

36 The Director-General, Department of Social Security, was required by s. 148 of the *Social Services Act 1947* to present an annual report.

37 *Standing Orders Committee Report*, H of R 1(1962-63)57; S.O. 319.

38 *Acts Interpretation Act 1963* (Act No. 19 of 1963) s. 34B; H.R. Deb. (7.5.63)1066-7.

39 VP 1978-80/1657-60.

40 VP 1978-80/1597.

41 S.O. 111.

42 VP 1976-77/183; VP 1978-80/178.

43 VP 1987-89/276.

It is expected that a Member or Minister seeking leave to table a document will first show it to the Minister at the Table or to the Member leading for the Opposition, as the case may be, and leave may be refused if this courtesy is not complied with.⁴⁴

Pursuant to standing order 321

Standing order 321 provides that any public document quoted from by a Minister or by an Assistant Minister shall, if required by a Member, be tabled, unless it is a confidential document or is such as should more properly be obtained by an Address to the Governor-General.⁴⁵ The rule has been said to be akin to the rule of evidence in the courts where evidence not placed before the court may not be cited by counsel.⁴⁶

The Speaker has laid down procedural rules to be followed when a request for tabling is made under this standing order. The Chair will first ask the question 'Has the Minister read from the document?'. If the answer is 'no', the Chair accepts the Minister's word. If the answer is 'yes', then the Chair will ask the further question 'Is it a confidential document?'. If the Minister replies that it is confidential, then it is not required to be tabled. If it is not a confidential document, and the Minister has read from it, he or she is then required to table the document. The Speaker also said that if a Minister states that he is only referring to notes, then that is the end of the matter—the Chair would not require the tabling of the document.⁴⁷

It is not always easy for the Chair to determine the status of documents. The provisions of the standing order do not apply to personal letters quoted from by a Minister⁴⁸, nor to private documents.⁴⁹ A Minister who summarises correspondence, but does not actually quote from it, is not bound to lay it on the Table.⁵⁰ The standing order also applies in the committee of the whole⁵¹ and in legislation committees.⁵²

It has been held that when Crown privilege was claimed by the Government in court proceedings it was the duty of the court, and not the privilege of the Executive Government, to decide whether a document would be produced or withheld⁵³ (see also p. 578). On 14 November 1978, a Member raised, as a matter of privilege, the possible application of these principles to the tabling of documents under standing order 321. The Member suggested that the Speaker should stand in a similar position to the court and when, under standing order 321, a document relating to public affairs was quoted from by a Minister any claim by a Minister that the document was confidential should be judged by the Speaker and not the Minister. The Speaker stated the cases were significantly different and the clear course of standing order 321 must be followed.⁵⁴

44 H.R. Deb. (9.10.79) 1724.

45 VP 1978-80/1648.

46 Lord Campion, *An introduction to the procedure of the House of Commons*, 3rd edn, London, MacMillan, 1958, p. 197.

47 H.R. Deb. (1.4.76) 1239.

48 H.R. Deb. (28.8.13) 646-7.

49 H.R. Deb. (23.2.49) 612.

50 H.R. Deb. (23.2.72) 110; and see May, pp. 433-4.

51 H.R. Deb. (20.9.73) 1385.

52 May, p. 672.

53 *Sankey v. Whitlam and others* (1978) 142 CLR 1.

54 VP 1978-80/529,541; H.R. Deb. (14.11.78) 2715; H.R. Deb. (15.11.78) 2867.

Laid on the Table by the Clerk

RETURNS TO ORDER

The House itself can order papers to be laid before it. Upon the House agreeing to a resolution that certain papers should be laid before it, the Clerk communicates the order to the Minister concerned. When the papers are received, they are laid on the Table by the Clerk.⁵⁵ As a general rule only papers which are of a public or official character should be ordered to be laid before the House.⁵⁶

This procedure of calling for papers was frequently followed during the early years of the Parliament, but it fell into disuse.⁵⁷ Much of the information previously sought in this way is now presented to the House in the form of command or statute papers. However, this power has continuing importance and it may be delegated to committees, thus enabling them to send for papers and records.⁵⁸ In the Senate orders have been made more recently for the tabling of accounts and papers.⁵⁹

An order for papers to be laid before the House or an Address for a paper which concerns the Royal prerogative may give rise to a claim of Crown privilege (sometimes referred to as 'public interest immunity'). In other words, in respect of certain documents, the Executive may claim an immunity in respect of their production (*see* p. 578).

ELECTION PETITIONS

The validity of any election or return may be disputed by petition addressed to the High Court acting as the Court of Disputed Returns.⁶⁰ Although there are no tabling provisions under the standing orders or under statute, it has been the practice for the Clerk to lay on the Table for the information of the House copies of election petitions⁶¹, and copies of orders of the Court of Disputed Returns on the petitions⁶², forwarded in accordance with the Commonwealth Electoral Act.⁶³

RETURNS TO WRITS

The standing orders provide that on the first day of the meeting of a new Parliament for the despatch of business the writ or copy-writ of the election of each Member is to be laid on the Table of the House by the Clerk.⁶⁴

ADDRESSES FOR PAPERS

When the Royal prerogative is concerned in any paper which the House desires to be laid before it, an Address must be presented to the Governor-General praying that such paper may be laid before the House.⁶⁵ There is no precedent of the House having presented an Address to the Governor-General praying for the production of a paper, but, if such a paper were to be produced, it would probably, as with a return to order, be laid on the table by the Clerk. The nature and extent of the Royal prerogative, or discretionary power of the Crown, is discussed in the Chapter on 'The Parliament'.

55 S.O. 316.

56 *May*, p. 266.

57 The last return to order was laid on the Table of the House on 25 July 1917, VP 1917-19/20.

58 S.O. 334; and *see May*, p. 265.

59 J 1976-77/248; J 1987-89/1205.

60 *Commonwealth Electoral Act 1918*, s. 353 (1); and *see* Ch. on 'Elections and the electoral system'.

61 VP 1987-89/98.

62 On five occasions a copy of the order of the Court of Disputed Returns has not been forwarded. In each case the election petition had been forwarded and tabled, VP 1913/14; VP 1950-51/10; VP 1978-80/18; VP 1985-87/26; VP 1987-89/98.

63 *Commonwealth Electoral Act 1918*, s. 369.

64 S.O. 2(d); VP 1987-89/3-6.

65 S.O. 317.

Parliamentary committee reports

The standing orders provide that the reports of standing and select committees may be presented at any time when other business is not before the House.⁶⁶ Under sessional orders effective from March 1988, time is provided on Thursday mornings for the presentation and consideration of committee reports.⁶⁷ Reports may be presented at other times, but when this happens there can be no assurance that time will be made available for statements on the reports. The House has authorised the Speaker to give directions for the printing and circulation of a report if the House was not sitting when the committee had completed its inquiry.⁶⁸ Committee reports are normally tabled by the chairman of the committee or, in the case of a joint committee where the chairman is a Senator, by the deputy chairman.⁶⁹ Any member of a committee may, when asked to do so, present a committee report on behalf of the chairman.⁷⁰ The publishing or disclosure of a committee report, or making its contents known, before the report is tabled has been held to constitute a contempt of the House.⁷¹

Petitions

It is the inherent right of every citizen to petition the House.⁷² As the standing orders provide that only a Member can lodge a petition with the Clerk for presentation to the House⁷³, citizens must lodge their petitions with a Member. There is no obligation on a Member to present a petition, and the fact that a Member presents a petition does not mean that he or she agrees with its content. The Clerk is required to announce in the House each petition lodged for presentation (if it is in conformity with the standing orders), indicating the Member who lodged the petition, and indicating the identity and number of the petitioners and the subject matter of the petition. Unless ordered to be printed⁷⁴, all petitions presented to the House stand referred to the Publications Committee which reports from time to time as to which petitions ought to be printed.⁷⁵ It is extremely rare for petitions to be ordered to be printed. Following the presentation of a petition a Member may not move for its printing unless he or she intends to take some action on it.⁷⁶ The petitioning process is covered in detail in the Chapter on 'Parliament and the citizen'.

Ministerial statements

Ministerial statements are made to the House by Ministers on behalf of the Government and are usually the means by which the Government's domestic and foreign policies and decisions are announced to the House. Leave of the House is required to make a statement. It is normal practice for the opposition spokesman on the subject, and occasionally other Members, to also make a statement on the same matter, by leave.⁷⁷ If leave to make a statement is refused, it is open to the Minister, or another Member, to move a motion to suspend the standing orders to

66 S.O. 102. For a detailed discussion of committee reports see Ch. on 'Parliamentary committees'.

67 VP 1987-89/299-300.

68 VP 1978-80/1205. There have been doubts about the legality of this practice, see Ch. on 'Parliamentary committees'.

69 VP 1978-80/1584.

70 VP 1977/367-9.

71 S.O. 340; see 'Article published in *The Sun*, 18 September 1973', *Report of Committee of Privileges*, PP 217(1973); see also Ch. on 'Parliamentary committees' and Ch. on 'Parliamentary privilege'.

72 See Hatsell, vol. III, p. 240 n.

73 S.O. 126.

74 S.O. 130; and see VP 1977/377.

75 S.O. 28.

76 S.O. 131; H.R. Deb. (8.11.77)3022-3; VP 1977/430.

77 VP 1978-80/877-8.

enable the statement to be made⁷⁸ or, alternatively, the Minister may table the statement, move 'That the House take note of the paper' and speak to that question.

Having concluded a statement made by leave, it is common practice for a Minister to table a copy of the statement. The Minister or another Minister may then move a motion 'That the House take note of the paper'.⁷⁹ Upon this motion the contents of the statement may be debated immediately or at a later time.

Custody and availability of original documents

The custody of all documents laid before the House is invested in the Clerk. Documents may not be removed from the Chamber or offices without the permission of the Speaker.⁸⁰ All papers and documents presented to the House are considered to be public. Any paper not ordered to be printed may be inspected at the offices of the House by Members at any time, and, with the permission of the Speaker, by other persons, and copies of it or extracts from it may be made.⁸¹ For further comments on the publication of documents not ordered to be printed *see* p. 577.

A department may make an application to the Clerk for the return of any original document tabled in the House. If the document is not likely to be further required by Members, it may, at the Speaker's discretion, be returned to the author department.⁸² In 1904, the Speaker informed the House that he intended, with the approval of the House, to allow original documents to be returned to departments when it appeared that they would not be further required by Members.⁸³ This procedure, which did not find expression in the standing orders until 1950, has rarely been used.⁸⁴

Although documents held by the House are Commonwealth records for the purposes of the Archives Act⁸⁵, the requirements of the Act relating to the disposal of and access to such records do not apply unless provided for by regulation.⁸⁶ Notwithstanding this exemption, the Act also provides that the Prime Minister may approve arrangements authorising accelerated or special access to records not otherwise available.⁸⁷

In 1980, the House agreed to a resolution delegating to the Speaker the authority, under standing order 340, to release for public scrutiny committee records which have been in the custody of the House for at least 10 years.⁸⁸

ORDERS AND RESOLUTIONS IN RELATION TO PAPERS AND DOCUMENTS PRESENTED

Motion to print paper

Standing order 322 provides that, upon a paper being presented to the House by the Speaker or a Minister, a Minister (or an Assistant Minister) may move, without notice, that the paper be printed and/or that the House take note of the paper. It is to be noted that standing order 322 does not apply to reports of

78 VP 1978-80/1202; and *see* Ch. on 'Control and conduct of debate'.

79 S.O. 322; and *see* Ch. on 'Motions'.

80 S.O. 39.

81 S.O. 320.

82 S.O. 39.

83 VP 1904/71.

84 VP 1950-51/36.

85 *Archives Act 1983*, s.3.

86 *Archives Act 1983*, ss. 18,20. Regulations had not been made by end of 1988.

87 *Archives Act 1983*, s.56.

88 VP 1978-80/1539-40; H.R. Deb. (22.5.80)3133-4; and *see* Ch. on 'Parliamentary committees'.

standing and select committees which are tabled by committee chairmen. In these cases a motion to take note by a Minister requires the prior leave of the House.

By ordering that a paper be printed, the House is not only ensuring that important information on government or parliamentary activity is being made available to its Members, it is also providing information to the public about the activities of government through the Parliamentary Papers Series of which all documents ordered to be printed become a part (*see* p. 565).

Papers ordered to be printed are protected under the Parliamentary Papers Act, (*see* p. 575).

Motion to authorise publication of document

Should the House perceive the need to bestow protection on a paper laid before it wider than that provided by an order to print (*see* p. 575), a motion is moved 'That this House, in accordance with the provisions of the *Parliamentary Papers Act 1908*, authorises the publication of . . .'. The motion may also contain the order 'That the paper be printed'.

Motion to take note of paper

A motion 'That the House take note of the paper' is a procedure employed in cases where the House wishes to debate the subject matter of a paper, whether it be a ministerial statement that has been tabled or any other document tabled in the House, without coming to any positive decision concerning the paper.⁸⁹ If the motion is not moved by a Minister at the time of presentation of the paper, it may be moved on a subsequent day, pursuant to notice or by leave.

It is the usual practice that motions to take note of ministerial statements are debated forthwith, shadow ministers having been given advance copies of the statements. However, in the case of the majority of motions to take note of a tabled paper such as a report, debate is immediately adjourned, customarily on the motion of an opposition Member, and the adjourned debate made an order of the day for the next sitting. Most of these orders of the day are later discharged from the Notice Paper, or lapse on dissolution, not having been debated. A motion to take note is open to amendment.⁹⁰

When papers are tabled together according to a previously circulated list (*see* p. 555), separate motions to take note are moved for individual papers.

Resolutions authorising the production of documents and attendance of officers in court or other proceedings

The standing orders provide that officers of the House or shorthand writers may not give evidence elsewhere in respect of the proceedings in the House or in its committees without special leave of the House.⁹¹ This requirement has been extended in practice to cover the production of documents and records. Those who desire to produce evidence of parliamentary proceedings or any document in the custody of the Clerk of the House of Representatives have been required, by the traditional practice of the House, to petition the House for leave of the House to be given for the production of the documents and, if necessary, for the attendance of an appropriate officer in court.⁹² On receipt of the petition it has been the

89 For procedures applying to the presentation of committee and delegation reports *see* Ch. on 'Private Members' business'.

90 VP 1985-87/882.

91 S.O. 368.

92 *See* 'The use of or reference to the records of proceedings of the House in the courts', *Report of Committee of Privileges*, PP 154(1980)6.

practice of the Clerk, pursuant to standing orders⁹³, to refer it to the Leader of the House who is the appropriate Minister to move a motion for the granting of leave of the House.⁹⁴ In some cases, motions to grant leave have been moved without a petition having been presented.⁹⁵

During a period when the House is not sitting, the Speaker, in order to prevent delays in the administration of justice, may allow the production of documents and the attendance of officers in response to a request. However, should any question of privilege be involved, or should the production of a document appear, on other grounds, to be a subject for the discretion of the House itself, the request would probably be declined and the matter referred to the House. According to *May*, during a recess following a dissolution the Clerk may sanction the production of documents following the principle adopted by the Speaker.⁹⁶

This practice and the issues involved are covered in detail in the Chapter on 'Parliamentary privilege'. Further information of an historical nature is contained in Chapter 17 of the first edition.

DISTRIBUTION AND PRINTING OF DOCUMENTS

Distribution of papers tabled

After the tabling of papers each sitting day, arrangements are made through the Bills and Papers Office for the distribution of copies to Members. Members have an option of either receiving automatically one copy of each paper that is tabled or they may receive a list (the Green List) showing the titles of papers tabled in the House that day from which they can select the particular papers they wish to receive. Very few Members opt to receive copies of all papers tabled, the vast majority preferring to receive the Green List. These distribution arrangements do not apply to machinery papers, that is, those papers deemed to have been presented to the House (*see* p. 558). However, copies of these papers are kept in the Bills and Papers Office should a Member wish to receive a copy.

It has always been considered a matter of impropriety to make documents publicly available before they are tabled in the Parliament. It has been acknowledged, however, that there will be circumstances in which it might be considered appropriate to release a document before it is tabled, such as during long adjournment periods. Where departments find it necessary to release a document in such circumstances, guidelines issued by the Department of the Prime Minister and Cabinet permit this, provided that:

- the Minister has approved release;
- there is no question of publication of the report having to be covered by the provisions of the Parliamentary Papers Act, and
- in the case of reports required to be tabled by statute, such statutes do not prevent the reports from being published as public documents prior to tabling.

On 11 October 1984 the House agreed to a motion authorising the Speaker, notwithstanding the pending dissolution of the House, to provide to all Members copies of the final report of the Royal Commission of Inquiry into the Federated Ships Painters and Dockers' Union. The Speaker stated that he had received an assurance of indemnity from the Government if the motion was carried and he acted in accordance with it.⁹⁷

93 S.O. 132.

94 VP 1985-87/1355.

95 VP 1983-84/881.

96 *May*, p. 94. In 1980 the Commons dispensed with the requirement that leave be granted in respect of the production of parliamentary records.

97 VP 1983-84/989; H.R. Deb. (11.10.84) 2200.

Usually, once a report has been tabled in the Parliament, it is made available for sale to the public through Commonwealth Government Bookshops.

Parliamentary Papers Series

All papers and petitions that are ordered to be printed by either House of the Parliament form part of the Parliamentary Papers Series. The series is designed to be a comprehensive collection of the papers of a substantial nature presented to the Parliament⁹⁸, and since Federation these papers have been a major reference source for information on, and research into, the role and activities of Parliament and of Government for Members and the general public.⁹⁹

The responsibility for deciding which papers are of a substantial nature or are important enough to form part of the series resides with both or either House of the Parliament. This responsibility is normally delegated, by way of the standing orders¹⁰⁰, to the Publications Committee of each House acting independently or jointly.

The Parliamentary Papers Series consists of reports, returns and statements from departments, authorities, parliamentary and ad hoc committees of inquiry and royal commissions and the like which are presented to the Parliament and considered appropriate for inclusion. Also included in the series are any other papers of an ad hoc nature, including ministerial statements and petitions, which either House orders to be printed, either through its own action or through the recommendation of the Publications Committee of either House acting independently or jointly.

Prior to 1963 certain papers, including committee reports, relating solely to either the House or the Senate were issued in a separate series, designated H of R or S, and (prior to 1961) published in bound form only in the Votes and Proceedings or Journals volumes respectively.

Until 1967, parliamentary papers were numbered in arithmetical sequence on a sessional basis, a new series of numbers commencing with each session. In 1964, the Joint Select Committee on Parliamentary and Government Publications recommended that the parliamentary papers be numbered on a calendar year basis and that they be bound in annual volumes.¹⁰¹ This recommendation came into effect beginning with the calendar year 1967.

Documents becoming parliamentary papers are so stamped. The practice of rebinding individual papers in distinctive blue covers was discontinued in 1988.

There is a wide distribution of parliamentary papers and members of the public have access to parliamentary papers through State, municipal and tertiary institution libraries. Copies can also be purchased through the AGPS on subscription.

Parliament maintains an extensive free distribution of parliamentary papers to the libraries of States, State Parliaments, municipalities, universities, tertiary education institutions, Commonwealth departments, foreign embassies, political parties which are registered under the Commonwealth Electoral Act and overseas national or parliamentary libraries of countries which have exchange arrangements with the National Library of Australia.

The distribution of the annual bound volumes of Parliamentary Papers is limited to the National Library, Australian Archives, State, parliamentary, and the overseas libraries included above.

98 'Parliamentary and government publications',
Report from Joint Select Committee, PP
32(1964-66)28.

99 PP 216(1977)1.

100 S.O. 28; Senate S.O. 36.

101 PP 32(1964-66)31.

Role of the Publications Committee

The Publications Committee, which consists of seven members, has the power to confer with a similar committee of the Senate.¹⁰² Apart from initial meetings to elect their respective chairmen, the committees rarely meet other than as a joint committee.¹⁰³

The Publications Committee replaced the Printing Committee when standing orders were amended in 1970.¹⁰⁴ The Joint Select Committee on Parliamentary and Government Publications recommended in its report, tabled in 1964, that there should be a continuing parliamentary review of Commonwealth printing and publishing.¹⁰⁵ The Printing Committees of the two Houses could not undertake the task as they were restricted in their powers under standing orders. The committee recommended appointment of a joint standing committee to undertake the reviews it proposed, together with the existing functions of the Joint Printing Committee. After the Presiding Officers and the Standing Orders Committees of both Houses had considered ways of implementing the proposal and the latter had reported to their respective Houses, the standing orders were amended to give effect to the joint select committee's recommendation.

The printing and investigatory functions

The Publications Committee has two main functions, namely, a printing function and an investigatory function. In performing its printing function the committee considers all petitions and papers presented to the Parliament, and not ordered to be printed by either House, and reports from time to time as to which should be printed as parliamentary papers, and whether wholly or in part.¹⁰⁶ The committee can make recommendations only. It is for the Houses to decide whether a paper is to be printed. In reporting to Parliament, the Publications Committee recommends that specified papers be printed. The committee does not recommend that specified papers submitted to it be not printed. It is therefore open to any Member to seek to move that a paper be printed, without the necessity of moving for the rescinding of an earlier motion, even though the Publications Committee has not so recommended.

Since 1987, guidelines followed have been to the effect that all reports, returns and statements of departments, authorities, parliamentary and ad hoc inquiries and royal commissions which are presented to Parliament should be recommended for printing. Interim annual reports of departments and authorities, reports of unfinished parliamentary inquiries and reports of ad hoc inquiries with short term interest do not fall within the guidelines.¹⁰⁷ Other papers of an individual or non-recurring nature are considered on their merits.

Papers which the Senate or the House orders to be printed are not brought before the Publications Committee, the question of printing having been determined by the superior body. Similarly, if a motion for the printing of a paper is before either House, the paper is not considered by the Publications Committee. The paper would be considered by the committee later if the motion were subsequently to be withdrawn or if it lapsed.

102 S.O. 28.

103 The last occasion was in 1976, VP 1976-77/569-70.

104 VP 1970-72/203.

105 PP 32(1964-66)40.

106 S.O. 28.

107 'Review of the cost and distribution of the Parliamentary Papers Series', *Joint Committee on Publications*, PP 450(1986).

In accordance with the principle that each House is master of its own affairs, papers presented to only one House are considered by members of the Publications Committee of that House, not by the joint committee, and any recommendation to print must be made in a report by the committee of the relevant House alone. In 1960, the Joint Printing Committee resolved to recommend the printing of a paper which was tabled in the House of Representatives only.¹⁰⁸ However, as the paper had not been tabled in the Senate, Senators should not have voted on the recommendation. The matter was reconsidered before the joint committee's report was tabled and the resolution recommending printing was rescinded. The House Printing Committee then considered the paper and decided not to recommend its printing.¹⁰⁹

The committee, when conferring with a similar committee of the Senate, has the power to inquire into and report on the printing, publication and distribution of parliamentary and government publications and on such matters as are referred to it by the relevant Minister. The joint committee has completed nine inquiries, of which two were matters referred by the responsible Minister. The committee has power to send for persons, papers and records and, depending on the particular inquiry, may be given power by the Houses to move from place to place.¹¹⁰

Reports

In undertaking its printing function the House Publications Committee normally reports that it has met in conference with the Senate Publications Committee and that the 'Joint Committee', having considered petitions and papers presented to the Parliament since the last meeting of the committee, recommends that specified petitions (if any) and papers be printed. The report is presented to both Houses and is reproduced in full in the Votes and Proceedings and the Senate Journals. The chairman, by leave, moves that the report be agreed to.¹¹¹ Joint committee reports on inquiries are dealt with in the same manner as reports from select and standing committees.

DOCUMENTS OF THE HOUSE¹¹²

Votes and Proceedings

The official record of proceedings of the House of Representatives is the Votes and Proceedings. Standing order 38 provides that:

All proceedings of the House shall be recorded by the Clerk, and such records shall constitute the Votes and Proceedings of the House, and shall be signed by the Clerk.

A definitive interpretation of 'proceedings of the House' has raised difficulties over the years and has been the subject of decisions both by the courts and in Parliament in the United Kingdom.¹¹³ Section 16 of the *Parliamentary Privileges Act 1987* provides a detailed definition of 'proceedings in Parliament' for the purposes of the provisions of article 9 of the Bill of Rights 1688, and for the purposes of the section (and see p. 576).

108 *Interim Report of the Federal Parliamentary Labor Party Mining Committee on the Coal and Shale Mining Industry*, VP 1960-61/127.

109 See Odgers, pp. 518-19.

110 VP 1977/166-7.

111 E.g. VP 1978-80/608-11; J 1978-80/436-8.

112 A bill is technically a document of the House while in the possession of the House; see Ch. on

'Legislation'. The *Daily Program* is a document of a less formal nature; see Ch. on 'Business of the House and the sitting day'. The *Standing Orders* are maintained by the Clerk of the House.

113 *May*, pp. 81,92; HC 34(1967-68)9.

It is the purpose of the Votes and Proceedings to record all that is, or is deemed to be, done by the House, but to ignore everything that is said apart from the words of motions, unless it is especially ordered to be entered.¹¹⁴ The Votes and Proceedings should not be confused with Hansard, which is a report of the debates of the House.

The entries are compiled, on the authority of the Clerk, in the Bills and Papers Office and are printed and circulated, usually the next day, in proof form. This proof is checked against the minutes kept by the Deputy Clerk and the original documents of the House. The Votes and Proceedings are then printed and distributed in final form and are issued for each session in bound volumes.

The standing orders require that Members' attendance¹¹⁵, divisions¹¹⁶, and any reason stated by the Chair for its casting vote¹¹⁷, be recorded in the Votes and Proceedings. The standing orders also provide that a Member may, if he or she wishes, have dissent to any question recorded if he or she is the only Member calling for a division.¹¹⁸

A typical day's Votes and Proceedings records that questions without notice were asked¹¹⁹, the papers presented by Ministers, ministerial statements, the committee reports presented and the matter of public importance. Depending on the sequence of business on the particular day, these are followed by the items of business considered by the House, and the Votes and Proceedings concludes with a reference to the adjournment, a list of papers deemed to have been presented and the record of Members' attendance.

In respect of notices called on and orders of the day, the record in the Votes and Proceedings is, broadly speaking, an account of what actually takes place in the House. The decisions of the House on all questions before it are recorded irrespective of whether or not a division is called for, as are the terms of every motion and amendment moved in the House. If debate takes place on any question, that fact is also recorded.

The proceedings of the committee of the whole were first recorded in the Votes and Proceedings on 1 July 1910.¹²⁰ During the trial, under sessional orders, of legislation committees and estimates committees, in 1978 and 1979, it was the practice to record the minutes of these committees in the Votes and Proceedings as a supplement.¹²¹

Some matters not formally being business of the House are also recorded in the Votes and Proceedings because of the importance attached to them by the House. These include announcements concerning ministerial arrangements¹²², the absence of the Governor-General¹²³ (on occasions), and references to the deaths of persons which are not the subject of motions of condolence.¹²⁴

The standing orders provide that motions and amendments not seconded shall not be recorded in the Votes and Proceedings.¹²⁵ These are the only specific exclusions from the Votes and Proceedings mentioned in the standing orders. However, it has been the practice to exclude from the Votes and Proceedings certain matters which are not considered to be part of the business of the House. Proceedings which are not recorded include:

- **New notices.** These are listed on the next day's Notice Paper¹²⁶;

114 E.g. under S.O.s 210, 276, in relation to the Chair's casting vote.

115 S.O. 31.

116 S.O. 207.

117 S.O.s 210, 276.

118 S.O.s 193, 204. On one occasion the dissent of the Opposition was recorded, by leave, VP 1978-80/686.

119 This entry was first included in 1962, VP 1962-63/15.

120 VP 1910/8.

121 VP 1978-80/427-8, 1109-32.

122 VP 1978-80/1662.

123 VP 1978-80/966.

124 VP 1978-80/213.

125 S.O.s 160, 174; but see VP 1978-80/700-1 where a motion to suspend standing orders, although not seconded, was recorded as it led to further proceedings.

126 S.O. 133.

- **Personal explanations.** These are not formally part of the business of the House; they arise mainly from what is reported about a Member in the media and through what is said in debate, and are therefore not normally recorded. When a personal explanation gives rise to some further proceedings then it may be recorded¹²⁷;
- **Points of order.** These are not normally recorded unless they give rise to some further procedural action¹²⁸, and
- **Rulings of the Chair.** These are not normally recorded unless they are of a significant nature¹²⁹ or there is a motion of dissent from the ruling moved.¹³⁰

As it is the purpose of the Votes and Proceedings to record those things done by the House and to ignore what has been said in the House, no record is made of debates other than to record that debate took place on a particular question.

Accuracy and alterations

The accuracy of the Votes and Proceedings has only been challenged in the House on three occasions. On 25 July 1901, a Member directed the attention of the Speaker to an alleged omission from the Votes and Proceedings of some of the proceedings of the House. The Speaker ruled that, as the proceedings which were omitted were proceedings which were out of order, under the standing orders the entry had to appear in that form.¹³¹

In March 1944, a question was asked of the Speaker as to what procedures were available to Members to challenge the accuracy of the Votes and Proceedings. The Speaker suggested that the matter ought to be raised with him and he would discuss it with the Clerks. The Speaker ruled that such questions were not questions of order, and that a substantive motion, of which notice had been given, would be necessary if the matter were to be dealt with otherwise. The Speaker went on to say that the submission of such a motion might have far reaching consequences and warned Members of the danger of establishing a precedent of moving for the alteration of the records of the House.¹³² A specific matter was then raised, as a point of order, concerning an alleged inaccuracy in the Votes and Proceedings of 15 March 1944. The Speaker reiterated his earlier ruling and undertook to consult with the Clerks, Hansard and the Chairman of Committees.¹³³ Subsequently, a motion to suspend standing orders was unsuccessfully moved seeking a debate on the accuracy of the Votes and Proceedings.¹³⁴ The Speaker later reported to the House that, having investigated the allegation of inaccuracy, he was satisfied that the Votes and Proceedings of 15 March 1944 presented a correct record of the proceedings.¹³⁵

On 22 November 1979 a Member sought the indulgence of the Speaker to bring to his attention an alleged anomaly in the Votes and Proceedings of 20 November 1979. The Speaker indicated that the record would be checked and, if found to be inaccurate, corrected.¹³⁶ As the record was found to be accurate, no alteration was made.

On 24 November 1988, although the accuracy of the record in the Votes and Proceedings was not challenged per se, there was some confusion as to decisions taken during consideration of a bill at the previous sitting and following the

127 See VP 1978-80/848,913-14; and see Ch. on 'Control and conduct of debate'.

128 VP 1978-80/153.

129 VP 1974-75/169.

130 VP 1978-80/1182-3; and see Ch. on 'The Speaker, the Chairman of Committees and Officers'.

131 H.R. Deb. (25.7.01)3056-7.

132 H.R. Deb. (16.3.44)1472-3.

133 H.R. Deb. (16.3.44)1474; VP 1943-44/99.

134 VP 1943-44/101.

135 H.R. Deb. (21.3.44)1640.

136 H.R. Deb. (22.11.79)3369.

suspension of standing and sessional orders, the House resolved that the recorded decisions of the committee of the whole, and the House itself, on the bill be rescinded and the committee and remaining stages be considered again. This happened immediately.¹³⁷

There have been two occasions on which the House has considered motions to expunge entries from the Votes and Proceedings. On 28 July 1909, during the debate on the election of the Speaker, a motion was moved that the debate be adjourned. The ensuing division resulted in an equality of voting and the Clerk, who was acting as Chairman during the election, purported to exercise a casting vote against the motion for the adjournment of the debate. On a point of order being raised that the Clerk could not vote, the Clerk ruled that, if he did not have a casting vote as Chairman, the motion nevertheless had not been agreed to, as it had not received a majority of votes.¹³⁸ On 29 July 1909, a Member raised the matter as one of privilege and unsuccessfully moved for the expunging of those entries from the Votes and Proceedings which recorded the exercise of a casting vote by the Clerk.¹³⁹

On 29 April 1915, a Member moved that a resolution of the House in the previous Parliament, which suspended a Member from the services of the House, be expunged from the Votes and Proceedings, as the resolution was subversive of the right of a Member to freely address his constituents. The motion was agreed to without a division¹⁴⁰ and the entry in the printed volumes held by the Clerk was inked out.

The standing orders provide that, if a division has been inaccurately recorded, the Speaker may cause the record to be corrected.¹⁴¹ The Votes and Proceedings are also altered on other occasions to correct minor errors, without reference to the House. On such occasions either an erratum slip¹⁴² or a substitute copy of the Votes and Proceedings¹⁴³ is issued.

Notice Paper

The Notice Paper is an official document of the House, published by authority of the Clerk, showing all the business before the House on the particular sitting day for which the Notice Paper is issued. The business includes notices and orders of the day which have been set down for a particular date.

The Notice Paper is prepared by the Table Office and, with the exception of the first sitting day of a session, is issued for every day of sitting. The Notice Paper is divided into three distinct sections, namely, the business section, questions on notice and, after the Clerk's signature, an information section.

The business before the House, under both government business and private Members' business, includes notices of motions, notices of intention to introduce bills and uncompleted items of business which have been set down as orders of the day. Also included on the Notice Paper are unanswered questions on notice, and other information not directly connected with the business of the House, such as the names of Deputy Chairmen of Committees, a list of House and joint committees showing membership and current inquiries, and a list showing the appointments of Members to statutory bodies.

137 VP 1987-89/925-7; H.R. Deb. (24.11.88 a.m.) 3312.

138 VP 1909/62; and see Ch. on 'The Speaker, the Chairman of Committees and Officers'.

139 VP 1909/67.

140 VP 1914-17/181; see also Ch. on 'Members'.

141 S.O. 209; see VP 1940/105; and H.R. Deb. (7.4.78) 1239-40.

142 VP 1974-75/129.

143 VP 1978-80/547.

Items of business

The business section of the Notice Paper is usually in two parts; one dealing with government business, the other dealing with private Members' business. In both parts notices, orders of the day and contingent notices of motion may be listed.

When business has been accorded priority by the Selection Committee for the next sitting Thursday pursuant to sessional order 28D, including committee and delegation reports for presentation and debate as well as the selected items of private Members' business, this is listed separately under the heading 'Business accorded priority for . . .'. When, occasionally, items of business are sponsored by the Speaker, these are listed separately as 'Business of the House'.¹⁴⁴

NOTICES

A notice of motion¹⁴⁵ is entered on the Notice Paper after a Member has delivered a copy of its terms to the Clerk.¹⁴⁶ The standing orders are, to the necessary extent, applied and read as if a notice of intention to present a bill were a notice of motion.¹⁴⁷ A notice becomes effective only when it appears on the Notice Paper.¹⁴⁸ Under the arrangements effective from March 1988, private Members' notices not called on on any of the next eight sitting Thursdays are removed from the Notice Paper.

ORDERS OF THE DAY

An order of the day is a bill or other matter which the House has previously ordered to be taken into consideration at a future time. Subject to the provisions that Ministers may arrange the order of government business as they think fit, and that the Selection Committee has a similar power with regard to private Members' business¹⁴⁹, orders of the day are entered on the Notice Paper in accordance with the order in which the notices of motion were moved.¹⁵⁰ However, where an order of the day is set down for a day other than the next day of sitting, it is entered on the Notice Paper under a heading showing that day.¹⁵¹ Private Members' orders of the day not re-accorded priority by the Selection Committee within eight sitting Thursdays are removed from the Notice Paper.¹⁵²

The standing orders provide that orders of the day shall have precedence according to the order in which they appear on the Notice Paper.¹⁵³ At the adjournment of the House those orders of the day which have not been called on are set down on the Notice Paper for the next sitting day at the end of the orders set down for that day.¹⁵⁴

CONTINGENT NOTICES OF MOTION

Contingent notices are in practice normally given only by Ministers (*see* Chapter on 'Motions') and appear under a separate heading following orders of the day, government business.¹⁵⁵

144 NP 61(23.5.88)2483.

145 *See* Ch. on 'Motions' for full details.

146 S.O. 133, as amended by sessional order first adopted 25.2.85, VP 1985-87/35.

147 S.O. 211(e); *and see* Ch. on 'Legislation'.

148 S.O. 141.

149 A Selection Committee was first appointed in 1988.

150 *See* Chs on 'Routine of business and the sitting day' and 'Motions'.

151 NP 42(2.12.74)4503.

152 Sessional order 104B, VP 1987-89/300.

153 S.O. 189.

154 S.O. 190.

155 NP 176(19.8.80)10851. *See* Ch. on 'Motions'.

Questions on notice

The standing orders provide that notices of questions¹⁵⁶ shall be printed and placed on the Notice Paper in the order in which they are received by the Clerk.¹⁵⁷ In delivering a notice of question to the Clerk a Member is required to show the day proposed for asking the question.¹⁵⁸ The practice of the House is that, unless otherwise shown, a notice of question is for the next sitting day. If a notice of question is given for a specific date, it is shown accordingly on the Notice Paper.¹⁵⁹

Questions on notice remain on the Notice Paper until written replies are received by the Clerk. Since 13 August 1963, questions on notice have retained the number originally allotted to them instead of being renumbered each sitting day.¹⁶⁰ On 23 March 1977, the format of the Questions on Notice section of the Notice Paper was altered. The format provides that on the first sitting day of each week all unanswered questions are printed. On the remaining sitting days of each week only those questions on notice which appear for the first time during that week are printed. However, the numbers of those unanswered questions which have not been printed on a particular day are listed at the commencement of the section.¹⁶¹

In 1980, a question which had been lodged was inadvertently not printed on the Notice Paper. As the Notice Paper concerned was the last for the Autumn sittings, and the next would not be printed for some months, the Speaker directed that the question be printed in Hansard and treated as a question placed on notice.¹⁶²

General information

The final section of the Notice Paper appears after the Clerk's signature. This section is for the information of Members and the public generally and is not directly connected with the business of the House. It contains a current listing of the Deputy Chairmen of Committees, the membership of all parliamentary committees on which Members of the House are serving, and, since 1977¹⁶³, the current inquiries being undertaken by those committees. The appointments of Members to statutory bodies are also included in this section.

Parliamentary debates (Hansard)

The parliamentary debates are the full reports of the speeches of Members of the House. The debates are substantially the verbatim reports, with no unnecessary additions, with repetitions and redundancies omitted and with obvious mistakes corrected, but on the other hand leaving out nothing that adds to the meaning of a speech or illustrates an argument. The debates are better known as Hansard which is a name derived from the printing firm which began printing the House of Commons debates in the early 19th century. The term Hansard did not appear on the title page of the volumes of the Australian parliamentary debates until 1946, when it was added in parentheses.¹⁶⁴

The parliamentary debates, as well as containing the verbatim report of Members' speeches, contain the full text of petitions presented and any responses from Ministers, notices of motion, questions on notice and the answers thereto, details of divisions and requests for detailed information concerning the Parliament asked of the Speaker. The report of the debates does not constitute the official record of the

156 See Ch. on 'Questions'.

157 S.O.s 148,149.

158 S.O. 148.

159 NP 64(16.10.70)4351.

160 See NP 89(13.8.63); NP 90(14.8.63).

161 See NP 7(23.3.77)423.

162 H.R. Deb. (22.5.80)3105,3142.

163 NP 13(20.4.77).

164 For a full account of the history of Hansard see PP 286(1972).

proceedings of the House; that is the purpose of the Votes and Proceedings (*see* p. 567).

Hansard is issued in two editions. There is a daily proof issue usually available the day after the proceedings to which it refers, and a weekly final issue from which the permanent volumes are compiled.

The production of Hansard is the responsibility of the Principal Parliamentary Reporter and his or her department which is officially known as the Department of the Parliamentary Reporting Staff.¹⁶⁵

Control of publication

Control over the published content of the Hansard reports of the House resides in the House itself. Speakers have consistently ruled that, ultimately, only the House itself can exercise this control.¹⁶⁶

However, in 1977 the Speaker ruled that if the House passed a resolution ordering the incorporation of a document in Hansard, the Speaker still had a discretionary power to refuse that incorporation on the basis of the size of the document and the inconvenience it might cause in the production of the daily Hansard.¹⁶⁷

Until September 1953 the Hansard reports of the Senate and the House of Representatives were published in the same volume. In answer to a question without notice concerning the change to separate volumes, the Speaker informed the House that the change had taken place as a result of an agreement between the three political parties.¹⁶⁸

Corrections

Prior to the subedited transcript being forwarded to the Government Printer, each Member is given an opportunity to read what he or she has said and, if necessary, to make minor corrections. The right of Members to peruse and revise the proofs of their speeches was a well established practice long before the Commonwealth Parliament first met.¹⁶⁹ Although Members have this right to make corrections to their remarks, emendations which alter the sense of words used in debate or introduce new matter are not admissible.¹⁷⁰ In some instances of error or inaccuracy in the Hansard reports, the position is better clarified by a personal explanation.¹⁷¹

The copy of the subedited transcript forwarded to each Member is confidential and may not be seen by any one else without the permission of the Member.¹⁷² There are, however, three exceptions to this rule of confidentiality. The Speaker has access to the proofs of Members' speeches when they raise questions upon which he or she has to intervene¹⁷³, and both the Prime Minister and the Leader of the Opposition have an acknowledged right to see the proof transcripts of any part of a day's proceedings.¹⁷⁴ The effectiveness of this rule of confidentiality has been eroded by the introduction of tape recordings of the proceedings of the House. Members are permitted to listen to this tape record and to compare it with the proof of the daily Hansard.¹⁷⁵

165 For further discussion of the functions of the department *see* Ch. on 'The Speaker, the Chairman of Committees and Officers'.

166 H.R. Deb. (29.4.15)2724; H.R. Deb. (21.5.15)3344; H.R. Deb. (28.11.18)8511; H.R. Deb. (1.5.40)416; H.R. Deb. (8.5.42)1030; H.R. Deb. (27.9.51)164.

167 H.R. Deb. (21.9.77)1390-2,1418-19.

168 H.R. Deb. (16.10.53)1507.

169 PP 286(1972)74.

170 H.R. Deb. (26.6.06)745; H.R. Deb. (12.10.71)2160; H.R. Deb. (10.4.78)1299.

171 H.R. Deb. (10.4.78)1299.

172 H.R. Deb. (12.10.71)2160.

173 H.R. Deb. (12.11.13)3060.

174 H.R. Deb. (20.9.73)1337.

175 H.R. Deb. (20.9.73)1337.

As well as having an opportunity to make corrections before the subedited transcript is forwarded to the Government Printer for inclusion in the daily proof issue, Members also have a fortnight in which to forward to the Principal Parliamentary Reporter any suggested corrections for the weekly issue and the bound volumes.

Deletion and incorporation of material

Although only the House itself can exercise control over the content of the Hansard reports, in practice this responsibility has devolved onto the Speaker. It is the rulings of the Chair that form the guidelines for what is to be deleted from the debates and what is to be incorporated.

Since 1904, the practice that interjections to which the Member addressing the Chair does not reply ought not to be included in the Hansard record has been followed.¹⁷⁶ The Chair has ruled that questions ruled out of order should not be included in Hansard.¹⁷⁷ The Chair has a responsibility to ensure that no objectionable material is included in the debates.¹⁷⁸ Exceptionally, offensive remarks ordered to be withdrawn have been deleted from the records.¹⁷⁹ The Chair has ruled that the remarks made by a Member after his time has expired are not to be recorded¹⁸⁰ and that the remarks of a Member who has not received the call are not to be entered in the record.¹⁸¹

Although Hansard is basically a record of the spoken word, the House has always had procedures for the incorporation of unread material. The final decision on incorporating material rests with the Speaker and occupants of the Chair are guided in this matter by guidelines issued by the Speaker (*see* Chapter on 'Control and conduct of debate').

During both World War I and World War II the House acted to censor its own debates and at both times the Chair reiterated that only the House itself could exercise this form of control over its own debates.¹⁸²

Copyright

In recent years the issue of copyright has risen in connection with parliamentary publications, principally bills. Parliament has taken the position that it is of fundamental importance that it facilitate access by interested persons to its proceedings and publications. To ensure that the administrative arrangements were as straightforward and clear as possible, especially from the point of view of persons making inquiries on these matters, parliamentary authorities agreed that the responsible area of the Executive (at the time of publication the Australian Government Publishing Service) could serve as a single contact point for persons or organisations with copyright queries. Under the arrangements any relevant matter concerning Parliament must be referred to the appropriate parliamentary department. The Parliament has been careful to ensure that, whilst agreeing to certain administrative arrangements for reasons of practicality, it never countenanced the concept that parliamentary publications, such as bills, should in any sense be regarded as the 'property' of the Executive.¹⁸³

176 H.R. Deb. (11.11.04)6885; PP 286(1972)84.

177 H.R. Deb. (10.5.40)697.

178 H.R. Deb. (13.11.13)3118.

179 H.R. Deb. (13.10.33)3540; H.R. Deb. (9.5.50)2235; H.R. Deb. (21.9.77)1432.

180 H.R. Deb. (25.2.69)32.

181 H.R. Deb. (2.4.74)804.

182 H.R. Deb. (21.5.15)3344; H.R. Deb. (1.5.40)416.

183 *See* for example correspondence between Speaker Snedden and President Laucke and the Attorney-General. In the United Kingdom the Copyright, Designs and Patents Act 1988 gives statutory recognition to the principle of 'parliamentary copyright'.

PARLIAMENTARY PRIVILEGE RELATING TO PAPERS AND DOCUMENTS

The decision of the Court of Queen's Bench in the case of *Stockdale v. Hansard* (1837) prescribed the limits of the right of the House of Commons to publish its proceedings or matters connected therewith, and laid down that, apart from statutory protection, such publication, if defamatory, was actionable unless it was confined to Members of the House. Lord Denman's judgment in this case drew a distinction between what the House may order to be printed for the use of its Members and what may be published and sold indiscriminately. As a result of the decision, and to provide by statute the protection lacking under common law, the United Kingdom Parliament passed the Parliamentary Papers Act 1840 in which it is enacted that proceedings, criminal or civil, against persons for the publishing of a paper printed by either House of the Parliament, shall be immediately stayed on the production of a certificate, verified by affidavit, to the effect that such publication is by order of either House of the Parliament.¹⁸⁴

Similar legislation was introduced into the House of Representatives in 1908. The object of the legislation is to authorise the publication of parliamentary papers and to put beyond doubt the power of either House to authorise the publication of papers laid before it.¹⁸⁵ Equivalent provisions to those in the United Kingdom Act were included whereby the production of a certificate, verified by affidavit, stating that a document had been published by authority of either House shall immediately stay any proceedings, criminal or civil.¹⁸⁶

Documents authorised to be published

Section 2 of the Parliamentary Papers Act empowers the Senate, the House of Representatives, a joint sitting or a committee to authorise the publication of any document laid before it or any evidence given before it. Under section 3, when one of the above bodies has ordered a document or evidence to be printed, it is deemed, unless the contrary intention appears in the order, to have authorised the Government Printer to publish the document or evidence. Section 4 of the Act provides inter alia that no action or proceeding, civil or criminal, shall lie against any person for publishing any document under an authority given in pursuance of section 2 or deemed by section 3 to have been given.

Where a paper is ordered to be printed, the protection of the Parliamentary Papers Act applies only to the paper printed by the Government Printer pursuant to the order to print (in practice the parliamentary paper copy) and not to the paper's prior publication.¹⁸⁷ If a wider protection is sought, for example, for a paper printed other than by the Government Printer, publication must be separately authorised.

Subsection 16 (2) of the *Parliamentary Privileges Act 1987* provides inter alia that the formulation, making or publication of a document, including a report, by or pursuant to an order of a House or a committee, and the document so formulated, made or published, is included in the term 'proceedings in Parliament', that is, it is absolutely privileged.

Although the House since 1908 had the authority under the Parliamentary Papers Act to authorise the publication of any document laid before it, this authority, apart from the deemed authorisation implicit in the order to print, was not exercised until 1971.¹⁸⁸ In that instance a report of the Committee on the

¹⁸⁴ *May*, p. 87.

¹⁸⁵ H.R. Deb. (28.5.08)11673.

¹⁸⁶ *Parliamentary Papers Act 1908*, s. 4 (Act No. 16 of 1908).

¹⁸⁷ Advice of Attorney-General's Department, 1 November 1967.

¹⁸⁸ VP 1970-72/489.

Problem of the Crown-of-Thorns Starfish¹⁸⁹ was to be tabled by command. Advice had been received that some references in the report might be regarded as defamatory and that the report had been printed by a statutory authority, not by the Government Printer. It was decided that the appropriate course of action would be to authorise the publication of the report in accordance with the provisions of the Act. As publication, for the purposes of the Act, includes the distribution of a document to the public, it was decided that each copy of the report distributed by officers of the House would bear the stamp 'Publication authorised by the House of Representatives, 30 March 1971'. Arrangements were made for all copies of the report held by the authority to be delivered to the House of Representatives to be stamped, prior to being distributed.

Motions to authorise the publication of a paper are normally moved only at the request of those responsible for the paper. As well as applying to command papers, such motions have been moved in relation to statute papers¹⁹⁰, and committee reports.¹⁹¹ Motions to authorise publication have become more commonplace, for example, 30 such motions were agreed to by the House in 1986¹⁹² (but only 11 in 1988). Papers so authorised for publication are no longer stamped to signify this fact.

Hansard

During the second reading debate on the Parliamentary Papers Bill in 1908 the Attorney-General, in answer to queries regarding statutory protection for the publication of Hansard, informed the House that the publication of Hansard was protected at common law.¹⁹³ However, during the following 27 years the authority for publication of Hansard and the protection of those who published it, was consistently raised.¹⁹⁴ As a result the Act was amended in 1935 to establish the legal basis for the official character of Hansard, and to place beyond cavil its privileged position, with a provision that each House shall be deemed to have authorised the Government Printer to publish the reports of its debates and proceedings.¹⁹⁵

Votes and Proceedings and Notice Paper

Over the years questions have been raised concerning the authority by which the Votes and Proceedings and the Notice Paper are published, and concerning the protection, if any, afforded to officers of the House in the publication of these documents.

Although the Clerk is required, under the standing orders¹⁹⁶, to record all the proceedings of the House, there is no explicit authority by which the Votes and Proceedings are published. A procedure has been used in the House of Commons, since at least 1680, whereby the Votes and Proceedings of that House are published under a sessional order passed on the first day of sitting of each session.¹⁹⁷

The Votes and Proceedings receive statutory recognition in the Evidence Act which provides that all documents purporting to be copies of the Votes and Proceedings, if purporting to be printed by the Government Printer, shall on their mere production be admitted as proof of proceedings in Parliament in all courts.¹⁹⁸

189 PP 34(1971).

190 E.g. see report of the Auditor-General, VP 1978-80/1648, and report of A.C.T. Consumer Affairs Council and Consumer Affairs Bureau, VP 1978-80/1688.

191 E.g. *Joint Committee of Public Accounts, 181st Report*, VP 1978-80/1664.

192 VP 1985-87/1333.

193 H.R. Deb. (28.5.08)11673.

194 *'Commonwealth Hansard—Its establishment and development, 1901 to 1972'*, PP 286(1972)4-8.

195 Act No. 64 of 1935; H.R. Deb. (6.12.35)2829.

196 S.O. 38.

197 *May*, p. 257; Redlich, vol. II, pp. 47-8.

198 *Evidence Act 1905*, s. 7.

The Votes and Proceedings of the House of Representatives is probably a publication within the meaning of the Parliamentary Papers Act. It therefore follows that the Clerk of the House and the Government Printer would probably have the complete protection of parliamentary privilege in respect of the publication of the Votes and Proceedings.¹⁹⁹ Reliance is also to be placed in the general privileges of the Parliament based on Article 9 of the Bill of Rights 1688.

Although the standing orders acknowledge the existence of the Notice Paper and provide for what may be entered on it, there is no explicit authority for its publication. However, as the Notice Paper is an essential part of the proceedings of the House, the Clerk of the House and the Government Printer, in arranging for the printing and distribution of the Notice Paper to Members and officials concerned with the business of Parliament, are performing an essential function of the House and, consequently, protection is afforded them by virtue of Article 9 of the Bill of Rights. Insofar as the wider distribution of the Notice Paper is concerned, the Clerk and the Government Printer would have, at least, qualified privilege.²⁰⁰

Documents not ordered to be printed or authorised for publication

Standing Order 320 provides that:

All papers and documents presented to the House shall be considered public. Papers not ordered to be printed may be inspected at the offices of the House at any time by Members, and, with the permission of the Speaker, by other persons, and copies thereof or extracts therefrom may be made.

As the House considers all papers and documents laid before it as public documents, every effort is made to meet genuine requests for access to these papers.

Although it is one of the fundamental purposes of the Parliament to inform the public, in the broader sense, of the functions of Government and factors affecting the operations of Government, much of which is revealed through papers and documents, the release of certain tabled papers by officers of the House raises legal doubts. Although the release of such documents to Members is covered by absolute privilege²⁰¹, questions have been raised as to the possible liability of officers of the House in respect of an action for defamation if, in accordance with standing order 320, they made available to a member of the public a document tabled in the House but not ordered to be printed or specifically authorised to be published. The question has also been raised as to whether standing order 320 represents an authorisation by the House, for the purposes of the Parliamentary Papers Act, for the publication of papers and documents presented to the House. The position seems to be that it does not so operate. Although section 50 of the Constitution empowers each House to make rules and orders with respect to the mode in which its powers, privileges and immunities may be exercised and upheld, in the absence of specific legislation, publication to members of the public of proceedings in Parliament, with immunity from defamation proceedings, has never been a privilege or power of any one House of the Parliament.²⁰² Consequently, the standing orders alone cannot, by virtue only of section 50 of the Constitution, make privileged the publication to the public of documents presented to the House. Nevertheless both the *Parliamentary Privileges Act 1987* and the *Parliamentary Papers Act 1908* contain provisions which enable each House to confer privilege on the publication

199 Advice of Attorney-General's Department, dated 24 July 1964.

200 Advice of Attorney-General's Department, dated 24 July 1964.

201 Any doubts which may have existed on this were resolved by the *Parliamentary Privileges*

Act 1987, s.11. Documents supplied to Members (only) under the provisions of the Act may be so stamped.

202 *Stockdale v. Hansard* (1837), 9 Ad and El 1; advice of Attorney-General's Department, dated 1 November 1967.

of tabled papers. Although officers of the House, acting in accordance with standing order 320, would therefore seem not to enjoy absolute privilege in the general distribution of material, they may be entitled to qualified privilege under the general law in respect of publication to persons engaged bone fide in research.²⁰³

If necessary officers of the House, acting for the Speaker, examine documents which are not protected by the Parliamentary Papers Act or the Parliamentary Privileges Act before making them available to the public, to see if they may contain actionable material. In problem cases factors considered include the purposes for which documents are sought, for example, bona fide research purposes. On occasions the advice of the Attorney-General's Department has been sought. In this context it should be noted that legislation may provide protection for the publication of specified documents, quite apart from any consideration of parliamentary privilege.²⁰⁴

In February 1988 the matter of the publication of tabled papers was referred to the Standing Committee on Procedure. The committee reported to the House in November 1988, in effect stating its belief that the practice referred to above should continue, that is, that with respect to those papers not authorised for publication nor ordered to be printed, access to non Members be subjected to the discretion of the Speaker (subject to any direction by the House) where it is considered they may contain actionable material. However, to remove possible ambiguities the committee recommended that standing order 320 be reworded.²⁰⁵

CROWN PRIVILEGE OF DOCUMENTS

Under the doctrine of 'Crown privilege', sometimes described as 'public interest immunity', the Executive Government may claim immunity from requests or orders, by a court or by Parliament, for the production of documents on the grounds that public disclosure of the documents in question would be prejudicial to the public interest.

The courts

In relation to the courts the general view following the decision of the House of Lords in *Duncan v. Cammell Laird & Co.* in 1942, was that if a Minister certified that it was contrary to the public interest for documents under subpoena to be produced, the certificate was conclusive and the courts would not go behind that certificate.²⁰⁶ In 1968, the House of Lords examined the matter thoroughly in *Conway v. Rimmer* and held that the Minister's certificate was not conclusive in all cases. The view was taken that the court was justified in certain cases in looking at the documents and forming its own opinion as to whether it was in the public interest that they be withheld but that, in making such a decision, due weight would be given to the opinion expressed by the Minister. It was seen as a duty on the part of the court to hold a balance between the public interest as expressed by the Minister to withhold certain documents and the public interest in ensuring the proper administration of justice. The House of Lords went on to say that there was a class of document such as Cabinet minutes and minutes of discussions between heads of departments which were entitled to Crown privilege and that the court would uphold the claim for privilege because the documents by their nature fell into that class and the court would not order their disclosure irrespective of their contents.²⁰⁷

203 Advice of Attorney-General's Department, dated 1 November 1967. Other persons publishing papers not authorised for publication or ordered to be printed may, if they contain actionable material, incur a potential liability. Senate S.O.362 serves as a standing authorisation and applies to all papers tabled in the Senate.

204 E.g. *Health Insurance Act 1973*, s.106AA.

205 'The publication of tabled papers', *House of Representatives Standing Committee on Procedure, Third Report*, PP 262 (1988).

206 *Duncan v. Cammell Laird & Co.* [1942] AC 624.

207 *Conway v. Rimmer* (1968) AC 910.

In the judgment of the High Court of Australia in *Sankey v. Whitlam and others* it was held that the public interest in the administration of justice outweighed any public interest in withholding documents which belonged to a class of documents which may be protected from disclosure irrespective of their contents. The court held that such documents should be inspected by the court which should then itself determine whether the public interest rendered their non-disclosure necessary. The court held that a claim of Crown privilege has no automatic operation; it always remains the function of the court to determine upon that claim. Accordingly a class claim supported by reference to the need to encourage candour on the part of public servants in their advice to Ministers was not a tenable claim of Crown privilege.²⁰⁸

Subsequent court decisions²⁰⁹ have supported the principle that no class of document is entitled to absolute immunity from disclosure and that all cases may be resolved by the courts on the balance of the competing aspects of the public interest.²¹⁰

The Parliament

By the end of the 19th century the United Kingdom Parliament was invested with the power of ordering all documents to be laid before it which were necessary for its information. Despite the powers of each House of the United Kingdom Parliament to enforce the production of documents, a sufficient cause had to be shown for the exercise of that power.²¹¹ This unquestioned power of the House of Commons is extended to the Australian Parliament by way of section 49 of the Constitution.

On a number of occasions questions have been raised as to the limits of the power of the Parliament in Australia to call for documents from the Executive, giving rise to conflict between Crown privilege and parliamentary privilege.²¹² The report of the 1969 Senate Select Committee on the Canberra Abattoir²¹³, a committee comprised of three opposition Senators, made two references to the question of Crown privilege. First, the committee reported that in seeking assistance from the Treasurer it was informed that, subject to certain specific restrictions, officers of the Treasury would assist the committee to the fullest practicable extent. The restrictions specified were that the officers should not respond to questions that called for an expression of opinion on government policy, and that officers should not provide confidential information on the abattoir that had not been released to the public. Whilst not disagreeing with the first restriction placed on officers who were to appear before it, the committee took exception to the second restriction and advised the Treasurer that it reserved the right to discuss the matter with him should circumstances arise. The committee believed that, in its response to the Treasurer's second restriction, it had acted in accordance with proper parliamentary practice and procedures.²¹⁴ No circumstances arose which required the committee to discuss

208 *Sankey v. Whitlam and others* (1978) 142 CLR 62-4.

209 See in particular the judgement of the Federal Court of Australia in *Harbours Corporation of Queensland v. Vessey Chemicals Pty Ltd*, which analysed *Sankey v. Whitlam* ((1986) 67 A.L.R. 100) and subsequent judgements. The court found against the proposition that there was a presumption in favour of immunity from disclosure attaching to Cabinet documents.

210 However this common law position was overridden by statute in New South Wales by that

State's *Evidence Amendment Act 1979*, which made the certificate of the Attorney-General conclusive.

211 *May*, 10th edn, pp. 507-11.

212 'Parliamentary committees: powers over and protection afforded to witnesses', paper prepared by I.J. Greenwood and R.J. Ellicott, PP 168(1972)33-40.

213 'Canberra Abattoir', *Report of Senate Select Committee*, PP 99(1969).

214 PP 99(1969)3.

this matter with the Treasurer. Secondly, the committee requested the Minister for Health to provide a copy of an inter-departmental committee report. The Minister replied saying that, as the report was prepared at the request of Cabinet by senior officials for the purpose of formulating government policy, it was an area where the confidentiality of advice should be preserved. The committee reported to the Senate the Minister's refusal to supply the report.²¹⁵ Consideration of the committee's report was not finalised by the end of the 26th Parliament in 1969 and the question raised by the claim of Crown privilege was not pursued.

In 1972, the question of Crown privilege was given serious consideration by the Attorney-General (Senator Greenwood) and the Solicitor-General (Mr Ellicott) in a paper entitled 'Parliamentary Committees—Powers over and protection afforded to witnesses'.²¹⁶ In the paper the Law Officers expressed the view that the power of each House of the Australian Parliament to call for documents from the Executive is as wide as that of the House of Commons in 1901 whose power was, at least in theory, unlimited. The Law Officers believed that, because of the unlimited nature of this power, the extent to which it is used must necessarily rest on convention. Prior to the decision of the House of Lords in *Conway v. Rimmer*, the parliamentary practice of accepting, as conclusive, a certificate of a Minister regarding a claim of Crown privilege was consistent with the practice of the courts. Given the change in practice by the courts, the Law Officers raised the question as to whether the Parliament should accept as conclusive the certificate of a Minister or adopt a system similar to that adopted by the courts. The Law Officers were of the opinion that, given a parliamentary system based on party government and ministerial responsibility to the Parliament, the preferred course would be to continue the practice of treating a Minister's certificate as conclusive. However, in an addendum to the report of the Senate Committee of Privileges on matters referred by Senate resolution of 17 July 1975²¹⁷, Senator Greenwood expressed the view that 'The conclusiveness of the Minister's certificate is for the Senate to determine'. The Senator also pointed out that where this view conflicted with that given by him earlier as Attorney-General in the paper referred to above he preferred the later view.²¹⁸

A substantial claim of Crown privilege was made by the Prime Minister and three other Ministers in 1975. In this instance public servants were summoned to the Bar of the Senate to answer questions and produce documents relating to certain government overseas loans negotiations. The Prime Minister and the other Ministers (the Minister for Minerals and Energy, the Treasurer and the Attorney-General) each wrote to the President of the Senate making a claim of privilege on the grounds that for departmental officers to answer questions and to produce documents, as required by the Senate resolution of 9 July 1975²¹⁹, would be detrimental to the proper functioning of the Public Service and its relationship to Government, and would be injurious to the public interest.²²⁰ The three Ministers wrote further to the President advising him that they had given instructions to their officers, summoned to attend before the Senate, to the effect that, should the Senate reject the claim of Crown privilege, the officers were to decline to answer questions, except of a formal nature, and to decline to produce documents.²²¹ The Solicitor-General, also summoned to the Bar of the Senate, wrote to the President pointing

215 PP 99(1969)4.

216 PP 168(1972).

217 J 1974-75/836-7.

218 'Matters referred by Senate resolution of 17 July 1975', *Report of Senate Committee of Privileges*, PP 215(1975)58.

219 J 1974-75/824-5.

220 PP 215(1975)16-20.

221 PP 215(1975)23-8.

out that as the Crown had already made a claim of privilege he, as second Law Officer of the Crown, could not, consistent with his constitutional duty, intentionally act in opposition to the Crown's claim. Therefore, he concluded, he must object to answering any questions relating to the Senate resolution of 9 July 1975.²²² The Committee of Privileges, which was directed to inquire into the Crown's claims of privilege, presented its report to the Senate on 7 October 1975.²²³ The report, agreed to by a majority, that is, by four government Senators, had no doubt that the directions given by the Ministers were valid and lawful directions.²²⁴ The dissenting report, by three opposition Senators, held the view that a Minister's certificate of a claim of privilege was not conclusive; it was entitled to consideration, but the conclusiveness of the certificate was for the Senate to decide.²²⁵ The report of the committee was not considered by the Senate before both Houses of Parliament were dissolved on 11 November 1975.

The Joint Committee on the Parliamentary Committee System also considered the question of Crown privilege. The committee found itself unable to offer any clarification of the rules concerning Crown privilege, but expressed the opinion that Crown privilege is relied on by Governments to protect themselves, and that the protection of the confidentiality of advice to Ministers, and of security matters, is a shield behind which witnesses sometimes retreat. The committee was also of the opinion that the events in the Senate in July 1975, when the Senate attempted to question public servants on certain matters, had shown that neither House is likely to overcome the use of Crown privilege unless the Government is prepared to release the relevant information.²²⁶

A government paper entitled 'Government guidelines for official witnesses before parliamentary committees and related matters' was tabled in the House in 1984.²²⁷ The paper sets out guidelines for claims by Ministers that information should be withheld from disclosure on grounds of public interest and lists categories of documents in respect of which such claims might be considered. These categories coincide with some, but not all, of the classes of documents exempt from disclosure under the Freedom of Information Act.²²⁸

Under the guidelines it is suggested that Ministers, as a matter of practice, consider whether information sought by a committee could be provided in a form or under conditions which would avoid the need for a claim of immunity, for example, by the production of documents in camera on the basis that the information not be disclosed or published except with the Minister's consent.

In contrast to proposed government guidelines on the same subject issued several years earlier,²²⁹ the 1984 paper uses the term 'public interest immunity' rather than that of Crown or Executive privilege, and notes the need to balance the public interest in protecting documents with the **public interest in Parliament pursuing its investigative functions.**

The final report of the Joint Select Committee on Parliamentary Privilege²³⁰, also presented in 1984, addressed these matters. The committee noted that the trend in respect of court proceedings had been away from ready recognition of claims for Crown privilege and towards examining these claims closely and carefully weighing

222 J 1974-75/824-5; PP 215(1975)21-2.

223 J 1974-75/936; PP 215(1975).

224 PP 215(1975)11-12.

225 PP 215(1975)51.

226 'A new parliamentary committee system', *Report of the Joint Committee on the Parliamentary Committee System*, PP 128(1976)87-8.

227 H.R. Deb. (23.8.84)290-6. *And see* Ch. on 'Parliamentary committees'.

228 *Freedom of Information Act 1982*, ss. 32-47.

229 VP 1978-80/434.

230 PP 219 (1984).

competing 'public interest' considerations, and considered it possible that an analogous evolution in thinking might develop in Parliament to help resolve cases where disputes arose between committees requesting information and Executives resisting their requests. However it could not be presumed that this would happen.

Observing that the Parliament had never conceded that any authority other than its Houses should be the ultimate judge of whether or not a document should be produced or information given, the committee rejected the adoption of any mechanism for the resolution of disputes over the production of executive documents, such as by arbitration by the Head of State, which involved concessions to executive authority. The committee further reasoned that it was inherent in the different functions and interests of the Parliament and the Executive that there be areas of contention between them on such matters, that it was impossible to devise any means of eliminating contention between the two without one making major and unacceptable concessions to the other, and that adjudication by a third party would be acceptable to neither 'in this quintessentially political field'. In effect, the committee's conclusion was that matters should be allowed to stand as they were.

Elsewhere in the report the joint committee recommended that witnesses be invited to produce documents required by a committee and that an order for the production of documents be made only where a committee has made a decision that the circumstances warranted such an order. From this, and from the government guideline that Ministers explore the possibility of in camera evidence being given before making a claim for immunity, it may be concluded that there is a willingness on the part of some in the Parliament and on the part of some in the Executive to attempt to resolve conflicts in as mutually acceptable a way as possible.

There are therefore obvious differences between the relationship of the Executive and the Parliament, and the relationship of the Executive and the courts on the question of Crown privilege. As has been mentioned the courts in *Conway v. Rimmer* and more strongly in *Sankey v. Whitlam and others* have ruled that it is for the courts to decide on the conclusiveness of a Minister's certificate, and that a claim of privilege on the basis of a class of documents, the need of which is to preserve candour in public service advice to Ministers, is not now a tenable one.

In any further consideration of this question it is important to bear in mind that, because different aspects of the public interest are involved, that is, the proper functioning of the Parliament as against the due administration of justice, the question of disclosure of documents to the Parliament is not the same question as disclosure of documents to the courts.²³¹

231 PP 168(1972)40.