

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 presentation of a paper to the House places it on the public record.

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.

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 pursuant to statute, at government initiative (nominally by command of the Governor-General), pursuant to standing orders⁴, by order of the House and by leave of the House. Papers may be presented by the Speaker, by Ministers and, in restricted circumstances, by private Members. There are special provisions for the presentation of petitions and committee and delegation reports. Various documents are tabled by the Clerk. As well as being presented by Ministers, government papers may be delivered to the Clerk and be deemed to be presented.

Time of presentation

The more important ministerial papers are usually tabled during the period of time set aside in the routine of business following Question Time on Tuesdays, Wednesdays and Thursdays. However, a Minister may present a paper at any time when other business is not before the House.⁵ With some exceptions, leave is required for a paper to be

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.

presented at any other time (*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 Main Committee.⁶

Papers presented at the time provided in the routine of business are generally presented together according to a previously circulated list. A schedule of papers to be presented is made available to the Manager of Opposition Business by 12 noon on the day of presentation, and circulated to Members in the Chamber at the first opportunity. Following Question Time a Minister presents the papers as listed, and the papers so listed are recorded in the 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 the Speaker is chair, or joint chair, are presented by the Speaker.⁹ The Speaker presents the reports of parliamentary delegations of which he or she is leader.¹⁰ The Speaker tables papers dealing with parliamentary activities¹¹, 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.¹²

The Reserve Bank Board¹³ must send a copy of its annual report, together with a report of the Auditor-General on its financial statement, 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.¹⁴ 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.¹⁵ 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.¹⁶

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 House¹⁷, or messages of the same kind from foreign countries and other legislatures¹⁸, letters acknowledging a vote of thanks of the House¹⁹, or relating to the rights and privileges of the House or its Members, such as communications notifying the House of

6 VP 1993-95/2516; VP 1996/457.

7 Resolution of the House effective March 1988. VP 1987-89/302-3.

8 S.O. 319.

9 VP 1993-95/965.

10 VP 1993-95/1613.

11 See 'Bills not passed into law', VP 1978-80/602; 'History of Hansard', VP 1970-72/1236; 'Radio Broadcasting of Parliamentary Proceedings—papers', VP 1993-95/1327; VP 1996/95, 160.

12 Annual reports of the Department of the House of Representatives, e.g. VP 1993-95/1270; and Joint House Department, VP 1993-95/1467.

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

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

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

16 See Ch. on 'The Speaker, Deputy Speakers and Officers'.

17 VP 1978-80/981.

18 VP 1978-80/930, 977; VP 1996/366-7.

19 VP 1932-34/583.

the arrest or imprisonment of a Member.²⁰ 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 1989.²¹ 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 Speaker²², documents of this kind are not regarded as having been formally tabled.²³

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.

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.²⁴

Authorities may be required to investigate and report on specific matters and to present their reports to the Parliament.²⁵ A number of statutes require that the Minister responsible for the administration of an Act report to the Parliament on the operations of that Act²⁶, 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.²⁷

Since 1986 annual reports of government departments have been presented pursuant to statute, following amendments to the Public Service Act²⁸ providing that reports should be prepared and presented to Parliament each year²⁹ in accordance with guidelines from time to time presented to Parliament by the Prime Minister, after approval by the Joint Committee of Public Accounts.³⁰

There is a statutory requirement that where any Act confers the power to make regulations, those regulations shall be laid before each House of the Parliament. 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.³¹

By command

Command papers, which are papers tabled nominally by command of the Governor-General, are tabled in the House by Ministers (or by Assistant Ministers).³² In some cases

20 VP 1970-72/517; VP 1990-92/1633 (letter of apology).

21 VP 1987-89/809, 1025.

22 VP 1967-68/10.

23 And see May, p. 180.

24 Some authorities report for 12 month periods other than the financial year; see reports of joint fisheries authorities under the Fisheries Act, VP 1993-95/949, 1983. Some authorities are not required to table financial statements; see Aboriginal Land Commission (Aboriginal Land Rights (Northern Territory) Act), VP 1985-87/636, 1692.

25 E.g. *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.

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

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

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

29 For the year ended 30 June.

30 VP 1987-89/221.

31 See Ch. on 'Legislation'.

32 S.O. 319.

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 annual reports of Public Service departments, before there was a statutory requirement to present them to Parliament, were tabled as command papers. 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, treaties³³, agreements and exchanges of notes with foreign countries, reports of committees of inquiry established by the Government, and ministerial statements.

The term 'command paper' in relation 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, to save the time of the House the Standing Orders Committee recommended an amendment to the standing orders providing that a miscellany of papers (mainly statutory papers presented by the Clerk) may 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'.³⁴

In 1963 the Acts Interpretation Act was amended to make the proposed new procedures for the presentation of papers legally effective.³⁵

The main types of paper delivered to the Clerk for recording in the Votes and Proceedings are the papers presented pursuant to statute described above. In addition, it is not uncommon for command papers to be delivered to the Clerk.

By leave

Leave of the House is required to enable the presentation of a paper in circumstances not provided for in the standing orders or established practice of the House.

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.³⁶

³³ New arrangements for treaties were announced in May 1996: the Government undertook to table treaties at least 15 sitting days before taking binding action; treaties were to be tabled with a national interest analysis, to facilitate community and parliamentary scrutiny; and a Joint Standing Committee on Treaties was created to consider tabled treaties and related matters. H.R. Deb. (2.5.96) 231-5.

³⁴ *Standing Orders Committee Report*, H of R 1 (1962-63) 57; S.O. 319.

³⁵ *Acts Interpretation Act 1963* (Act No. 19 of 1963) s. 34B; H.R. Deb. (7.5.63) 1066-7.

³⁶ H.R. Deb. (9.10.79) 1724.

BY PRIVATE MEMBERS

Other than providing for the tabling of committee and delegation reports, the standing orders make no provision for private Members to table papers and documents. Any private Member (unless presenting a parliamentary committee report, or a delegation report during the time allotted on Mondays) wishing to table a paper must obtain leave of the House to do so³⁷, and leave must be granted without any dissentient voice.³⁸

MINISTERS

The requirement for leave also applies to Ministers when other business is before the House.³⁹ 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.⁴⁰

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.⁴¹ 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.⁴²

Speaker Snedden laid down steps 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.⁴³

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 Minister⁴⁴, nor to private documents.⁴⁵ A Minister who summarises correspondence, but does not actually quote from it, is not bound to lay it on the Table.⁴⁶ The standing order also applied in the former committee of the whole⁴⁷ and legislation committees⁴⁸, and by extension of these precedents would apply in the Main Committee.

It has been held that when public interest immunity (*see* p. 578) is claimed by the Government in court proceedings it is the duty of the court, and not the right of the Executive Government, to decide whether a document would be produced or withheld.⁴⁹ 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

37 VP 1978–80/1597; VP 1996/162.

38 S.O. 111.

39 S.O. 102. VP 1976–77/183; VP 1978–80/178; VP 1996/276.

40 VP 1993–95/1656; VP 1996/310.

41 VP 1993–95/1972; VP 1996/491.

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

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

44 H.R. Deb. (28.8.13) 646–7.

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

46 H.R. Deb. (23.2.72) 110; and *see* May, pp. 382–3.

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

48 May, p. 602.

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

suggested that the Speaker should stand in a similar position to the court and when a document relating to public affairs was quoted from by a Minister any claim by the Minister under standing order 321 that the document was confidential should be judged by the Speaker and not the Minister. The Speaker stated that the cases were significantly different and that the clear course of standing order 321 must be followed.⁵⁰

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.⁵¹ According to *May*, as a general rule only papers which are of a public or official character should be ordered to be laid before the House.⁵²

The procedure of calling for papers was frequently followed during the early years of the Parliament, but it fell into disuse.⁵³ 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.⁵⁴ In the Senate orders have been made more recently for the tabling of accounts and papers.⁵⁵

An order for papers to be laid before the House or an Address for a paper may give rise to a claim of 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.⁵⁶ 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 petitions⁵⁷, and copies of orders of the Court of Disputed Returns on the petitions⁵⁸, forwarded in accordance with the Commonwealth Electoral Act.⁵⁹

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.⁶⁰

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.⁶¹ There is no precedent of the House having

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

51 S.O. 316.

52 *May*, p. 214.

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

54 S.O. 334; and *see May*, p. 213 and Ch. on 'Committees'.

55 E.g. J 1993–95/316, 899, 901, 919.

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

57 VP 1993–95/45, 63, 106, 147; VP 1996/72, 109.

58 VP 1993–95/176, 1106; VP 1996/428–30.

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

60 S.O. 2(d); VP 1993–95/3–7; VP 1996/3–8.

61 S.O. 317.

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'.

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.⁶² Time is provided on Mondays for the presentation and consideration of committee reports.⁶³ 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.⁶⁴ Committee reports are normally presented by the chair of the committee or, in the case of a joint committee where the chair is a Senator and the deputy a Member of the House, by the deputy chair.⁶⁵ Any member of a committee may, when asked to do so, present a committee report on behalf of the chair.⁶⁶ 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.⁶⁷

Parliamentary delegation reports

Time is provided on Mondays for the presentation of reports of parliamentary delegations. Leave is required for a private Member to present a delegation report at other times.⁶⁸

Petitions

Petitions are presented following question time on Mondays. Presentation is by means of an announcement by the Clerk⁶⁹, indicating the Member who lodged the petition, and the identity and number of the petitioners and the subject matter of the petition. The full text of each petition is printed in Hansard.⁷⁰ 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 a 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. The relevant shadow minister, and occasionally other Members, may also make a statement on the same matter, by leave.⁷¹ 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

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

63 S.O. 102A; VP 1993-95/2519-20.

64 VP 1993-95/2662-3, see Ch. on 'Parliamentary committees'.

65 VP 1978-80/1584.

66 VP 1977/367-9; VP 1996/535.

67 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'.

68 S.O. 102A.

69 S.O. 101, 129, e.g. VP 1993-95/1618-9; VP 1996/491-3.

70 S.O. 129.

71 VP 1993-95/949; VP 1996/428.

orders to enable the statement to be made⁷² 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 present a copy of the statement. The Minister or another Minister may then move a motion 'That the House take note of the paper'.⁷³ Debate on this motion enables the contents of the statement to be debated immediately or at a later time (*and see* p. 563).

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.⁷⁴ 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.⁷⁵ 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.⁷⁶ 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.⁷⁷ This procedure, which did not find expression in the standing orders until 1950, has rarely been used.⁷⁸

Although documents held by the House are Commonwealth records for the purposes of the Archives Act⁷⁹, the requirements of the Act relating to the disposal of and access to such records do not apply unless provided for by regulation.⁸⁰ The relevant regulations acknowledge the position of the Parliament within the Commonwealth, the special recognition and treatment that should be given to particular parliamentary records, and the different powers and functions of the Parliament and the Executive Government.⁸¹ The regulations recognise Parliament's control over the records of proceedings of the Houses, tabled papers and certain committee documents ('class A records'). Other records, for example, administrative records of the parliamentary departments ('class B records') are subject to the provisions of the Archives Act applying to similar records of executive departments.

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. Similar authority was given to the Speaker and the President in respect of joint committee records.⁸²

72 VP 1993-95/923; *and see* Ch. on 'Control and conduct of debate'.

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

74 S.O. 39.

75 S.O. 320.

76 S.O. 39.

77 VP 1904/71.

78 VP 1950-51/36.

79 Archives Act 1983, s. 3.

80 Archives Act 1983, ss. 18, 20.

81 Archives (Records of Parliament) Regulations 1995, s. 2 (SR 91 of 1995).

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

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. Standing order 322 does not apply to reports of standing and select committees which are tabled by committee chairs. In these cases a motion to take note by a Minister requires the prior leave of the House.

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

Motion to authorise publication of document

Should it be considered necessary to bestow protection on the publication of a paper presented to the House wider than that provided by an order to print (*see* p. 575), a motion is moved 'That this House 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 is a ministerial statement that has been tabled or any other document tabled in the House, without coming to any positive decision concerning the paper.⁸³ If the motion is not moved by a Minister at the time of presentation of the paper, it may be moved at another time, 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. The timing of the resumption of debate (possibly in the Main Committee) is a matter for negotiation between the parties. Before the establishment of the Main Committee a large proportion of these orders of the day were later discharged from the Notice Paper, or lapsed on dissolution, not having been debated. A motion to take note is open to amendment.⁸⁴ Orders of the day referred to the Main Committee may be returned to the House after debate.⁸⁵

When papers are tabled together according to a previously circulated list (*see* p. 556), a single motion may be moved that the House take note of specified papers, with the resumption of debate on the motion to take note of each of the papers made a separate order of the day on the Notice Paper.⁸⁶

⁸³ For procedures applying to the presentation of committee and delegation reports *see* Chs on 'Private Members' business' and 'Committees'.

⁸⁴ VP 1985–87/882.

⁸⁵ VP 1993–95/2427.

⁸⁶ S.O. 322.

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.⁸⁷ 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.⁸⁸ On receipt of the petition it has been the practice of the Clerk, pursuant to standing orders⁸⁹, 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.⁹⁰ In some cases motions to grant leave have been moved without a petition having been presented⁹¹ or following the tabling by the Speaker of a less formal communication.⁹² All sides of the House have been involved in the consideration of such a matter.⁹³

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.⁹⁴ 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.

This practice and the issues involved are covered in detail in the Chapter on 'Parliamentary privilege'. Further information of a 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.

87 S.O. 368.

88 *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. Leave of the Senate is not required in these circumstances (resolution of 25.2.88, J 1987-90/525, 537). In 1980 the Commons dispensed with the requirement that leave be granted in respect of the production of parliamentary records.

89 S.O. 132.

90 VP 1985-87/1355.

91 VP 1983-84/881.

92 H.R. Deb.(25.2.92) 27 (faxed letter to the Speaker); VP 1996/514, 525 (following statement of committee chair).

93 In this case the matter was referred also to the Manager of Opposition Business and the (sole) independent Member, who each spoke to the motion moved on behalf of the Leader of the House, H.R. Deb.(25.2.92) 390-92.

94 VP 1996/408 (House informed of Speaker's decision).

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

Release prior to tabling

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 a motion to authorise publication; 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.

In such cases copies of the report are sent by the sponsoring department to all Members and Senators at their electorate offices.⁹⁵

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.⁹⁶

Parliamentary Papers Series

Historically⁹⁷ all papers and petitions ordered to be printed by either House of the Parliament have formed part of the Parliamentary Papers Series. The series was designed to be a comprehensive collection of the papers of a substantial nature presented to the Parliament⁹⁸, and since Federation these papers have served as a useful 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 ultimate responsibility for deciding whether papers have been of a substantial nature or important enough to form part of the series has resided with both or either House of the Parliament. This responsibility has been delegated, by way of the standing orders¹⁰⁰, to the Publications Committee of each House acting independently or jointly.

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

⁹⁵ *Guidelines for presentation of ministerial statements and reports to Parliament*. Department of the Prime Minister and Cabinet, November 1991.

⁹⁶ VP 1983–84/989; H.R. Deb. (11.10.84) 2200.

⁹⁷ At the date of publication there was some question as to the future of the Parliamentary Papers Series.

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.

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 or R or S, and (prior to 1961) published in bound form only in the Votes and Proceedings or Journals volumes respectively.

Role of the Publications Committee

The Publications Committee consists of seven members and has the power to confer with a similar committee of the Senate.¹⁰¹ Apart from initial meetings to elect their respective chairs, the committees usually meet as a joint committee. Historically, the Publications Committee has had two functions, namely, a printing function and an investigatory function.

The printing function

In performing its printing function the committee has considered all petitions and papers presented to the Parliament and not ordered to be printed by either House. It has reported from time to time as to which should be printed as parliamentary papers, and whether wholly or in part.¹⁰² The committee has been able to make recommendations only: it has been for the Houses to decide whether a paper is to be printed. In reporting, the Publications Committee has recommended that specified papers be printed. It has been open to any Member to seek in the House to move that a paper be printed even though the Publications Committee has not so recommended.

From 1987 the committee has followed guidelines to the effect that all reports, returns and statements of departments, authorities, parliamentary and ad hoc inquiries and royal commissions 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 have not fallen within the guidelines.¹⁰³ Other papers of an individual or non-recurring nature have been considered on their merits.

Papers which the Senate or the House have ordered to be printed have not been 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 has been before either House, the paper has not been considered by the Publications Committee. The paper would be considered by the committee later if the motion were subsequently withdrawn or if it lapsed.

In accordance with the principle that each House controls its own affairs, papers presented to only one House have been 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 tabled in the House of Representatives only.¹⁰⁴ 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

¹⁰¹ S.O. 28.

¹⁰² S.O. 28.

¹⁰³ 'Review of the cost and distribution of the Parliamentary Papers Series', *Joint Committee on Publications*, PP 450 (1986).

¹⁰⁴ *Interim Report of the Federal Parliamentary Labor Party Mining Committee on the Coal and Shale Mining Industry*, VP 1960-61/127.

was rescinded. The House Printing Committee then considered the paper and decided not to recommend its printing.¹⁰⁵

The investigatory function

The committee, when conferring with a similar committee of the Senate (as the Joint Committee on Publications), 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 ten inquiries, of which two were matters referred by a 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.¹⁰⁶

Reports

In undertaking its printing function the House Publications Committee has reported (normally stating that it has met in conference with the Senate Publications Committee) that the committee, having considered petitions and papers presented to the Parliament since a certain date, recommends that specified petitions (if any) and papers be printed. The report has been presented to the House (in the case of 'joint' reports, to both Houses) and reproduced in full in the Votes and Proceedings (and the Senate Journals).¹⁰⁷ The chair, by leave, has moved that the report be agreed to.¹⁰⁸ Reports of the Joint Committee on Publications on inquiries are dealt with in the same manner as reports from select and standing committees.

DOCUMENTS OF THE HOUSE¹⁰⁹

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, shall be signed by the Clerk and shall be the record of the proceedings of the House.

In 1994 the standing order was complemented by a resolution of the House declaring 'the Votes and Proceedings to be the record of the proceedings of the House of Representatives'.¹¹⁰

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.¹¹¹ The Votes and Proceedings are, in effect, the minutes of the House and should not be confused with Hansard, which is a verbatim report of the debates of the House.

¹⁰⁵ See *Odgers*, 6th edn, p. 791.

¹⁰⁶ VP 1977/166-7; VP 1996/535-6.

¹⁰⁷ The report covering the same papers will be numbered differently by each House, e.g. the 28th report of the House committee presented on 30.11.95 equated to the 25th report of the Senate committee presented the same day. VP 1993-96/2696; J 1993-96/4304.

¹⁰⁸ E.g. VP 1978-80/608-11; VP 1996/535-6. J 1978-80/436-8.

¹⁰⁹ 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.

¹¹⁰ VP 1993-95/1620.

¹¹¹ E.g. under S.O.s 210, 276, in relation to the Chair's casting vote.

The entries are compiled, on the authority of the Clerk, in the Table Office and are printed and circulated, usually the next day, in proof form. This proof is checked against the notes 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' attendance¹¹², divisions¹¹³, and any reason stated by the Chair for its casting vote¹¹⁴, 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.¹¹⁵

A day's Votes and Proceedings records the items of business considered by the House. Depending on the sequence of business on the particular day, it also records that questions without notice were asked¹¹⁶, the papers presented by Ministers, ministerial statements, any committee reports presented, the matter of public importance discussed, and legislation presented or considered, and it 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.

On the days on which the Main Committee meets, the Minutes of Proceedings of the Main Committee, signed by the Deputy Clerk in his or her capacity as Clerk of the Committee, are included as a supplement to the Votes and Proceedings.¹¹⁷ 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.¹¹⁸

The Votes and Proceedings also record the terms of statements by the Speaker on matters of privilege and important procedural and administrative matters. Some matters not formally being business of the House in a technical sense are also recorded because of the importance attached to them by the House. These include announcements concerning ministerial arrangements¹¹⁹, the absence of the Governor-General¹²⁰ (on occasions), and references to the deaths of persons which are not the subject of motions of condolence.¹²¹

The standing orders provide that motions and amendments not seconded shall not be recorded in the Votes and Proceedings.¹²² These are the only specific exclusions 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:

112 S.O. 31.

113 S.O. 207.

114 S.O.s 210, 276.

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

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

117 S.O. 279.

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

119 VP 1978-80/1662; VP 1996/241.

120 VP 1978-80/966.

121 VP 1978-80/213.

122 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.

- **New notices.** These are listed on the next day's Notice Paper¹²³;
- **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 recorded¹²⁴;
- **Points of order.** These are not normally recorded unless they give rise to some further procedural action¹²⁵; and
- **Rulings of the Chair.** These are not normally recorded unless they are of a significant nature¹²⁶ or there is a motion of dissent from the ruling moved.¹²⁷

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 omitted were proceedings which were out of order, under the standing orders the entry had to appear in that form.¹²⁸

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.¹²⁹ 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.¹³⁰ Subsequently, a motion to suspend standing orders was unsuccessfully moved seeking a debate on the accuracy of the Votes and Proceedings.¹³¹ 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.¹³²

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.¹³³ As the record was found to be accurate, no alteration was made.

¹²³ S.O. 133.

¹²⁴ See VP 1978–80/848, 913–14; and see Ch. on 'Control and conduct of debate'.

¹²⁵ VP 1978–80/153.

¹²⁶ VP 1974–75/169.

¹²⁷ VP 1978–80/1182–3; VP 1996/462; and see Ch. on 'The Speaker, Deputy Speakers and Officers'.

¹²⁸ H.R. Deb. (25.7.01) 3056–7.

¹²⁹ H.R. Deb. (16.3.44) 1472–3.

¹³⁰ H.R. Deb. (16.3.44) 1474; VP 1943–44/99.

¹³¹ VP 1943–44/101.

¹³² H.R. Deb. (21.3.44) 1640.

¹³³ H.R. Deb. (22.11.79) 3369.

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 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.¹³⁴

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 Chair 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 Chair, the motion nevertheless had not been agreed to, as it had not received a majority of votes.¹³⁵ 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.¹³⁶

On 29 April 1915, a Member moved that a resolution of the House in the previous Parliament, which had 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 division¹³⁷ 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.¹³⁸ 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 slip¹³⁹ or a substitute copy of the Votes and Proceedings¹⁴⁰ 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 and the Main Committee 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. Standing order 100A provides that all business before the House shall be set down on the Notice Paper in accordance with the standing and sessional orders and that 'the Notice Paper shall be published'. 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 has three distinct sections, namely, the business section, questions on notice and, after the Clerk's signature block, an information section.

Items of business

Business before the House is listed in the Notice Paper under the headings 'Government Business', 'Committee and Delegation Reports', and 'Private Members'

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

135 VP 1909/62; and see Ch. on 'The Speaker, Deputy Speakers and Officers'.

136 VP 1909/67.

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

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

139 VP 1974-75/129.

140 VP 1978-80/547.

Business', and within each category divided, where relevant¹⁴¹, into 'Notices' and 'Orders of the day'. When business has been accorded priority by the Selection Committee for the next sitting Monday pursuant to standing order 28D¹⁴², 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'.¹⁴³

Business which has been referred to the Main Committee is listed separately under the heading 'Business of the Main Committee'—subdivided if necessary into 'Committee and Delegation Reports' and 'Government Business'.

NOTICES

'Notices' are new proposed business—that is, business that has not yet come before the House. A notice of motion¹⁴⁴ is entered on the Notice Paper after a Member has delivered a copy of its terms to the Clerk.¹⁴⁵ 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.¹⁴⁶ A notice becomes effective only when it appears on the Notice Paper.¹⁴⁷ Private Members' notices not called on on any of the next eight sitting Mondays are removed from the Notice Paper.

ORDERS OF THE DAY

Orders of the day are items of business which have already been before the House and which the House has ordered to be taken into consideration at a future time (in the House or the Main Committee). 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' business and committee and delegation reports, orders of the day are entered on the Notice Paper in accordance with the order in which the notices of motion were given.¹⁴⁸ 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.¹⁴⁹ Orders of the day relating to committee and delegation reports and private Members' business which have not been re-accorded priority by the Selection Committee within eight sitting Mondays are removed from the Notice Paper.¹⁵⁰

The standing orders provide that orders of the day shall have precedence according to the order in which they appear on the Notice Paper.¹⁵¹ 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.¹⁵²

141 Notice is not necessary for presentation of a committee or delegation report.

142 See Ch. on 'Private Members' business'.

143 NP 61 (23.5.88) 2483.

144 See Ch. on 'Motions' for full details.

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

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

147 S.O. 141.

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

149 NP 42 (2.12.74) 4503.

150 S.O. 104B.

151 S.O. 189.

152 S.O. 190.

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.¹⁵³

Questions on notice

The standing orders provide that notices of questions¹⁵⁴ shall be printed and placed on the Notice Paper in the order in which they are received by the Clerk.¹⁵⁵ In delivering a notice of question to the Clerk a Member is required to show the day proposed for asking the question.¹⁵⁶ 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 (this is rare), it is shown accordingly on the Notice Paper.¹⁵⁷

Questions on notice are numbered consecutively in order of receipt by the Table Office¹⁵⁸ and remain on the Notice Paper until written replies are received by the Clerk. 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 and a list is included identifying by number the unanswered questions not printed.¹⁵⁹

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.¹⁶⁰

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 members of the Speaker's panel, the membership of all parliamentary committees on which Members of the House are serving, and a list of 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.¹⁶¹

153 NP 176 (19.8.80) 10851; NP 34 (8.10.96) 1231. *See* Ch. on 'Motions'.

154 *See* Ch. on 'Questions'.

155 S.O.s 148, 149.

156 S.O. 148.

157 NP 64 (16.10.70) 4351.

158 Before 13.8.63 questions were renumbered each sitting day, *see* NP 89 (13.8.63), NP 90 (14.8.63). The practice is to list consecutively all questions received from an individual Member, and to list these in order of the seniority of the Ministers to whom they are addressed, even though they may not have been received in that exact order.

159 Before 23.3.77 all unanswered questions were printed in every Notice Paper.

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

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

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 proceedings of the House; that is the purpose of the Votes and Proceedings.

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. In addition, Hansard is available electronically; the material for a sitting is normally available early the following morning in proof form, and may be accessed by Members and other users.

The production of Hansard is the responsibility of the Department of the Parliamentary Reporting Staff.¹⁶² For privilege in relation to Hansard *see* p. 576.

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.¹⁶³ 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.¹⁶⁴

Correction, deletion and incorporation of material

Prior to the subedited transcript being forwarded for printing, 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.¹⁶⁵ 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.¹⁶⁶ In some instances of error or inaccuracy in the Hansard reports, the position is better clarified by a personal explanation.¹⁶⁷

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.¹⁶⁸ 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 intervene¹⁶⁹, 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.¹⁷⁰ The effectiveness of this rule of confidentiality has been eroded by the introduction of electronic 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.¹⁷¹

162 For further discussion of the functions of the department *see* Ch. on 'The Speaker, Deputy Speakers and Officers'.

163 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.

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

165 PP 286 (1972) 74.

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

167 H.R. Deb. (10.4.78) 1299; H.R. Deb. (3.12.96) 7510.

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

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

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

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

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

Although only the House itself can exercise control over the content of the Hansard reports, in practice this responsibility has devolved onto the Speaker. Rulings of the Chair 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.¹⁷² The Chair has ruled that questions ruled out of order should not be included in Hansard.¹⁷³ The Chair has a responsibility to ensure that no objectionable material is included in the debates.¹⁷⁴ Exceptionally, offensive remarks ordered to be withdrawn have been deleted from the records.¹⁷⁵ The Chair has ruled that the remarks made by a Member after his time has expired are not to be recorded¹⁷⁶ and that the remarks of a Member who has not received the call are not to be entered in the record.¹⁷⁷

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.¹⁷⁸

Copyright

In recent years the issue of copyright has arisen in connection with parliamentary publications, principally bills. Parliament has taken the position that it is important that it facilitate access by interested persons to its proceedings and publications. As is to be expected, requests have often been made for the use of various items, and permission has been given on many occasions. To ensure that the administrative arrangements are as straightforward and clear as possible on these matters, especially from the point of view of persons making inquiries, parliamentary authorities have agreed that the responsible area of the Executive (at the time of publication the Australian Government Publishing Service) may serve as a single contact point for persons or organisations with copyright queries. Under the arrangements any relevant matter concerning Parliament must then 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 has never countenanced the concept that parliamentary publications, such as bills, should in any sense be regarded as the 'property' of the Executive.¹⁷⁹

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

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

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

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

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

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

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

179 *See* for example correspondence between Presiding Officers and Attorneys-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 decisions in the cases of *Stockdale v. Hansard* (1836–40) 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 order of 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.¹⁸⁰

Similar legislation was introduced into the House of Representatives in 1908. The object of the legislation was 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.¹⁸¹ 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.¹⁸²

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, it has been considered that 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.¹⁸³ 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

¹⁸⁰ *May*, p. 87.

¹⁸¹ H.R. Deb. (28.5.08) 11673.

¹⁸² *Parliamentary Papers Act 1908*, s. 4 (Act No. 16 of 1908).

¹⁸³ Advice of Attorney-General's Department, 1 November 1967.

deemed authorisation implicit in the order to print, was not exercised until 1971.¹⁸⁴ In that instance a report of the Committee on the Problem of the Crown-of-Thorns Starfish¹⁸⁵ was to be presented. Advice had been received that some references in the report might be regarded as defamatory. 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 Parliamentary Papers 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'.

Motions to authorise the publication of a paper are normally moved only at the request of those responsible for the presentation of the paper. As well as applying to papers presented by the Government, whether pursuant to statute or voluntarily, such motions have been moved in relation to committee reports.¹⁸⁶ Motions to authorise publication are now quite common. Papers so authorised for publication are no longer stamped to signify this fact. Senate standing orders give blanket authorisation for the publication of all documents tabled in the Senate¹⁸⁷, but the Procedure Committee has recommended against such an approach in the House.¹⁸⁸

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.¹⁸⁹ However, during the following 27 years questions regarding the authority for publication of Hansard and the protection of those who published it were consistently raised.¹⁹⁰ 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.¹⁹¹

In 1993 the House and the Senate passed resolutions, with continuing effect, authorising the publication of the Hansard record of their respective proceedings. This action removed any doubt that might have applied to the status of the Hansard report when published by anyone other than the Government Printer (a particular consideration being distribution in electronic form).¹⁹²

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.

184 VP 1970–72/489.

185 PP 34 (1971).

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

187 Senate S.O. 167.

188 PP 262 (1988).

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

190 *Commonwealth Hansard—Its establishment and development, 1901 to 1972*, PP 286 (1972) 4–8.

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

192 VP 1993–95/25; J 1993–95/123.

Although the Clerk is required, under the standing orders¹⁹³, to record all the proceedings of the House, the most explicit authority by which the Votes and Proceedings are published is the resolution of 1994 declaring the Votes and Proceedings to be the record of the proceedings of the House of Representatives.¹⁹⁴ 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.¹⁹⁵

It is considered that the actions of the Clerk of the House and others responsible for the preparation and publication of the Votes and Proceedings would be protected by parliamentary privilege, as these actions would seem to fall within the ambit of s. 16 of the Parliamentary Privileges Act. Before the enactment of that law, it had been considered that the Votes and Proceedings of the House of Representatives was probably a publication within the meaning of the Parliamentary Papers Act and that therefore the Clerk of the House and the printer would probably have the complete protection of parliamentary privilege in respect of the publication of the Votes and Proceedings.¹⁹⁶

Although the standing orders acknowledged the existence of the Notice Paper and provided for what may be entered on it, there was until recently 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 printer, in arranging for the printing and distribution of the Notice Paper to Members and others concerned with the business of Parliament, are performing an essential function of the House and, consequently, protection was afforded them by virtue of Article 9 of the Bill of Rights. In so far as the wider distribution of the Notice Paper was concerned, the Clerk and the Government Printer would have had at least qualified privilege.¹⁹⁷ It may also be that the provisions of s.16 of the Parliamentary Privileges Act would have been found to have removed any residual doubts in this matter. The position was further strengthened on 1 May 1996 when standing order 100A was agreed to providing that 'All business before the House shall be set down on the Notice Paper . . . and the Notice Paper shall be published'. In explaining the new standing order the Leader of the House stated 'This will ensure that all matters in the Notice Paper, including questions on notice, whether in printed or electronic form, are covered by parliamentary privilege'.¹⁹⁸

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.

The release of certain tabled papers by officers of the House raises legal questions. Although the release of such documents to Members is covered by absolute privilege¹⁹⁹, 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

193 S.O. 38.

194 VP 1993-95/1620.

195 *May*, p. 205; Redlich, vol. II, pp. 47-8.

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

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

198 H.R. Deb. (1.5.96) 87.

199 *Parliamentary Privileges Act 1987*, s.11.

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.²⁰⁰ 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 under the provisions of both the *Parliamentary Privileges Act 1987* and the *Parliamentary Papers Act 1908* they could. Each Act contains provisions which enable each House to confer privilege on the publication of tabled papers and such action can be taken by way of suitably worded standing orders or specific motions. In the absence of such action, although officers of the House, acting in accordance with standing order 320, may not 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.²⁰¹

If necessary, officers of the House, acting for the Speaker, examine documents the publication of which is not protected by a suitable motion 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.²⁰²

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 there should not be a standing order authorising the publication of all tabled papers and that with respect to those papers not authorised for publication nor ordered to be printed, access to persons other than 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.²⁰³

PUBLIC INTEREST IMMUNITY

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

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

201 Advice of Attorney-General's Department, dated 1 November 1967. Other persons publishing papers not authorised for publication nor ordered to be printed may, if they contain actionable material, incur a potential liability. Senate S.O. 167 serves as a standing authorisation and applies to all papers tabled in the Senate.

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

203 House of Representatives Standing Committee on Procedure, *The publication of tabled papers*, PP 262 (1988). No action was taken by the House on the recommendation.

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.²⁰⁴ 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 (as public interest immunity was then known) 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.²⁰⁵

In the judgment of the High Court of Australia in *Sankey v. Whitlam* 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.²⁰⁶

Subsequent court decisions²⁰⁷ 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.²⁰⁸

A court may consider that the competing public interests would best be served by the limited, rather than public, disclosure of documents for which immunity is claimed.²⁰⁹

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

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

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

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

208 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.

209 For example, the Federal Court has ordered confidential Foreign Investment Review Board documents to be made available to an applicant's legal representatives, *INP Consortium Limited and ors v. John Fairfax Holdings Limited (formerly Tourang Limited) and ors*.

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.²¹⁰ 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 public interest immunity and parliamentary privilege. These issues are most likely to arise in connection with parliamentary committee inquiries, and these aspects are covered in the Chapter on 'Committees'. Instances where the government of the day has come into conflict with the Senate or a Senate committee over claims of executive privilege or public interest immunity are outlined in *Odgers*.²¹¹ Because of the majority of government Members in the House, disputes over such matters between the Government and the House are unlikely to arise or when they do, it is likely that a compromise may be reached, for example, by agreement to produce documents on a confidential basis.

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'.²¹² 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 1901 House of Commons, 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 1975²¹³, 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.²¹⁴

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

210 *May*, 10th edn, pp. 507–11.

211 See *Odgers*, 7th edn, pp 484–97.

212 PP 168 (1972).

213 J 1974–75/836–7.

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

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 1975²¹⁵, would be detrimental to the proper functioning of the Public Service and its relationship to Government, and would be injurious to the public interest.²¹⁶ 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.²¹⁷ The Solicitor-General, also summoned to the Bar of the Senate, wrote to the President pointing 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 1975.²¹⁸ 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 1975.²¹⁹ 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.²²⁰ 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.²²¹ The report of the committee was not considered by the Senate before both Houses of Parliament were dissolved on 11 November 1975.

On 10 May 1994, the Government not having provided certain documentary material sought by order of the Senate, the Senate censured the Senate Minister representing the responsible Minister, and the responsible Minister (a Member of the House) 'for their joint contempt of the Senate in failing to comply with an order [of the Senate]'. The Senate resolved that the Ministers 'purge the contempt' by tabling the documents by 6 p.m. on that day.²²² The documents were not however provided to the Senate.

The final report of the Joint Select Committee on Parliamentary Privilege²²³, 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 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

215 J 1974-75/824-5.

216 PP 215 (1975) 16-20.

217 PP 215 (1975) 23-8.

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

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

220 PP 215 (1975) 11-12.

221 PP 215 (1975) 51.

222 J 1993-95/1641.

223 PP 219 (1984).

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.

In 1994, following a dispute between the Government and a Senate select committee over the production of documents concerning Foreign Investment Review Board decisions, a private Senator introduced a bill giving the Federal Court the power to determine whether documents in dispute in such circumstances could be withheld from a House or committee on public interest grounds.²²⁴ The bill was referred to the Senate Privileges Committee, which recommended that the bill not be proceeded with and that claims of public interest immunity should continue to be dealt with by the House concerned.²²⁵ The House also referred the matter of the appropriateness of such legislation to its Privileges Committee.²²⁶ The committee concluded that the evidence available did not establish that it would be desirable for legislation to be enacted to transfer to the Court the responsibility to adjudicate in these matters.²²⁷

In any 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.²²⁸

224 *Parliamentary Privileges Amendment (Enforcement of Lawful Orders) Bill 1994*.

225 *Odgers*, 7th edn, pp. 494–6.

226 VP 1993–96/1107.

227 H.R. Deb. (8.12.94) 4375. PP 408 (1994).

228 PP 168 (1972) 40.