The Table

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IN
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The Journal of The Society of Clerks-at-the-Table in Commonwealth Parliaments

EDITORIAL

In the House of Lords 2006 saw the election of Baroness Hayman as the first Lord Speaker, bringing to an end a centuries-long sequence of Lord Chancellors who have held the post of Speaker *ex officio*. Having been elected in a secret ballot by the Members of the House of Lords, Baroness Hayman replaced the Lord Chancellor on the Woolsack with little ceremony, on 4 July 2006.

The election of a Speaker was undoubtedly among the most significant events in the House of Lords in recent years. Its procedural and political implications are difficult to predict, but will certainly be far-reaching. The actual events of 2006 were largely covered in that year's *Table*,[1] and the story is not repeated in this year's edition, although the method of election (alternative vote) is touched on in the article "Multiple Choice Voting", by Andrew Makower, Paul Bristow and Nicolas Besly. A full article on the historic election of a Lord Speaker will follow in a future volume, once the consequences have begun to make themselves felt.

Elsewhere, the contributions to this year's *Table* bear witness to highly charged developments, both political and procedural, around the Commonwealth. Harry Evans, the Clerk of the Australian Senate, writes of changes to the public finance system by which, in his words, the Australian government has "succeeded in reversing the results of the English Civil War, the Revolution of 1688 and the reforms of William Pitt the Younger". The Senate's Finance and Public Administration Committee is still in the early stages of seeking to claw back the supervisory function with regard to expenditure that is taken for granted in most parliaments.

Charles Robert, Principal Clerk in the Canadian Senate, has collaborated with his colleague Vince MacNeil in contributing a second major article on privilege, following up his contribution to the 2006 *Table*.[2] On this occasion,

[1] See *The Table*, 74 (2006), pp 127–129.

[2] *Ibid.*, pp 7–21, "An Opportunity Missed: The Joint Committee on Parliamentary Privilege, Graham-Campbell and Internal Affairs".

he explores a series of court decisions, based on the Canadian Charter of Rights and Freedoms, which have progressively narrowed the scope of parliamentary privilege in Canada. He argues that the Canadian parliament, instead of responding to legal challenges with appeals to archaic nineteenth century interpretations of privilege, should itself initiate a review of the scope of privilege in the twenty-first century. He concludes that modernisation will happen one way or another—the question is whether this modernisation will be undertaken in a comprehensive fashion by parliament, or, piecemeal, by the courts.

Two other articles, by Neil Laurie, Clerk of the Parliament in Queensland, address specific aspects of privilege. The first explores whether privilege attaches to ministerial briefings, while the second analyses developments in the case-law governing how privilege is applied to documents published online.

On a very different subject, Ian Harris, Clerk of the Australian House of Representatives, writes of the Parliamentary Studies Centre, established by the Departments of the Senate and House of Representatives, in partnership with the Australian National University. And, in a departure from the normal form of articles in *The Table*, we reprint an edited transcript of a seminar in which two Clerks with long experience of Westminster, Paul Hayter and Jacqy Sharpe, reflect on how times and manners have changed in the last 40 years.

This year we received relatively few contributions to the *Table*, but the quality and level of detail more than made up for the shortage of contributors. As ever, the Editor would like to thank all contributors for their support.

MEMBERS OF THE SOCIETY

Australia Senate

Roy Edward Bullock (1916–2006), former Clerk of the Australian Senate, died on 13 May 2006. He was born in Wagga Wagga and attended Sydney University on a scholarship, graduating with honours in Arts in 1938. After a time as a teacher and an officer in the Treasury, he took up a position in the Department of the Senate. He was secretary to many prominent Senate committees, and became the semi-official chronicler of Senate events, writing many articles for The Table and other journals. He was appointed Clerk of the Senate in 1979 but was compelled to retire in 1981 due to ill health.

John Vander Wyk retired from the service of the Australian Senate in September 2006, after 32 years. He joined the Senate after training as a jour-

nalist, and was noted for his clear and incisive writing. He was a highly experienced committee secretary and for many years Clerk Assistant (Committees) in charge of the Senate Committee Office. He will be remembered for two particular pieces of work. One was a thoroughly researched paper in 1988, which demonstrated that successive governments had confused and misrepresented the processes of prorogation and dissolution of the House of Representatives in relation to their effect on the Senate. This eventually resulted in the government changing the processes and the wording of the associated documentation. The second was a comprehensive guide to the procedures and practices of Senate committees, which he completed shortly before his retirement. Generous tributes were paid to his service by senators of all parties in the Senate.

New South Wales Legislative Council

John Evans. On 24 October 2006, the President informed the House of the impending retirement of the Clerk of the Parliaments, Mr John Evans PSM, following 35 years service in the Legislative Council. Mr Evans' last day of service will be 29 July 2007. On 23 November 2006, the last sitting day for the session, the Leader of the House moved a motion of appreciation for Mr Evans' distinguished service to the Legislative Council and the State in his role as Clerk of the Parliaments and Clerk of the Legislative Council. Mr Evans was appointed Clerk of the Parliaments and Clerk of the Legislative Council in August 1989. He has served the Department of the Legislative Council since 1971 and has held various positions including Usher of the Black Rod, Clerk Assistant and Deputy Clerk. His professionalism and commitment to the institution of Parliament, and to the Council in particular, are acknowledged by his colleagues both in New South Wales and throughout the Commonwealth, and his presence will be sadly missed by members and staff alike.

Lynn Lovelock was appointed Acting Clerk of the Parliaments and Clerk of the Legislative Council on 30 January 2007. Ms Lovelock joined the Department of the Legislative Council in 1987, having been previously employed in the Commonwealth Public Service and later, as a high school teacher. Prior to her appointment as Acting Clerk, Ms Lovelock held the positions of Deputy Clerk, Clerk Assistant, Usher of the Black Rod and Administration Officer. Ms Lovelock has a wealth of knowledge and experience in the management of the Parliament and in parliamentary practice and procedure, a background in research and in the development of public sector policy.

Warren Cahill. On 14 November 2006 the Legislative Council said farewell to Mr Warren Cahill, former Clerk Assistant—Committees and Usher of the Black Rod. After 19 years service Mr Cahill left the parliament to take up a post with the United Nations Development Program to the Solomon Islands Parliament. A motion of appreciation was moved by the Leader of the House in which Mr Cahill was commended for his service, with members observing that he would be best remembered for his years served as Usher of the Black Rod, during which he escorted the then Treasurer and Leader of the Government, the Honourable Michael Egan, from the Chamber for failing to comply with an order of the House to table certain papers.

David Blunt was appointed Deputy Clerk on 5 February 2007. Mr Blunt has served in a range of positions with the Legislative Council since December 1995: Clerk Assistance—Corporate Support, Director—Procedure and Usher of the Black Rod, Director of General Purpose Standing Committees, and inaugural Director for the Standing Committee on Law and Justice. He had previously worked in the Legislative Assembly as a senior research office to the NSW Public Accounts Committee and the Parliamentary Joint Committee in the Independent Commission Against Corruption.

Robert Stefanic was appointed Clerk Assistant—Corporate Support on 5 February 2007. Mr Stefanic joined the Legislative Council in 1996 having previously worked as a corporate tax consultant. Prior to his appointment to the position of Clerk Assistant, he held a number of positions including Director—Corporate Support, Director—Committees, Senior Project Officer—Committee, and Manager—Procedure Office and Deputy Usher of the Black Rod.

Steven Reynolds was appointed Clerk Assistant—Procedure Support and Usher of the Black Rod on 10 November 2006. Prior to his current position, Mr Reynolds held the position of Usher of the Black Rod together with the position of Director-Procedure. Mr Reynolds joined the Legislative Council in May 1999 as a Senior Project Officer—Committees before being appointed as Director—Committees, including Director of General Purpose Standing Committees. He has held several other public sector and non-government positions, including grants manager for the NSW Law Foundation and manager of a litigation support fund.

Queensland Legislative Assembly

Neil Laurie, Clerk of the Parliament, was awarded the Queensland University of Technology Law Faculty Alumni of the Year.

Victoria Legislative Council

Bridget Noonan was appointed in August 2006 as Assistant Clerk—Committees.

Gavin Bourke, Assistant Clerk—Procedure and Serjeant at Arms, began a 12-month leave of absence to fulfil a role with the Australian Army in December 2006. **Anne Sargen**t, previously Assistant Chamber Officer, is acting in the role of Assistant Clerk—Procedure and Serjeant at Arms.

Western Australia Legislative Council

On 14 March 2006 **Mia Betjeman** was appointed the 25th Clerk of the Legislative Council and Clerk of the Parliaments. Ms Betjeman is the first woman to be appointed as a Clerk in the Western Australian Parliament. The appointment coincided with the first sitting day of the Legislative Council in 2006.

Laurence (Laurie) Bernhard Marquet, the former Clerk of the Legislative Council and Clerk of the Parliaments, passed away in Royal Perth Hospital on 22 April 2006. Mr Marquet was the longest-serving Clerk in any Australian Parliament, and the longest-serving Clerk of the Western Australian Legislative Council. Mr Marquet's 23 years of dedicated service to the Parliament of Western Australia were formally recognised on 23 June 2005 when the then President of the Legislative Council, Hon John Cowdell MLC, presented the Parliamentary Service Award in recognition of officers who have served with distinction.

Canada Senate

Gary O'Brien, the Deputy Clerk of the Senate, retired in 2006.

Charles Robert, who formerly held the position of Principal Clerk, Procedure was made Principal Clerk, Chamber Operations and Procedure.

Blair Armitage became Principal Clerk, Legislative Systems and Broadcasting, having been Principal Clerk, Legislative Support Office.

Ontario Legislative Assembly

Claude DesRosiers, Clerk for 20 years, retired on 31 December 2006.

Deborah Deller was appointed Clerk on 21 March 2007. Ms Deller had been Acting Clerk since January 2007, Deputy Clerk and Executive Director of Legislative Services from 2002–07, and Assistant Clerk and Executive Director of Legislative Services from 1997–2003. Ms Deller is the first woman to occupy the position in Ontario.

Todd Decker was appointed Deputy Clerk and Executive Director of Legislative Services on 25 April 2007. Mr Decker was Clerk of Journals and Procedural Research from 1997–2007.

Lisa Freedman was appointed Clerk of Journals and Procedural Research on 22 May 2007. Ms Freedman was Clerk of Committees from 1997–2007.

Tonia Grannum was appointed Clerk of Committees on 4 June 2007. Ms Grannum was a Research Assistant with the Committees Branch from 1989–1992 and a Committee Clerk from 1992–2007.

India Rajya Sabha

Dr Yogendra Narain, Secretary-General, Council of States (Rajya Sabha), Parliament of India, was elected as Member of the Executive Committee of the Association of Secretaries-General of Parliaments (ASGP) in October 2006 in Geneva.

United Kingdom House of Commons

Sir Roger Sands, Clerk of the House of Commons, retired at the end of September 2006.

Dr Malcolm Jack took up appointment as Clerk of the House of Commons on 1 October 2006. **Robert Rogers** was promoted to Clerk of Legislation.

Malcolm Jack writes: Roger Sands had a quiet and authoritative manner which was based on a formidably acute intellect (enabling him quickly to grasp the essential issues of any discussion or argument) and a self discipline which could, at times, appear austere in mastering the details of any brief put before him and which may have earned him the description that he could, on occasion, close in "like a lethal hunter-killer submarine". Many years ago I followed him as Secretary to the Chairman of Ways and Means and found that all the incumbents of the Chair whom we both served were struck by the quality of Roger's advice and his organisational skills.

Roger's career provided a mix of jobs which honed his skills both as a proceduralist and an administrator and, eventually, as the second Chief Executive of the House service. His procedural skills were particularly developed in the Public Bill Office where he was very much at home. His periods as Clerk of Public Bills and then Legislation (1994–2001) was probably the period he most enjoyed in his career and those of us who followed him in that job found plenty of evidence of hallmark Sands decisions. Before that, in the mid eighties, he had served as Secretary to the House of Commons

Commission, gaining an extensive knowledge of House administration that would serve him well as Chief Executive.

Roger was very keen on Commonwealth links. As Clerk of the Overseas Office he made important connections with colleagues that enabled him to bring back procedural practices to Westminster (for example, from Australia the model for what has become Westminster Hall). Keeping an open mind about procedural developments also made him keep up his lifelong connection with the Study of Parliament Group.

Roger's time as Clerk of the House, although short, was also one of significant change. Some of that change he embraced; some of it, like the café society which has developed in Portcullis House, was not entirely to his taste. We all hope that he and Jennifer have a long and happy retirement.

Wales National Assembly

Paul Silk is no longer Clerk to the National Assembly for Wales but is working on secondment in the House of Commons. During 2007 he has been Director of Strategic Projects in PICT.

PARLIAMENTARY CONTROL OF FINANCE: BRINGING BACK THE REVOLUTION

HARRY EVANS
Clerk of the Australian Senate

Introduction

At a hearing of the Senate Finance and Public Administration Committee in September 2006, I told the committee that the government had succeeded in reversing the results of the English Civil War, the Revolution of 1688 and the reforms of William Pitt the Younger. This was an attempt, not entirely appreciated by some of the senators, to draw attention to the serious constitutional and parliamentary implications of the public finance system put in place since 1997. This regime makes it extremely easy for government to find large amounts of money for virtually any purpose, and without specific and advance parliamentary approval. The system was largely established by the Financial Management and Accountability Act 1997 (the FMA Act), which was presented as a streamlining and modernisation of public finances. The potential of the system did not become clear until 2005, when the government spent $55 million on an advertising campaign for its workplace relations policies, which had not yet been enacted, and for which no parliamentary appropriation had been made. This was done simply by spending departmental appropriations that had been appropriated for vaguely-stated "outcomes", which are a feature of the new system.

Such is the "new" financial system that the Parliament does not effectively control either the amount of money available to government or the purposes on which it may be expended. This is due to:

- The variety of sources of money available for expenditure apart from appropriations, and the undermining of sections 81 and 83 of the Constitution;
- The form of the annual appropriations;
- The undermining of section 54 of the Constitution in relation to the ordinary annual services of the government.

Appropriations and sources of money

The annual appropriations made by Parliament for departmental expenditure now amount to something less than 20 percent of all government expenditure. Special appropriations, more accurately called standing appropriations, most of which are of indefinite duration and indefinite amount, now account for most government expenditure. In addition, departments have available to them other sources of expenditure:

- Advances to the Minister for Finance and Administration, which are funds for urgent and unforeseen or overlooked expenditure, and which potentially amounted to $390 million in the appropriation acts for the financial year 2006–07;
- Departments are able to carry over surpluses from their annual appropriations, providing them with cash to add to their appropriations in the future;
- Revenue raised by departments may be retained by agreement of the Minister for Finance and Administration under section 31 of the FMA Act (departments are able to raise revenue from each other, as well as other persons and bodies);
- Special accounts are created by the Minister for Finance and Administration under sections 20 and 21 of the FMA Act, in 2002–03 amounting to $3.4 billion, into which some revenues are directly paid;
- Appropriations of unspecified amount are made under section 30A of the FMA Act, to allow payment by departments of the goods and services tax (GST).

The Minister for Finance and Administration may also increase the annual appropriations of departments within specified ceilings, totalling $40 million in the appropriation acts for 2006–07.

These arrangements have effectively undermined key provisions of the Australian Constitution designed to ensure parliamentary control of public finance. Section 81 of the Constitution provides that all money raised or received by the government shall form one Consolidated Revenue Fund, to be appropriated by the Parliament for the purposes of the Commonwealth. This provision is now interpreted by government to mean nothing more than that money raised by the Commonwealth belongs to the Commonwealth, and does not require that revenue be actually credited to an identifiable fund. Thus the money flowing to departments does not actually appear in any consolidated account.

Section 83 of the Constitution provides that no money shall be drawn from the Treasury of the Commonwealth except under appropriation made by law. Government is able to say, with technical accuracy, that all of the money expended by government is authorised by something in some act of Parliament, which is interpreted as an appropriation. These appropriations, however, are so scattered through the statute book and in such a variety of forms that it is very difficult to attain a comprehensive view of them. In 2005 a senator asked a question on notice seeking figures for all of the sources of appropriations since 1998, but complete figures could not be provided.

The Australian National Audit Office, in three reports from 2003 to 2006, pointed out illegalities and serious problems in the management of special appropriations, special accounts and the system of retaining revenues.[1] These problems were not the product of poor management alone, but of a financial system which by its nature led to loose dealings with money. The Department of Finance and Administration promised better management, but the Parliament is still not in the position properly belonging to a legislature, of actually approving the expenditure.

Form of annual appropriations

The annual appropriations are now in such a form that there is very little limitation on the purposes for which the money may be spent. Money is appropriated within departments for outcomes, and the outcomes are so nebulous and vaguely expressed that the purposes of expenditure are unknown until the expenditure occurs. For example, the Department of Employment and Workplace Relations has only three outcomes:

1. Efficient and effective labor market assistance;
2. Higher productivity, higher pay workplaces;
3. Increased workforce participation.

These are vague aspirations vaguely expressed, not purposes for which money is appropriated.

The appropriation acts provide that the Portfolio Budget Statements (PBS) produced by departments may be consulted for determining the purposes on which appropriations may be expended, but the PBS are similarly vaguely expressed. For example, in the PBS of the Department of Employment and Workplace Relations, the information about the outcomes

[1] Reports Nos 24 of 2003–04, 15 of 2004–05, 28 of 2005–06.

of the department consists of a series of further aspirations which the department is to support.

This situation virtually allows government to expend money on any project which comes to mind at any time.

The result is that many questions at Senate committee hearings on estimates are directed towards locating particular projects and subjects of expenditure in the outcomes of departments. It is almost never obvious to which outcome a particular project or subject of expenditure belongs.

Ordinary annual services

Under section 54 of the Constitution, the bill which appropriates money for the ordinary annual services of the government must deal only with such appropriations and all other appropriations must be in another appropriation bill. The definition of ordinary annual services of the government, and the delineation of those items which are ordinary annual services items and those items which are non-ordinary annual services items, is the subject of an agreement between the Senate and the government, known as the Compact of 1965. The content of the Compact has been modified from time to time by agreement between the Senate, represented by its Appropriations and Staffing Committee, and the Minister for Finance and Administration.

The purpose of the distinction in section 54 is to identify the bills which the Senate may amend directly under section 53 and those to which it must request amendments, but the distinction is also a useful tool for parliamentary scrutiny and control of expenditure, in that it separates normal ongoing expenditure from other projects.

Thus, under the Compact, new policies are regarded as not part of the ordinary annual services of the government. This distinction, however, has been violated in recent times. Taking advantage of the nebulous nature of departmental outcomes, departments have been able to start up new policies by using ordinary annual services money.

A glaring example of this came to notice with the appropriation bills for assistance to the victims of the Asian tsunami. The form of the bills disclosed that ordinary annual services money appropriated to departments had been expended on tsunami relief, which cannot possibly be an ordinary annual service of the government. In its passage through the Senate, the bill to replenish the ordinary annual services money already expended was treated as a non-ordinary annual services bill, but as the bills were passed without amendment this had no practical consequence.

In 1999 the Senate Appropriations and Staffing Committee agreed that appropriations for "continuing activities for which appropriations have been made in the past" could be classified as ordinary annual services appropriations. This seems to have been taken to mean that anything falling within the statements of outcomes is an ordinary annual service, an assumption quite contrary to section 54 of the Constitution and the Compact of 1965.

Illustration: the WR advertising campaign

These problems, which vitally affect parliamentary control of government expenditure, were well illustrated by the advertising campaign in relation to the government's proposed workplace relations legislation.

This expenditure was charged to Outcome 2 of the Department of Employment and Workplace Relations. Clearly, it was felt that that outcome is so all-embracing that it authorised expenditure on a completely new advertising campaign for legislation which had not been disclosed. If that were so, then Parliament, in making appropriations, would be giving government a blank cheque to spend money for any purpose.

Outcome 2 also occurred in the appropriation act for the ordinary annual services of the government. So a new advertising campaign for legislation not yet disclosed was also regarded as an ordinary annual service of the government. This was clearly in violation of section 54 of the Constitution and the Compact of 1965.

Judgment of the High Court

The validity of the advertising campaign was challenged in the High Court, on the basis that the expenditure was not properly authorised by an appropriation by Parliament. By a majority of 5 to 2 the court found that the advertising campaign was an authorised purpose of expenditure under the appropriations made by the Parliament for the Department of Employment and Workplace Relations.[2]

The judgment reinforced the point that annual appropriations are now in such a form that there is very little limitation on the purposes for which the money may be spent. The effect of the judgment is that the court will not correct this situation. It is Parliament's responsibility to ensure that expenditure is appropriate.

[2] *Combet v Commonwealth* [2005] HCA 61, reasons for judgment 21 October 2005.

A joint judgment by four of the majority justices was accurately characterised by one of the dissenters, Justice McHugh, as authorising an agency "to spend money on whatever outputs it pleases".[3] In so holding, the joint judgment, as indicated by dissenting Justices McHugh and Kirby, effectively repudiated the principles on which earlier relevant judgments of the court were based.[4]

The separate judgment of Chief Justice Gleeson explicitly put the responsibility for control of expenditure back on to the Parliament:

> "If Parliament formulates the purposes of appropriation in broad, general terms, then those terms must be applied with the breadth and generality they bear."[5]

The problem is Parliament's problem, not the court's. It is now clear that control of expenditure must be undertaken by Parliament or it will not be undertaken at all.

Parliament could undertake that control by winding back outcomes budgeting and returning to greater specification of the purposes of appropriations in appropriation acts. That would be difficult to achieve and is not likely to occur. The alternative is for Parliament to insist on greater explanation and scrutiny of government expenditure. Chief Justice Gleeson helpfully indicated what must be done:

> "The higher the level of abstraction, or the greater the scope for political interpretation, involved in a proposed outcome appropriation, the greater may be the detail required by Parliament before appropriating a sum to such a purpose; and the greater may be the scrutiny involved in a review of such expenditure after it has occurred."[6]

The Parliament, which effectively means the Senate, must diligently pursue and enhance its scrutiny of expenditure, both pre-expenditure scrutiny, principally through the estimates process, and post-expenditure scrutiny, to which the estimates process is also adapted. Effective scrutiny, however, depends on transparency of government activities and the provision of adequate information. The Senate must insist that transparency is applied and that adequate information is provided.

[4] *Attorney-General (Victoria) v Commonwealth*, (1945) 71 CLR 237; *Brown v West* (1990) 169 CLR 195. Referred to at 89, 233, 234.

[5] At 27.

[6] At 7.

The judgment also made it clear that the question of what are the ordinary annual services of the government is a non-justiciable question for the Senate alone to determine. The point that the expenditure on the advertising campaign could not be expenditure for the ordinary annual services of the government was referred to before the court and appeared in the judgments. This appearance did not indicate that the court has decided that the question is justiciable. The argument advanced to the court was that the Parliament could not have intended that the appropriations which have been used for the advertising campaign should be so used because, if the Parliament had so intended, it would not have included the money in the ordinary annual services bill. It was a question of interpreting the Parliament's intention in making the appropriation, not of judicially determining what are the ordinary annual services. The responsibility for making that determination still clearly rests with the Senate.

A further example

A report by the Auditor-General on the Roads to Recovery program (a road building and improvement project) was presented in March 2006.[7] Apart from identifying some of the troubles with that program which had been the subject of political controversy, the report demonstrated that the outcomes system of appropriations has effectively removed parliamentary control of the purposes of expenditure. The Department of Transport and Regional Services has two outcomes: "a better transport system for Australia", and "greater recognition and development opportunities for local, regional and territory communities". Having previously charged expenditure on the Roads to Recovery program to the first outcome, the department decided that the program could just as well be charged to the second outcome, and in this it had the support of a legal opinion. This confirmed that, apart from having indefinite amounts of money not appropriated by the Parliament at their disposal, departments and agencies are able to spend that money on whatever they choose.

Senate action: committee report

As the implications of the "new" financial system become apparent, the Senate began to take interest.

[7] Report No. 31 of 2005–06.

The Scrutiny of Bills Committee presented a report in November 2005 on the problems posed for parliamentary control of expenditure by standing appropriations.[8] The committee expressed an intention to scrutinise all provisions for such appropriations in bills in the future.

In late 2005 the matter of appropriations for the ordinary annual services was taken up by the Senate's Appropriations and Staffing Committee following references to the matter by the Australian National Audit Office. The committee engaged in negotiations with the government to restore the appropriate treatment of appropriations for new policies.

Finally, the Senate in June 2006 made a reference to the Finance and Public Administration Committee on the financial system. Fortunately, there were several expert witnesses willing to assist the committee to come to grips with the problems of the public finance system and to suggest remedies. In a report presented in March 2007 the committee analysed the issues outlined above, and made a number of radical recommendations for changes, including:

- Proper accounting and review of special appropriations;
- Closer management of departmental revenues;
- Virtual abolition of carryover of annual appropriations;
- Recasting of outcomes, and reporting of expenditures by specific programs;
- Continuing and systematic supervision of the division between ordinary annual services and other expenditures.

The implementation of these recommendations will require the co-operation of government. This will be the difficult part. The system now in place gives the executive government maximum flexibility in spending public money, and executives are not known for willingly submitting to greater parliamentary control. The report of the committee may be the beginning of a lengthy process whereby the Parliament claws back that proper role in supervising expenditure for which the revolutionaries of the past risked honour and life.

[8] Fourteenth Report of 2005.

SHIELD OR SWORD? PARLIAMENTARY PRIVILEGE, *CHARTER* RIGHTS AND THE RULE OF LAW

CHARLES ROBERT AND VINCE MACNEIL[1]

Introduction

Before the enactment in 1982 of the *Canadian Charter of Rights and Freedoms*[2] parliamentary privilege in Canada had remained relatively static for over a century. Just over a decade after the *Charter*'s coming into force, Joseph Maingot cited it as a reason for publishing a second edition of his work, *Parliamentary Privilege in Canada*.[3] He also pointed to the need to take into account the 1993 decision in *New Brunswick Broadcasting Co. v Nova Scotia (Speaker of the House of Assembly)*,[4] the first Supreme Court of Canada decision in a case involving privilege in nearly 100 years.

Since the publication of the second edition of Maingot's book, the courts have been seized with numerous cases involving parliamentary privilege. In almost every case, the question to be resolved pits parliamentary privilege against *Charter* rights or the rule of law. Traditionally viewed as a shield against the Crown, privilege has thus been transformed into a sword that conflicts with constitutionally guaranteed rights. While most of these cases were determined in lower courts, two would lead to decisions by the Supreme Court: *Harvey v New Brunswick (Attorney General)*[5] in 1996 and *Canada (House of Commons) v Vaid*[6] in 2005.

In Canada, the fundamental principle of the rule of law is expressly

[1] Charles Robert is the Principal Clerk of Chamber Operations & Procedure at the Senate of Canada. Vince MacNeil is a research consultant with nearly two decades' experience as a parliamentary assistant and observer.

[2] *Constitution Act, 1982*, Part I, enacted by Schedule B to the *Canada Act 1982* (UK) 1982, c. 11.

[3] *Parliamentary Privilege in Canada*, 2nd ed., J. P. Joseph Maingot, QC, House of Commons and McGill-Queen's University Press, 1997.

[4] *New Brunswick Broadcasting Co. v Nova Scotia (Speaker of the House of Assembly)*, [1993] 1 SCR 319.

[5] *Harvey v New Brunswick (Attorney General)*, [1996] 2 SCR 876.

[6] *Canada (House of Commons) v Vaid*, [2005] 1 SCR 667, 2005 SCC 30.

acknowledged in the preamble of the *Charter*.[7] While parliamentary privilege is constitutional in nature, it does not create an exception to the rule of law. As the Supreme Court stated in *Vaid*, "parliamentary privilege does not create a gap in the general public law of Canada but is an important part of it".[8]

While the courts have been busy seeking to balance parliamentary privilege with individual rights, Parliament and the legislatures have taken a defensive posture in pleadings before the courts. Neither Parliament nor the legislatures in Canada have been active stewards of their privileges. For more than a century, many took the view that vagueness was sufficient, and even advantageous. Without a clear and well-defined statutory basis for privilege, and in the absence of constitutional guarantees of individual rights and liberties, litigants faced the daunting—if not impossible—challenge of persuading an often deferential court to question the claims of privilege by legislative bodies. Obscurity, then, was regarded as an appropriate and effective means of maintaining and maximizing privilege.

Canadian parliamentarians are rightly concerned with the preservation of privileges that are essential to the independence and effectiveness of their institutions. To date, the only strategy that can be inferred from their actions is a passive and defensive one, limited to asserting and defending privilege in matters raised by other actors through the courts. Instead, as stewards of privileges that are indispensable in a healthy parliamentary democracy, they might consider a more proactive strategy. This paper will consider possible elements of a framework for such a review and will outline some possible outcomes.

Reasons for static nature

The static nature of parliamentary privilege observed by Maingot is largely due to the fact that it was taken for granted. Unlike the British experience, parliamentary privilege in Canada did not result from a protracted struggle for power with the Crown. It was imported *holus-bolus* from Westminster in the *Constitution Act, 1867*. The Act does not define privilege; rather it empowers the Canadian Parliament to define its privileges by statute, so long as the definition does not exceed the privileges of the United Kingdom House of Commons.[9] The resulting sections 4 and 5 of the *Parliament of*

[7] *Constitution Act, 1982*, Part I, preamble: "Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law".

[8] *Vaid*, para 29.

[9] *Constitution Act, 1867*, (UK) 30 & 31 Victoria, c. 3, s. 18.

Canada Act[10] merely claim the privileges of the UK House of Commons without elaboration. Similarly, most provincial legislatures have enacted provisions that merely claim the same privileges either of the Canadian House of Commons or of the British one.

Supreme Court of Canada rulings

The coming into force of the *Charter* marked the end of a century of stasis. Having imported their privileges with little review or understanding, parliamentarians were ill-prepared for the legal challenges to come. The courts are now obliged to weigh claims of privilege in a new constitutional context. The *Charter* has emboldened people to be much more assertive of their rights, and less deferential to the shield of privilege. After a century of silence, the Supreme Court issued three major rulings on privilege in the space of 12 years.

The decision in *New Brunswick Broadcasting Co.* (1993) had to do with the power of the Nova Scotia Assembly to refuse cameras in the House. The Court held that the *Charter* provision of freedom of the press did not prevent the Assembly from asserting its privileges to exclude cameras from its deliberations. In *Harvey* (1996), the Court dealt with a challenge to a New Brunswick statute that excluded persons convicted of an illegal practice from membership in the Assembly, or from being elected as a candidate. It was held that the statute was an exercise of privilege, and that *Charter* provisions guaranteeing democratic rights did not invalidate the statute. The most recent decision, *Vaid* (2005), concerned the reassignment of the Speaker's driver. The employee alleged that the reassignment constituted unlawful discrimination, and asked the Canadian Human Rights Commission to investigate. The House of Commons asserted privilege to prevent an investigation. The Supreme Court disagreed with the House of Commons and held that privilege did not immunize its management of such employees from outside review.

The Supreme Court decisions serve as a set of principles around which a parliamentary review of privilege could be organized. They delineate the legal characteristics of privilege, which are themselves part of a constitutional structure founded on the rule of law.[11]

First, the Court distinguished two kinds of privilege in Canada: inherent and legislated. In *Harvey*, Chief Justice Lamer, writing for himself in concurring

[10] *Parliament of Canada Act*, R.S.C. 1985, c. P-1, ss. 4–5.

[11] See *Reference re Secession of Quebec*, [1998] 2 S.C.R. 217, paras. 70–72, sqq.

reasons, stated that any statutory privilege is subject to *Charter* review.[12] At the same time, he maintained that inherent privileges being constitutional in nature are not subject to the *Charter*. Writing for a unanimous Court in *Vaid*, Mr Justice Binnie expressly rejected this view, and instead held that parliamentary privilege, regardless of whether it is inherent or legislated, is constitutional.[13] Privilege and *Charter* rights, then, are equal in status, and neither is subordinate to the other.

Second, where a privilege is claimed, the burden of proving its existence is on the claimant. Binnie J. in *Vaid* cited Lord Denman in *Stockdale v Hansard* (1839)[14] with approval: "The party who seeks to rely on the immunity provided by parliamentary privilege has the onus of establishing its existence … The onus of shewing that it is so lies upon the defendants; for it is certainly primâ facie contrary to the common law … The burthen of proof is on those who assert it."[15]

Third, the Court firmly agreed that the foundation of all privilege is necessity. If a matter can be dealt with under ordinary law, without interfering with the capacity of the assembly to carry out its constitutional functions, then immunity is unnecessary and privilege could not be successfully claimed.[16]

Fourth, the Court acknowledged that necessity is determined by contemporary context. Binnie J. wrote: "When the existence of a category (or sphere of activity) for which inherent privilege is claimed (at least at the provincial level) is put in issue, the court must not only look at the historical roots of the claim but also … determine whether the category of inherent privilege *continues* to be necessary to the functioning of the legislative body today."[17]

The burden of proof consists of two essential elements. The claimant must demonstrate that the privilege exists, either by showing that it is inherent to a legislative assembly, or by demonstrating that it was an acknowledged privilege of the 19th century UK House of Commons. In addition, the burden of proof entails demonstrating the continuing necessity of the privilege claimed. In other words, even where a privilege can be shown to have existed in the UK House of Commons, it will not be recognized if the claimant cannot show its necessity in modern Canada.

Fifth, the Court clearly decided that Parliament is not a "statute-free

[12] *Harvey*, para. 2.
[13] *Vaid*, para. 33.
[14] *Stockdale v Hansard* (1839), 9 Ad. & E. 1, 112 E.R. 1112.
[15] *Vaid*, para. 29.
[16] *Ibid.*, para. 5.
[17] *Ibid.*, para. 6. Emphasis in original.

zone".[18] In *Vaid*, the Court expressly rejected the much-criticized judgment of a British court in *R. v Graham-Campbell Ex parte Herbert* (1935)[19] which has been interpreted to mean that no statutes apply to Parliament.[20] By extension of the logic that Parliament is not a statute-free zone, it is also clear that it cannot be an enclave totally outside the ambit of *Charter* review.

One major issue that is left open is the role of the courts in defining the "scope" of privilege in cases that come before them. The courts have assiduously excluded the possibility that they could review the exercise of a privilege, once established. They have claimed to limit their role to two basic steps: establishing the existence of a privilege, and defining its "scope".

Whatever their intentions, at least one observer has pointed out that this approach is not entirely tenable. In a recent paper analyzing the Supreme Court ruling in *Vaid*, Evan Fox-Decent has pointed out that there is no substantive difference between "scope" and "exercise" for the purposes of judicial review of privilege. He points out that: "Judges reviewing the scope of an asserted privilege will have to engage in just the type of review they would undertake were they to review a particular exercise of privilege … To say that an asserted privilege is too broad in scope is to say that there are some types of exercises of power that will not receive immunity because they are too far removed from the legislature's discharge of its constitutional duties."[21]

If Fox-Decent is correct, no aspect of privilege, including a review of its exercise, would be beyond the reach of the courts. Fox-Decent is not the first to point to this difficulty. Twelve years before *Vaid*, Chief Justice Lamer drew attention to it in his concurring reasons in *New Brunswick Broadcasting Co.*: "The general rule which has developed … is that courts will inquire into the existence and extent of privilege, but not its exercise. This rule does not always provide a clear guide, however, as the existence, extent and exercise of privilege tend to overlap."[22]

No doubt, the Supreme Court will again be called upon to deal with contentious claims of privilege. Sooner or later, a matter will come before it

[18] *Ibid.*, para. 64.

[19] *R. v Graham-Campbell; Ex parte Herbert*, [1935] 1 KB 594.

[20] *Vaid*, paras. 64 and 69. See also Charles Robert, "An Opportunity Missed: the Joint Committee on Parliamentary Privilege, *Graham-Campbell* and Internal Affairs", in *The Table* (2006), 74, pp. 7–21.

[21] Evan Fox-Decent, "Parliamentary Privilege and the Rule of Law", 20 Can. J. Admin. L. & Prac. 117, p. 128.

[22] *New Brunswick Broadcasting Co.*, p. 350.

that will require the Court to revisit what Fox-Decent characterizes as the "fragile" distinction between scope and exercise.

Traditional approach to privilege

Despite the Supreme Court rulings, parliamentarians seem to be holding fast to their traditional notion of privilege. To date they have allowed legal disputes to be the main driver—and tribunals the main vehicle—for modernizing privilege. They continue to be passive, allowing litigants to challenge a privilege before venturing to prove its existence or necessity. They have insistently asserted and defended a traditional view of privilege. In cases where privilege conflicts with individual rights, their consistent assumption appears to be that privilege trumps everything, including *Charter* rights.

There are two risks associated with this posture. First, modernization of privilege is left entirely out of the hands of parliamentarians, which leads to results they find unsatisfactory. The UK Joint Committee report questioned the wisdom of a passive and defensive approach:

> "Parliament is not always well advised to adopt a passive stance. There is merit, in the particularly important areas of parliamentary privilege, in making the boundaries reasonably clear before difficulties arise. Nowadays people are increasingly vigorous in their efforts to obtain redress for perceived wrongs. In their court cases they press expansively in areas where the limits of the courts' jurisdiction are not clear. Faced with demarcation problems in this jurisdictional no-man's land, the judges perforce must determine the position of the boundary. If Parliament does not act, the courts may find themselves compelled to do so."[23]

Second, given that privilege originally developed over the centuries as a shield against interference from the Crown, the modern use of privilege as a sword against individual rights may serve to fuel public cynicism and damage Parliament's reputation. Ironically, then, following a traditional approach to privilege in the *Charter* era may actually be counterproductive. Mr Justice Létourneau of the Federal Court of Appeal noted in his reasons in *Vaid* that such a litigious modernization process entails the possibility of a perverse result, namely that the defence of an unbounded privilege may ultimately have the effect of bringing Parliament into disrepute.[24]

[23] Joint Committee on Parliamentary Privilege, First Report, Session 1998–99, para. 26.
[24] *Vaid*, para. 33.

Two recent episodes in Canada illustrate the gravity of this risk. Resolutions adopted by the National Assembly of Quebec in 2000,[25] denouncing remarks made by a non-member, Yves Michaud, and by the House of Commons in 2006,[26] condemning a newspaper article by Jan Wong, attracted widespread criticism. Both episodes put the basic principles of procedural fairness and natural justice directly at odds with parliamentary privilege. In both cases, the condemnations were made on the fly—without notice, without debate, without any real consideration, and without affording any procedural fairness or opportunity to answer the allegations. In addition, once these pronouncements were made, the media were free to repeat the condemnations with impunity.

The parliamentarians in question seem to have proceeded in the confidence that their privileges override individual rights. This traditionalist view of privilege in Canada is widespread, despite the evolution of the law since the inception of the *Charter*. At some point, if assemblies persist in condemning individuals in this manner, there is a possibility that a clearly libellous resolution could be adopted. It is likely that if such a case arose, the court would have to inquire into it and determine whether privilege could be claimed.

The most recent matter decided by the Supreme Court is an illustration of the traditional perspective that parliamentarians can do with impunity almost anything short of a criminal act. In *Vaid*, the House of Commons and former Speaker Parent argued that the decision to reassign the Speaker's driver was privileged, and therefore not reviewable by any outside body, including the Canadian Human Rights Commission. Relying in part on Maingot,[27] the Commons asserted that privilege with respect to "internal proceedings" included the hiring, management and dismissal of all staff. Rejecting this traditional and sweeping approach, Mr Justice Binnie wrote:

> "I have no doubt that privilege attaches to the House's relations with *some* of its employees, but the appellants have insisted on the broadest possible

[25] Quebec, National Assembly, *Votes and Proceedings*, December 14, 2000, No. 153. See also Michel Bonsaint and Hubert Cauchon, "Historique judiciaire et analyse de l'affaire Michaud", paper presented at the Presiding Officers' Conference, Charlottetown, Prince Edward Island, January 2007.

[26] Canada, House of Commons, *Journals*, September 20, 2006, p. 403.

[27] Maingot, p. 301: "The courts, however, accept that they do not have jurisdiction over the "internal proceedings" of the House of Commons or of the Senate or of a legislature. Apart from what takes place officially in the House and in committee, this also includes areas of administrative concern."

> coverage without leading any evidence to justify such a sweeping immunity, or a lesser immunity, or indeed any evidence of necessity at all. We are required to make a pragmatic assessment but we have been given no evidence on which a privilege of more modest scope could be delineated."[28]

The House of Commons appeared so confident in the absolute nature of its privilege in this case that it did not offer alternative pleadings or evidence for the courts to consider. In other words, the House of Commons did not even seem to anticipate the possibility that the courts would reject its broad interpretation.

Even when privilege is successfully asserted, many will regard it as an abuse when privileges trump the rights of individuals. Where there is conflict between individual rights and parliamentary privileges, the first instinct of parliamentarians has been to defend privilege at the expense of individual rights. In fact, such conflicts present an opportunity to re-evaluate and modernize the privilege in question, so that to the greatest extent possible, the claimed privilege can co-exist with individual rights.

Parliamentarians are dissatisfied with the results of their approach

There is evidence that parliamentarians are becoming aware that the traditional stance is unsustainable, and that they risk the erosion of their privileges if they do not study the whole issue with a view to devising a more viable long-term strategy.

In reaction to a series of adverse court rulings,[29] the House of Commons Standing Committee on Procedure and House Affairs commented on the matter of compulsory attendance in court. The brief Committee report states categorically that it is for Parliament, not the courts, to review or modify privilege.[30] The Committee also pointed to the unsatisfactory situation resulting from the lack of understanding of parliamentary privilege. They identified the high risk associated with leaving the modernization of privilege to the courts alone.

In addition, the report acknowledged the need for a comprehensive review

[28] *Vaid*, para. 75. Emphasis in original.

[29] *Ainsworth Lumber Co. v Canada (Attorney General)* (2003), 226 D.L.R. (4th) 93, 2003 BCCA 239; *Samson Indian Nation and Band v Canada*, [2004] 1 F.C.R. 556, 2003 FC 975; *Telezone Inc. v Canada (Attorney General)* (2004), 69 OR (3d) 161 (CA).

[30] Canada, House of Commons Standing Committee on Procedure and House Affairs, Eighth Report, 37th Parliament, 3rd Session (2004), para. 12.

of privilege with a view to modernizing it and taking the *Charter* into account: "The time is perhaps appropriate for the Canadian Parliament to undertake a systematic review of its privileges and those of its members … the introduction of the *Canadian Charter of Rights and Freedoms* and parliamentary developments, such as the broadcasting of proceedings, have inexorably affected the environment within which we operate … It would be timely, at the beginning of the 21st century, to review parliamentary privilege in Canada, although this would involve a significant amount of time and energy."[31]

Finally, the report recommended that the House of Commons establish a special committee to conduct this comprehensive review. The report was not adopted by the House of Commons, and the comprehensive review has yet to take place.

The Senate, which possesses the same privileges as the House of Commons, has decided to address the accommodation of privilege to the *Charter*. On the motion of Senator Raynell Andreychuk, the Senate recently directed its Committee on Rules, Procedures and the Rights of Parliament to study "a systematic process for the application of the [*Canadian*] *Charter of Rights and Freedoms* as it applies to the Senate of Canada."[32]

In her remarks, Senator Andreychuk, herself a former judge, noted the Supreme Court's emphasis on institutional comity in its judgment in *Vaid*. The senator went on to say that for the Senate to respect this principle, "requires that we fully assess the outcome of the *Vaid* case as it applies to the Senate of Canada and, second, that we ensure the maximization of rights while maintaining the proper balance with parliamentary privilege. To do so in a systematic way could be an adequate defence to any incursions in the future into Senate activities and would give a measure of comfort and understanding to those who come in contact with the Senate … that we respect and enforce the [*Canadian*] *Charter of Rights and Freedoms*."[33]

On 31 May 2007 the Senate gave second reading to Bill S-219, and referred it to the Rules Committee. The Bill was introduced by Senator Serge Joyal, who along with Senator Mobina Jaffer, was intervened against the House of Commons in the Supreme Court hearing of the *Vaid* case. The Bill would amend the *Parliamentary Employment and Staff Relations Act* (PESRA)[34] to repeal the non-derogation provision (s. 4) with reference to

[31] *Ibid.*, para. 11.
[32] Canada, Senate, *Journals*, February 28, 2007, p. 1131.
[33] Canada, Senate, *Debates*, February 28, 2007, p. 1861.
[34] *Parliamentary Employment and Staff Relations Act*, RSC 1985, c. 33 (2nd Supp.).

privilege, characterized by Mr Justice Binnie as meaningless.[35] More importantly, the Bill would give the Canadian Human Rights Commission standing in grievances involving parliamentary employees alleging infringement of their human rights. It would also empower PESRA adjudicators to interpret the *Canadian Human Rights Act*[36] and apply it to parliamentary employees. This approach mirrors the 2003 changes to the *Public Service Labour Relations Act*.[37]

At the time of writing of this article, the Senate Committee had been preoccupied with prior orders of reference, and had not yet commenced its work on the application of the *Charter* within the Senate or on Bill S-219. However, there is every indication that the Committee will begin work on both in the fall of 2007.

In-depth studies by the UK and Australian Parliaments

Canadian parliamentarians are not the first to realize that the preservation of privilege requires more than their traditional defensive stance. British and Australian parliamentarians have been active in defining their privileges rather than leaving it to the courts to review and modernize them. This active approach requires a sophisticated strategy that proactively and regularly updates privilege while minimizing the risk of unsatisfactory court rulings. This strategy was effectively developed through a comprehensive study.

The UK Parliament conducted three comprehensive studies in the past 40 years (1967[38], 1977[39] and 1999[40]). The most recent review, which began in July 1997, was undertaken by a joint committee of the two Houses. Their thorough study resulted in a three-volume report tabled in March 1999, recommending a number of modernizations, including legislation to clarify and define the privileges required for the 21st century.

Australia has already taken the step of spelling out the law of parliamentary privilege in detailed legislation. The *Parliamentary Privileges Act 1987*[41] is the product of "a critical examination of parliamentary privilege" by a joint

[35] *Vaid*, para. 60.

[36] *Canadian Human Rights Act*, R.S.C. 1985, c. H-6.

[37] *Public Service Labour Relations Act*, S.C. 2003, c. 22, s.2.

[38] United Kingdom, House of Commons Select Committee on Parliamentary Privilege, Report, Session 1967–68.

[39] United Kingdom, House of Commons Committee of Privileges, Third Report, Session 1976–77.

[40] UK Joint Committee on Parliamentary Privilege (1999).

[41] Australia, *Parliamentary Privileges Act 1987*.

select committee of the Senate and the House of Representatives in 1984.[42] Similar to the more recent British study, the Australian joint committee did a comprehensive two-year review, resulting in an extensive report that contains sweeping recommendations in every area of privilege. Pointing to the need for modernization and clarity, the Joint Committee noted: "To many, it seems distinctly odd that to discover the nature and extent of its privileges a sovereign legislature should have to look back to a point of time frozen in the history of a legislature of another country."[43]

In addition to legislation, the Australian Senate has accepted a series of resolutions to implement changes to practice recommended by the Joint Committee. The House of Representatives has not yet adopted the resolutions.

The modernization effort of both countries is based on necessity. This, in turn, has led to an understanding of privilege that is restricted to what is required in the modern context. The UK Joint Committee said: "We have asked ourselves, across the field of parliamentary privilege, whether each particular right or immunity currently existing is necessary today, in its present form, for the effective functioning of Parliament. Parliament should be vigilant to retain rights and immunities which pass this test, so that it keeps the protection it needs. Parliament should be equally vigorous in discarding rights and immunities not strictly necessary for its effective functioning *in today's conditions*."[44]

This sentiment echoed the earlier report of the Australian Joint Committee, which noted that "Parliament's privileges are a mirror of the times when they were gained."[45]

The 1999 report of the Joint Committee in the United Kingdom is the most recent comprehensive and authoritative analysis of parliamentary privilege. Indeed, the Supreme Court of Canada refers to the report no fewer than 17 times in *Vaid*. In addition, the Court lent great weight to the report, characterizing it as a considered view of the appropriate limits of privilege, and noting that the committee was headed by a Law Lord.[46]

The British and Australian experiences demonstrate that a comprehensive review would allow Canadian parliamentarians to protect and maintain parliamentary privilege within the current legal and political context.

[42] Harry Evans, ed., *Odgers' Australian Senate Practice*, 11th ed., 2004, p. 30.
[43] Australia, Joint Select Committee on Parliamentary Privilege, Final Report, 1984, p. 23.
[44] UK Joint Committee on Parliamentary Privilege (1999), para. 4. Emphasis added.
[45] Australia, Joint Select Committee on Parliamentary Privilege, Final Report, 1984, p. 25.
[46] *Vaid*, para. 45.

Vulnerability of traditional privileges

Freedom of speech

The traditional view is that freedom of speech is an absolute privilege, and that the House or its members can say anything with impunity so long as it is within the proceedings of the Chamber or its committees.

Viewed in context at the time of Confederation, freedom of speech in parliamentary assemblies was very different from what it is today. Generally, the only people who would likely hear damaging statements in the House were those actually within earshot of the parliamentarian making them. Even though words were reported in the *Debates* and possibly printed in newspapers, the risk of damage to personal reputation did not match the scale possible in an age of instant communications. Now, those statements are carried live over radio, television and the Internet to millions of potential listeners.

The traditional view of absolute freedom of speech is not invulnerable. One has only to bear in mind the reasons of McLachlin J. in *Harvey*, where she indicated that the Court will not be deterred from inquiring into abusive claims of privilege.[47] It is not difficult to imagine scenarios where abuses could arise, even in connection with freedom of speech. Consequently, the traditional absolutist view is bound eventually to collide with the attitude of the Court in the *Charter* era. Absent an initiative by parliamentarians to develop a modern, principled strategy for avoiding or dealing with such a scenario, it may once again be left to the courts to determine the outcome.

There is ample room to modernize the freedom of members to express themselves without fear of consequences for libel. Other jurisdictions have found ways to balance this freedom with the rule of law concept of procedural fairness, and with the rights of persons who might be the subject of libellous remarks. For example, in New South Wales, the Legislative Assembly in 1996 established a "Citizen's Right of Reply". The Assembly jealously guards the freedom of speech guaranteed in the Bill of Rights, but its explanation of the right of reply goes on to state the following:

> "However, this freedom of speech can leave citizens vulnerable to allegations being raised about them in Parliament. To ensure that people are able to publicly defend themselves against allegations within the House, the Legislative Assembly has adopted a Citizen's Right of Reply … A citizen's right of reply does not affect Members freedom of speech … The right of reply gives a citizen or corporation subject to allegations under that privi-

[47] *Harvey*, para. 71.

lege an opportunity to have a response to those allegations published in the forum in which they were made."[48]

Interestingly, the UK Joint Committee considered and rejected a right of reply scheme. A comprehensive review in Canada would be informed by the experience in these jurisdictions. Ultimately, a proactive review should help parliamentarians maintain the appropriate level of privilege with minimal impairment to the rights of others. This approach should also reduce the risks associated with litigation.

The experience of newly established devolved assemblies in the UK is instructive. The privileges granted to the Scottish Parliament and the Welsh Assembly are minimal. The enactments of the UK Parliament that created the two assemblies provide absolute privilege for statements made in the proceedings of the assembly or published under its authority. They also make express provision for the application of the Defamation Act 1996.[49] In the short time since the establishment of these institutions, few privilege issues have arisen. Former Scottish Parliament Presiding Officer David Steel (Lord Steel of Aikwood) said in a statement in 1999 to provide guidance to members: "The starting point is that the Parliament, its members and staff are not beyond the law. … there is no concept of 'parliamentary privilege' in relation to the Scottish Parliament or its members in the sense understood at Westminster."[50]

He also pointed out that while the Scotland Act 1998 provided "absolute privilege" in respect of free speech, there were nonetheless very real limitations on what members could say. Referring to s. 41 of the Act, he said: "This section is intended to ensure that Members are free to debate and the Parliament to report on matters of public interest ... Although it provides absolute protection in that context, it does not shield members from the operation of the law in relation to other matters, for example incitement to racial hatred."

Similarly, the Transitional Assembly of Northern Ireland does not view privilege as covering certain forms of speech. Its constituent legislation provides that speech in the assembly is privileged, unless it is "proved to have been made with malice." [51]

[48] New South Wales, Legislative Assembly Procedure Office, *Citizen's Right of Reply,* pamphlet, 2007, first column.

[49] Scotland Act 1998, (UK) 1998, c. 46, s. 41; and Government of Wales Act 2006, (UK) 2006, c. 32, s. 42.

[50] Scottish Parliament, *Business Bulletin 38/1999*, August 6, 1999.

[51] Northern Ireland (St Andrews Agreement) Act 2006, (UK) 2006, c. 53, Schedule I, s. 8.

The UK Parliament adopted the Defamation Act 1996 in an attempt to balance freedom of speech with the increasingly problematic rule that excludes the use of statements in Parliament as evidence for any purpose in court. This problem has affected members and non-members alike. The 1996 Act was an attempt to allow members individually to waive the collective privilege, to permit them an effective recourse against defamatory statements about their conduct in Parliament. While the result has attracted criticism,[52] this initiative does illustrate the British willingness to modernize privileges in a way that accommodates individual rights.

Publication of Parliamentary Papers

Another area that has given rise to conflict in recent years is the status of certain documents created by parliamentarians in the course of their duties. For a long time, "parliamentary papers" were generally limited to documents printed to facilitate the day-to-day work of the assembly. Today, documents proliferate, and are generated by many participants in parliamentary activities, not just the Chamber and its committees themselves.

In the UK, the judgment in *Stockdale v Hansard* led to the enactment of the Parliamentary Papers Act 1840.[53] The Act provides that papers published by order of the House, or under its authority, enjoy absolute privilege, while publications of extracts enjoy qualified privilege. The documents clearly covered are the *Journals*, *Debates* and unabridged reports of committees. However, it is unclear whether documents merely tabled in either House may be published with impunity. In a paper on the 1840 Act, Patricia Leopold outlined its various limitations and uncertainties, and described the need for Parliament to review and update the law of privilege in this area.[54] She said that such a review should not only consider new legislation, but that it should also address "the procedure in Parliament for deciding whether to authorise the publication of controversial reports. Such a review would be another opportunity for Parliament to face up to the need for a definition of 'proceedings in Parliament.'"[55]

The situation in Canada is no less uncertain. A Canadian Human Rights Tribunal in 2005 ruled that a document, called a "householder", authored by

[52] See Kevin Williams, "'Only Flattery is Safe': Political Speech and the Defamation Act 1996", (1997) 60 *The Modern Law Review* 388.

[53] Parliamentary Papers Act (UK) 1840, 3 and 4 Vict., c. 9.

[54] Patricia M. Leopold, "The *Parliamentary Papers Act 1840* and its Application Today," (1990) *Public Law* 183, particularly the discussion of Command papers, Act papers and returns, pp. 190–201.

[55] *Ibid.*, p. 205.

a member of Parliament, Jim Pankiw, and distributed to his constituents, was not immune from review by the Tribunal.[56] The matter arose from a complaint to the Canadian Human Rights Commission alleging that the householder contained racist statements.

The MP initiated an action against the Commission, arguing that the House of Commons, through its Board of Internal Economy, has exclusive jurisdiction over the content of such a document, that it was privileged, and that consequently no tribunal could review the content of his householder. The approach in this case is in line with the position long taken by many parliamentarians in Canada. Mr Pankiw applied to the Federal Court, which declined to prevent the Commission from investigating the complaint. Mr Justice Lemieux found that both the MP and the Speaker (intervener) had failed to prove the existence of a privilege covering papers authored by individual members of Parliament.[57] In addition, the judge embarked on an inquiry as to whether such a privilege could be justified under the doctrine of necessity. He concluded that it could not, noting that the authorship and distribution of a householder by an individual member is not "so closely and directly connected with proceedings in Parliament that intervention by the courts would be inconsistent with Parliament's sovereignty as a legislative and deliberative assembly."[58]

At the time of writing of this paper, Mr Pankiw's appeal to the Federal Court of Appeal has yet to be heard.

Whether privilege attaches to a pamphlet distributed to electors by their representative is a matter that has yet to be finally adjudicated in Canada. Nonetheless, it is an example of how sharply the Canadian and British approaches to privilege diverge. The 1999 British report recommended that privilege be limited to "papers emanating from the House or its committees."[59]

The Australian experience also points away from the position advocated by Mr Pankiw. *Odgers' Australian Senate Practice* comments on the enactment of the *Parliamentary Privileges Act 1987* as follows: "The 1987 Act did not explicitly extend the immunity of freedom of speech to activities of members not related to their participation in proceedings of the Houses and committees. This reflected a considered view that the extension of the immunity to such matters is not warranted."[60]

[56] *Dreaver v Pankiw*, [2005] C.H.R.D. No. 39, 2005 CHRT 28.
[57] *Dreaver v Pankiw*, [2006] F.C.J. No. 761, 2006 FC 601, para. 92.
[58] *Ibid.*, para 94.
[59] UK Joint Committee on Parliamentary Privilege (1999), para. 352.
[60] Evans, p. 44.

The experience of parliamentarians in other Commonwealth countries, and their regular revision and clarification of parliamentary privilege puts the traditional Canadian stance in sharp relief. The outcome of the courts reviewing privilege related to parliamentary documents would likely have been avoided if Canadian parliamentarians had modernized their privileges before the dispute in *Dreaver v Pankiw* arose.

Proceedings in Parliament

Article 9 of the Bill of Rights protects certain "proceedings in Parliament" from outside review. The Bill of Rights was adopted in 1689, at a time when Parliament met for short periods, and when none of the support structure that has grown up around modern assemblies existed.

In Canada Article 9 had been the basis for the notion that Parliament is a statute-free zone where any and all activities by the either House and their members are outside the law. However the *Vaid* decision has set some boundaries. The appellant House of Commons had claimed that staffing, management and dismissal of any parliamentary employee was protected by Article 9 as a proceeding in Parliament. Consequently, the Commons insisted that Article 9 immunized all of its activities as an employer and that no law, including the *Canadian Human Rights Act*, had any force or effect within the parliamentary precincts. The Court totally dismissed this claim that the courts have no jurisdiction over any labour issue arising in Parliament. The *Vaid* decision thus serves as a clear indicator that a review of privilege with respect to establishing the boundaries of proceedings in Parliament is long overdue.[61]

Contempt

In Canada public criticism of political institutions and of individual parliamentarians is still subject to punishment for contempt. Contempt powers enable Parliament to deal with members or "strangers" who disrupt its work or to punish outsiders who, in the view of Parliament, have insulted its dignity or authority.

This power was rarely used in the last century, especially in relation to persons who have no connection to Parliament. Nonetheless, the traditional view is that these powers are required to defend the integrity of Parliament. The British report shows just how out-of-date the Canadian situation is, at least with respect to outsiders: "Times have changed … In practice the Lords

[61] For a fuller discussion of this issue see Robert, *op.cit.*, pp. 7–21.

have long ceased to take any notice of an abusive contempt, and the Commons decision in 1978 to require evidence of substantial interference before treating a matter as a contempt has considerably reduced its scope. It may be noted that the Australian joint committee in 1984 considered claims of contempt in this area should be abandoned, and … the *Parliamentary Privileges Act 1987* (Australia) effectively abolished abusive contempt.[62]

The use of the penal power of Parliament, which is an enforcement element of contempt, was quite infrequent in the 19th century, and has not been invoked since 1913.[63] It is likely that any review of privilege would find no reason to retain this power. Such a result would be in line with the British report of 1999, which recommended its abolition in favour of fines. A fine would be determined by Parliament in cases involving its own members, and by the courts in cases involving non-members.[64]

Exemption from court appearance

One aspect of privilege that has come under a great deal of scrutiny in recent years is the exemption from the obligation to answer a court *subpoena* during the parliamentary session. Some Canadian parliamentarians have held fast to the traditional view that the exemption is absolute for the duration of the parliamentary session, and for 40 days before and after it. The historical context is important to understanding how the 40-day rule came about. Centuries ago, the English Parliament only met for a few weeks or months at a time, postal services were slow, and it could take days to travel to and from Parliament. Today, apart from election periods, the Canadian Parliament is in near-permanent session. Members can travel to their homes in a matter of hours, and modern communications permit almost instant service of court documents. One analysis shows that the 40-day rule applied in the 20-year period from 1983 to 2003 would result in only 138 days during which parliamentarians could be compelled to appear in court.[65]

In modern Canada, the claimed immunity is quite varied. Several jurisdictions, including Parliament, assert the 40-day rule, but without any express enactment to that effect. Some provinces do not specify any time frame at all. Ontario and British Columbia extend immunity for 20 days before and after the session.[66] Nova Scotia extends it for 15 days before and after the

[62] UK Joint Committee on Parliamentary Privilege (1999), para. 269.

[63] Marleau & Montpetit, pp. 100–101.

[64] UK Joint Committee on Parliamentary Privilege (1999), para. 324.

[65] *Telezone Inc. v Canada (Attorney General)* (2004), 69 O.R. (3d) 161 (C.A.), para. 47.

[66] Ontario, *Legislative Assembly Act*, R.S.O. 1990, c. L10, s. 38; British Columbia, *Legislative Assembly Privilege Act*, R.S.B.C. 1996, c. 259, s. 5.

session.[67] In Quebec it is very limited. A Quebec member is exempted from appearing as a witness "while the Assembly or a committee or subcommittee *in whose work he is taking part* is sitting, and during the two preceding and two following days".[68] This appears to make a Quebec member compellable following an adjournment during a session, and possibly even while a committee is meeting, so long as the compulsory appearance does not interfere with the member's actual work.

These provincial enactments presumably reflect the respective legislatures' evaluations of the meaning of "necessity" in context. This casts further doubt on the sustainability of the 40-day rule in Canada. The UK Joint Committee report is instructive in this respect: "When attendance at Parliament is essential, the need to be present in the House should prevail over the need to attend court as a witness. But this principle does not necessitate or justify members having, as at present, an unfettered right to choose which cases to attend as a witness and which to refuse."[69]

In *Telezone Inc. v Canada* (2003), the Ontario Superior Court held that the 40-day rule is obsolete because of advances in communication and transportation. The court recognized the privilege, but determined that its duration should be only during the sittings of an actual session, as well as 14 days before and after.[70] A 14-day rule was also adopted by the Federal Court in *Samson Indian Nation and Band v Canada* (2003).[71] In *Ainsworth Lumber Co. v Canada (Attorney General)* (2003), the British Columbia Court of Appeal held that the privilege was limited to the parliamentary session, with no extension before or after it.[72] Leave to appeal *Ainsworth* to the Supreme Court of Canada was denied.[73] In Ontario, the *Telezone* ruling was later overturned by the Ontario Court of Appeal, which reverted to the 40-day rule both before and after the session. This Ontario ruling did not disturb the Federal Court decision in *Samson* or the BC Court of Appeal decision in *Ainsworth*. As a result, there are currently three different decisions applicable to Parliament, depending on the jurisdiction in which the privilege is claimed.

[67] Nova Scotia, *House of Assembly Act*, R.S.N.S., 1989, c. 10, s. 28.

[68] Quebec, *An Act Respecting the National Assembly*, R.S.Q., c. A-23, s. 46.

[69] UK Joint Committee on Parliamentary Privilege (1999), para. 331.

[70] *Telezone Inc. v Canada (Attorney General)*, [2003] O.J. No. 2543 (QL), paras. 16–20.

[71] *Samson Indian Nation and Band v Canada*, [2003] F.C.J. No. 1238 (QL) (S.C.J.), para. 45.

[72] *Ainsworth Lumber Co. v Canada (Attorney General)*, [2003] B.C.J. No. 901 (QL), paras. 45, 57 and 62.

[73] [2003] S.C.C.A. No. 296 (QL).

The 40-day rule is ripe for clarification. The conflicting rulings demonstrate the confusion and uncertainty that flow from the vague basis for such a rule. While the British have abolished the exemption for jury duty, they have not yet implemented the recommendation to abolish the immunity from compulsory attendance as a witness. The Australian *Parliamentary Privileges Act 1987* retains the fundamental immunity while the House or a committee is actually sitting. However, it curtails the privilege significantly, providing that a member may be compelled to appear in court five days before or after a meeting of the House or a committee.[74]

The Canadian judgments on exemption from court appearance result in Parliament being subject to conflicting rules in different jurisdictions. This demonstrates one of the risks of leaving the modernization of privilege in the hands of the courts. A comprehensive review would enable parliamentarians, rather than the courts, to determine what is actually necessary, so that they have a clearer and more principled position in the face of an increasing number of legal challenges.

Framework for review

The common element of the British and Australian reviews is that they have identified the minimum privileges necessary to protect the independent functioning of their Parliaments. This has reduced the risk of court decisions that are unsatisfactory to these parliamentarians. Minimizing risk is even more important for Canada's legislative bodies, which unlike our Commonwealth partners must also contend with constitutional guarantees of individual rights and freedoms.

The UK Joint Committee points to the evolving context in which privileges are to be maintained and asserted: "Despite its ancient origins, parliamentary privilege must meet the current needs of Parliament, and must do so in a way acceptable today as fair and reasonable … The touchstone applied by the Joint Committee was that Parliament should be vigilant to retain necessary rights and immunities, and equally rigorous in discarding all others."[75]

In addition, the British report identified several themes that were relevant to its entire examination. The Committee members questioned whether their privileges were adequate to meet current and future needs. They applied contemporary standards of fairness, reasonableness and accountability.

[74] Australia, *Parliamentary Privileges Act 1987*, s. 14(1).

[75] UK Joint Committee on Parliamentary Privilege (1999), para. 3 of the executive summary.

While recognizing the need of Parliament to have rights and immunities essential to its proper functioning, they felt that privilege should be no more than is actually required. They identified a need to establish procedures to prevent abuse and ensure fairness.[76]

A Canadian review would have a number of parallels with the British and Australian studies—insofar as the same range of privileges and many of the same issues and concerns would have to be examined. Such an exercise would be guided by the considerable case law of recent years—not only to take important legal principles into account, but also to address adverse or conflicting court rulings. Moreover, it would have to inquire into the fair and reasonable balance between two constitutional areas of law: the *Charter* and parliamentary privilege.

The key elements drawn from the three major Supreme Court cases could serve broadly as parameters. Thus, a review would cover both inherent and legislated privilege, create a better understanding of necessity as the foundation of privilege, clarify necessity in a modern context, ensure that Parliament is prepared to meet the burden of proving both the existence and the continuing necessity of each privilege, and review the application of statute law and, by extension, review the application of the *Charter*.

A Canadian review would also have to address the conundrum postulated by Fox-Decent. He proposes a way out of the troublesome distinction between scope and exercise. He suggests an approach that permits a review of both. In this connection, he cites Mr Justice Létourneau of the Federal Court of Appeal, who wrote reasons for the court in *Vaid* and who explained: "the scope of a power is, in practice, revealed by the exercise that is made of that power. It is at that point that the issue of scope and delimitation comes into play. It is at the moment of the exercise of the power that the necessity test becomes significant. It is at this juncture that one has to determine whether, as part of the scope of the power, its exercise was necessary to attain the objectives for which the power was given."[77]

If the scope of privilege were more closely defined by necessity understood in a contemporary context, the risk identified by Fox-Decent could be significantly minimized.

[76] *Ibid.*, para 32.

[77] *Canada (House of Commons) v Vaid*, [2003] 1 F.C. 602, 2002 F.C.A. 473, para 37.

Conclusion

There is a need to re-evaluate privilege in a comprehensive way in a process that not only engages the parliamentary and legal advice of experts, but also engages the judgment and discretion of political actors accountable through political institutions.

In Canada, the conditions that allowed a static law of privilege for over a century no longer prevail. The *Vaid* decision necessitates a broad and careful review of all privileges, not only to verify old assumptions, but also to ensure that these necessary protections of democratic institutions are modernized and continue to be maintained. This will help ensure that privilege can withstand close judicial scrutiny. It will also serve to ensure that privileges are fair and reasonable in a modern context by balancing the institutional imperatives of a parliamentary body with the need to minimally impair individual rights and freedoms.[78]

This approach is preferable to the course followed to date, which has seen the courts as the principal actors in the attempt to reconcile parliamentary privilege with the *Canadian Charter of Rights and Freedoms*. Necessarily, the courts have had to deal only with the narrow questions of law squarely put before them, which means that the modernization process so far has been piecemeal and disjointed, confusing and contradictory.

Conventional wisdom once held that vagueness and obscurity served the interests of protecting and maximizing privilege. That strategy, which was largely successful before the advent of the *Charter*, has now exhausted its usefulness. In the modern context, it can only serve to undermine the maintenance and protection of privileges necessary to the independent functioning of the legislative branch of the state. A comprehensive review is now needed, one that not only protects the legislative branch, but that also pragmatically addresses the realities of the human rights protected by the Constitution. It is essential that parliamentarians come to grips with the fact that in modern times privilege is rarely claimed as a shield against attacks by the executive or by the judiciary acting as a proxy for the executive. In reality, and in public perception, privilege has become a sword, with the practical effect of denying, or at least interfering with, the rights and freedoms guaranteed to individuals by the Constitution.

[78] "Minimal impairment" was one of the *Charter* tests of reasonableness established by the Supreme Court in the landmark case *R. v Oakes*, [1986] 1 S.C.R. 103. This is effectively the test suggested by Senator Andreychuk: "maximization of rights while maintaining the proper balance with parliamentary privilege".

A lack of clarity, about which the privileges committee of the House of Commons recently complained, continues to prevail. Neglect of privilege, or the failure to attempt a serious modernization effort, is fraught with risk. It lends itself to abuse, such as the scenario envisioned by McLachlin J., now Chief Justice, where the guise of privilege is used to trump legitimate *Charter* rights. It also leads inevitably to a parade of legal challenges, and ultimately to a court-driven modernization that is already unsatisfactory to parliamentarians in Canada.

MULTIPLE CHOICE VOTING

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House of Lords[1]

Introduction

Voting in Westminster-style assemblies is binary: Aye or No, Content or Not Content. A proposition is put to the House, usually with written notice. After debate, the person presiding "puts the Question", so that everyone is clear what the proposition is. The House then decides Yes or No, usually by simple majority. Amendments proposed to the proposition are dealt with in the same fashion, before a final decision on the proposition as amended (or not).

This approach is crude, but it is robust and it makes for clarity and speed. Members are as clear as possible what they are being asked to decide at each point. The outcome is likewise clear, and available immediately. It is significant that, at Westminster at least, there is no procedure to record abstention; the only votes recorded are those that express a choice and affect the outcome.

It can be argued that binary voting reinforces the constitutional principle of responsible Government. Governments are formed from and are accountable to Parliament, and through Parliament to the people. The party that can best command a majority in the House of Commons forms the Government, decides on a policy and invites Parliament to agree to it. Should Parliament do so, the Government can be held responsible for it. Should it not be carried, the authority of the Government is questioned. The ultimate sanction is a vote of confidence, the biggest binary question of them all, where a Government's survival can depend on a single member's vote.

But choices are not always binary. Sometimes the Government, or other person initiating the business, wants to put forward not a single proposition, but a set of options. This article recounts recent Westminster experience of such situations. It suggests that, while the binary voting system can be adapted to quite complex situations, members value the opportunity to table amendments, and the right to say No.

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It often happens that more than one alternative is presented, in the form of competing amendments to the original proposition. Each House has its own procedures for dealing with such situations. What distinguishes the situations described here is that the original proposition itself contains alternatives.

Lords reform

On two recent occasions the Government has asked both Houses to vote on multiple options for the composition of a further reformed House of Lords—in February 2003 and March 2007. The first time, the procedure and propositions were put forward by the Joint Committee on House of Lords Reform. The Committee proposed seven motions, from a fully appointed House to a fully elected House with hybrid options in between, arranged so as to start with the two extremes and move towards 50:50. They said:

> "Having considered various possible methods of approaching the voting, including the possibility of a ballot, we conclude that the best way of getting an accurate measure of views in both Houses would be to have a series of motions put on the different options one after the other, notwithstanding the normal practice of the Houses in dealing with substantially similar questions and questions disagreed to. This follows the precedent used in the case of the Motions on Hunting with Dogs in both Houses in March 2002.
>
> "Accordingly we recommend that a series of motions, each setting out one of the seven options we have identified, be moved successively in each House notwithstanding the normal practice in regard to questions. Members would be free to vote in favour of as many of the options as they considered acceptable, after a separate debate on the issues raised in this Report."

The "normal practice" referred to is the "same Question same Session" rule, that "a motion or an amendment which is the same, in substance, as a question which has been decided during a session may not be brought forward again during that same session". Arguably, if either House agreed to any of the motions on Lords reform, this rule would prevent any further motions being moved, making this an unsatisfactory form of multiple choice. Procedural motions were agreed to in both Houses to disapply the rule and to make it clear that all the motions could be moved. The Lords motion (28 January) was "that, notwithstanding the practice of the House that matters already decided may not be brought forward again during the same session,

the House may vote on all of the seven motions". The Commons motion (30 January) was that "pursuant to the recommendation of the Joint Committee on House of Lords Reform in its First Report, Questions on later Motions may be put notwithstanding any decision of the House on earlier Motions".

The two Houses voted on the same day (4 February 2003). In the Lords, the procedure worked, in the sense of producing a clear outcome. The House divided on all seven options. The all-appointed option was agreed to, and all others roundly defeated.

In the Commons, the process was less satisfactory. All seven options were defeated, one by only three votes, three without division. It is said that some MPs voted the wrong way because they lost track of which motion was being voted on. All sides of the argument pored over the division lists looking for evidence of moral victory, but Lords reform went off the boil.

In the Commons, an amendment to the first motion was selected, which allowed the House to vote on the option of abolishing the Lords altogether. It was defeated. No amendments were tabled in the Lords.

The process was repeated in 2007, this time on the basis of a Government White Paper, *The House of Lords: Reform* (Cm 7027). The seven options were the same, and once again the "normal practice" was waived, but several refinements were introduced to the process. First, the Commons voted first, on 7 March, followed by the Lords on 13 March. Secondly, the Commons took a preliminary motion "That this House supports the principle of a bicameral Parliament". They also took a final motion "That this House is of the opinion that the remaining retained places for peers whose membership is based on the hereditary principle should be removed". An Opposition amendment to this motion was selected, to add "once elected members have taken their places in a reformed House of Lords". Neither of these additional options was put to the Lords. Thirdly, the seven options were moved in a different order, starting with "fully appointed" and moving through the range to "fully elected".

Most dramatically, the White Paper proposed that both Houses should vote on the seven options by paper ballot and alternative vote (AV). It said:

> "The aim of the free vote proposal is to seek a clear final preference on the options put before the two Houses. The AV procedure should encourage Members to vote 'for' a particular option, rather than against, as MPs did in 2003. Although it is an unusual method of voting, both Houses have decided to use a similar approach to choosing their Speakers (through a single ballot in the Lords and sequential votes in the Commons). The

> House of Lords used its adopted system in its Speakership election in 2006. A difference between those processes and that proposed here is that, whereas the votes in Speakership elections are anonymous, the votes for the proposed free vote on reform of composition of the House of Lords, as with normal Parliamentary votes, would be put into the public domain after the vote has been counted and the result has been announced."

When Jack Straw MP, the Leader of the Commons, made a Statement to the House about the White Paper on 7 February, this aspect of it was attacked. Theresa May MP, Shadow Leader, called it a "dangerous precedent"; Sir Patrick Cormack MP called it a "constitutional outrage" and a "football coupon ballot"; Sir Nicholas Winterton MP called it a "proposal to manipulate the House of Commons". Those who spoke in favour of AV, on the other hand, made it clear that they saw it as a way to push forward with Lords reform.

Responding, Mr Straw revealed more of the thinking behind the proposal. In 2003, "Gamesmanship applied. The order in which the ballots were put determined the outcome." The outcome had amounted to a "train wreck". AV was "simply a compressed version of an exhaustive ballot", as in the new procedure to elect the Speaker.

The following day, a Commons Early Day Motion was tabled, "That this House believes that whatever proposals come forward on House of Lords reform, any indicative vote should include on the ballot paper the option to support the status quo." At Business Questions that day, George Howarth MP made the same point: "many of us want not only the opportunity to vote for what we want to happen, but the opportunity to vote against what we do not want to happen".

On 19 February Mr Straw withdrew the proposal for an AV ballot, and announced that traditional voting would be used. He explained, "It is inherently difficult to elicit preferences with yes/no votes. However, that is the system that we must use. My own instinct is to keep broadly to the range of options with some additions that were set out on the Order Paper on the last occasion. We should simply start at one end of the spectrum and work to the other, as that will leave the least bad taste in people's mouths." He explained candidly why he would not seek to force through AV: "It is hard to persuade colleagues who disagree with one's argument to go into the Lobby on a procedural issue".

The Opposition welcomed this change of heart. Theresa May explained more clearly this time her objection to AV: "It is a fundamental right of Parliament to reject Government proposals should it wish to do so."

This time in fact the result was clearer in the Commons. They voted for 80 percent elected by 305 to 267, for fully elected by 337 to 224, and for the preliminary and final motions, rejecting the other options and the Opposition amendment. The Lords again voted for "fully appointed" and rejected all other options.

Hunting with Dogs

In 2001 the Government introduced in the Commons a bill to regulate hunting with dogs. The bill contained parallel clauses 1, 2 and 3 providing for three alternative approaches: self-regulation, licensing and a total ban. It also contained a complex commencement clause, which prevented the bill from being internally contradictory. The first day of Committee Stage took place in the Chamber, on 17 January, with a vote on each option. Introducing the debate, the Minister explained that MPs could vote for more than one option. He also explained that they should vote against options they opposed as well as in favour of those they supported, since nothing in procedure prevented the House from agreeing to more than one option and creating a nonsense.

The Commons opted for a ban, striking out clauses 1 and 2 and endorsing clause 3 (and deleting the commencement clause, which was now redundant), and this therefore was the form in which the bill reached the Lords. It was however desired that the Lords too should have free choice among the options.

The way chosen to achieve this was to hold a preliminary committee stage to choose between the options, followed by recommitment to work on the option selected. This procedure was embodied in the following motion, tabled before Second Reading and moved by the Government Chief Whip, Lord Carter, on 13 March, the day after Second Reading:

> "That it be an instruction to the Committee of the Whole House to whom the Hunting Bill has been committed that, notwithstanding the normal practice of the House in Committee, no amendments be considered except any amendments to leave out Clause 1 (Hunting with dogs: prohibition), leave out Clause 1 and insert a new clause (Hunting with dogs: supervision) as set out in House of Commons Bill 2, or leave out Clause 1 and insert a new clause (Hunting with dogs: regulation) as set out in House of Commons Bill 2, and consequential amendments to leave out the schedule and to insert new schedules; and that, thereafter, the Bill be recommitted to a Committee of the Whole House."

The procedure was explained by the Minister at Second Reading, and again by Lord Carter the next day. Both stressed that there would be a vote on each option; and both cited the precedent of the Sunday Trading Bill (see below)—conveniently set by a Government of the other party.

Lord Carter defended taking this motion so soon after Second Reading. "I believed that it would be in the best interests of the House to have a decision on the procedure to be used as soon as possible after Second Reading ... If we delay the decision … your Lordships and the staff of the House will waste time and resources on the tabling, handling and drafting of amendments to options which may never appear in the Bill."

The Opposition raised the following objections to the proposed procedure:

- It had not been agreed through the usual channels, but had been devised by the Government "for their private political purposes";
- It would restrict the amendments which could be tabled for the preliminary committee stage—which was not a feature of the procedure on Sunday Trading;
- It was being put forward too soon, before Lords had even received the complete Hansard of the previous day's debate;
- The Commons having made their choice, the Lords should scrutinise the bill as received, rather than writing a different bill. "If another place decides to insist on its option, we shall have expressed no opinion on the many detailed points that require improvement in the bill as it stands" (Lord Lucas).

Lord Carter defended the proposed procedure, but apologised for the failure to consult. The motion was agreed to on division.

Lord Carter's difficulties were not over. The preliminary committee stage took place on 26 March 2001, and began with a moment of procedural confusion. The following amendments were before the House:

1. To leave out what was now clause 1 (i.e. to reject a ban);
2. To leave out clause 1 and insert a self-regulation clause;
3. To leave out clause 1 and insert a licensing clause;
4. To leave out the Schedule associated with a ban;
5. To leave out the ban Schedule and insert a self-regulation Schedule;
6. To leave out the ban Schedule and insert a licensing Schedule.

The Lord in the Chair opened proceedings with a statement in standard form that if amendment 1 were disagreed to, i.e. if the House upheld the ban, then the remaining amendments would not be called. But the Minister then

said that there would be a vote on each option. He added an important clarification, to cover the possibility that more than one option would be approved: "the last one that receives a positive vote will be the chosen option". The discrepancy was noticed, confusion erupted, and Lord Carter moved a brief adjournment.

When the Committee resumed, the Lord in the Chair confirmed that amendments 1, 2 and 3 would all be called. Debate proceeded. Amendment 1 was agreed to, so the House rejected the ban; amendment 2 (self-regulation) was agreed to; amendment 3 (licensing) was defeated. And that was that: the bill made no further progress before a General Election was called in May.

The Government returned to the issue after the Election, with debates in both Houses (Commons 18 March 2002, Lords next day) on three free-standing motions, moved by a Minister, one in favour of each option. A business motion was moved first to make it clear that all three motions could be voted on; this was agreed in each House without debate. The motions were, in the Commons:

> "That, at this day's sitting, the Speaker shall put successively the Question on each of the Motions in the name of [the Minister] relating to Hunting with Dogs";

and in the Lords:

> "that, notwithstanding the practice of the House that matters already decided may not be brought forward again during the same session, the House may if it thinks fit consider and vote on all the motions standing in the name of [the Minister] this day."

The results were the same as the previous year.

Sunday Trading

The Shops Act 1950 banned all shops in England and Wales from opening on Sundays, with certain exemptions. By the 1990s, there was widespread agreement that the 1950 Act was no longer "fit for purpose", but views were divided, inside and outside Parliament, about the changes that were needed. Options canvassed ranged from "keeping Sunday special" (i.e. highly restricted trading) to aligning Sunday opening hours with the rest of the week. In 1993, the Government put the options to Parliament in a Sunday Trading Bill.

Commons Committee

On 8 December, the Commons considered the bill in Committee of the Whole House, with a single debate on selected amendments to clause 1. Five competing proposals were each reflected in a principal amendment, to which related amendments were attached. Three of these amendments were tabled by the Government: Amendment 1 for total de-regulation, Amendment 2 for continuing regulation, and Amendment 3 for partial de-regulation. Sir Peter Emery MP tabled a further amendment proposing that only a limited range of shops would be allowed to open before 1 o'clock on a Sunday. Finally Simon Hughes MP tabled an amendment, which he described as a fall-back option, allowing local authorities to decide.

In the event, Sir Peter withdrew his amendment; Amendment 1 was rejected (404 to 174); Amendment 2 was also rejected (304 to 286); Amendment 3 was accepted (333 to 258); and, because the House had thereby taken a view, Mr Hughes' amendment was not called. In the final division at this stage, the Commons agreed that the amended clause 1 should stand part of the bill (335 votes to 175).

Lords Committee

On 29 March 1994, the House of Lords considered the Bill in Committee. The following motion had been moved after Second Reading, on 8 March, and agreed without debate:

> "That Clause 1 and Schedule 1 of the Sunday Trading Bill be committed to a Committee of the Whole House; that thereafter Clause 1 and Schedule 1 be recommitted to a Committee of the Whole House and that the remaining Clauses and Schedules of the Bill be then also committed to a Committee of the Whole House."

The bill before the Committee contained only the option of partial de-regulation. The Minister explained that:

- The first vote would be on whether the first option, of total de-regulation, should replace the second option. Amendments 1 and 2 would have to be accepted for the first option to be supported;
- After the fate of amendments 1 and 2 had been decided, the Committee would be asked whether clause 1 should stand part of the bill. This would in effect be a purely formal question, since clause 1 was necessary whichever option was chosen;
- After clause 1 had been agreed, and if the first option had not been

approved (i.e. if amendments 1 and 2 had not been carried), the Committee would be able to choose the third option, of regulation, by voting for amendment 3;

- Finally, the question would be put on Schedule 1. Schedule 1 was a necessary part of the bill for the second option, but not for the other options.

This sounds complex, but it worked. At the end of the debate, the House divided on amendment 1, which was disagreed to (46–303). Since amendment 2 was consequential on amendment 1, it was not moved. The House agreed that clause 1 should stand part of the bill without a division. The House then divided on amendment 3, which was also disagreed to (151–206). Clause 1 and Schedule 1 were reported without amendment, and recommitted to a Committee of the Whole House.

Committee report presenting alternatives

On two recent occasions the Lords Procedure Committee has invited the House to decide which day should be the general debate day, Wednesday or Thursday. This had been a matter of dispute for some years. The first time, the Committee left the decision to the House, by reporting as follows:

> "We ... recommend:
> (a) that the general debate day should be moved to Thursday for an experimental period of one session;
> (b) that the general debate day should remain on Wednesday.
>
> *Note: an amendment will be required to leave out one or other of the above recommendations.*"[2]

Accordingly on 25 March 2005 amendments were moved, first to leave out (a), i.e. to choose Wednesday, then to leave out (b) and choose Thursday. The first was defeated and the second agreed to, so Thursday it was.

Elections

Elections are an obvious case of multiple choice, and most assemblies elect their presiding officer, if no-one else. Until 2000, the House of Commons used the binary method to elect its Speaker, with a primary motion "That X do take the Chair of this House as Speaker", and amendments to leave out "X" and insert "Y". In the election of that year there were 12 candidates and proceedings took 9 hours.

[2] House of Lords Procedure Committee, 1st Report, Session 2004–05.

The following year the House agreed a new procedure. This starts binary, with a motion that the incumbent take the Chair. But if this is defeated, or if there is no incumbent, then the decision is by a series of secret ballots, with low-scoring candidates eliminated until one secures more than half the votes. This procedure has not yet been tried.[3]

The House of Lords is in the unusual position of electing some of its own members, under the House of Lords Act 1999, namely the hereditary peers excepted from expulsion under that Act, with by-elections to fill vacancies arising since 2002. The Act left the process to Standing Orders, and the Standing Orders leave it largely to the Clerk of the Parliaments. The method used has been a single secret ballot and alternative vote, with all-postal voting for by-elections not involving the whole House, and with a modified preferential voting system for elections with a very small number of voters. When in 2006 the House decided to elect its own Lord Speaker, it was natural to choose the same process.[4]

It is significant both in principle and in practice that these votes are secret, as is normal in elections, with only anonymised results published. Members' votes are of course normally not secret on other matters. Compiling and publishing the alternative votes of each member, in an assembly of any size, would take some time. Even just counting an AV vote takes some time; but for an election result people are prepared to wait.

[3] See Commons Standing Order No. 1A and *Erskine May* 23rd edition, p 280.

[4] See Lords Standing Orders 9, 10 and 19 (currently 18A) and *Erskine May* 23rd edition p 16.

WHEN IS MINISTERIAL BRIEFING MATERIAL PROTECTED BY PARLIAMENTARY PRIVILEGE AND WHAT ARE THE IMPLICATIONS?

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Introduction

In Queensland it is understood to be normal practice for Ministers to be provided by their departments with briefing papers titled "Possible Parliamentary Questions" (PPQs). As their name suggests, the specific purpose of PPQs are to brief the Minister on matters that are likely to be the subject of questions without notice in Question Time in the Legislative Assembly. Ministers may use the information in the PPQ, either with or without amendment, in answering questions. Some PPQs may in fact never be used, as questions are never asked in respect of the matter. Ministers may also simply choose not to use the information in the PPQ. PPQs or similar briefing papers may also be prepared to assist in giving evidence at a committee hearing, such as before an estimates committee hearing.

On occasion these PPQs may be sought under Freedom of Information legislation or, in rarer cases, sought by an investigating body or a court. On even rarer occasions, they may become evidence in non-parliamentary proceedings. For example, the recent Queensland Public Hospitals Commission of Inquiry, chaired by Hon Geoff Davies QC, obtained PPQs from the Department of Health, prepared for use by the Minister for Health in the Legislative Assembly. It was apparent from the transcript of proceedings that at least one person involved in preparing these documents was examined about their preparation.

This paper seeks to clarify in what circumstances PPQs or other ministerial briefing material can be sought by and used in non-parliamentary bodies.

Issues to consider

There are essentially seven issues to consider when PPQs or briefing documents of the nature described above are sought by a non-parliamentary body:

1. Are the documents proceedings in the Assembly?
2. What is the effect of such documents being proceedings in the Assembly?
3. Can the body seeking the document compel the production of the documents?
4. Can the documents be voluntarily produced to the body without claiming the privilege?
5. Can the production of the documents without claiming the privilege constitute a contempt or breach of privilege?
6. Does the production of the documents without claiming privilege affect the privileged status of the documents?
7. Can any privilege be waived?

Proceedings in the Assembly

Section 9 of the *Parliament of Queensland Act 2001* provides the definition of proceedings in Parliament:

"**9 Meaning of 'proceedings in the Assembly'**

(1) '**Proceedings in the Assembly**' include all words spoken and acts done in the course of, or for the purposes of or incidental to, transacting business of the Assembly or a committee.

(2) Without limiting subsection (1), '**proceedings in the Assembly**' include—

(a) giving evidence before the Assembly, a committee or an inquiry; and

(b) evidence given before the Assembly, a committee or an inquiry; and

(c) presenting or submitting a document to the Assembly, a committee or an inquiry; and

(d) a document tabled in, or presented or submitted to, the Assembly, a committee or an inquiry; and

(e) preparing a document for the purposes of, or incidental to, transacting business mentioned in paragraph (a) or (c); and

(f) preparing, making or publishing a document (including a report) under the authority of the Assembly or a committee; and

(g) a document (including a report) prepared, made or published under the authority of the Assembly or a committee."

The statutory definition of proceedings in parliament in Queensland is very similar to the definition in s 16(2) of the Commonwealth legislation:

"For the purposes of the provisions of article 9 of the Bill of Rights, 1688 as applying in relation to the Parliament, and for the purposes of this section, proceedings in Parliament means all words spoken and acts done in the course of, or for purposes of or incidental to, the transacting of the business of a House or of a committee, and, without limiting the generality of the foregoing, includes:

(a) the giving of evidence before a House or a committee, and evidence so given;
(b) the presentation or submission of a document to a House or a committee;
(c) the preparation of a document for purposes of or incidental to the transacting of any such business; and
(d) 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."[1]

Arguably s 9(2)(e) ("preparing a document for the purposes of, or incidental to, transacting business mentioned in paragraph (a) or (c)"), is wider than its equivalent s 16(2)(c). Whether or not there is any substantial difference between the Commonwealth and Queensland legislation to any practical effect is dubious. I would suggest that there is no practical difference.

I would further suggest that what is stated in this article in relation to the Queensland legislation, which is very similar to the Commonwealth legislation, is probably relevant to other jurisdictions relying on the application of Article 9 of the Bill of Rights 1688 given the Commonwealth legislation has been held by both the Privy Council and Australian Courts to be declaratory of the prior operation of Article 9.[2]

In respect of a PPQ, or any ministerial briefing material, the following questions can be asked:

- Is the preparation of a PPQ a proceeding in the Legislative Assembly as defined by s 9 of the *Parliament of Queensland Act 2001*?
- Is a PPQ itself a proceeding in the Legislative Assembly as defined by s 9 of the *Parliament of Queensland Act 2001*?
- Do the answers to the above two questions vary if the document is prepared for the Minister, but not actually delivered to the Minister or used by the Minister?

[1] *Parliamentary Privileges Act 1987* (Cth) s 16(2).

[2] *Amann Aviation Pty Ltd v The Commonwealth* (1988) 19 FCR 223; *Prebble v Television New Zealand Limited* [1995] 1 AC 321.

There can be little doubt that the preparation of a PPQ or a ministerial briefing paper for use by the Minister in the House or before a committee is clearly caught by s 9(2)(e). The acts of preparation are, therefore, clearly a proceeding in Parliament. Does this mean that the document actually prepared, the actual PPQ or briefing paper is a proceeding in Parliament? Section 9(2)(a)-(c) clearly covers evidence given and documents actually presented and s 9(2)(e) clearly covers the act of preparing a document for use in a proceeding. An argument could be run that protecting the preparation of a document does not actually protect the document itself, unless it is later presented or tabled. That is, it could be argued that the document itself is not part of the preparation.

I submit that this argument is not sustainable, at least since the leading case on the Commonwealth legislation of *Rowley v O'Chee*.[3] In that case Fitzgerald P[4] indicated that the preparation of documents on behalf of a parliamentarian would "perhaps" attract privilege depending upon the evidence tendered; McPherson JA[5] indicated broad scope of operation to the definition of "proceedings in parliament", which clearly would include the preparation of documents for use by a parliamentarian in answering questions asked in parliament and the actual documents prepared. Macpherson JA stated:

> "To that extent, he 'prepared' them or, it may be, arranged for them to be prepared on his behalf. They are among the documents which he swears were 'created, prepared [or] brought into existence' for purposes of or incidental to the transacting of Senate business. It might have been possible for him without exposing the contents of those documents to have identified their subject matter more closely with Senate 'business'; but, even without his having done so, I consider that a conclusion to that effect can readily be drawn as a matter of objective inference by comparing the dates and descriptions of documents in section B of the affidavit with the extracts from the Weekly Senate Hansards which are in evidence.
>
> "The enumerated documents therefore appear to me to satisfy the requirements of s.16(2)(c) by reason of their having (as Senator O'Chee has sworn) been prepared, for purposes of or incidental to the transacting of that business. The expression 'purposes' in s.16(2)(c) inevitably intro-

[3] [1997] QCA 401 (4 November 1997) http://www.austlii.edu.au//cgi-bin/disp.pl/au/cases/qld/QCA/1997/401.html?query=o'chee%20v.%20rowley.

[4] at 213/5.

[5] at 221/25–50.

> duces an element of subjectivity or intention which, in terms of that provision, must have existed at the time the documents were prepared. If it is necessary to go further and find some independent basis or reason for concluding that they were so prepared, it is in my opinion enough to say that recording and compiling notes of information supplied and writing letters on a particular subject in anticipation of imminent discussion or debate on the same subject in the Senate is what one would ordinarily expect a member of Parliament to do before speaking on that topic in the House. Perhaps item 25 described as 'Internal memo from Diane to Senator O"Chee 6.6.95l' may not precisely fit that description; but, if it was created or came into existence, as the Senator swears, for purposes of transacting Senate business, there is no good reason for doubting that it too satisfies the requirements of s.16(2)(c). Alternatively, its preparation may well have been 'incidental' to the transacting of the business in question."[6]

Therefore, PPQs or other briefing material will be proceedings in the Assembly on the basis that the documents were "prepared for" the Minister for use in either answering questions in the House or giving evidence before a committee. If prepared for the Minister for use in the House, it will not matter if they were in fact never delivered (or not yet delivered) or used. If they are prepared for a parliamentary proceeding, whether or not they are actually delivered to the Minister or used by the Minister is irrelevant.

The effect of a document being a proceeding in the Assembly—how can it be used?

In the context of the subject under consideration, two issues arise in respect of documents that are proceedings in Parliament: firstly, the use of such documents in a non-parliamentary proceeding and secondly, the compellability of such documents by non-parliamentary bodies.

One undoubted effect of being a proceeding in Parliament is that the document cannot be "impeached or questioned" in another body or court—the traditional Article 9 protection. It is important to note that just because a document is a proceeding in Parliament does not necessarily mean it will be automatically excluded from being evidence in a non-parliamentary proceeding. Whether a document that is a parliamentary proceeding is able to be used in evidence in a non-parliamentary proceeding turns upon the actual use to be made of the document.

[6] Note 6.

If the use of the document is simply to establish a historical fact,[7] for example, and no impeachment or questioning of the document is invited or allowed, then no objection can be taken.[8] However, the intended use of the document in a non-parliamentary proceeding to "impeach or question" the document, its preparation or its actual use in a parliamentary proceeding would be clearly impermissible. For example, it would be impermissible for an inquiry to use such a document to cross-examine a witness about the accuracy of its content, its use or the inconsistency between the document and a later statement in or out of the House or committee.

Compellability of documents

As previously noted a document that is a proceeding in Parliament is not automatically excluded from being evidence in a non-parliamentary proceeding. The next question to consider is whether such a document is discoverable or compellable? Because a document is a proceeding in the Assembly it may be that coercive processes (e.g. summons) to compel the production of such documents can be lawfully resisted. Usually the statute conferring the coercive process will itself include an exception for parliamentary privilege.[9] Despite an express statutory exception, it is clear that parliamentary privilege may be claimed to resist coercive powers such as a summons, or discovery under court rules[10] or perhaps in the correct situation a search warrant.[11] (It is noted that *In the Matter of the Board of Inquiry into Disability Services*,[12] Crispin J of the ACT Supreme Court rejected a claim to prevent the tender of a report by an inquiry commissioner in declaratory proceedings against the commissioner. However, in that case the evidence did not establish that the particular copy of the report in issue had been prepared for use in Parliament.)

[7] *Church of Scientology of California v Johnson-Smith* [1972] 1 QB 522; *Roost v Edwards* [1990] 2WLR 1280.

[8] Of particular concern, and worthy of separate consideration, is the increasing use of parliamentary proceedings by courts, ostensibly for 'historical fact', but in reality to enable inferences to be drawn from the parliamentary proceedings. In short, there is an increasing fiction being perpetrated with regard to the historical fact exception.

[9] For example, it is lawful to resist a summons issued under *s* 75 of the *Crime and Misconduct Act 2001* on the basis that the document or documents sought are privileged, which in the context of the Act includes parliamentary privilege.

[10] Note 4.

[11] *Crane v Gething* (2000) 169 ALR 727.

[12] [2002] ACTSC 28.

It is now reasonably clear that an objection to compellability in these circumstances may itself be sourced from the protection, in Queensland, enshrined by ss 8 and 9 of the *Parliament of Queensland Act 2001* and in other jurisdictions by application of Article 9 of the Bill of Rights 1688. There is also a suggestion that an objection can be raised on the basis of the exercise of public interest immunity.

McPherson JA in *Rowley v O'Chee*, with which the other members of the court agreed, dealing with the Commonwealth legislation, stated:

> "The remaining and perhaps more difficult question is whether the production, under compulsory process of the court, of the documents in section B falls within the scope of Parliamentary immunity. For this purpose it is necessary to revert to Article 9 of the Bill of Rights. It provides that 'proceedings in Parliament ought not to be impeached or questioned in any court' … It is not, at first sight, altogether easy to see that requiring Senator O'Chee to produce documents for the inspection of another party to litigation can be said to involve 'questioning' his preparation of them in any way. However, the prohibition in Article 9 also uses the word 'impeach'. In modern parlance 'impeach' is often used to mean 'to bring a charge or accusation against', which is the fourth of the meanings ascribed to it in the Oxford Dictionary. The first is 'to impede, hinder, prevent', and the second: 'to hinder the action, progress, or well-being of; to affect detrimentally or prejudicially; to hurt, harm, injure, endamage, impair.' According to the Oxford Dictionary, the second meaning is now obsolete; but, from the examples given in that work, both it and the first meaning were in current use at the time the Bill of Rights was enacted in 1689. It is therefore to those meanings that resort should be made in interpreting the word 'impeach' in Article 9 of the Bill of Rights … Adopting that course with respect to Article 9 has the consequence that, when read with s.16(2) of the 1987 Act, it means that preparation of a document for purposes of or incidental to the transacting of the business of a House is not to be impeded, hindered or prevented (first meaning); or is not to be detrimentally or prejudicially affected, or impaired (second meaning). If the decision below is allowed to stand, the next step in the action no doubt will be to administer interrogatories questioning the Senator about the sources or other details of the information on which he based his statements to the Senate. Interrogatories are part of a process of discovery or disclosure of which the production of documents for inspection is simply a particular form. Proceedings in Parliament will inevitably be hindered, impeded or

impaired if members realise that acts of the kind done here for purposes of Parliamentary debates or question time are vulnerable to compulsory court process of that kind. That is a state of affairs which, I am persuaded, both the Bill of Rights and the Act of 1987 are intended to prevent."[13]

I note Professor Campbell's suggestion that a claim may be made in both privilege and in public interest immunity: "A Member of Parliament who protests the seizure of documents held by him or her might protest not merely on the ground that the seizure was in violation of his or her parliamentary privileges, but also on the ground that the action was in violation of a broader public interest immunity."[14]

The use of Article 9 protection to prevent the compellability of documents may be problematic in respect of documents that are already in the public domain or where it would be difficult to justify that their release would amount to hindering, hurting, or having an injurious effect on parliamentary proceedings. It appears that evidence establishing their nature as parliamentary proceedings and the effect of their release may be required.

Production of documents without claim

In the absence of any positive duty or obligation, there is no compulsion for any person to claim a privilege and resist a summons or other coercive process. Thus although a claim of privilege may be legitimately made in respect of documents that are proceedings in Parliament, there is no necessity or compulsion to make the claim in the absence of a positive duty. There is certainly no obligation on a Minister to object to producing documents sought by a court or an inquiry, unless to do so would breach a Standing Order or privilege of the House or its committees or another duty or obligation at law (such as cabinet confidentiality).

Contempt or breach of privilege

It must be accepted that only the Legislative Assembly itself can determine a breach of privilege or a contempt.[15] Conduct is a contempt if it is intended or likely to amount to an improper interference with the free performance by a member of the member's duties as a member.[16]

[13] Note 4.
[14] Professor Enid Campbell, *Parliamentary Privilege* (2003) 38.
[15] *Parliament of Queensland Act 2001* s 38.
[16] *Parliament of Queensland Act 2001* s 37(2).

If a person in the possession of documents is under a duty or obligation to claim privilege or if by not claiming the privilege they themselves may commit a contempt or breach of privilege, then they should claim the privilege and not produce the documents.

It would appear appropriate for any custodian to obtain the consent of the Minister to provide the documents either pursuant to the summons or voluntarily. This is because despite who the actual custodian of the documents is (e.g. a public officer), in most cases the stated purpose of the documents was to brief the Minister. Put another way, aspects of the privilege attaching to the documents relating to compulsion of the documents must belong to the Minister as the member for whom they were prepared. The aspect of the privilege that belongs to the Minister includes the ability to determine to whom the documents may be released. Once again, setting aside internal matters (such as cabinet confidentiality), a Minister could decide to release the documents to whomsoever the Minister wants to have the documents. It follows that if the Minister consents to their release it cannot be said that the release of the documents amounts to an improper interference with the free performance by a member of their duties.

However, most importantly, despite the wishes of the Minister, in most circumstances, the failure to claim the privilege would, in my view, rarely amount to a breach of privilege or a contempt. There are a number of important circumstances where the release of information, even pursuant to an otherwise lawful summons or like coercive power, may constitute a contempt of Parliament, for example, the publication of a committee document (including a report) where the committee has not authorised its publication. Another example is where the Assembly has prohibited a document's publication, but it is nevertheless published.[17]

But it would be difficult in the extreme to sustain an argument that the Assembly must approve the publication of a document that is not under its control, that it has never seen and will likely never see. It is even more difficult to sustain an argument to expect that the Assembly will treat as a contempt the publication of a document that it has never seen, has no immediate control over and may never (indeed probably highly unlikely) see or have control over, even if it were to give leave for or approve its publication.

[17] In my view, s 63 of the *Parliament of Queensland Act 2001* sets out the circumstances where the Assembly controls the release of a document and where leave of the Assembly or a committee to publish the document is required.

Effect of publication to an investigating body

The provision of the documents to an investigating body will not affect the protection afforded to the documents by s 9 of the *Parliament of Queensland Act 2001* as proceedings in the Assembly. That is, they will still not be able to be impeached or questioned in the absence of an overriding statutory provision applying. Article 9 protection aimed at the "use" of the document, rather than its possession, is still operative.

Waiver

One of the more frustrating issues that continues to be raised from time to time is the notion that Parliamentary privilege afforded by Article 9 of the Bill of Rights can be waived. This is clearly not the case: the privilege, established by statute, can only be set aside by statutory amendment. Professor Carney in his book *Members of Parliament: Law and Ethics* states: "As for waiving freedom of speech, the accepted position is that neither a member nor a House has the capacity to waive the Article 9 freedom because it is a statutory provision."[18]

My colleague David McGee QC, Clerk of the New Zealand Parliament, in his text[19] discusses in some detail the notion of "waiver of privilege" which he rejects. His excellent explanation of the history of such matters elucidates just how the confusion about "waiver" and "permission to use proceedings" came about as a result of litigants applying for leave to refer to proceedings and attempts in earlier times of the House of Commons to try and restrict reports of its proceedings.

Professor Enid Campbell[20] devotes a whole chapter of her treatise to the issue of waiver of parliamentary privilege. Professor Campbell clearly dismisses any suggestion of waiver without statutory amendment, but importantly also discusses the poor policy implications involved in parliament attempting to waive privilege and states:

> "There seems to be little doubt that the immunity from liability which Article 9 confers cannot be waived either by a house of parliament or by an individual who is entitled to rely on the immunity. There are, however,

[18] Professor Carney references *Prebble v Television New Zealand Ltd* [1985] 1 AC 321 at 335 (PC), my colleague Harry Evans, the Clerk of the Senate and a report of Queensland's Legal, Constitutional and Administrative Review Committee for the assertions.

[19] *Parliamentary Practice in New Zealand* at pages 474 and later at 477–478

[20] Note 15, chapter 30.

differences of opinion about whether the exclusionary rule of evidence based upon Article 9 may be waived, in the absence of a clear statutory provision which authorises waiver. A limited power of waiver has been conferred by s 13 of the Defamation Act 1996 (UK). Such a power was also given to the houses of the New South Wales parliament in 1997 by amendments to the Special Commission of Inquiry Act 1983 (NSW), but again for limited purposes … There is surprisingly little judicial authority on the question whether any immunities conferred by Article 9 of the Bill of Rights, or any of its requirements, can be waived. Houses of parliament have generally taken the view that Article 9 cannot be waived, principally because it is contained in a statute. No one, it has been argued, has authority to dispense with the application of statutes unless there is clear statutory provision to enable dispensations to be granted."

I believe that some of the confusion surrounding the waiver issue arises because the protection afforded by Article 9 which goes to the "use" of protected documents (that is, preventing their impeachment and questioning) is confused with their release (that is, whether the documents can be released, whether by compulsion or consent).

Freedom of Information

I note that in a Queensland Freedom of Information (FOI) decision, *Beanland and Department of Justice & Attorney-General*,[21] a claim for exemption from FOI on the basis of parliamentary privilege failed. The documents sought were briefing material by agencies in connection with the budget approval process of the Queensland Parliament, in particular, for the purpose of briefing their respective Ministers for appearances before budget estimates committees of the Queensland Parliament.

It was suggested that ss 11(1)(b) and 50(c) of the *Freedom of Information Act 1992* (Qld) applied, each of which provide as follows:

"**11.(1)** This Act does not apply to … (b) the Legislative Assembly, a member of the Legislative Assembly, a committee of the Legislative Assembly, a member of a committee of the Legislative Assembly, a **parliamentary** commission of inquiry or a member of a **parliamentary commission of inquiry …**

"**50.** Matter is exempt matter if its public disclosure would, apart from this

[21] [1995] QICmr 26 (14 November 1995); (1995) 3 QAR 26.

Act and any immunity of the Crown … (c) infringe the **privileges** of—(i) Parliament".

The Commissioner formed the view that these provisions were of no relevance in the review. The Commissioner noted that the applications in these cases were made to agencies for documents held by agencies, not to a committee or member of the Legislative Assembly for documents held by a committee or member of the Legislative Assembly. The Commissioner held that the fact that the documents were in some way relevant to a committee of the Legislative Assembly did not attract the application of s 11(1)(b) of the FOI Act.

Section 50(c)(i) provides that matter is exempt if its public disclosure would infringe the privileges of Parliament. It was suggested that the effect of s 3 of the then *Parliamentary Papers Act 1992* (Qld) was such that papers prepared for the benefit of a Minister giving evidence before a Parliamentary committee could be regarded as "proceedings in Parliament", and so public disclosure of them might amount to an infringement of Parliamentary privilege. The Commissioner considered that he should bring both provisions to the notice of each of the respondents and raise the possible application of s.50(c)(i) of the FOI Act with the Speaker of the Legislative Assembly.

The Commissioner wrote to the Speaker on 24 January 1995, outlining a number of concerns the Commissioner had as to the possible applicability of s 50(c)(i) and inviting him to apply to become a participant in these external reviews. The Speaker responded by letter dated 10 March 1995, indicating that on the facts of the matter, he did not consider that there was any basis on which a claim for exemption under s 50(c)(i) could succeed, and declining to apply to be a participant. Following the Speaker"s letter, the Commissioner wrote to each of the respondents indicating his preliminary view that s 11(1)(b) was not applicable in the circumstances of these applications. It is noted that this decision pre-dated *Rowley v O'Chee*.[22]

The proper approach for custodians

The proper approach for a custodian of such briefing material, should they be summoned to produce documents is as follows:

- Firstly, the custodian should seek the consent of the Minister to release the documents to the investigating body.

[22] Note 4.

- Secondly, if the Minister consents, the documents should be provided. Note that the provision of the documents to the non-parliamentary body will not affect the protection afforded the documents by s 9 of the *Parliament of Queensland Act 2001* as proceedings in the Assembly. That is, they will still not be able to be impeached or questioned in the absence of an overriding statutory provision applying.
- Thirdly, if the Minister does not consent, the summons should be challenged in accordance with the Act or otherwise in accordance with law. The ultimate claim will be determined by the courts in accordance with the law.

It is important at all times to note the distinction between the use of a document (that is, if it is a proceeding in Parliament) and the release of the document to third parties. Whether a matter is a proceeding in Parliament does not necessarily mean it is protected from an order from a competent tribunal for production—for example, if the document is already public. The provision of a document, either voluntarily or by coercion, does not result in the loss of privilege. Privilege of a proceeding cannot be waived. The privilege arises from the operation of statute and only statute can alter its status.

PARLIAMENTARY PRIVILEGE AND MODERN COMMUNICATIONS: A POSTSCRIPT

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The 2001 prediction

In an article in 2001 in *The Table* titled "Parliamentary Privilege and Modern Communications"[1] (the 2001 article), I explored the application of the law of parliamentary privilege in the electronic or cyber age.

The 2001 article was written prior to any significant Australian or other Commonwealth judicial decisions regarding jurisdiction and the Internet.[2] The article attempted to predict what would happen if a document, published in such a way as to be protected by parliamentary privilege in one jurisdiction, when published on the Internet could be the subject of legal action in another jurisdiction (for example, defamation) and, if so, what law would be used in the proceeding and whether the parliamentary privilege in the other jurisdiction could be raised as a defence or complete bar to the action.

The issues under consideration in the 2001 article were essentially questions involving an area of law often called "conflict of laws", "private international law" or "private transnational law". Consideration of this area of law is necessary when there are elements of a matter that involve another jurisdiction. This field of the law deals with the law, rules and practices in determining whether a local court has jurisdiction to deal with a matter and, if so, what law is to be applied.

In respect of the jurisdiction issue, whilst judicial decisions in the Commonwealth on the Internet were sparse, I concluded, largely based on the architecture of the Internet and a number of decisions of courts in the United States, that courts would hold that in a legal sense "publication" of a

[1] See *The Table*, 69 (2001), pp 44–52.

[2] There had been decisions regarding actions involving the Internet, for example, probably the first reported case concerning the application of defamation laws to online publications occurred in Western Australia in relation to an alleged defamation on an Internet bulletin board as early as 1993 (*Rindos v Hardwick* (No. 1994, March 31, 1994, WA Sup Crt). But in that case both parties were in Western Australia, and the "posting" occurred in Western Australia, so no jurisdictional issues such as that discussed in the 2001 article were raised.

document on the Internet actually only occurs in the jurisdiction where the server which holds the information is located.

I disagreed with a New South Wales decision of Simpson J in *Macquarie Limited v Berg*[3] that held that material placed on a server in another jurisdiction was "transmitted to and can be received in New South Wales." I submitted that the case had misunderstood the way in which the Internet works and would not be followed.

In respect of the law to be applied, based on the theory that the "publication" occurred where the server that contained the material was located, I concluded that in respect of defamation on the Internet[4] the law of the jurisdiction where the publication took place was the appropriate law to be applied. I was thus supporting, with regard to Internet publications, the "single publication" principle from the United States that makes the distribution of a single communication, even via a connected mishmash of media such as the Internet, one act of publication.

On 10 December 2002 the High Court of Australia in *Dow Jones and Company Inc. v Gutnick*[5] thoroughly rejected the decisions of courts in the United States and debunked my prediction, insofar as the jurisdictional issue canvassed in the 2001 article was concerned.

Of course, the jurisdictional issue also has implications for the choice of law to be applied to a matter involving publication on the Internet.

Dow Jones and Company Inc. v Gutnick (*Gutnick*)

The facts of the case are relatively simple. Joseph Gutnick commenced an action against Dow Jones in respect of statements made by Dow Jones in the publication of its Barron's Digest on the Internet. The servers containing the Internet version of Barron's Digest were located in the United States. Mr Gutnick bought the defamation action in Victoria, his principal place of residence.

Dow Jones challenged the matter being heard in Victoria. In the Victorian Supreme Court, Justice Hedigan held that the matter could be heard in

[3] [1999] NSWSC 526.

[4] A defamation is a subset of a group of wrongs recognised by the common law and statute known collectively as torts. They are generally actions or omissions that cause damage to another person.

[5] [2002] HCA 56 http://www.austlii.edu.au/cgi-bin/disp.pl/au/cases/cth/high_ct/2002/56.html?query=%7E+dow+jone+vs+gutnick

Victoria. Dow Jones sought leave to appeal to the Full Bench of the Victorian Supreme Court, but leave was refused. Dow Jones then sought leave to appeal to the High Court of Australia. The High Court granted leave to appeal. The case was heard on 28 May 2002, with the judgment being delivered on 10 December 2002.

The High Court unanimously held that the appeal should be dismissed and that Australian State jurisdiction applied where it could be shown that the defamatory material was accessed (downloaded) from that jurisdiction. In effect, the High Court found that material was published anywhere it was downloaded, not only where it was uploaded and held.

In making its finding, the High Court rejected the single publication principle which underlay the reasoning of a number of court decisions in the United States. In respect of this principle, the High Court stated:

> "To trace, comprehensively, the origins of the so-called single publication rule, as it has come to be understood in the United States, may neither be possible nor productive. It is, however, useful to notice some of the more important steps that have been taken in its development. Treating each sale of a defamatory book or newspaper as a separate publication giving rise to a separate cause of action might be thought to present difficulties of pleading and proof. Following early English authority holding that separate counts alleging each sale need not be pleaded in the declaration, American courts accepted that, where the defamatory matter was published in a book or newspaper, each publication need not be pleaded separately. Similarly, proof of general distribution of a newspaper was accepted as sufficient proof of there having been a number of separate publications. It was against this background that there emerged, at least in some American States by the late nineteenth century, the rule that a plaintiff could bring only one action against a defendant to recover damages for all the publications that had by then been made of an offending publication. The expression 'one publication' or, later, 'single publication' was first commonly used in this context.
>
> "In the early decades of the twentieth century, the single publication rule came to be coupled with statements to the effect that the place of that single publication was the place where the newspaper or magazine was published. The source of this added proposition was given as a case of prosecution for criminal libel where the question was that raised by the Sixth Amendment to the United States Constitution and its reference to the 'state or district wherein the crime shall have been committed'. Despite

> this difference in the context in which the question of location arose, the statement that the place of publication was where the newspaper or magazine was published was sometimes taken as stating an element of (or at least a consequence of) the single publication rule applied to civil defamation suits …
>
> "For present purposes, what it is important to notice is that what began as a term describing a rule that all causes of action for widely circulated defamation should be litigated in one trial, and that each publication need not be separately pleaded and proved, came to be understood as affecting, even determining, the choice of law to be applied in deciding the action. To reason in that way confuses two separate questions: one about how to prevent multiplicity of suits and vexation of parties, and the other about what law must be applied to determine substantive questions arising in an action in which there are foreign elements."[6]

Gutnick raised the prospect for material to be considered published in multiple jurisdictions. Furthermore, it opened the possibility of multiple concurrent actions of defamation, or the strategic choice of jurisdiction based on the plaintiff's assessment of success in each jurisdiction.

It also meant that conflict of laws considerations would not necessarily apply and that the law where the action was commenced would apply, not the law where the material had been uploaded.

A practical example highlights the issue. If a committee of the Queensland Parliament publishes a report which defames a resident of New South Wales and the report is subsequently published on the Queensland Parliament's Internet server and the material is read in New South Wales via the Internet, the "publication" occurs in New South Wales. If the action is commenced in New South Wales, the law applied is the New South Wales law, not the Queensland law. Now this raises the spectre that the possibly more advantageous extended statutory parliamentary privilege in Queensland may not be relevant in the action and that common law parliamentary privilege only applies.

I say spectre, because I am not convinced there would be practical differences in the scenario above. I submit that each jurisdiction's laws, practices and procedures would be recognised and applied as necessary to give effect to parliamentary privilege, despite the general law of the jurisdiction applying. This was a prediction that I made in the 2001 article, which, unlike the

[6] Per Gleeson CJ, McHugh, Gummow and Hayne JJ at para 31, 32 and 35.

other prediction, appears to have support in the dicta of the High Court in *Gutnick*.

Assume there are real differences in the law relating to parliamentary privilege in each jurisdiction. Assume that in one jurisdiction (jurisdiction A) a committee has no power itself to order publication of a report or evidence and that the committee must report all matters to the House who must decide whether to order publication; whereas in jurisdiction B, a committee has full power to publish evidence, reports and other documents. If a committee from jurisdiction B publishes its evidence and report containing defamation against a resident of jurisdiction A and that resident takes action in jurisdiction A, it is that jurisdiction's general law that will be applied. But will the court recognise the power of a committee in jurisdiction B to publish its own reports and evidence? If it strictly applied its own law, then because a committee has no power to order publication, the absolute defence of parliamentary privilege would not apply. But I believe that full faith and credit of each parliament's laws, practice and procedure would be applied on subsidiary questions such as the authority to publish.

In the 2001 article I opined that s 118 of the Commonwealth Constitution—the "full faith and credit" provision—may apply in respect of actions involving Australian jurisdictions. Section 118 provides that "full faith and credit shall be given, through the Commonwealth to the laws, the public Acts and records, and the judicial proceedings of every State." In the Gutnick decision, the High Court emphasised the importance of the full faith and credit provision:

> "Publications within Australia, but in different States or Territories, may require consideration of additional principles. Although the choice of law to be made in such a case is again the law of the place of the tort, questions of full faith and credit or other constitutional questions may well arise. It is unnecessary to pursue those matters further at the moment and we return to cases in which there are international rather than solely intranational aspects."

This is an important indicator of the court's attitude to matters such as parliamentary privilege in inter-jurisdictional issues. Legislative initiatives across Australia since *Gutnick* make the position even clearer.

Reform since *Gutnick*

Prior to *Gutnick* there was no legislation dealing specifically with defamation on the Internet and no uniform approach to defamation. Furthermore, Australian defamation laws are primarily State and Territory laws and the law, including available defences, was different in each jurisdiction until 2006.

In November 2004, the Attorneys-General of the States and Territories agreed to support the enactment of uniform model provisions in relation to the law of defamation.

For example, in May 2005, the Queensland Attorney-General, Linda Lavarch, introduced a Bill (Defamation Bill 2005) to amend Queensland's defamation laws, in accord with the proposed uniform model provisions. This Bill was passed and became effective from 1 January 2006 as the *Defamation Act 2005*. All states have since adopted the model provisions.

Section 27 of the Act provides that it is a defence to the publication of defamatory matter if the defendant proves that the matter was published on an occasion of absolute privilege. The section provides a non-exhaustive list of certain publications of matter that are published on occasions of absolute privilege. The list includes the publication of matter in the course of the proceedings of a parliamentary body of any country.

Section 28 provides that it is a defence to the publication of defamatory matter if the defendant proves that the matter was contained in a public document or a fair copy of a public document, or a fair summary of, or a fair extract from, a public document. The section provides that the defence is defeated if, and only if, the plaintiff proves that the defamatory matter was not published honestly for the information of the public or the advancement of education. The section defines "public document" to include:

- Any report or paper published by a parliamentary body, or a record of vote debates or other proceedings relating to a parliamentary body published by or under the authority of the body or any law;
- Any report or other document that under the law of any country:
  (i) is authorised to be published, or
  (ii) is required to be presented or submitted to, tabled in, or laid before, a parliamentary body.

Section 29 provides that it is a defence to the publication of defamatory matter if the defendant proves that the matter was, or was contained in, a fair report of any proceedings of public concern. The section defines "proceed-

ings of public concern" to include any proceedings in public of a parliamentary body.

The net result of all of this is that the position is much clearer than it was in 2001 and the position of parliamentary privilege in inter-jurisdictional disputes, at least within Australia, is much stronger than in 2001 despite *Gutnick*.

THE AUSTRALIAN PARLIAMENTARY STUDIES CENTRE: *STRENGTHENING PARLIAMENTARY INSTITUTIONS* PROJECT

IAN HARRIS
Clerk of the House of Representatives of Australia

Australian tradition of parliamentary inspiration from other jurisdictions

Australia takes great pride in the fact that its federation was forged not by war or rebellion, but by discussion groups, called "conventions", and by consultation with the people at the plebiscite and ballot boxes. Even though the participants of the constitutional conventions in the 1890s took considerable inspiration from the Westminster tradition, there was a quite conscious global search to identify the most appropriate elements of other systems of government for the new nation.

At the Adelaide Convention in 1897, there were many references to the impact of international influence on the minds of those drafting the Constitution. The person who was to become the first Prime Minister, recognising the concept of responsible government, indicated that he did not want his boots made in Germany, and that he did not want his Constitution made in Switzerland. He thought that British forms of government, as adopted and adapted, were the best fitting. His boots clearly had always been made in Britain.

However, the person who was to become the first President of the Senate believed that it was possible to learn lessons from other countries, and pointed to federations in Germany, Switzerland, and America, and to a limited extent in Canada. His response to the suggestion of only British "footwear" was: "I want my boots made where I find they fit me best".

Lao Tzu said that a long journey starts with a single step, and the boots chosen by Australia have done a lot of walking. Australia has been open to adopting successful procedures operating in other institutions that have come to light along the path of that walk. Initially, the choice related to a House of Representatives and a Senate, more along the Washington model. One of the early decisions of the Australian High Court (the Supreme Court) contained the reflection that probably the most striking achievement

by the founders was the successful combination of British parliamentary government with American federalism. The American inspiration has led some to think that Australia, rather than being in the Westminster mould, is more appropriately characterised as "Washminster".

Subsequently, Australian national procedural evolution has occurred inspired from within and by observation of the practices of other jurisdictions. The changes have been so far-reaching in many instances that the appropriate descriptive term would be "Ausminster" rather than "Westminster" or "Washminster".

Establishment of the Parliamentary Studies Centre—building on, and developing, tradition

In what may be a further step down this procedural path, a Parliamentary Studies Centre has been established in Australia. The Departments of the Senate and of the House of Representatives of Australia have joined together with policy and governance/political science programs in the Australian National University to support the establishment within the university of the Parliamentary Studies Centre.

The three main aims of the Centre are:

- Research Output: to promote internationally-recognised parliamentary studies in Australia, the Asia Pacific region, and beyond;
- Research Network: to build linkages between researchers and parliamentary institutions in Australia, the Asia Pacific region and beyond;
- Policy Network: to promote parliament in Australian public policy debate.

In pursuit of these aims, the Centre proposes to provide an international linkage centre, at which international researchers in the parliamentary field will work with Australian researchers interested in parliaments and legislative institutions in Australia at all levels and internationally, particularly in the Asia Pacific region. It will promote comparative parliamentary research across the Australian federation and comparative investigations of Australian experiences in the light of appropriate international developments (see the website: http://www.parliamentarystudies.anu.edu.au/).

Australian Research Council grant

The Department supporting the Senate and the Department supporting the House of Representatives in Australia joined together with the Australian

National University to apply for a linkage grant from the Australian Research Council (ARC). Funds available from the ARC will supplement contributions in cash and in kind from each of the three partners in the project.

The *Strengthening Parliamentary Institutions* project: examination of parliamentary capacity building

The principal theme of the project will be to examine causes of success and failure in parliamentary capacity-building stemming from attempts to modernise and strengthen legislatures. The partners in the project believe that the Australian Parliament has much to offer parliamentary scholars. Australia possesses a relatively stable constitutional environment (though that is not to say that there have not been some instances of constitutional excitement, such as the 1975 dismissal of a validly-elected Prime Minister by the Queen's representative). The walk of the boots along the road has seen a number of attempted variations, including:

- The combination of responsible government together with American federalism referred to earlier;
- Bicameralism;
- Strong party government, with a government by definition, able to control a majority in the House of Representatives;
- Selection of Senators by a proportional representation (PR) voting system, and an increase in the number of Senators so as to make it extremely difficult for the government of the day to command a majority in the Senate;
- Compulsory voting at elections;
- Public funding of political parties;
- An independent parliamentary administration;
- Independent officers of the parliament exercising oversight functions such as the Auditor-General (working closely with the Public Accounts and Audit Committee and other parliamentary committees) and the Ombudsman;
- Procedural innovations such as the House Main Committee, in effect a second Chamber within the House, adapted and adopted by other jurisdictions such as the United Kingdom House of Commons and House of Lords, with concomitant increased opportunities for private Member participation.

The Parliamentary Studies Centre will be responsible for academic and public communication of the results of the research. There will be a web-based series of discussion papers relating to interim findings. Appropriate papers will be published in one of the ANU-based academic journals. The project's ongoing legacy will be three edited volumes in the series *Strengthening Parliamentary Institutions.*

The project will enable the Australian experience of parliamentary innovation to be placed within the wider context of international parliamentary capacity building. Three research streams are expected to flow, under the direction of a project Advisory Committee representing the ANU, the Senate and the House of Representatives Departments:

- A parliamentary fellowship stream to enable parliamentary staff, Members or former Members to articulate case studies of the Australian parliament's institutional changes;
- An Australian parliamentary scholars stream to enable Australian parliamentary researchers to make use of the Centre's resources to examine change processes in the national parliament and other Australian parliamentary institutions; and
- A stream of international parliamentary scholars to enable international researchers to make use of the Centre's resources to place Australian developments in a wider comparative context of legislative studies.

Possibly members of the Society of Clerks-at-the-Table may play some role in the third stream of the project. Many of the Society's members are highly regarded in the international academic community, and on occasion are the most appropriate source of description and evaluation of developments in the international sphere. The miscellaneous section of future editions of *The Table* will include reports of the project's progress, including participation by Society members.

WESTMINSTER, PAST AND PRESENT

What follows is an edited transcript of a seminar with Sir Paul Hayter, Clerk of the Parliaments, House of Lords and Jacqy Sharpe, Clerk of the Journals, House of Commons, chaired by Paul Seaward, Director of History of Parliament Trust. The seminar was one of a series of events marking the 60th anniversary of the establishment of the Parliamentary Archives (formerly the House of Lords Record Office), in which staff of both Houses were invited to record their memories of Parliament.

Paul Seaward: I want to begin by asking Paul why he chose in 1964 to join the Parliament Office, a deeply obscure and rare part of the public service.

Paul Hayter: Well, in those days it was certainly deeply rare and obscure but I would like to think not quite so obscure now. The short answer to your question is, I was facing the prospect of being unemployed when I left Oxford. A friend of mine there said, "I gather there's a job going in the House of Lords, sounds like your sort of thing, why don't you apply for it?" You will notice that that is a little different from the way it's done now. I was known as part of the hit and miss generation. Some of the appointments were a hit and some were a miss and it wasn't until the early 70s that we joined in the use of the fast stream equivalent through the civil service. Since I was also at the bottom of the office for four years you will realise that appointments in those days were infrequent as well.

PS: We won't press you on who were the misses among your generation though I'm very tempted to. Jacqy, can I ask a similar question to you?

Jacqy Sharpe: Well I have to confess to being a parliamentary anorak. I came to London for the first time from the North East when I was ten and I was brought round on a tour and I fell in love with the place and thought that's where I want to work. I did everything I could to get here and I've never changed my mind about wanting to work here. When I was at University my careers officer pointed out a job in the Library Clerkships but they weren't available in the year I was looking for a post and I found that the Clerkships were available and so I decided to apply. It was very similar to the system now. We had an exam … there was a two-day selection process where you had to do all sorts of obscure things including talking to psychologists, chairing a meeting, being the most co-operative member of a

meeting and also had to choose some subjects which you were prepared to defend in debate … We then had a final selection board, about seven people interviewing, and then if you got through that you came to the House itself to be interviewed by the Clerk of the House and to see round. So it was a quite thorough process and I'm still astonished that I ever made it through it but I'm very glad I did.

PS: One further question about that which is that you were one of the first two women to join the Clerks' Department, I think, and it was some time before you were joined by another and I wondered how that affected your experience of both joining, both the process of applying to the Department, and when you got here?

JS: Well I hadn't realised there weren't women Clerks until I actually came to the House; I just assumed that there would be. I found everybody very welcoming. I didn't really find there was any difficulty. I think perhaps the only change which we noticed was that letters stopped being addressed to people by their surname. That had been very much the tradition till then but some people seemed to cavil at the idea of addressing me as Beston, as my name then was, so we started introducing Miss, Mrs. and Mr. I'm sorry it sounds such a trivial difference, but it was about the only difference. Otherwise we were accepted as colleagues and members of the Clerks' Department from the start.

PS: I should say, presumably there were other women in the Clerks Department?

JS: Of course, yes there were and they were welcoming. I've always felt this is a very collegiate place where everybody has supported each other and been a helpful colleague.

PS: Was it about the same time that women joined the Parliament Office?

PH: If I answer initially by saying when did the first female Clerk arrive, the answer is 1981. But when I joined the Refreshment Department was run by a woman. In fact it was almost entirely run by females and now it's been reversed and entirely run by males, but you have to remember that in 1964 we'd only had female Members of the House for six years. Until the Life Peerages Act 1958 it was an entirely male organisation. There were of course secretaries but when you were a young graduate and there was a pool of old dragons, which is frankly what they were, you had almost nothing to do with them at all and they certainly had nothing to do with me.

PS: Just expanding on that, what was the department like when you joined it? Who were the senior figures and those who you looked up to at the top of the department?

PH: I find it very difficult to see that organisation and the one we've got at the moment as being the same place. It was just completely different. For a start we didn't have anything like a Management Board or anything. It was run by three Table Clerks. The staff which, in the Lords, is now is about 500, in those days was about 100. We had no Committee Office, no Works Department, no Human Resources Office, no IT department, no Overseas Office, no Information Office, no internal audit. The Refreshment Department was an entirely separate organisation. It was just a different world and it was a very amateur organisation and if you at some point ask me how things have changed I would say that the change from the amateur organisation of the 1960s to the professional organisation of now is the biggest change of the lot.

PS: And to what extent did those three Table Clerks refer to Members? What was the sort of relationship between Members and Clerks in the running of the organisation?

PH: Well, to begin I was tucked away in the Judicial Office. In fact a quarter of the Clerks were in the Judicial Office and there were three of us there out of 12. So I have got no idea. I have some idea about the Law Lords but the business of the Chamber didn't really figure. Since the three Table Clerks spent most of their day sitting in the Chamber no doubt they had quite a close relationship with some of the Members but in those days, of course, they were almost all hereditaries and, while there were some very good hereditaries, there were some total eccentrics as well so you have to recognise that we aren't thinking about the present day relationship between the staff and the Members which, nowadays, I'm glad to say, is very friendly in the House of Lords. I suspect it was quite friendly too in those days, but the Members were much more starchy and so the notion ever of addressing a Member by his or her Christian name ...

PS: Jacqy, how about the Commons? What was it like when you joined, what was the atmosphere?

JS: I don't think it was as different then from now as the Lords was. It was more formal. We had some very senior people like Barnett Cocks, David Lidderdale, Kenneth Mackenzie. I think one of the factors was that a lot of

the senior people had served in the war and that makes a difference. People bring a different experience and a different approach to what they're doing and I think that, for all that generation, the war permeated everything else they did. It just brought an extra maturity and perhaps a sense of proportion to people which those of us who weren't faced with those sorts of situations had to develop more slowly. And we had a dress code. Initially women were not allowed to wear trousers to work at all and then we got a concession and on Fridays we could wear formal trouser suits and, as you see, the restriction has now gone completely but it was a very welcome concession at the time.

PH: Can I come back, actually, because of this reference to the war. When I joined not only, of course, had most people served in the war but also all the COs and EOs were ex-servicemen. They were very largely non-commissioned officers or sub-mariners or that sort of thing. Very few of them had any serious academic qualifications of the sort we would expect now and that had a really big effect on the organisation and it also made something, which I now regard as being unacceptable, perfectly natural and that was the concept of officer status. The moment I joined here I was an officer and the other people were men in the military sense. Now we've abolished officer status in the Lords because I regard it as being divisive. It helps of course that we aren't only talking about men, but you could not now reproduce the arrangement that you had in those days and, to change the language slightly, there was a very strong above stairs and below stairs element.

PS: And that was true in the Commons too?

JS: Yes, and I'm very glad, like Paul, that that has vanished. I think everybody now is valued for what they contribute equally and that's how it should be.

PS: You touched on it, Paul, but the relationships with other departments and the relationships between the Parliament Office itself—or at least the Clerks—and the other departments of the House. Did they exist in any real sense or were they poles apart?

PH: That's a questioner with a Commons background because the House of Lords has always been either one service or two. In 1964 and for many years afterwards Black Rod was actually completely separate from the rest of the organisation. He is now actually on the staff. I employ him. In those days he was separate but, that apart, it was a completely unified service and the Clerk of the Parliaments employed everybody as I still do.

PS: And a similar question about the relationships between the staff of the

two Houses. Did you ever see members of the staff of the House of Commons at that time?

PH: Well I'll say something that I suspect Jacqy doesn't know about. In fact quite a lot of people in the Commons don't know about it. In, I think it was 1969, the then Lord Chancellor asked the staff of the House of Lords whether we would like to be part of a joint service with the House of Commons and had he got a different answer history might have been different. The answer he got was "not on your life". But that was the 1960s and the not on your life was because we knew—actually we still know—that if it were a joint service across the board we would be the junior partner and it could never work to our advantage so that was why we turned it down and it wasn't pursued. But in those days the communication between the two Houses was almost nil and I am so pleased that we are changing that. I think that the amount of communication between the two Houses is wholly beneficial. They have still got completely different interests so I'm not saying there should be one service, because actually I don't think that would work, the Members of the two Houses want a service which is serving them and their interests. But the more collaboration that we can have the better and of course, with PICT, we have the first joint service. But IT hadn't even been invented in the 1960s.

PS: Just going back to the question that Paul said was really a question with a Commons bias. Back in the late 60s, early 70s how were relationships between the Clerks Department and other departments of the House?

JS: I think there was less contact. There was goodwill but I don't think we knew each other very well except when we went on international assemblies as part of the teams and then we got to know each other much better. I think we did work much more in our individual boxes at that time …

PS: Maybe we should move on a little bit from those early days of both of your careers and I just wanted to ask Jacqy what do you see as the highlight of your career in the House? What are the things you remember: Parliamentary occasions, maybe relationships with colleagues?

JS: One of the ones I remember is the Industrial Relations Bill in 1971 when the House voted for over 12 hours through the night. Anyone who either sat at the desks or had to walk through the lobbies for all those hours will never ever forget the experience and I can only tell you that yellow division paper, after you've looked at it for that many hours, makes you feel remarkably sick. Other memorable occasions: obviously the vote of no confidence carried in

1979 had an impact; the recalls of Parliament, the Saturday when we sat for the Falklands and the second recall after 9/11—I wasn't here for the first one—but the second one, the atmosphere in the House of everyone standing committed to democracy and all the things we normally take for granted but at that moment felt were slightly shaken; it was just a very impressive atmosphere. And if I can mention something which was a very traumatic event, that was the assassination of Airey Neave in 1979. And what was so very impressive was the way the House stopped for a few minutes and then went on and did the business and nobody faltered for a moment and it was out of a sense of respect, not disrespect, that business had to be completed and no one was going to intimidate it into not doing it …

PS: I just wanted to go back to that vote of no confidence because a lot of stories are said these days by Members and so on about that. Were you on division duty that night?

JS: No. I was on in the Journal Office but I was on night duty the next day so I'd reluctantly gone home because I thought I might need some brains and energy the next day if it was carried; I missed the actual vote.

PS: So you didn't see the ambulances in the courtyard?

JS: No, I didn't, but I have on previous occasions seen ambulances in courtyards when they used to bring in people from hospital to keep a majority.

PS: Paul, the bit of your career that I can imagine was the most dramatic was when you were Private Secretary to the Leader of the House and Chief Whip but maybe that isn't the highlight that particularly sticks out in your mind?

PH: Well, funnily enough, listening to Jacqy's answers I was going to have said hearing the bomb that killed Airey Neave was certainly one of the most memorable things about my time here and then over the years that followed, every time I heard an explosion I thought to myself "is that another, is that another bomb?" … Or one time when I was at the Table of the House 7 o'clock in the evening and there was the most appalling shindig outside—explosions galore—and I thought to myself, well, this really is terrible and actually it was a firework display on a barge outside the terrace and nobody had had the decency to tell us. I'm very happy just to come to the Whip's Office in a second but, because it's so unusual, one of my other memories is being the Clerk of the first Select Committee in the House of Lords after the war. In 1972 (this was a year before the European Union Committee came

into existence) the Lords felt it was really about time we tried to have some committee of some sort and I was picked to be the Clerk and first of all the choice of the committee was indicative. It was Sport and Leisure. What they were trying to do was find something completely innocuous where the Lords couldn't do any harm to anybody. Actually it was extremely enjoyable. It was a bit unusual because it lasted for two years and then, as it happens, because it was so non-controversial, the debate on the report was what the Prince of Wales chose to make his maiden speech on. I got summoned to go down to Buckingham Palace thinking I was going to have to write his speech for him and I was seriously impressed when I got there. There was absolutely no question, he'd made up his mind what he was going to say for himself, he was just checking a few small details: you know, which way does he face and so forth. But it's the fact that we were even thinking, could the House of Lords be trusted with a committee, in 1972. Now it's a really, totally different business. But if I can come on to the Whip's Office. It's a feature of the House of Lords which I think is admirable—it's a shame that the Commons hasn't taken the same route—that the Private Secretary to the Leader of the House and the Government Chief Whip is always now a Clerk on secondment and it has been since about 1960, I think, and I was there for three years during Harold Wilson's administration starting in 1974 including the period when he resigned, certainly, and had the lib-lab pact. But you have to remember that in those days the House was overwhelmingly conservative, so being in the Whip's Office for a labour government in a House that was totally, or was almost totally, conservative was surreal because the Chief Whip would do her best to get the troops through the two division lobbies but it didn't make any difference. If there was going to be a division the conservatives were going to win it so the only question was: when would the conservatives decide that they'd like another win? And that is why, since the House of Lords Act of 1999, the House of Lords is so much better a place. Because it is not controlled by anybody there is a certain thrill to what goes on and it was a thrill that was missing … But it was good. I got to see a lot of Cabinet papers and I had the opportunity to put my sixpenny-worth into things and when I came out and came back into the Parliament Office I had a much better idea how the system works and I think that influences the way in which the senior management of the House of Lords operate. We've all, almost all, been there.

PS: Presumably the implication of what you are saying is that, I mean, unlike today when it presumably is an extremely highly-pressured job, then, though

there was a lot to do, it wasn't tied so much to deadlines and to political imperatives?

PH: No, no. There were plenty of political imperatives and so forth but I actually found that it was rather good going from the Clerk's job where I never knew what time I was going to leave in the evening to the Whip's Office where I knew that I could leave at 8 o'clock every evening. I just left at 8 o'clock every evening. As an aside, I remember the Industrial Relations Bill in 1971 a great deal as well. I was a division Clerk and I was on three nights a week and we were here until 11, midnight or later every night. The Industrial Relations Bill was a real horror in both Houses.

PS: Maybe, actually, we should just pursue that theme about late nights and the volume of work. Jacqy what's your impression of, over time, over your whole career, do you think there has been a very significant change or are we just moving back to where we were at some earlier point?

JS: There's certainly been a significant change in hours. Midnight was the norm and later was quite common. There've been changes for things like the Consolidated Fund Bill where there was always an all-night sitting and now it happens as a formal matter and there've been changes in things like Fridays where now the Commons sits only for private Members' Bills. I was just remembering when we used to sit every Friday and one Friday we sat until after 10 o'clock at night. They'd changed the hours and then suddenly the Standing Order was suspended and we had three sittings after the moment of interruption and the latest was after 10 o'clock. I think it was the only time it happened and it sticks in my brain because I was hoping to do something else that evening.

PH: It's one of the civilizing effects of having a larger proportion of women amongst the membership of both Houses that the hours have actually improved very considerably recently. When I arrived the House of Lords only used to sit on three days a week: Tuesday, Wednesday and Thursday and Members of the House were apologising for detaining your lordships at this late hour when the clock was beginning to get near 6. Then there came a period in the 70s and 80s and 90s, well the early 90s, when we got much too much like the House of Commons and now it seems to me that both Houses have recognised that there is no macho achievement in being here late and we have a somewhat more civilised and predictable existence.

PS: But over that time presumably the actual volume of work: transacted

business, transacted bills, committee reports and so on has grown exponentially, so that must have had an effect on the, if not the amount of time that the House sits, at least the amount of work to be got through?

PH: As far as the business of the House is concerned the statute book is growing the whole time but actually it's the complexity, the fact that the bills are getting bigger—the number of bills is not necessarily any different from what it was. As far as the Lords is concerned the reason why everything takes so much longer is there are so many more active Members of the House, all of whom feel they need to have an opportunity to say their six-penny worth, so that whereas in earlier days you would just have the front benches having a cosy chat over a bill, that no longer applies. But remember, the Lords has changed much more than the Commons and I imagine if Jacqy was answering this question she would say that the business isn't such a huge difference between then and now.

JS: I think for the Chamber there probably isn't. I think for committees the work has increased considerably. We've got more committees and they're doing a huge amount of work and one of the reasons is not just the establishment of the departmental select committees in 79 but the move from having sessional select committees to committees set up for the Parliament which, in effect, means that you can use the summer recess to generate enquiries, to gather evidence and things, which has actually made a difference in the amount of work that committees can do in the timescale.

PS: Just going back to your personal experience of the change that has happened. Looking back to the late 60s, early 70s, and the long nights. What did you do in those long watches of the night?

JS: It depended which office you were in. In the Committee Office you could obviously do some work. Sometimes in the Public Bill Office you'd actually be on a Standing Committee which was going all night which, I have to say, was one of the most difficult experiences because you were doing two and a half to three hours before there was a suspension for getting a cup of coffee and between about 2 and 4 in the morning all your eyes wanted to do was close and you couldn't move from the desk. All the Members and the Chairman and Hansard were in the same position. I once got through one night by writing down every minute there was to the next suspension and crossing one out every minute as it was the only way I could keep awake. After that I had a strong cup of coffee and I was all right but it was getting desperate.

PS: There was that terrible moment in some committees where they closed down the support services after about midnight so you were the only people left in the building.

JS: Yes. But I think working two nights a week until after midnight is actually very, very tiring. Members were obviously much more unfortunate because they were working four nights but by the time it got to August I felt that all I really wanted to do was sleep—holidays weren't wanted—you just wanted to sleep.

PS: The summer recesses then were perhaps much more a time for rest and recuperation than they have become?

JS: Yes. I think that's very true.

PH: Close the doors and come back refreshed.

JS: Especially in a procedural office, not so much in the Committee Office.

PH: Summer recesses used to be rather more unpredictable though. Very early on the House of Lords rose on the 12th August. It was thought there was some significance in this but the awful thing was that we were not told when the summer recess was going to start more than three weeks before it began and there were a few years where you were only told a fortnight before it began, so although you had the prospect of a long holiday, and most of us would find that we could have the whole of that as holiday, you couldn't actually plan anything until way into August because you were not quite sure when the recess was going to start, so the luxury of being told in November when the recess is going to be in July to October next year—you don't know how lucky you are!

PS: What do you think has been, Paul, the most significant single engine of change, that has produced these changes that we have been talking about?

PH: That's a completely unanswerable question. In 1968 we nearly got House of Lords reform. It actually took until 1999 to get any significant change and now we're still waiting for the outcome. So that has been an undercurrent throughout. The change in the membership of the House following 1999 was, as we foresaw, a major influence because the hereditary Members of the House had all got there by mistake. I mean it wasn't of their choosing to be there so they tended to take the House of Lords as it was. The new Members, especially those who've come in since 1999, are there because they've chosen to be or because they've been chosen to be and they

expect the House to be something that meets their expectations and when you get rid of the ballast of those who used to be there and you have a membership which is almost entirely new—50 percent of the Members of the House of Lords have arrived since 1997—you get a quite different attitude. The cult of the amateur which used to be the tradition in the House of Lords is being replaced by professionalism. You can't say there was a particular moment at which that happened but I can assure you it is a very different business.

PS: To what extent do you think that was prefigured by the life Peerages and the introduction of them? They must have had a sort of levelling influence.

PH: Oh, well, they immediately improved the performance of the House because, although there were good hereditaries, nevertheless you needed people from different backgrounds. If you think about it, the hereditary House was predominately male, conservative and came either from the South East or from Scotland. It's not the best basis on which to constitute a chamber and I don't have any hesitation in saying I think that the membership of the House of Lords has improved throughout the time that I've been here. It is a far more vibrant place than it ever was and I have no regrets about any of the changes that have taken place. And the Life Peerages Act—which will be celebrating its 50th anniversary in two years' time—that was the beginning of it all.

PS: Jacqy, how about some significant changes in the Commons? What do you think you would pick out?

JS: … Televising, I think, has had an impact because although the audience may not be large, people do get interested in what the House is doing and maybe Members get more letters and things through that. I suspect that the Internet and electronic communications have actually had a very big impact especially upon Members and their constituency workload. But I think the professional approach to the job and the concern for constituencies and constituents is still very, very obvious in that Members take that part of their work incredibly seriously and I don't think that has changed at all. It's just a real commitment between Members and the people they represent.

PS: Do you feel there was any real difference between the way that committees worked before and after the changes in 1979–80 and, secondly, are there any things about your committee experience that stand out?

JS: I think the main change was just that one could actually organise

committee work much better if you weren't trying to get everything finished by July and start again in November; it made it much better organised. It was also more helpful, the departmental select committee, because one had a body of Members who were real experts in their subject and knew the subject, could ask questions on the same level as the Ministers who were replying. I think that's very helpful. Also there are more staff available. When I first started I had half a committee assistant and half the time of a secretary and now there's been an increase in professional back-up for Members … Visits—some very interesting visits. We went with the Race Relations Committee to Atlanta and met a friend of Martin Luther King who had been in Atlanta just after Martin Luther King had been assassinated. That was a very interesting and moving meeting. My highlight? Unless you are a railway buff you won't appreciate it, but when I was on the Transport Committee we went on the advanced passenger train and we had the great experience of hurtling down from Shap into Carlisle, which is a real train lovers' descent, at a great speed …

PH: I was actually the Clerk of Committees for 17 years and 10 happy years of that was as Clerk of the Science and Technology Committee … I never claimed to be a scientist but my committee had on it five Fellows of the Royal Society and two Fellows of the Royal Academy of Engineering and I felt they could get the science right, I could do the writing. Between us we might be able to produce some quite good reports and we did. And since visits have been mentioned, yes I had some very enjoyable visits: a space agency in Toulouse, Fujitsu in Tokyo, Mucking Marshes on the Thames Estuary. It's adult education—very good.

PS: I just also wanted to go back to what we were talking about earlier about the volume of legislation. I know, as Clerk of the Parliaments, this is brought home to you rather immediately when you have to read out the titles of the bills as they receive Royal Assent. I wonder whether this is a process that, has visibly changed?

PH: Having just recently at prorogation had to give Royal Assent to 19 Acts in the old form and been described by one of the sketch writers as a tall coat hanger of a fellow ... If any of you saw the prorogation ceremony you will realise that it is a very exotic affair, and the sketch writer actually surprising keen on it, which surprised me, but my having to say "La Reyne le Veult"—part of my Norman French vocabulary—19 times, each time turning through 360 degrees I tell you by the end I was really quite dizzy. But until

1968 that was the only way in which Royal Assent could be given. In 1968 we used to have Royal Commissions—10 times a year?—and the Members of the Commons got extremely ratty about being summoned up to the Lords especially if it was just to have Royal Assent to a couple of rather insignificant bills. So the introduction of the Royal Assent Act was a great step forward. But, in the interests of keeping the old ceremonies going, it was agreed that there would be one Royal Assent a year at prorogation. It's just like the State Opening, a salutary reminder that the Queen is in Parliament, that there are three parts to Parliament and that the Prime Minister is not yet the king of this country.

PS: You both mentioned earlier hearing the bomb that assassinated Airey Neave and I remember myself sitting over there somewhere and hearing the mortar that was lobbed at 10 Downing Street. I wonder if you can tell us how security levels have changed? It's very visible outside now. What was it like when you joined? Was there any significant security?

PH: No. It was blissful. Nobody worried about that. All the doors were wide open. Nobody had passes. You just walked in. Policemen were comparatively rare. It is most unfortunate, but absolutely unavoidable, that we have gone from being an open place to a fortress and, of course, trying to maintain security—keeping the undesirable element out while at the same time welcoming the public in—is one of the great challenges. The physical challenge of getting them in is one thing but of course now both Houses have recognised that we've got to think rather more about how do we make ourselves available to the public at large. The Internet in particular and television, too, are a great asset.

PS: And that's been quite a recent thing, hasn't it, over the last few years really?

PH: Well, television arrived. One House got there before the other and you can guess which one, in the 1980s. The Commons did join eventually, but the Internet, I mean if we were to try to operate and ignore what is going on in the Internet we would be culpable.

PS: And Jacqy, just thinking about the Commons. The great change there has been the way it's run its own affairs, presumably since the House of Commons Administration Act and then the Ibbs Report and so on. How do you feel that that has affected the Commons?

JS: Obviously it's essential that it runs its own affairs but I haven't been conscious myself of any great change in atmosphere.

PH: Well, can I just say that I am conscious of a vast change in atmosphere … Difficult to imagine that, until the beginning of the 1990s, we were not responsible for the building, we were not responsible for printing, we were not responsible for pay, we were not responsible for pensions so that a whole heap of things which are now part of the daily grind of work were done for Parliament by bits of government. That's one of the reasons why we've had to increase the size of the staff so much, that we're actually doing jobs that we didn't have to do before.

PS: And I suppose having some of these changes in employment practice that we've become more systematic maybe?

JS: Yes, I think we have become more open in our procedures. We've made opportunities more generally available throughout Parliament. We've done things like introducing secondments in and out of Parliament which I think is something everybody has welcomed and also attitudes to management have changed over the time, people taking it as an important part of their job, not an add-on. The way you assess staff has changed and I was there when we first started introducing annual reports but they were confidential in the sense that the person you reported on didn't know about them. And then they became slightly more open, but not in the same way as now. I was given an annual report once, about ten minutes before I was to have my discussion about it, and my reporting officer had very difficult handwriting and I could not work out whether he'd said I was acceptable or appalling. He asked "What did I think about it?" and I thought, well, I'll just wait and see what he says when he's talking to me and work out which of these two things it is. But we've gone beyond that and I hope we've got a much better system of responding to people and giving people a chance to talk.

PS: If we were to look forward to when the Parliamentary Archives celebrate either their 100th or even their 120th anniversary, what changes do you think we might be looking at then, what changes would we be discussing? Jacqy?

JS: I suspect we might be looking at whether we should introduce or should have introduced electronic voting. It's one of those things that keeps coming up. I suspect sitting times will still be being considered. Maybe sittings in other parts of the UK. Various Commonwealth Parliaments take their House around and maybe by then it will be something we'll be thinking about. And perhaps somebody will be asking whether we should or whether we shouldn't still be wearing uniform. I don't have a view but it's probably an issue that will come up again.

PH: Well, anybody looking back now from the distant future is bound to be looking at House of Lords Reform. Either it'll still be going on at the time or we will have managed to resolve it. If I think about two major events of the last 18 months which will have a long term effect one is the appointment of a Lord Speaker in the Lords which may not have a strong effect immediately but you can be quite sure it will have a big effect in the long run. That's the first one and, secondly, the purchase of 1 Millbank. The centre of gravity within the service of the House of Lords has changed and we are no longer all based in the Palace, which we were of course when I arrived, and there is going to be a lot will flow from that.

PS: Well, I slightly suspect myself that global warming may mean that the Palace will have to move entirely by then. But, let me say, if anybody who wants to ask a question please do. I'm sorry we haven't left very much time. Lord Temple-Morris?

Lord Temple-Morris: Just a quick one for Paul Hayter. I've got one for the Commons as well if there's time, but others must speak too. But just one question. Taking Paul directly up on what he said about the appointment of the Lord Speaker, which is very recent now, and the fact that inevitably that will lead to change. Many people here don't quite realise that—certainly I didn't fully realise coming from the Commons to the Lords—it's a self-regulatory House. In other words that the Lord Chancellor, great figure of the realm, and now the Lord Speaker, sits there and doesn't call people to speak. People get up and speak and the House consents to their speaking and occasionally more than one will stand up. The other day, it must have been, I think, about five stood up all at the same time, crying out "My Lords", which is the way that you attract attention of your Peers. It was like the dawn chorus. The Speaker quite powerless to say anything to them and therefore of course the poor old front bench Government has to come in and say I think it's the Liberals turn or so and so or whatever. That sort of thing, I'm just wondering in the past whether you can think of a time when perhaps a lack of control has been very evident? In other words, the system generally seems to work, this is the curious thing. Whether in the past maybe it hasn't always worked and then a little bit more about whether it is that area of change within the Chamber that might have been part of the change resulting in the appointment of the Lord Speaker.

PH: I think it's amazing that self-regulation has worked as well as it has. With very rare exceptions it's worked all the time that I've been here and it is some-

thing that the Members of the House of Lords quite rightly want to keep going as long as they can. Just imagine yourself in a school with rules. What do children do? They break the rules. The absence of rules curiously enforces people to behave themselves and there is a fundamental difference between the self-regulating House where self-control is usually evident and the House of Commons where sometimes I feel the opposite is true. There is a device which has been used—oh—half a dozen times in the last 30 years, where the House has to decide that some Member of the House should shut up: the motion that The Noble Lord be no longer heard. But it's a nuclear option which hardly ever is required. The House of Commons used to have an element of self-regulation before the Irish got involved in the 19th century. The House of Lords is therefore enjoying the privilege of being like the 19th century House of Commons.

MISCELLANEOUS NOTES

AUSTRALIA

House of Representatives

Address by the Rt Hon Tony Blair MP

Early in 2006 the House was addressed by the Prime Minister of the United Kingdom, the Rt Hon Tony Blair MP. This is only the fifth such address to the House, with three of the other occasions being addresses by United States Presidents—Presidents George H W Bush, Bill Clinton and George W Bush—and the fourth being an address by the President Hu Jintao of China. Previously such addresses have been given to concurrent meetings of the House of Representatives and the Senate, with the Senate being invited to meet in the House Chamber. Following disruption caused by two Senators during the address given by President George W Bush in October 2003, both the Senate and House Procedure Committees recommended that future addresses be given to a meeting of the House of Representatives to which Senators are invited as guests. This was the process adopted for the address by Mr Blair, and the address proceeded without incident.

Senate

Effect of Government majority

Over the 106 years of the existence of the Australian Senate, its effectiveness as a legislature has largely depended upon the government of the day not having a majority in the chamber, particularly in the decades since the rise of highly disciplined parties and intensive ministerial control over back-benchers. The attainment by the current government of a one-seat majority in the chamber, therefore, was regarded by parliament-watchers as a phenomenon to be closely observed. The following briefly summarises recent relevant developments.

Committees

It was expected that the government would restructure the committee system to give itself a party majority on all committees and to take all the chairs. This did not occur until September 2006, possibly because of uncertainty

amongst some government senators. The deputy chairs were allocated to non-government senators and, for the first time, they were given remuneration, to soften their loss of the positions of chairs. The change was, however, denounced by non-government senators, who expressed their lack of faith in the capacity of the new chairs and government members to resist ministerial direction in performing their committee functions.

It was necessary for some chairs to be persuaded that they did not possess an arbitrary and unlimited power to make "rulings" on all manner of committee proceedings, and that their decisions were governed by the rules of the Senate, which are designed to preserve proper committee processes and the rights of committee members. Those rules remain largely unchanged.

The government has used its majority to restrict the matters referred to committees by the Senate for special inquiries, confining them to subjects not expected to produce political embarrassment, but the non-government senators have had some successes in having matters referred to the committees for inquiry.

The system of referring bills to committees has continued; indeed, non-government senators have complained that the government is plotting to overload the system by referring too many bills to committees and setting tight deadlines for reports. In some cases committees have, however, successfully sought from the Senate extensions of time to report.

The committees have also had some significant successes in bringing about changes to government legislation as a result of their inquiries. Many bills have been amended because of problems shown up by those inquiries, and government committee members have not been backward in recommending amendments. The government prefers to take up committee suggestions by moving its own amendments, and only a very few amendments moved by non-government senators have been accepted. In one instance a government amendment resulted from a recommendation by non-government senators on a committee, which was supported by evidence given to the committee. In several instances the amendments have been made in the House of Representatives (Senate committees frequently report on bills before they are received by the Senate). In two instances government bills were abandoned because of committee inquiries.

Estimates hearings

There was an apprehension that the government would use its majority to restrict the estimates hearings of Senate committees, which are widely

regarded as the most valuable accountability mechanism in the Parliament.

In 2006 the days available for estimates hearings were reduced from 19 to 17, and ministers made remarks in debate about the wide-ranging nature of questioning in the hearings. The scope of questioning cannot be limited, however, without changing the 1999 resolution of the Senate declaring that all questions relating to the operations and financial positions of departments and agencies are relevant questions. There was no attempt to change this resolution, and there appeared to be no systematic efforts by ministers to restrict questioning.

There was a greater readiness on the part of ministers and officers to refuse to answer particular questions without properly raising claims of public interest immunity as required by past resolutions of the Senate. They obviously understand that, with the government majority in the chamber, there is little likelihood of the Senate taking steps to compel the production of the required information, as occurred in the past.

The government maintained its refusal to answer questions about the Iraq wheat bribery scandal and the wheat export monopoly company AWB (see *The Table*, 74 (2006), pp 69–72). The commission of inquiry on that matter reported and exposed massive financial malfeasance which may lead to criminal prosecutions of AWB officers. The Commission was not able to explore links between AWB and ministers, which probably would have been brought to light by uninhibited estimates hearings.

The hearings, however, still led to many revelations about government activities which would have remained unknown but for the hearings.

Legislation

The government has not completely had its own way in relation to passing legislation, apart from the changes brought about by committee inquiries. There were several "rebellions" by government senators which caused the abandonment of some bills. The government's hand was forced on legislation relating to stem cell research and approval of a particular drug: private senators' bills on those matters were passed when the government was compelled to allow a "conscience vote". Some bills were also amended on the insistence of government senators.

In summary, the position has not been as dismal as it could have been, and in 2007 the parliament-watchers anxiously await the imminent general election to see whether government will maintain its slender Senate majority.

Parliamentary scrutiny of government contracts

The Finance and Public Administration Committee presented in February 2007 a report relating to the Senate's continuing order for the publication on the Internet of lists of departmental and agency contracts. The Department of Finance and Administration had suggested that the order be revoked on the basis that contracts would be listed in a new database called the AusTender system. This listing, however, would cover only procurement contracts. The committee did not agree with this suggestion, but recommended that the Senate's order be strengthened to take account of AusTender and to improve the transparency of contracting. Two recommendations of the committee were adopted by the Senate in March, one to give the committee continuing oversight of the operation of the order, and the other to request the Department of the House of Representatives, the only department which does not comply with the order, to voluntarily list its contracts. Another recommendation, that the order be amended to cover bodies established under the Commonwealth Authorities and Companies Act, was left over. The government in the past has resisted this step.

Government legal advice

In September 2006 the Leader of the Government in the Senate, Senator Minchin, tabled the government's legal advice on the sale of Medibank Private, a publicly-owned health insurance company, without being asked to do so. This was in response to a Parliamentary Library paper suggesting that the sale was of dubious legality. It contrasts starkly with previous refusals on principle to table legal advice, and a recent ministerial statement that it is long-established practice not to disclose legal advice provided to government except in the most exceptional circumstances. Such statements have long been regarded as spurious.

Subsequently, an answer to a question on notice suggested a shift in the official story. The answer stated:

> "Consistent with the long-standing practice of successive Governments the Department of Foreign Affairs and Trade does not comment on legal advice that may or may not have been provided to the Government, or persons performing functions on behalf of the Government, unless the Government decides in a particular case to do so."

This is an admission that the only rule relating to disclosure of advice is that it is disclosed whenever the government chooses to do so. This should

put paid to past claims that advice is never disclosed (which is patently not true given the occasions when ministers voluntarily disclose favourable advice) or is only disclosed in most exceptional circumstances. There have since, however, been other refusals to disclose advice.

Australian Capital Territory Legislative Assembly

Civil Unions Act 2006—disallowance by the Governor-General

Unlike other Australian parliaments, the Legislative Assembly for the Australian Capital Territory does not have an administrator, like Norfolk Island and the Northern Territory, or a Governor, like the States. Instead there is a relationship with the Governor-General, which, for the first time in the Assembly's existence since 1989, was recently invoked by the Federal Government over the issue of civil unions.

By way of background, the Assembly election of October 2004 returned, for the first time, a majority Government for the Australian Labor Party. One of the election platform commitments was to pass legislation in relation to civil unions. On 28 March 2006 the Attorney-General introduced the *Civil Unions Bill 2006*. The intention of the bill, as set out in its explanatory statement, was to provide a scheme for two people, regardless of their sex, to enter into a formally recognised union (a civil union) that attracts the same rights and obligations as would attach to married spouses under Territory law.

After some considerable debate both in the Assembly and within the ACT community, the bill passed the Assembly on 11 May 2006, with 63 amendments being moved by the Attorney-General, and subsequently agreed to by the Assembly. One amendment clarified clause 5, and inserted a new clause which stated that: "A civil union is different to a marriage but is to be treated for all purposes under territory law in the same way as a marriage."

The Act was notified on the Legislation Register on 19 May, with the commencement of the Act being fixed by written notice of the Minister. On Tuesday, 6 June (coincidentally Budget day for the ACT), the Commonwealth Attorney-General announced that the Commonwealth would use its power under the *Australian Capital Territory (Self -Government) Act 1988* to advise the Governor-General to disallow the *Civil Unions Act 2006*. The Attorney-General was referring to section 35 of the *Self-Government Act*, which states that the Governor-General may, by written instrument, disallow an enactment made by the Territory within six months after it is made. Needless to say, this proposed course of action caused

considerable controversy in the Territory, and in particular, for the Government. The Assembly was sitting that week, so the Government took the opportunity to attempt to urgently amend the *Civil Unions Act 2006* to alter the waiting period between the giving of notice of intention to enter into a civil union and the entering of a civil union (from one month to five days). That bill was introduced into the Assembly on the Thursday morning, 8 June, and was passed later that evening. On the same day, the Assembly utilised a little-used standing order that enables the Assembly to make an Address to the Governor-General. The address to His Excellency accepted that the Commonwealth had the power to recommend to His Excellency that an enactment of the ACT could be disallowed, but submitted that when considering advice from the Federal Executive Council the following matters be taken into consideration:

"i) The Australian Capital Territory is a body politic with a plenary grant of power;

"ii) The *Civil Unions Act 2006* is a lawful exercise of the legislative power of the Parliament of the Australian Capital Territory, made in pursuance of a political mandate given to the Parliament by the people of the Australian Capital Territory;

"iii) By convention, the Crown seldom intervenes once a law is made, so as to delay or frustrate the commencement of the law, save in unusual circumstances where the law, because of its exceptional of the Parliament or is otherwise defective;

"iv) The Commonwealth maintains that the law trespasses on a legitimate area of Commonwealth policy, namely the Marriage Act, and the Territory disagrees with that proposition;

"v) Mindful of the need for legislatures to operate co-operatively within a federal system, the ACT stands ready to consider amending the *Civil Union Act 2006* were the Governor-General to make recommendations concerning the amendment of the Act, to resolve any outstanding ambiguities."

The Address then noted that the Territory did not seek to impose contrary advice to that given to the Governor-General by the Federal Executive Council, but pointed out that this was the first time that the Governor-General had been requested to use the power, and that is was an exceptional request which would inevitably form the basis for future precedent, not just in relation to the Australian Capital Territory, but in relation to self-governing territories and other polities, including the Commonwealth itself.

The standing orders provide that the Speaker shall present any Address to the Governor-General, and arrangements were made for him to call upon His Excellency to present the Address. As the Governor-General was in Norfolk Island at the time, and the following Monday was the Queen's Birthday weekend, the first available opportunity to make the visit was 9.15 a.m. on Tuesday, 13 June. The Speaker subsequently called on the Governor-General and presented the Address. Later that morning at approximately 10.30 a.m., the Governor-General received advice from the Federal Executive Council to disallow the *Civil Unions Act 2006* and the next day a Special Commonwealth Gazette was issued detailing the disallowance by the Governor-General. Later that week the Senate debated a disallowance motion of the instrument made by the Governor-General. That motion of disallowance did not pass the Senate, but it is of interest to note that the Australian Capital Territory's sole Government Senator crossed the floor and supported the disallowance.

Subsequently the Governor-General sent a formal reply to the Speaker, which was tabled in the Assembly by the Speaker on Tuesday, 15 August, the first sitting day after the winter adjournment. In his letter to the Speaker, the Governor-General advised that he would refer the Address to the Australian Government for consideration, and also pointed out as Governor-General he was required to act on the advice of the Australian Government given to him by the Federal Executive Council. On 22 November, following a similar motion moved in the Senate, a Government backbencher moved a motion in the Assembly calling on the:

- Commonwealth Executive to respect the rights of the people of the ACT by allowing their democratically elected representatives to enact legislation and govern the ACT on their behalf, and
- Commonwealth Parliament to amend the *Australian Capital Territory (Self-Government) Act 1988* to remove the Commonwealth Executive's power to call on the Governor-General to disallow any Act which has been enacted by the Legislative Assembly.

On 12 December, the Attorney-General introduced the *Civil Partnerships Bill 2006*. The explanatory statement to the Bill states the purpose of the Bill is to provide a mechanism for two people, regardless of their sex, to enter a formally recognised relationship, known as a civil partnership. Given that the reported basis of the Governor-General's intervention was the Commonwealth Government's perception that the previous Bill was akin to a marriage, it will be interesting to see whether this new Bill will again attract

the attention of the Commonwealth Government and lead to similar action by the Governor-General.

Naming of public place in honour of former Senate Clerk

Under the *Public Place Names Act 1989* the Minister for Territory and Municipal Services can name public places within the Territory. The Act states that when making a determination in respect of the naming of a public place, the Minister shall have regard to (a) the names of persons famous in Australian exploration, navigation, pioneering, colonisation, administration, politics, education, science or letters; and (b) the names of persons who have made notable contributions to the existence of Australia as a nation.

On 7 July 2006, Disallowable Instrument DI2006, made pursuant to the *Public Place Names Act 1989*, was notified on the Legislation Register. In the determination there is created off London Circuit in the City Odgers Lane, named after the former Clerk of the Senate, James (Jim) Odgers, who retired in 1979.

Code of Conduct for Members—Employment of family members by MLAs

On 16 August 2006, the Speaker moved a motion to amend the Code of Conduct for Members (which had been agreed to by the Assembly in a resolution of 25 August 2005) to provide that Members should not appoint close relatives to positions within their own offices or any other places of employment where the Member's approval is required. Prior to the motion being moved, the Manager of Government Business moved a motion by leave that enabled one of the MLAs to participate in the debate on the Speaker's motion. That MLA had an employment contract with her husband, and thus may have been in breach of section 15 of the *Australian Capital Territory (Self -Government) Act 1988*, which relates to conflict of interest. In any event, the MLA did not speak on the motion. The motion was passed.

Speaker and presentation of petitions

Following inquiries from the Speaker as to whether he was able to lodge petitions for presentation to the Assembly, and on being advised that the Assembly practice to date was that Speakers had not lodged them, an e-catt info share request was made of other Australian Parliaments as to what their practice was on this matter. The advice received from other parliaments was mixed, with some jurisdictions allowing it and others not. The Speaker, having received this information, decided that he would adopt the practice of

lodging petitions, and on 15 August 2006, lodged three petitions for presentation. He adopted the practice on the proviso that if any question arose as to whether the petitions were in order, they would be ruled upon by the Deputy Speaker.

New South Wales Legislative Council

Sesquicentenary Opening of Parliament

On 22 May 2006, in the absence of the Governor, His Excellency the Lieutenant-Governor, the Honourable James Jacob Spigelman AC, opened the second session of the 53rd Parliament. The opening commemorated the 150th anniversary, to the day, of responsible government in New South Wales.

As occurred at the first meeting of the new bicameral legislature in 1856, the proceedings of the day involved a joint sitting of both Houses in the Legislative Council chamber. The opening was a community-based event commencing with a welcome to country by an aboriginal elder, and an honour guard of members of the NSW Fire Brigade, Ambulance Service of NSW, NSW Rural Fire Service, State Emergency Service and the Volunteer Rescue Association being presented to His Excellency for inspection.

Orders for papers

Orders for papers have continued to increase in recent years, with 56 orders in 2006, the highest number of orders to date. Claims of privilege continued to be made on approximately half of all returns received, in keeping with previous years. Disputes on claims of privilege surpassed those of previous years, with nine orders being referred for assessment by an independent legal arbiter. Orders that generated considerable interest amongst members and the public included papers relating to the sale of Snowy Hydro Limited, the proposed desalination plant, dioxin levels in Sydney Harbour, tunnel filtration, the police report into the Cronulla riots and the police investigation "Operation Retz".

The effect of prorogation on orders of the House for state papers, and the House's powers to enforce the Government's compliance with an order in the subsequent session, came under examination in the days following the prorogation of parliament on 19 May 2006.

On the House proroguing, the returns to four standing order 52 resolutions remained outstanding. On 25 May, following the opening of the new session of parliament, the Clerk tabled correspondence from the Premier's

Department indicating that the Government had received advice from the Crown Solicitor that the orders for papers in place at the time of prorogation had lapsed and that there was no power to restore the original resolutions in the new parliamentary session. As a result, no documents would be produced in respect of the four orders for papers.

Subsequently, the House passed resolutions in similar terms as those agreed prior to prorogation with the addition of paragraphs noting that the Government would not be producing papers in respect of the earlier resolutions despite established conventions to the contrary. Returns to these new resolution were later received.

The House also introduced a new precedent in 2006 when, with the impending adjournment of the House for the winter and summer recesses, it passed a sessional order authorising the Clerk to publish any report of an independent legal arbiter, and any documents deemed by the independent legal arbiter not to be privileged, while the House was not sitting. The tabling of the reports and the publication of documents were subsequently recorded in the Minutes of Proceedings of the House.

Legislation

The *Constitution Amendment (Pledge of Loyalty) Bill 2004* was first introduced in the Legislative Assembly, and forwarded to the Legislative Council for concurrence on 7 April 2005. The bill, which was passed by the Council on 7 March 2006, amended the *Constitution Act 1902* by omitting non-entrenched section 12, which provided that members could not take their seat or vote until they had taken the oath of allegiance or affirmation, and inserting a new section 12 which replaced the oath of allegiance with a pledge of loyalty to Australia and the people of New South Wales. The bill also provided that the oath of allegiance, the oath of service to the Queen and the special Executive Councillor's oath taken by members of parliament when they become Ministers and members of the Executive Council be replaced with the pledge of loyalty and a single Executive Councillor's oath.

Following a New South Wales Minister being arrested and charged with certain offences, the government introduced the *Parliamentary Electorates and Elections Amendment (Child Sexual Offences Disclosures) Bill 2006*, passed by the Council on 21 November 2006. Under the Act, a candidate's nomination must be accompanied by a declaration as to whether the candidate has been convicted of a child sexual offence or of the murder of a child, or been the subject of proceedings for such an offence, or the subject of an apprehended violence order for the purposes of protecting a child from sexual

assault. A false declaration is punishable by imprisonment for up to five years. The Electoral Commissioner must make public all declarations received. The Commissioner for Children and Young People will audit the accuracy of declarations of candidates who are elected and report on its findings to Parliament.

The government also introduced the *Parliamentary Contributory Superannuation Amendment (Criminal Charges and Convictions) Bill 2006*, to ensure that members who are the subject of charges for an offence carrying a gaol term of five years or more will not have access to their publicly funded superannuation until the conclusion of those proceedings. The House passed the bill the same day.

Both Acts commenced on the date of assent.

Replacement of Royal Arms in Chamber with State Arms

Under the *State Arms, Symbols and Emblems Act 2004*, the State arms or State symbols, rather than the Royal arms of the United Kingdom, are to represent the authority of the State in a Parliament building, a courthouse, an office or official residence of the Governor or Government office. On 26 September 2006, on the motion of Mr Breen, standing orders were suspended, according to contingent notice, to allow a motion to be considered forthwith which noted that 11 October 2006 marked the centenary of the granting of the State arms and authorising the President to relocate the Royal arms in the Legislative Council chamber and replace it with the State arms of New South Wales.

On 11 October the Royal Arms were removed from the chamber and the State Arms mounted in its place. The Royal Arms were restored before being displayed in the Jubilee Room at Parliament House in accordance with the resolution of the House.

Tasmania Legislative Council

Parliamentary Service Awards

From a staff perspective one of the more significant functions held in recent times was the second presentation by the President and Speaker during December 2006 of Parliamentary Service Awards. The Awards recognised those employees across both Houses and the Joint Services areas who had served the Parliament of Tasmania for a period of 15 years or more.

Permanent, part-time and casual staff are all eligible to receive awards under the new scheme. Certificates of Service are presented along with a gift

voucher to each eligible member of staff. Service awards are presented each year at a function held during the month of December. Service of 15 years has been determined as the base for an award with additional service to be recognized in five-year increments thereafter.

The decision by the Presiding Officers and Clerks to put in place a Parliamentary Service Award Scheme was seen as a fitting way to recognise and reward officers of the Parliament who had served for long periods with dedication, enthusiasm and loyalty.

One of the Parliament's goals is to attract and retain a highly skilled and motivated team, to recognise the contribution of its employees and to encourage them to develop and perform to their fullest capabilities. The fact that so many staff have long years of service and have made a career working in the Parliament and progressing to senior positions within the Parliamentary system, demonstrates that this goal is being achieved.

The awards presentation function was extremely well attended and feedback from those who attended was extremely positive. The award concept has been very well received by all employees, and the certificates of service were enthusiastically received as they represented a permanent record of service to the Parliament and an acknowledgement of the high regard which the Presiding Officers have for those award recipients.

Regional Sitting of Both Houses

Both Houses of the Tasmanian Parliament, as part of the celebrations marking the 150th anniversary of bi-cameral Parliament and responsible Government in Tasmania, met for the first time outside of Hobart from 17–19 October 2006. The venue was the Albert Hall in Launceston. The regional sitting in Launceston was a great success and testament to the considerable amount of preparatory work and planning undertaken by staff across the Parliament, who were given valuable support and assistance by the Launceston City Council and Tasmania Police.

The sitting was significant in that both Houses conducted their business at the same location. This involved careful planning and a reconfiguration of the chambers. A full range of business was conducted in the Legislative Council over the three day period, including the consideration of legislation, and a great number of people from northern Tasmania attended to observe the proceedings, including an encouraging number of school children. In summary, it was a very positive experience, well received by the general public at large and given very positive coverage by the media.

Joint Ceremonial Sitting of both Houses

By Joint Resolution of both Houses of the Tasmanian Parliament, His Excellency the Governor of Tasmania, the Honourable William Cox, was invited to attend in the Legislative Council and address both Houses at a Joint Sitting to commemorate the sesquicentenary of responsible government and bicameral parliamentary democracy in Tasmania. His Excellency attended on Friday 1 December 2006 at 3 p.m. and addressed both Houses. In accordance with resolutions agreed by both Houses, Members of the House of Assembly were seated on the floor of the Council in places allotted for that purpose and Joint Sitting Rules provided, amongst other things, for the Premier of Tasmania and the Leader of the Government in the Legislative Council to address the Joint Sitting at the conclusion of the Governor's address.

The ceremonial joint sitting was followed by a reception at Government House. Presiding Officers and parliamentary officers from interstate attended the joint sitting ceremony and reception as well as the Parliament House Open Day which was conducted the next day.

Victoria Legislative Assembly

November 2006 election

Victorians went to the polls on Saturday 25 November 2006. The results of the election saw Steve Bracks and the Australian Labor Party (ALP) returned to government with a slightly reduced majority in the Legislative Assembly, winning 55 (previously 62) of the 88 seats. The Liberal Party won 23, gaining six seats and the Nationals won nine gaining two seats. One independent member was also re-elected.

Following the election, the 56th Parliament was opened on 19 December 2006. The Hon Jenny Lindell MLA was elected Speaker.

Victoria Legislative Council

Divisions

There were two significant changes to the conduct of divisions in the Legislative Council during 2006. The first concerned a decision made by the Standing Orders Committee on 5 April 2006 to alter the longstanding practice of tellers calling out Members' names, recording these on division lists and rechecking these details prior to signing the relevant lists. As a means of

reducing the time spent on divisions, the Committee agreed to a new procedure in which the Clerks now record those present for the division, as well as conducting an initial count, while the division bells ring. Once the bells cease, each teller then simply conducts their own count and, upon agreement, signs the relevant list. This approach has proved successful and has resulted in a substantial saving of time.

The other reform to the conduct of divisions was a product of the first change and relates to the division list itself. The names of Members were previously recorded in alphabetical order without any indication of party allegiance. Under the new procedures for divisions, this created some difficulties when a second division was conducted immediately after the first, with the Clerks having only one minute to record the number and names of Members present. As a means of making this easier to achieve quickly and accurately, names on the division list have been arranged according to party or independent status (although party affiliation is still not actually recorded). This too has facilitated a smoother and faster conduct of divisions under the new procedures.

A general election and reformed Legislative Council

As foreshadowed in *The Table* 2004, the Victorian State election held on 25 November 2006 was the first to be conducted since the introduction of constitutional reforms in 2003 which significantly altered Victoria's parliamentary system, particularly in relation to the Legislative Council. Electoral reform was part of this new model, with both Houses being elected for fixed four-year terms, with the number of Legislative Councillors being reduced from 44 to 40. The latter change was the result of the establishment of a new electoral system in which five Members were elected in each of eight electoral regions using the proportional representation method. The Legislative Assembly continued to elect 88 Members using the preferential voting system.

Although the outcome for the Legislative Assembly was clear-cut early on election night, with an Australian Labor Party (ALP) Government being returned with a slightly reduced but very comfortable majority, the situation was far less certain in the Legislative Council. It actually took until Thursday, 14 December for the counting and, in some cases, recounts to be completed and a final result determined (in several cases recounts altered outcomes that had been announced in error earlier by the Victorian Electoral Commission). The Legislative Council's eventual composition was 19 ALP, 15 Liberal Party, three Greens, two Nationals and one Democratic Labor Party (DLP).

The success of the DLP was arguably the biggest surprise of the election as the party had not won a seat in the Victorian Parliament since the 1950s (nor the Australian Federal Parliament for over thirty years)—for much of the electorate, the DLP had come to be considered an anachronism. Although the successful DLP applicant attracted only 2.57 percent of first preference votes in his electoral region, the flow of preferences from other candidates allowed him to achieve the 16.66 percent quota required to be elected.

More in accord with pre-poll predictions, the Government failed to maintain a majority in the reformed Legislative Council, which is likely to have a impact, not only on the passage of some Bills, but on the development of a more comprehensive committee system encompassing a Legislation Committee, various select committees and the existing joint investigatory committees.

Opening of Parliament

Despite the proximity of Christmas and uncertainty regarding the Legislative Council's results, the Government decided to open the 56th Parliament of Victoria on Tuesday, 19 December with the Assembly sitting for two days and the Council for three. The Government's reasons for doing so were not entirely clear, although it did point to the need for the passage of certain legislation prior to Christmas to ensure tax reforms providing financial relief could come into effect on 1 January 2007.

To a large extent, the Opening of the 56th Parliament proceeded in accordance with tradition and past Openings. There were, however, certain divergences from the usual procedures. The date of the Opening, which occurred during an Australian Defence Force (ADF) stand down period, resulted in the ADF being unable to provide its usual support for the event (a Tri-Service Guard for the Governor's arrival and departure near the front of Parliament House; a Defence Force Band; and a 19-gun salute). On this occasion, Victoria Police provided both the band and Guard of Honour (consisting of police officers who had recently graduated) and their contribution proved to be a considerable success.

As a result of the absence of the ADF Guard and band, the usual attendance of Service Chiefs and Honorary Aides-de-Camp (in full ceremonial dress) was deemed unnecessary. Their absence from the Vice-Regal party gave the ceremony in the Chamber a somewhat less formal (and colourful) appearance. This was reinforced when the judges from both the Supreme and County Courts decided not to wear ceremonial robes. It remains to be seen whether these changes become a permanent feature of the event.

Election of a new President and Deputy President

As Council Members were elected for two terms of the Legislative Assembly prior to the 2006 election, it was not always necessary to elect a President on Opening Day. If the President was mid-way through his or her term as a Member, the President simply continued in office. However, with the adoption of fixed four-year terms, the Council must elect a President on the first day of each new Parliament. The election takes place immediately following the swearing-in of Members. On this occasion, the Honourable Robert Smith was elected unopposed as the Legislative Council's nineteenth President. Mr Smith, a Member of the Council since 1999, was nominated by the Government and replaced Ms Monica Gould who retired at the State election.

In the past, the Deputy President was not always elected on the same day as the President, sometimes being appointed the following day. Under the House's revised standing orders, this position now has to be filled immediately after the President's election. On this occasion, with the Government falling short of a majority in the Chamber, the Deputy Presidency went to a member of the Opposition and only nominee for the position, Mr Bruce Atkinson.

Removal of the title "Honourable"

Victoria's Legislative Council sat for the first time on 21 November 1856 with the formal Opening of the first Parliament four days later. Soon after that first sitting, Members of the Council were permitted to use the title "Honourable" in keeping with the position in other Australian State Upper Houses. This was by virtue of a circular dispatch from the Colonial Secretary's Office to the Governor of New South Wales conferring the title "Honourable" on Members of the Council in Victoria which was tabled on 27 January 1857. The title was adopted by Members as from that date. On 10 April 1897 an extract from the London Gazette indicated that Queen Victoria had approved that Members of the Council who had served continuously for 10 years or more could seek permission to retain the title after their retirement or resignation from the Council. Members who had served as President for three years could also apply to retain the title. Members of the Executive Council were thereafter permitted to retain the title for life.

The use of the title remained unchanged until the current Parliament. Under changes to Victoria's Constitution passed in 2003 which came into operation on the dissolution of the last Assembly (31 October 2006), a Member of the Council who is not the President or a member of the Executive

Council is not entitled to be styled "The Honourable". However, the rights of any Member who ceased to be a Member of the Council at the last election were not affected. Consequently, application has been made to the Governor for the retention of the title for seven Members who retired at the last election. However, continuing Members who have already served for ten years or more and would have otherwise been entitled to apply for the retention of the title can no longer do so. The use of the title in the 55th Parliament proved to be quite controversial with half of the Government's Members in the Council refusing to use the title or to be referred to by it, whilst the other half elected to keep it. In the 56th Parliament the position is much clearer but still not completely uniform. The President is using the title but notably only two of the four Ministers currently in the Council have done so.

Western Australia Legislative Council

Dividing Bills

Standing Order 222 provides: "Such matters as have no proper relationship to each other shall not be included in one and the same bill." The rule is designed to ensure that the House is not put in a position of having to accept a provision, unrelated to other provisions of a Bill, on the basis that the Bill stands or falls with that provision in it. It is a prohibition against "non-financial" tacking.

It is also a protection for the public. Mason's Manual of Legislative Procedure[1] states at section 729 that: "the main object of a provision requiring that every act shall embrace but one subject which shall be expressed in its title is to prevent a legislative body and the public from being entrapped by misleading titles, whereby legislation relating to one subject might be obtained under the title of another; and in the accomplishment of this object the provision is not to receive narrow or technical construction."

The Legislative Assembly were advised that the *Electoral Legislation Amendment Bill 2006*, if introduced into the Council, would breach SO 222 as it contained matters that had no proper relation to each other. The provisions amending:

- The *Constitution Acts Amendment Act 1899*, to enable the Salaries and Allowances Tribunal to determine an allowance in respect of the office of Parliamentary Secretary pursuant to section 6 of the *Salaries and Allowances Act 1975*; and

[1] The American Society of Legislative Clerks & Secretaries 1989.

- The *Salaries and Allowances Act 1975* regarding the provision of payment for an allowances for a Parliamentary Secretary, Chairman, Deputy Chairman or a member of committees of a House or joint committees of both Houses;

had no relation with the principal policy of the Bill to introduce public funding of candidates and parties and minimum thresholds for election funding and return of deposits.

The Legislative Assembly on 14 September 2006 agreed to divide the Bill into three Bills.[2] This was not without some hesitation or comment in relation to the "legality" of the advice.

The application of the standing order is a matter of procedure within the sanctioned rights of the Legislative Council. The *Constitution Act 1889* section 34 provides in part:

> "The Legislative Council … shall each adopt Standing Rules and Orders, joint as well as otherwise, for the regulation and orderly conduct of their proceedings and the despatch of business, and for the manner in which the said Council and Assembly shall be presided over in the absence of the President or the Speaker, and for the mode in which the said Council and Assembly shall confer, correspond, and communicate with each other, and for the *passing, intituling, and numbering of Bills*, and for the presentation of the same to the Governor for Her Majesty's assent." [*Emphasis added*]

Further, the *Parliamentary Privileges Act 1891* section 1 provides that the Legislative Council and Legislative Assembly of Western Australia, and their members and committees, have and may exercise "a) the privileges, immunities and powers set out in this Act; and b) to the extent that they are not inconsistent with this Act, the privileges, immunities and powers by custom, statute or otherwise of the Commons House of Parliament of the United Kingdom and its members and committees as at 1 January 1989."

This law of Parliament provides the framework for, and determines the nature of, parliamentary procedure, which consists of the rules and arrangements made by either House for discharging its constitutional functions within that framework. The principle distinction for practical purposes between parliamentary law and procedure is that any change in the law of parliament can only be effected by statute, whereas either House is free to modify its own procedures by its independent action.

[2] Electoral Legislation Amendment Bill 2006 (158 - 2), Electoral Reform (Electoral Funding) Bill 2006 (162–1), and Parliamentary Legislation Amendment Bill 2006 (164–1).

The *Local Government Amendment Bill 2006* was divided by the Council following an instruction to the Committee of the Whole moved by a member of the Greens (WA). The Bill dealt with reforms to local government by:

- Changing the date for local government ordinary elections; and
- Replacing the first past the post voting system for local government elections with the preferential system used in the State Parliamentary system of voting.

There was general agreement on the first reform but significant opposition by the Western Australia Local Government Association to the change in voting system.

Two new Bills were printed on the assumption that the House would agree to the Bill being divided. The first, the Local Government Amendment Bill 2006, contained those clauses that dealt with the change of election date. The second, the Local Government Amendment Bill (No. 2) 2006, contained those provisions relating to the proposed change to the system of voting.

Following the splitting of the Bill and the agreement by the House to the action of the Committee of the Whole, the Local Government Amendment Bill 2006 dealing with the election date was passed without amendment. The other Bill, which had now become a Council Bill, was referred to a standing committee to report in 2007. The passing of the Bill dealing with the election date caused some confusion. The Bill considered by the House was the newly printed Bill reflecting its agreement to split the original Bill. No change needed to be made to this Bill and it passed without being amended. The proviso to the standing orders which permits a Bill which has not been opposed and is not amended to be third read on the same day as the report from the Committee of the Whole is adopted was also invoked.

However, such a Bill is only a "working copy" for the benefit of the Committee of the Whole and the House. When the original Bill is returned to the Assembly it must reflect the decision of the Council. This meant that the message to the Assembly returning its original Bill was accompanied by a schedule that set out the amendments made to the Bill. This schedule indicated the clauses that had been deleted from that Bill but were now contained in the newly created Local Government Amendment Bill (No. 2) 2006.

State Flag Bill 2006

This Bill was introduced in the Assembly as a Private Member's Bill to provide legal status to the Western Australian State flag. It was only after the

Bill had passed both Houses and was ready for assent by the Governor when it was discovered that the Bill contained some significant inaccuracies.

In addition to a narrative description of the flag, the Bill contained a Schedule with a picture of the flag. This picture, taken from the Department of Premier and Cabinet's website, contained several errors which were reproduced in the Bill. The question was what could be done in relation to these errors as the Bill had passed both Houses.

Joint Standing Order 12 of the two Houses deals with clerical errors in Bills. It permits the Clerk of the Parliaments to report the error to the House in which the Bill originated and for that House to deal with the matter as with other amendments. The Clerk of the Parliaments duly reported the error to the Speaker and the matter was resolved when the Legislative Council agreed to a resolution, also passed by the Assembly, that the reproduction of the flag in the Schedule to the State Flag Bill 2006 be replaced by a correct reproduction of the flag. Three weeks after first passing both Houses, the Bill finally received the Royal Assent on 24 August 2006.

Daylight Saving Bill (No. 2) 2006

This Bill was introduced in the Assembly as a Private Member's Bill co-sponsored by a Member of the Opposition and an independent Member (formerly a Member of the Government). The Bill passed both Houses and came into effect at midnight on 3 December 2006, with WA now remaining only two hours behind NSW and Victoria over this summer and for at least the next two summers on a trial basis.

The Bill was not passed without some resistance in the Legislative Council. Members of the major parties were given a free vote on the Bill. A division was taken on the question "That the Bill be read a first time" in the Legislative Council, and that set the tone for the next three weeks in the House. A small number of country-based Members proceeded to lengthy debate. The ensuing delays attracted considerable criticism in the media.

Perhaps the most sinister element of the extensive media coverage of the Bill's passage through the Parliament was the repeated call for the abolition of the Legislative Council. The independent Member who co-sponsored the Bill indicated to the media that in early 2007 he would introduce another Private Member's Bill to initiate a referendum in 2009 on the question as to whether to abolish the Legislative Council.

Under the Western Australian constitutional framework the Council or the Assembly cannot be abolished, their Members reduced or a change made

that would result in their membership not being chosen directly by the people unless:

- The second and third reading of a Bill affecting any of the above is passed by both Houses with the concurrence of an absolute majority; and
- Prior to the presentation of the Bill for the Governor's Assent, the Bill has been approved in a referendum by a majority of electors.[3]

Reversing amendments made in Committee of the Whole

The Residential Parks (Long-stay Tenants) Bill 2006 had been amended in the Committee of Whole. However, as a result of correspondence from the Caravan Industry Western Australian Branch expressing concern about the amendments, the House agreed to a motion to recommit the Bill into Committee of the Whole to reconsider the clauses that had been amended.

The Government sought to delete from the Bill the amendments that had been previously made to two clauses and a schedule to return them to the wording that appeared in the original Bill.

The Bill's recommittal did not offend the rule against considering the same question or require a rescission of a previous decision of the House. This is because when the Bill was recommitted for the purpose of being reconsidered, it is recommitted to a new Committee of the Whole to consider the Bill with the amendments that had been made by the previous Committee. The standing orders permit that the procedure applied for such a reconsideration of clauses is the same as applied to the original Committee of the Whole.

The amendments were reversed in the Committee of the Whole and the Bill read a third time a week later.

Consideration of Messages from the Legislative Assembly

An amendment made by the Council to the Energy Safety Bill 2005 changed the time for the Director of Energy Safety to submit the first draft energy safety business plan from three months to three weeks before the start of the next financial year. The amendment was made by the Council on 25 May 2006. However, it was not considered by the Assembly until 13 June. Due to the delay in progressing the Bill through Parliament, it would not have been possible for the Director of Energy Safety to submit the first draft energy safety business plan three weeks before the start of the next financial year in the likely event that the Bill became law on or before 30 June 2006.

[3] See *Constitution Act 1889*, section 73.

As a consequence, the Assembly disagreed with the Council amendment and sought to substitute its amendment. This amendment deleted the original time period of three months so that the Director was required to submit the first draft energy safety business plan "before the start of the next financial year". This was designed to provide time for the Minister to receive and approve the plan before the end of June 2006.

When the Assembly's Message was received the Leader of the House moved "That the amendment made by the Council not be insisted upon and that the substituted amendment proposed by the Assembly be agreed to". The Opposition lead speaker indicated that he would oppose the motion. However, no amendment to the motion was moved so as to delete "not" after Council and insert "not" after Assembly.

The moving of an amendment to the Leader's motion would have resulted in the debate on the amendment superseding the original question so that the amendment would be dealt with first. If the amendment were agreed to or disagreed to the question on the principal motion (amended or otherwise) would then be put. By failing to move an amendment, there was a risk that the Council would merely defeat the Leader's motion resulting in the two Houses not agreeing to the Bill in identical terms.

This possibility did not eventuate with the Leader's motion being agreed to on division 13 votes to 12. However, the case illustrates the point that care should be taken when dealing with Messages, particularly those that seek to substitute an amendment.

Note taking by the public

On 20 September 2006 the Committee of the Whole House agreed to a motion that amended a number of the standing orders of the House, but also altered the practice of the House in relation to the taking of notes by members of the public during proceedings.

The change in the practice of the House resulted from recommendation 14 of the Procedure and Privileges Committee report *Matters Referred to the Committee and Other Miscellaneous Matters*[4] which noted the following:

> "There is a traditional rule against anyone in the public gallery of the House making notes of the debate. This is an assertion by the Council of its rights to determine whether or not its proceedings are to be made public and who may report its proceedings—Hansard being the official

[4] Western Australia, Legislative Council, Procedure and Privileges Committee, Report 8, *Matters Referred to the Committee and Other Miscellaneous Matters*, 16 November 2005.

provider of debates. The same rules have applied to committee proceedings.

"In addition any notes taken by public are not covered by (absolute) parliamentary privilege. If any member of the media or the public reports proceedings to anyone else, they are covered only by qualified privilege. That means in essence that any report of proceedings receives the protection of privilege if it is a fair report, made in good faith, for the information of the public.

"The advent of modern means of communication, including the Internet, means that most Parliaments have relaxed their rules and allow members of the public (including unaccredited news media) to take notes in a discreet manner."

The change in the custom of the House and its committees allows members of the public who are attending proceedings to take notes in a discrete manner so long as it does not disrupt proceedings.

CANADA

Senate

There have been no particular changes in practice or in law in the Senate in 2006. There is, however, ongoing discussion of changing the system of appointing senators, both with respect to process and length of term. Bill C-43, an Act to provide for consultations with electors on their preferences for appointments to the Senate, was introduced in the House of Commons on 13 December 2006. As of 30 March 2007, the bill had not progressed beyond first reading.

A Senate bill, S-4, would set an eight year term for new senators. Previous to the actual bill being studied, a new committee, know as the Special Committee on Senate Reform, was struck. Its mandate was to study the subject matter of Bill S-4. The Prime Minister testified before this committee. On 20 February 2007, the actual bill was given second reading and then proceeded to committee stage in the Senate. As of late March, 2007, it was being studied by the Standing Senate Committee on Legal and Constitutional Affairs.

An article of interest on the subject was published in the *Canadian Parliamentary Review*, Winter 2006–07, Volume 29, No.4. It was written by the Honourable Gary Mar, MLA, the Honourable Marie Bountrogianni, MPP, and Honourable Benoit Pelletier, MNA and contains excerpts from their testimony before the Special Committee on Senate Reform.

British Columbia Legislative Assembly

Independent Officers of the Legislature

In British Columbia, 2006 saw the appointment of two new independent officers of the Legislature: the Merit Commissioner and the Representative for Children and Youth.

The Merit Commissioner is an officer of the Legislature appointed under the *Public Service Act* to monitor the application of the merit principle to public service appointments. Under the *Public Service Act*, the Commissioner is required to conduct random audits to ensure that public service appointments are merit-based and that individuals appointed are properly qualified. He or she is also available to review the application of merit as the final recourse for employees on specific appointment decisions.

The Representative for Children and Youth is appointed under the *Representative for Children and Youth Act* to oversee the revised child protection framework recommended by a 2006 independent review. Under the Act, the Representative for Children and Youth has three basic functions: to advocate on behalf of children regarding designated services, to oversee the provision of designated services for children and families, and to review child deaths and critical injuries. The Act also requires that a standing committee of the Legislative Assembly actively oversee the work of the Representative for Children and Youth. The latter was another recommendation of the BC Child and Youth Review, which noted that the regular discussions of this all-party committee would foster legislators' deeper understanding of the issues relating to the well-being of children and youth, and help to maintain an ongoing public awareness of issues surrounding the child and family serving system.

The addition of the two new officers brings British Columbia's total complement of independent officers to eight, a number that includes the Auditor General, the Chief Electoral Officer, the Conflict of Interest Commissioner, the Information and Privacy Commissioner, the Ombudsman and the Police Complaint Commissioner. It should be noted, however, that this was not a straightforward increase; variations on the two positions have existed for some time, but have moved between the executive and legislative branches of government.

INDIA

Rajya Sabha

Members' conduct

The Council of States (Rajya Sabha), the Upper House of Indian Parliament has given utmost attention to the conduct and behaviour of its members within and outside the House. A Committee on Ethics oversees the ethical and moral conduct of members and examines cases concerning the alleged breach of the Code of Conduct by members as also cases concerning allegations of any other ethical misconduct of members. The conduct of some members came before the House in December 2005. On 19 December 2005, a private channel telecast a programme entitled *Operation Chakravyuh*, alleging improper conduct of some members of Parliament in the implementation of the Member of Parliament Local Area Development Scheme (MPLADS). Two Members shown in the programme belonged to the Council of States. This matter was referred to the Committee on Ethics by the Chairman of Rajya Sabha on 20 December 2005 for examination and report.

The Committee, in its Eighth Report, observed that in the case of one member, the charges of ethical misconduct and breach of the Code of Conduct could not be sustained. The Committee found that the actions both of the investigating agency which shot the programme and the channel which broadcast the episode amounted to tarnishing the image of the member in the public eye without adequate cause, and had done incalculable damage to the member's reputation. It was therefore of the view that both the agency and the broadcaster might have committed breach of privilege and contempt of the House and of its members. It recommended that the Chairman, Council of States consider referring the complaint of the member to the Committee of Privileges for further examination and report. However, in the case of the second member, after detailed examination, the Committee concluded that the conduct of the member had brought the House and its members into disrepute and had contravened the Code of Conduct for Members. It therefore recommended the expulsion of the member from the membership of the House. After adoption of the Report by the House on 21 March 2006, the member was expelled from the House.

Disqualification of member

Another important development that took place in the year 2006 related to the disqualification of a member of the Council of States. As per the Constitutional provisions, a person is disqualified from being chosen as and

being a member of either House of Parliament if he holds any office of profit under the Government of India or the Government of any State, other than an office declared by Parliament by law not to disqualify its holder. Such question of disqualification is decided by the President of India, who is required to obtain the opinion of the Election Commission and has to act according to such opinion. In March 2006, one member of the Council of States was disqualified from being a member of the Rajya Sabha with retrospective effect by the President for holding an office of profit.

Parliament (Prevention of Disqualification) Amendment Bill 2006

The issue of disqualification of Members of Parliament holding an office of profit assumed further importance in the wake of the disqualification proceedings initiated against some members on the ground that they were holding an office of profit. The Government subsequently brought before Parliament the Parliament (Prevention of Disqualification) Amendment Bill 2006, to exempt the holders of certain offices from incurring disqualification. The Bill was passed by Lok Sabha on 16 May and Rajya Sabha on 17 May 2006. The Bill was, however, returned by the President of India on 30 May for reconsideration by the Houses of Parliament. In his message, the President stated that he would like the Parliament to reconsider the proposed Bill in the context of the settled interpretation of the expression "Office of Profit" in article 102 of the Constitution; and the underlying Constitutional principles therein. He further stated that while reconsidering the Bill, the following, among other things, should be specifically addressed:

1. The evolution of generic and comprehensive criteria which are just, fair and reasonable and can be applied across all States and Union territories in a clear and transparent manner;
2. The implication of including for exemption the names of offices the holding of which is alleged to disqualify a member and in relation to which petitions for disqualification are already under process by the competent authority; and
3. The soundness and propriety in law of applying the amendment retrospectively.

The Parliament (Prevention of Disqualification) Amendment Bill, 2006 was passed again by Parliament in July 2006. The Bill received the assent of the President on 18 August 2006 and became Act No. 31 of 2006.

However, to address the issues raised by the President in his message on the Bill, a Joint Committee consisting of fifteen members, ten members from

the Lok Sabha nominated by the Speaker, Lok Sabha, and five members from the Rajya Sabha, nominated by the Chairman, Rajya Sabha, has been constituted to examine, among other things, the constitutional and legal position relating to the office of profit, pursuant to the motions adopted by both the Houses of Parliament on 17 and 18 August 2006.

Gujarat Legislative Assembly

The last sitting of the tenth session of the Gujarat Legislative Assembly was held on 19 September from 8.30 a.m. until 7.37 p.m., a total time of 9 hours 28 minutes. This is the record time for a single sitting of the Assembly.

Uttar Pradesh Legislative Assembly

A resolution to provide reservation to the depressed class (Dalits) of Muslims and Christians, by repealing with immediate effect clause III of the Constitution Scheduled Castes) Order 1950, was presented to the House on 4 December 2006. It was argued that the sections of society which have been enlisted as Scheduled Castes under article 341 of the Constitution of India should be provided the facilities of reservation irrespective of their caste or creed.

STATES OF JERSEY

The move to a new system in government in Jersey

After several years of planning the States of Jersey implemented major reforms to the machinery of government in Jersey in December 2005 after island-wide elections. 2006 was therefore the first year of operation of the new system.

The changeover to the new system has, of course, led to a considerable amount of work for the States Greffe (Clerk's Office) and has also raised some challenging issues that have not had to be addressed in the Island before on the separation of the Executive from the legislature.

For many hundreds of years executive government in Jersey had been undertaken by Committees elected by the members of the States of Jersey from among their own number. Each area of island life was covered by a Committee with executive functions and each Committee comprised between five and seven elected members. Education matters were the responsibility of the Education, Sport and Culture Committee, health

matters the responsibility of the Health and Social Services Committee, and so on. With 53 elected members, and some 13 Committees, almost every member of the States without exception served on one or more Committees and therefore participated in executive government in that particular area.

There is no tradition of party politics in Jersey, with every member being elected as an independent, and there is therefore no pre-defined "government" or "opposition" grouping in the Assembly. With the old Committee system every member could be said to have moved in and out of "government" depending on Committee membership. Although Committee members were not formally required to support Committee policy in a debate in the Chamber it was normal to find the members of a Committee speaking and voting in favour of a matter brought forward by the Committee they served on. As a result, although members of, say, the Health and Social Services Committee would be acting in a "government" role in supporting a proposition brought forward by that Committee to the Assembly, those same members might find themselves opposing a proposition brought forward by another Committee and could therefore, in those circumstances, be considered to be part of an "opposition". In a very real sense every single member of the Assembly was able to play a small part in the government of the Island. Following a major review of the machinery of government, the reforms have established a ministerial system of government associated with a system of scrutiny. The Committees with executive responsibilities that existed in the old system have been abolished and replaced by a Chief Minister and nine Ministers who meet together as a Council of Ministers. The Ministers are assisted by 13 Assistant Ministers meaning that responsibility for executive government has been concentrated in 23 members of the Assembly with the remaining 30 members playing no part at all in the Executive. These 30 members are able to serve on the five scrutiny panels and/or on the Public Accounts Committee, which have been established to scrutinise the Executive (with these bodies fulfilling roles similar to scrutiny or select committees on other parliaments).

The reforms have, for the first time, created a very real distinction between the Executive and the Legislature. Fortunately the legislative changes that were necessary to establish the new structure addressed this issue. The budget for the States Assembly and its services (including the budget of the scrutiny function and the States Greffe) is now drawn up by the Privileges and Procedures Committee of the Assembly and must be submitted straight to the Assembly for approval without any interference or prioritisation from the Council of Ministers. The independence of the Greffier (Clerk) and his

staff (as officers of the States) from the civil service structure of the Executive is reflected in the revised legislation.

At the time of writing these notes the new system has been in place for some 18 months. The Council of Ministers is undoubtedly operating effectively and able to take decisions in a quicker and more co-ordinated fashion than Committees did under the previous system and the new scrutiny panels and the PAC are beginning work to scrutinise the work of the Executive. The main teething problem has undoubtedly been the difficulty of members who are not in the Executive feeling "left out" of decision-making. This is particularly true for those members who were in the Assembly before the changeover and who perhaps had some executive responsibility in a Committee under the old structure. Opponents of the new system consider that the new system will inevitably lead to a more formal government and opposition structure with a possible development of party politics. Only time will tell if these predictions prove to be accurate or whether Jersey's tradition of non-partisan consensus politics can survive in the new system.

MONTSERRAT PARLIAMENT

Following the general election of 31 May 2006, a new Parliament was sworn to office on 9 June 2006.

Members participated in a Post Election Seminar on 12–14 July 2006. The seminar was designed to provide an orientation to new members and reinforcement of parliamentary practice and procedures for experienced legislators. The seminar was aided by both local and international experts to include the former CPA Secretary General, Hon Denis Marshall, QSO, and the Speaker of the House of Assemblies, Jamaica, Hon Michael Peart.

NAMIBIA PARLIAMENT

The Electoral Act of 1992 was amended and gazetted on 21 December 2006. It provides "that the returning officer for a local authority area in question shall forthwith declare, if only one political party has submitted a list of candidates in an election for members of a local authority council, and the persons whose names appear on the list have been declared duly nominated as the candidates of the political party in question, the persons whose names appear on that list to be duly elected members of the local authority council in question".

The Children Status Act was gazetted on 21 December 2006. It provides

for children to be treated equally regardless of whether they are born inside or outside marriage. It also deals with matters relating to custody, access, guardianship and inheritance in relation to children born outside marriage; and matters connected thereto.

The Financial Intelligence Bill was passed by the National Assembly on 26 October 2006. It is now being reviewed by the National Council (the Second Chamber). The purpose of the Bill is to provide for the combating of money laundering and to establish an Anti-Money Laundering Advisory Council; to provide the Bank of Namibia with the necessary powers to collect, assess and analyse financial intelligence date, which may lead or relate to money laundering; and to impose certain duties on institutions and other persons which may be used for money laundering.

UNITED KINGDOM

Joint Committee on Conventions

This Committee was set up in May 2006, in fulfilment of an undertaking in the Labour Manifesto for the General Election 2005. It was ordered to consider "the practicality of codifying the key conventions on the relationship between the two Houses of Parliament which affect the consideration of legislation", and in particular:

- The Salisbury-Addison Convention;
- Secondary legislation;
- The convention that the Lords consider government business "in reasonable time";
- Exchange of amendments between the Houses ("ping-pong").

The Committee was chaired by Lord (Jack) Cunningham of Felling, former chairman of the Joint Committee on House of Lords Reform. Its report, *Conventions of the UK Parliament*, published in November, was unanimous. It concluded that certain conventions could be "formulated"—a term which the Committee preferred to "codified"—as follows:

"In the House of Lords:

- A manifesto Bill is accorded a Second Reading;
- A manifesto Bill is not subject to 'wrecking amendments' which change the Government's manifesto intention as proposed in the Bill; and
- A manifesto Bill is passed and sent (or returned) to the House of

Commons, so that they have the opportunity, in reasonable time, to consider the Bill or any amendments the Lords may wish to propose.

"The House of Lords considers government business in reasonable time.

"Neither House of Parliament regularly rejects statutory instruments, but in exceptional circumstances it may be appropriate for either House to do so."

These conclusions were accompanied by precautionary language about the nature of the conventions. They were "flexible and unenforceable, particularly in the self-regulating environment of the House of Lords". They were not to alter "the present right of the House of Lords, in exceptional circumstances, to vote against the Second Reading or passing of any Bill, or to vote down any Statutory Instrument where the parent Act so provides". They were not to be embodied in legislation, "or any other form of codification which would turn conventions into rules, remove flexibility, exclude exceptions and inhibit evolution in response to political circumstances". And "the spirit in which they are operated will continue to matter at least as much as any form of words". The courts had no role in adjudicating on possible breaches of parliamentary convention.

The background to the inquiry was of course the continuing debate on reform of the House of Lords. The Committee said, however, in the passage which has since been quoted the most, "Our conclusions ... apply only to present circumstances. If the Lords acquired an electoral mandate, then in our view their role as the revising chamber, and their relationship with the Commons, would inevitably be called into question, codified or not. Should any firm proposals come forward to change the composition of the House of Lords, the conventions between the Houses would have to be examined again."

The Government accepted all the Committee's conclusions. The report was debated in the Lords on 16 January 2007 and in the Commons the following day. Both Houses "took note with approval", without division.

House of Lords

Session 2005–06 was the busiest for the House of Lords Procedure Committee since 1971–72. Much of the activity concerned the Speakership. But there have been other significant changes, as follows.

Third Reading amendments

In January the House agreed that "The practice of the House is normally to resolve major points of difference by the end of the Report stage, and to use Third Reading for tidying up the Bill." This was in addition to the previous guidance that

"The principal purposes of amendments on third reading are:

- To clarify any remaining uncertainties;
- To improve the drafting; and
- To enable the government to fulfil undertakings given at earlier stages of the bill."

Further to this, in December the House agreed that the Public Bill Office should notify the "usual channels" of amendments tabled for Third Reading which in their opinion fell clearly outside the guidance and which had been tabled notwithstanding their advice to the member concerned. It would then be for the House itself to decide what action to take.

Few such notifications have been issued so far. But the new guidance is changing members' behaviour, leading to more divisions in Committee and on Report, and fewer at Third Reading.

General debate day

In July, the House agreed to confirm the experimental switch of the general debate day from Wednesday to Thursday. This matter had a history: proposals to switch were defeated in 1999 and 2000, and the experiment was agreed to in 2005 by only 135 votes to 98. Yet confirmation was agreed without a vote.

Select Committees

The House has created two new select committees:

- The Select Committee on Regulators will investigate the working methods and effectiveness of the UK's major economic regulators.
- The Select Committee on Communications will look at the broad range of broadcasting and communications issues.

Table Office and House of Lords Business

In response to a survey of members' wishes, a Table Office was created in April, to receive questions and motions, administer divisions, produce the notice paper and provide general procedural advice. And the House agreed

to a major relaunch of the notice paper, formerly the *Minutes of Proceedings*, as House of Lords Business, from the start of Session 2006–07. The differences can be viewed at www.parliament.uk. They include simpler language—in particular, Starred Questions are now known as "Oral Questions", and Unstarred Questions are now known as "Questions for Short Debate".

WALES NATIONAL ASSEMBLY

Following publication of a government White Paper, *Better Governance for* Wales, in June 2005, the Government of Wales Act 2006 ("the 2006 Act") received Royal Assent on 25 July 2006, and is the legislative vehicle for achieving the following four main aims:

- Legal separation of executive and legislature. Parts 1 and 2 of the Act end the corporate body status of the Assembly and create two legally distinct institutions—the "National Assembly for Wales" (the legislature) and the "Welsh Assembly Government" (the executive), formalising in law some of the *de facto* arrangements which have been in place since the Assembly's inception in 1999.
- Alterations to the electoral system. In elections to the First and Second Assemblies, candidates were able to stand in a constituency and on a regional list at the same time. The 2006 Act prevents this practice from continuing and requires candidates for future Assembly elections to choose to stand either in a constituency or on a regional list.
- Enhancement of the Assembly's legislative powers. This falls under two headings:
    1. Part 3 of the Act establishes the process by which the Assembly may acquire enhanced law-making powers. In the areas in which the Assembly currently exercises executive powers, it will be competent to enact a new type of law called "Assembly Measures", which will have similar effect to an Act of Parliament. The power to do so will be delegated to the Assembly by Parliament on a subject-by-subject basis, in the form of Legislative Competence Orders, conferring law-making powers in relation to a list of subject area "fields", such as the environment, health, housing, etc.
    2. Part 4 of the Act entitled "Acts of the Assembly" provides for the conferral of primary legislative powers, by Parliament to the Assembly, in relation to a list of defined fields over which the Assembly will have full legislative competence. Part 4 will be

brought into force at an unspecified point in the future, following a "yes" vote in a Welsh referendum.

- Finance. Part 5 of the Act Bill establishes the "Welsh Consolidated Fund" which, from April 2007, will be the neutral account into which the money voted by Parliament to Wales (as part of the Barnett formula) will be paid. The Auditor General for Wales will authorise payments out of the Welsh Consolidated Fund to the Welsh Ministers in accordance with budget motions and supplementary budget motions approved by the Assembly.

COMPARATIVE STUDY: DEVELOPMENTS IN SUPPORT SERVICES

This year's Comparative Study asked, "What major developments have there been in the last ten years in the mechanisms for the provision of support services, such as accommodation, IT, research or refreshment services? In bicameral Parliaments, has joint provision of support services increased or decreased, and what issues have been encountered? To what extent are such services now out-sourced?"

AUSTRALIA

House of Representatives

Background

As background to this paper on major recent developments in support services to the Australian Parliament, it is useful to provide some background to the provision of support services, including joint services.

The Department of the Senate and the Department of the House of Representatives provide a range of support services to Senators, Members and other occupants of their wings in Parliament House. Through the offices of the Usher of the Black Rod and the Serjeant-at-Arms, they manage the provision of accommodation to Senators, Members and other occupants of their respective wings. In the Ministerial wing, these services are provided by the Department of Finance and Administration (Finance) and the Serjeant-at-Arms' office. These agencies also provide the furniture and equipment, including IT equipment that is located in these office areas.

The Department of Parliamentary Services (DPS), which was created in 2004—see below—has responsibility for central building support and facilities management services such air conditioning, maintenance, cleaning, refreshment services, security, broadcasting etc. It also has responsibility for the central IT system, its support and the training of users.

Again through the offices of the Black Rod and Serjeant respectively, the Department of the Senate, the Department of the House of Representatives and Finance act as the primary contact point (effectively the primary clients) for the provision of DPS's building services to Senators, Members and other occupants of their wings. The effective provision of support services to

Senators and Members, in particular, relies on the cooperation and coordination between the parliamentary departments.

Review of parliamentary administration

The most significant development that has affected the provision of the support services to the Australian Parliament, as outlined above, was the review of the parliamentary administration undertaken in 2002 and the consequent amalgamation in 2004 of the three joint service departments—the Department of the Parliamentary Library (DPL), the Department of the Parliamentary Reporting Services (DPRS) and the Joint House Department (JHD)—to form the DPS.

The structure of parliamentary administration for the Australian Parliament has been a matter of some debate since the early days of federation, when five parliamentary departments were established—Department of the Senate, Department of the House of Representatives, DPL, DPRS and JHD.

Proposals for change have ranged from the creation of a single department, to two, three and four department models. As a history of the debate about proposed changes to parliamentary administration noted, there have been a number of concerns that have permeated the debate. These concerns have focused on the independence of the Parliament including:

- The extent to which Parliament should control its own budget;
- The extent to which Parliamentary staff are different from, and should be independent of, the public service; and
- The way in which the administration of the Parliament can be made more efficient, without losing its independence.[1]

In April 2002, the Presiding Officers asked the Parliamentary Service Commissioner, Mr Andrew Podger, to undertake a review of parliamentary administration, and in particular to review:

- The advantages, financial and organisational, which might arise from a change to the administration of security within Parliament House;
- The extent to which the management and corporate functions across the Parliamentary departments might be managed in a more cost effective and practicable manner;
- Whether and to what extent financial savings might accrue from the

[1] Jill Adams, *Parliament—Master of its Own Household*, Australian Public Service Commission, Occasional Paper 1, 2002 p.7

centralisation of the purchasing of common items by all the Parliamentary departments; and
- Such other organisational matters affecting the Parliamentary administration which arose during the review.

Mr Podger reported in September 2002 recommending:

- The creation of a centralised security organisation in JHD (subsequently DPS) under a purchaser/provider arrangement whereby the Chamber departments retain security funding and purchased security services from DPS under a memorandum of understanding;
- The amalgamation of the three joint service departments, with special measures to protect the independence of the Parliamentary Library;
- A common services centre to undertake human resources, finance and office services processing activities for all the parliamentary departments; and
- Other measures to ensure better co-operation between the parliamentary departments.

Mr Podger identified that the amalgamation of the three joint departments would generate considerable cost efficiencies from economics of scale and reduced duplication; and in the longer term from synergies within the larger department as amalgamation provided the opportunity for revised approaches to service delivery. These savings were estimated to be of the order of $A5 million to $A10 million a year[2] (subsequently, in evidence to the Senate Standing Committee on Appropriations and Staffing, Mr Podger identified the savings as being $5.165 million a year when fully realised[3]). Mr Podger concluded in his review that the savings:

> "Could free resources that the Presiding Officers could redirect to other parliamentary priorities, e.g. to meet the financial pressures likely to emerge for improvements in security, to improve the quality of services provided to Senators and Members or to general productivity improvements needed to support future Certified Agreements for parliamentary staff."[4]

The emphasis was that amalgamation could generate efficiencies and the savings from the efficiencies could be available to meet the needs of the Parliament.

[2] Podger report 2002, pp.50–52.
[3] Senate *Hansard*, 18 August 2003, p. 13787.
[4] Podger report 2002, p. 58.

A number of features of the model recommended by Mr Podger are worth commenting on:

- The security service was to be centralised so that it could become more focused and professional, commensurate with the increased security threat following the events of 11 September 2001;
- The model preserved the two Chamber departments as independent entities, reflecting the independent status of the two Houses;
- Virtually all joint functions and services (with the exception of joint committees, parliamentary relations and parliamentary education) were to be undertaken by the new single joint department;
- Special protection was to be given to the independence of the Parliamentary Library within the new joint department;
- The Chamber departments were to become even more specialised around their core functions of supporting the Chambers and committees by having corporate support (and potentially all Senators' and Members' services) provided by a common services centre (presumably located in the new joint department); and
- A more efficient parliamentary administration and the consequent realisation of savings was a key (some might suggest driving) element in the proposal.

Implementation of the changes

Security: An interim Security Management Board (SMB) had been established by the Presiding Officers in March 2002 to provide advice on policies, practices and procedures on all matters relating to security at Parliament House, and to develop long-term security planning. The SMB was chaired by the Secretary of JHD, and included in its membership the Usher of the Black Rod and the Serjeant-at-Arms representing the Chamber departments and an expert on security matters from the Government's principal advisory body on security.

The requirement for the SMB was endorsed by the Podger review, and the SMB was made permanent (now chaired by the Secretary, DPS). The role and functions of the SMB are now incorporated in the *Parliamentary Service Act 1999*.

The centralisation of the security function and staffing in DPS also has taken place as recommended by Podger. This centralisation has improved the coordination and professional development of the parliamentary security service. Initially the Chamber departments retained the funding for security,

with DPS providing security services to the Chamber departments under a memorandum of understanding that specified service levels and standards. In July 2004, security funding and assets were transferred from the Chamber departments to DPS so that DPS could assume full operational control and responsibility for security.

Amalgamation: In August 2003, the Senate and the House of Representatives passed resolutions abolishing the three joint departments and establishing DPS from 1 February 2004 to perform all the functions of the three joint departments, as recommended by Podger.

A new secretary, Ms Hilary Penfold PSM QC, formerly the head of the Office of Parliamentary Counsel, was appointed to DPS and commenced the process of amalgamation. As the new secretary noted in her review for the 2002–04 annual report: "The creation of the new department brought together three very different organisations. The departments differed in the nature of their work, their management structures and approaches, the skills bases of their staff, and their cultures."[5]

In addition to this challenge, DPS was also asked to absorb savings of around $A6 million per annum to fund increased security measures at Parliament House that were implemented following the Bali bombing in October 2002.

The initial focus of amalgamation was on the consolidation of the corporate areas of the three previous departments into a single group, with consequent reduction in staff so that the savings identified by Podger, and the requirement for DPS to fund additional security measures, could be achieved. However, the level of savings from amalgamation to date is not of the order estimated by Mr Podger, placing pressure on the remainder of DPS's budget. The net savings from amalgamation identified to date are $A2.1 million per annum. This left a shortfall of $A2.7 million in 2004–05 and larger shortfalls in subsequent years.

Subsequently, a new position of Deputy Secretary was filled and a fundamental review undertaken of the structures and policies of the department. As the Secretary noted in the 2004–05 annual report: "many of our systems, structures and policies have had to be developed almost from scratch, and with a view to addressing the varied activities and cultures of the three different departments."[6]

The review led to a major restructure of the department and the recruitment of a number of senior level staff, which was completed in 2006. DPS

[5] Department of Parliamentary Services, Annual Report, 2002–04, p.9

[6] Department of Parliamentary Services, Annual Report, 2004–05, p.2

also is undertaking a number of continuous improvement reviews to identify more cost-effective ways of providing services.

Following the passage of amendments to the Parliamentary Service Act to establish a position of Parliamentary Librarian and to give effect to the recommendations of Podger to ensure the independence of the Parliamentary Library, a Parliamentary Librarian was recruited in late 2005. A resource agreement also was finalised between the Secretary of DPS and the Parliamentary Librarian.

As noted earlier, the efficiencies from the amalgamation itself are not delivering the level of savings identified in the Podger report, and which are now required of DPS. As a result, the Secretary of DPS stated in 2004 that "DPS will need to explore ways of providing our services more efficiently or renegotiating the provision of, or the service levels for, some of our services."[7]

Among the matters that were to be looked at to achieve savings were:

- The approach to building management, and the scope to continue to maintain the building to the current high standards;
- Further enhancements of the security of the parliamentary precincts, and whether physical enhancements would reduce operational security costs;
- Whether there were more efficient ways of providing some or all library services, including whether there were any overlaps in the current provision of such services, either within DPS or among the three parliamentary departments;
- Whether all Hansard and broadcasting services could be maintained to the same levels, or whether it would be necessary to eliminate some non-core services or reduce service levels for core services;
- The arrangements for setting priorities for both information and communications technology projects undertaken on behalf of parliamentary clients and for new building works or refurbishment projects (each of these may benefit from engaging our clients more fully in the priority-setting processes); and
- The nature of the current service agreements between DPS and its clients and whether there was scope for renegotiating or clarifying those agreements.[8]

To ensure that spending was maintained within DPS's overall budget, the Secretary of DPS established a Finance Committee in 2005 comprised of

[7] Department of Parliamentary Services, Annual Report, 2002–04, p.14

[8] Department of Parliamentary Services Annual Report 2002–04, pp.14–15

the Secretary, Deputy Secretary and Chief Finance Officer which has to approve all recruitment action; renewals or extensions to existing contracts and any new contracts; and advertising of tenders or requests for quotations. The Secretary has noted that, while the Finance Committee rejected only four of the requests that came to it, its scrutiny of expenditure enabled DPS to achieve a close to budget result for the department as a whole in 2005–06 despite the reduction in funding.[9]

However, the achievement of this outcome did seem to come at some cost in the provision of services. A review of the amalgamation by the Australian National Audit Office (ANAO) in 2006 noted a small number of decisions which had been taken by DPS to reduce services. More significantly, the ANAO referred to comments from senior managers in the Chamber departments that there had been a fall off in the quality of service in the areas such as IT projects and building and maintenance services. They considered that the introduction of agreed service levels for the services provided by DPS would assist in addressing perceived service level shortfalls.[10]

At this stage, no consideration has been given to the establishment of a common services centre to provide corporate support services to the Chamber departments. There is a concern in the Chamber departments about the level of service that may be provided by such a centre. However, there has been cooperation between the parliamentary departments in the acquisition of common items. There is also some consideration being given to using the Senior Management Coordination Group, which comprises the heads of corporate services of the three parliamentary departments to ensure there is better sharing of information and cooperation between the parliamentary departments.

Outsourcing

In relation to outsourcing, the changes which have resulted from the amalgamation have not significantly increased the outsourcing of services. A number of services had been outsourced prior to amalgamation—refreshment services; cleaning; aspects of the security service; and some building construction and maintenance.

[9] Department of Parliamentary Services Annual Report 2005–06, pp.12–13.

[10] Australian National Audit Office, "Implementation of the Parliamentary Resolutions Arising from the *Review by the Parliamentary Service Commissioner of Aspects of the Administration of the Parliament*, Audit Report No. 51, 2005–06, p. 66.

Some thoughts on impact of the changes

While it is still relatively early days in the implementation of the changes, some initial impacts can be identified:

- The new department, particularly with the transfer to it of security funding is, in budgetary and staffing terms, more than twice the size of the two Chamber departments *combined*. While size does not necessarily imply influence, it will be interesting to see whether, over time, the traditional role of the Chamber departments in decision-making in the parliamentary sphere, including in areas not structurally their responsibility, declines;
- The search for savings within DPS beyond the efficiencies achieved by amalgamation has potential implications for Senators, Members and the Chamber departments. DPS intends to consider matters like levels of service. This may mean either that service levels are redefined or reduced or that, to maintain current levels of service in some areas, the Chamber departments may be asked to make some financial contribution;
- While there will be some strengthening of Members' and Senators' involvement in the provision of services with the implementation of changes recommended in relation to the Joint Library Committee, the Podger review has not generally affected the current involvement by Members and Senators in service provision; and
- It is unlikely that there will be greater consolidation of service provision to the Chamber departments, or to Senators and Members, while issues about levels of service remain.

Senate

The most significant development in support services in the last ten years was the amalgamation in 2003 of the three joint parliamentary departments.

Until that time, certain services used by the two Houses in common were provided by joint departments under the joint administration of the President of the Senate and the Speaker of the House of Representatives. Those departments were: the Parliamentary Library, which provided library reference and research services and, for a time, IT services; the Department of the Parliamentary Reporting Staff, which provided transcription services for the two Houses and their committees and at one stage televising and broadcasting services; and the Joint House Department, which provided building maintenance and associated services. Secretarial and advisory services to the

two Houses and their committees are provided by the Department of the Senate and the Department of the House of Representatives. The various departments are established by statute; the current statute is the *Parliamentary Service Act 1999*.

Over many years the government Department of Finance had an agenda of amalgamating the three joint departments, supposedly to achieve major financial savings. These schemes always foundered on opposition in the Senate, which was particularly based on the need to preserve the independence of the Parliamentary Library and not to submerge it in an administrative department.

In 2002 the President and the Speaker were enjoined by the government to establish a consultancy to examine the amalgamation of the joint departments. The consultancy adopted the long-standing agenda of the Department of Finance, and recommended the amalgamation of the joint departments, claiming that savings of $5–10 million would be achieved. This figure was regarded with great scepticism, but the scheme was adopted in accordance with the legislation, with amendments to safeguard the independence of the Parliamentary Library. Unsurprisingly, the claimed savings were not achieved, and this led to some recriminations in Senate estimates hearings.

The new joint department is called the Department of Parliamentary Services, and combines the services provided by the old joint departments, with the addition of security services. The latter, however, are under Security Management Board, which includes senior officers of the departments of the two Houses.

The expenditures and operations of the joint department are also subjected to scrutiny in Senate estimates hearings, and this provides senators with strong oversight over the department. The Senate Appropriations and Staffing Committee was given by the Senate a particular oversight role over security services.

Australian Capital Territory

The Legislative Assembly established a corporate services section in 1994 and it currently provides services and advice to non-executive members, their staff, the Clerk and other staff of the Secretariat encompassing a range of administrative, financial, human resource, building management and records management. There is no capacity within the precincts for the provision of accommodation or hospitality services for Members. The Assembly out sources its IT infrastructure and support.

New South Wales Legislative Assembly

Review and restructure of committee staffing for the New South Wales Legislative Assembly

The Legislative Assembly is in the final stages of restructuring its committee staffing arrangements. This has been a process stemming back to 1999 when a review of committee staffing was first undertaken. Following that review a one size fits all committee secretariat system was adopted. That secretariats consisted of four positions: a committee manager; senior committee officer (then project officer); committee officer; and assistant committee officer. However, the then Speaker insisted that committee managers remain on contract and reapply for committee manager positions every time contracts expired. Initially the contracts were synchronised for two and most recently three year periods.

Within this historic context it is sufficient to say there were a number of industrial issues relating to the employment of committee managers by contract. Also the Legislative Assembly evolved a policy of predominantly employing generalist staff to service its committees. Further, analysis of staffing grades and committee workloads highlighted inequities in terms of managing the structure.

When the latest committee manager contracts expired in early 2005 Legislative Assembly management and the Speaker agreed in principle to the employment of committee managers on a permanent basis at the substantive level. However, some issues needed to be resolved to the satisfaction of management.

The most significant issues were: assessing the services provided to Parliamentary committees; consequent resourcing needs given the uncertainty of the number of committees to be serviced by the Legislative Assembly for the duration of the next Parliament; processes for servicing any newly appointed committees; options for the flexible deployment of committee managers and all committee staff on a collective committee needs basis; enhancing career development by overcoming the gap in committee staff progression from committee officer (grade 5/6) and senior committee officer (grade 9/10)—a weakness of the 1999 restructure. These issues were considered and resolved in conjunction with the Workplace Group or the Public Service Association.

The main aim of the review was to establish the basis for the permanent employment of committee managers; suggest options to enhance services provided to committees by the flexible deployment of committee staff; filling

the gap in the career progression from committee officer to senior committee officer; and to remain relatively cost neutral. Mr Jim Pender, formerly Clerk Assistant—Committees in the Australian Department of the House of Representatives, was selected to conduct this review.

The review was done as much as possible on a consultative basis obtaining the views of staff, committee chairs, opposition members of various committees and upper House members of joint committees, the Public Service Association and management. Issues of concern were left to the various stakeholders to identify and raise. Consultation was ongoing and all staff were encouraged to participate in the process as individuals, groups of staff or through Workplace Group representatives.

A discussion paper was produced in January 2006 that was productive in canvassing and collating the views of staff and stakeholders and suggested possible options to address those issues. It also provided a forum for the ongoing discussion of a number of ideas and ways of trying to achieve the above goals that ultimately helped shape the final report and the management response to it in terms of implementation of recommendations.

In March 2006 a survey of committee staffing arrangements was also conducted with all Australian jurisdictions responding. The conclusion drawn from the survey was that each jurisdiction had different circumstances. The information gathered from the most analogous Houses (size of House and types of committees serviced) was helpful.

The report, released in August 2006, made a number of recommendations and suggestions. In short the recommendations were:

1. A policy to regulate committee travel.
2. Committee managers be compensated in a commensurate way to committee directors of the Legislative Council.
3. Multiple committee responsibilities for each secretariat leading consequently to a reduction in the number of secretariats.
4. The position descriptions for each position be revised and tightened.
5. There be a dedicated interview room, or work room, for committee staff at Parliament House.
6. Each secretariat to be responsible for two or more committees (this complements recommendation 3).
7. The core structure for each secretariat to include a committee manager; one or two senior committee officers; a research officer; a committee officer; and a assistant committee officer.

The report also made a number of suggestions of an administrative nature. These will be addressed on an individual basis at appropriate times. However, it is envisaged that the majority will be taken up in whole or in modified form, for instance the review of position descriptions.

At the time of the release of the report management released its response so that staff could focus on what was intended to be implemented as management did not intend to adopt some of the recommendations. For instance due to a shortage of spare office accommodation it is not possible to provide committee staff, who are all located in outside offices, with work space at Parliament House. Also the Legislative Assembly will not adopt the core secretariat structure with regard to allocating research officers automatically to secretariats.

The report noted that the one size fits all secretariat structure met the needs of most committees. However, as there are peaks and troughs in work demands, at times secretariats have less need for "standard" staff resources.

The new structure therefore builds on the old by first establishing research officer positions and then having them "floating" across secretariats and allocated to secretariats by the Clerk-Assistant (Committees) on a needs basis. The idea is that these officers will be allocated to committee inquiries when warranted by demand and can also be used to leverage-off existing secretariats. For instance, if a select committee is appointed a "floating" officer would be allocated to assist with an inquiry. One research officer will also be allocated to work for the Clerk-Assistant (Committees). Further, a temporary specialist could also be engaged, thus obviating the need to establish a new secretariat.

The review also highlighted that the Legislative Assembly did not have a committee staff establishment. Numbers have expanded and contracted as staff were employed either permanently and temporarily depending on changing circumstances. Therefore the opportunity is being taken to create a committee staff establishment. The proposed structure allows for the ability to engage specialists or secondees on a temporary basis as required.

In late 2006 there were 30 staff working across seven secretariats serving 11 committees and one working with the Clerk-Assistant (Committees). Thus, the net impact of the new staffing structure would result in a reduction of seven secretariats to five and a reduction of staff from 31 to 26. The breakdown across levels will be:

- Committee manager positions (Grade 11/12)—7 to 5;
- Senior committee officers positions (Grade 9/10)—9 to 6;
- Research officer positions (Grade 7/8)—5 new positions;

- Committee officer positions (Grade 5/6)—7 to 5; and
- Assistant committee officer positions (Grade 1/2)—7 to 5.

The presumption has been made that there will be at least one less committee to service in the next Parliament.

The review of committees was well underway when the Parliament's budget was dramatically reduced in the 2006 State budget. The Parliament was by necessity required to demonstrate to Treasury how it would operate within this reduced budget. Independently, all sections of the Parliament had to prepare savings plans. In fortuitous timing the Legislative Assembly committee staffing and services review was thus able to dovetail into the Parliament's global savings plan. It was also within this atmosphere that negotiations were conducted with the Workplace Group about implementation of the restructure and communications made to staff.

A part of The Treasury package included the funding of voluntary redundancies for the number of positions to be reduced. In the case of committees, it was five positions. Voluntary redundancies were offered at the levels identified where there would be a net reduction in positions.

Implementation of the restructure has commenced to bring in the changes over the recess period from December 2006 and onward before the new Parliament is due to meet in May 2007.

It is also hoped that the proposed new structure will provide not only flexibility in servicing committees, but also a greater opportunity for career development within the committee secretariat and the Legislative Assembly. Signs are encouraging with both management and staff proceeding in a consensual manner throughout both the review process and the implementation phase.

New South Wales Legislative Council

The services provided to the Parliament of NSW by its joint support services have been relatively stable in the last 10 years although the increase in technology has assisted both in the improved delivery and efficiency of services. There has been little outsourcing of support services despite a gradual net reduction in funding for parliamentary services in recent years.

Parliamentary food and beverage services

During 2006, the NSW Treasurer announced and subsequently removed all government funding for food and beverage services for future years.

Changes were immediately implemented to reduce services to core and basic service levels while initiating an independent review of the operation. This included reducing staffing levels by half through a voluntary redundancy process. Following the recommendations of a consultant, the Presiding Officers committed to maximising the operations with a view to promoting and developing the service in the market place to match the role and prestige of Parliament House.

A number of initiatives were being developed to ensure the sustainability of the operation into the future, including strategies to increase patronage (including improved menus and customer service, and transparent function costing), and reduce costs (including the use of government suppliers for fresh produce and human services, and reductions in other operational expenditure).

Parliamentary information technology services

The following services are outsourced due to the required technical specialisation:

- Support for the SAP HR and Accounting system.
- Management of Internet security—Firewall, Intrusion detection, Intrusion prevention, Antivirus, AntiSpyware.
- Management of communication links between Parliament House and electorate offices.

Parliamentary building services

In building maintenance there has been an increase awareness of OH&S issues, and compliance with central agency reporting and probity requirements. The public interest in climate change and the environment has driven increased capital funding for implementation of environmental sustainable measures for saving water and energy.

Some change in work practices has occurred to reflect savings imposed on the Parliament. For example, a new cleaning plan was designed and implemented to reflect staffing levels while delivering efficient and effective cleaning services. There has been a disproportionate increase in the workload of management with the additional reporting and probity requirements.

Parliamentary security services

There has been an increased need for security awareness, improved and more sophisticated physical infrastructure due to the risk of terrorism, and

the requirements placed on the Parliament by the National Threat Level. This has led to increased involvement of "specialist" providers of security including involvement with intelligence agencies and police services that have required the Parliament to change the service delivery model including its guard force and management. There has been increased reporting to central agencies relating to compliance associated with the requirements of a Medium security threat level.

Outside of the operational issues, there are issues of demarcation between the Federal and State requirements and additionally the lessening of the doctrine of the separation of powers with the relationship between the Executive (through the Police) and Parliament.

Hansard

The use of voice recognition technology has enabled Hansard to reduce its staff numbers by 10 word processing operator (WPO) positions in the last seven years. Previosuly up to 10 WPOs were engaged during sitting periods compared to one WPO now required.

New computer technology is facilitating the reduction of "printed" material and enabling Hansard to replace this with electronic publications. This reduces printing costs and enables faster and more efficient delivery of publications.

Hansard has increased its service delivery to members in a number of ways:

- Prior to 2000, Hansard did not report committee hearings on Mondays or Fridays during sitting weeks. Hansard now reports on committee proceedings on both Mondays and Fridays, provided only one House is sitting.
- Transcripts are now available online within three hours of the last House rising, due to improved Hansard production and improved IT support services. Ten years ago, only the hard copy was available on the following morning.
- The trend in overall committee reporting undertaken by Hansard staff has been steadily rising and has been generally met from within existing resources.

Hansard endeavours to report all committee proceedings. A calendar is published on the Intranet to indicate to committee managers Hansard's availability on any day to ensure that internal resources are used cost effectively. When Hansard staffing resources are not available to meet requests for

reporting services to committees, Hansard arranges for contract reporting services.

Parliamentary Library

The increasing use of information technology in the provision of support services. Many of the services and resources are now available on the Parliament's network including press clippings (e-clips), press releases and the library catalogue.

Parliamentary education

A significant expansion of programs and publishing for school and tertiary students, and teachers. In the case of schools this has been related to curriculum changes which have placed Civics and Citizenship significantly into the school curriculum in NSW and nationally. A substantial number of professional development programs is now provided to teachers in co-operation with the government and non-government school sectors. Community programs have been greatly expanded as well, offering evening and day events and courses. The biggest change is in terms of increased numbers and variety of programs to all sectors—in terms of numbers of participants, the increase over 10 years would be at least 400 percent. This does not include school tours, which are running now at around 30,000 students annually, at least a 100 percent increase.

Staffing has not increased, however the budget is sufficient to be enable the service to subsidise some participation by non-metropolitan students in some programs, therefore providing some equity for isolation and disadvantage.

No services have been outsourced although a significant number of programs are run in partnership with other organisations.

Northern Territory Legislative Assembly

Outsourcing IT services

In 1999 a decision was made to outsource information technology (IT) services across all government agencies. The Department of the Legislative Assembly, which provides administrative, Chamber and Committee support to the Legislative Assembly of the Northern Territory, is part of the whole of government structure. The outsourcing is grouped into seven categories:

- Electronic messaging services;
- Telephone data and Internet communication services;

- Desk top service and software and local area network support including work stations, hardware and file print servers and users;
- Help Desk Services;
- Software applications maintenance and development, data centre operations including management and mainframe mid-range hardware, operating systems, data bases, and software environments; and
- Project management and consulting services.

A comprehensive structure has been put in place in the Department of Corporate and Information Services (DCIS) which is responsible for strategic advice to agencies and government, uniform standards and policies across the public sector, central contract negotiation and management, and the day-to-day interface between client agencies and the service provider. Service provision is outsourced whilst control and strategic direction remain with government.

Up until this time the department employed two full time operatives and one shared operative with the Department of the Chief Minister. The shared resource was the position of IT Manager. These operatives are located in the Parliament House building where the majority of clients are located—Members of Parliament including Ministers and the Leader of the Opposition, Office of the Clerk and parliamentary staff, ministerial staff, and the Office of Parliamentary Counsel.

With the move to outsourcing, the existing IT staff were subsumed into the outsourced contract. The contractor had a policy of staff rotation which made it difficult to maintain a relationship with the service providers. Members found it particularly difficult as a relationship was developed with an IT support officer only to find that after three months a new officer was assigned to the agency. To overcome this, an arrangement was reached whereby IT support officers were "attached" to the agency on a more permanent basis.

The outsourcing of IT was put forward as a way of standardising across all spheres of government and this has taken a few years to bed down, but it has now reached a stage where there is a minimum standard operating technology across government agencies which obviously has made savings to government as a whole.

Hansard interface in a parliamentary environment with an outsourced IT regime

The Hansard Unit of the Department of the Legislative Assembly in Darwin, Australia has been using FTR Gold for some seven years. This

digital sound recording system has been successfully interfaced with the Whole of Government IT Standard Operating Environment. It is managed with a contractor of the Assembly. Through the Whole of Government contractors this interface has been managed quite well despite some initial software conflicts which took nearly 12 months to resolve to a satisfactory operating level. To date we are confident of the reliability of the system and it is serving us well.

The system is practical, flexible, easy to use and has increased efficiencies within the department both financially and in terms of timely production of the Hansard record and parliamentary committee transcripts.

Technical ability

Whilst the system is comprised of highly technical design and equipment, it is extremely easy to operate and is user-friendly. Operators call up an on-screen audio recording panel (i.e. play, stop, rewind, fast forward) with a digital clock so that precise times can be entered.

The Log Notes that accompany the system are highly complementary and have the bonus of time-stamping various incidents, speakers and/or comments, with a facility to directly correspond to the relevant audio section. This has enormous advantages and saves considerable time by negating the necessity to search audio tracks. Moreover, the system can be (and is in the case of this department) used for web casting.

This system is a four-channel system. For audio transcribing staff, the system features "isolation" which means that some or all channels can be turned off, leaving just one channel isolated to provide sound of the highest quality (in a parliamentary environment, this is critical, particularly during heated debate during which there are ongoing interjections).

The Assembly has had a complementary system loaded onto a laptop computer which has proved invaluable for parliamentary committees travelling to isolated Aboriginal and other communities throughout the Northern Territory, and for recording regional sittings of the Northern Territory Legislative Assembly in Alice Springs, some 2000 km from Parliament House in Darwin, where the Hansard Unit resides. In the case of regional sittings, the laptop feeds the FTR recording into an ISDN line, which allows the Hansard Unit in Darwin to download the sound and operate normally, as though the sittings were in the Chamber on the floor below.

Management of technology change

This was relatively easy. The Hansard Unit moved from a system of cassette

recordings to digital recording and the transition was seamless. Transcribing staff lost an item of equipment from their work stations (i.e. the transcribing machine) and acquired a much higher quality digital sound system available on their work stations. Minimal training was required and the new system was greeted enthusiastically.

Monitoring parliamentary proceedings required some training, although involved minimal staff. The monitor has audio and visual contact with the Parliamentary Chamber and is responsible for data entry of the person speaking and any other details (e.g. a motion that the bill be read a second time) into the Log Notes program. The monitor is also responsible for the parliamentary broadcast, which sends the sound and vision of parliamentary proceedings to various parts of Parliament House and selected government offices throughout the Darwin CBD. This training, too, was minimal and the transition, again, was seamless.

The monitor is also responsible for archiving and backing-up audio recordings to CD for a sound record and DVD for a sound and vision record.

Management of the technology change included reducing the length of time over which casual staff are required for each parliamentary sitting period. Under the former regime, casual staff were required for up to four weeks after a six day sitting to keyboard corrections from the editors and type a camera ready copy for the Government Printer. Under the current regime, casual staff are required for sitting days only as the editors correct copy on-screen and the camera ready copy is produced by the editors. This has resulted in considerable cost savings in salaries paid.

Efficiencies gained

The change to digital audio meant that editorial staff could edit on computer screens rather than on hard copy. This resulted in massive efficiencies (for example, seven years ago, the salary allocation for the Hansard Unit was nearly twice what is today. Under the current regime, the lightly edited Daily Hansard is loaded onto the Internet within three hours of the House rising. Under the former regime, that timeframe was never able to be achieved. In fact, the production of a complete Daily Hansard by 10 a.m. on the day following a sitting of the Parliament could only be met if the House rose between 7 p.m. and 9 p.m.

The Hansard Unit has experienced a substantial reduction in the use of paper and printers. Under the former regime, hard copy was printed, edited, corrected and re-printed. Under the current regime, no printing at all occurs

until the document has been collated, uploaded on to the Internet and electronically posted to the Government Printing Office for a small print run of hard copies.

Benefits

Put succinctly, the benefits are a higher quality product produced with greater efficiency at a much lower cost.

The flexibility of the portable system is a major benefit and saves something in the order of $A15,000 in respect of not having to transport our Hansard section to conduct a regional Parliamentary Sittings in Alice Springs (this figure is exclusive of wages/salaries).

FTR Gold is supported by an uninterruptible power supply, which means that lightning strikes and electricity surges arising from tropical thunderstorm activity do not affect the recording capacity of the system. There have been occasions when the Parliamentary Chamber is in darkness because the lights have been affected by surge or lightning strike, but recording continues and no sound has been lost during a thunderstorm since the installation of the system.

The unit is now able to produce "Rushes" of members' speeches on request. A "Hansard Rush" is usually available within 1.5 hours of a member delivering their speech. It is a verbatim, unedited transcript direct from the transcriber. This is far more efficient than what could be managed under the previous methodology.

Under the former system, the sound stream was captured on video for archive purposes. This meant both sound and vision were lost or distorted after a few years of storage. The current system allows indefinite storage of both sound and vision in digital format either on CD or DVD.

FTR Gold can be used to facilitate web casting of both sound and vision. At present, the department only web-casts the sound, but the capacity exists for vision to be added at any time.

Queensland Legislative Assembly

Accommodation

The following accommodation services are provided:

- Parliamentary Precinct (overnight accommodation, room services, building maintenance etc.) has remained relatively unchanged, although the number of function venues in the precinct has increased signifi-

cantly. Cleaning and maintenance continue to be outsourced, but overall co-ordination and management remain in-house.
- Electorate Office accommodation services also unchanged although the size and quality of electorate office accommodation provided has increased and improved significantly. Leasing agent services remain outsourced to a government department however coordination/ management of all Electorate Office services remains in-house.

Human resource services

Since 2001, members have been provided with additional Electorate Office staffing resources (additional full time equivalent in the form of an Assistant Electorate Officer) with a consequential impact on all support services (HR support IT support, Electorate Office accommodation requirements etc).

Human Resource Management (HRM) services continue to be provided by the Parliamentary Service (i.e. not outsourced) however HRM now provides services to agencies outside the Parliament (Auditor-General, Office of the Governor and Offices of the Information Commissioner and Ombudsman) as part of a public sector Shared Services Initiative.

Technology (including information technology)

The following changes have occurred in the last ten years:

- Introduction of expanded Parliamentary Internet and Intranet (with associated information services);
- Mobile computing facilities for each member (laptops) with full network access from within the Chamber;
- Audio broadcast of parliamentary proceedings over the Internet (soon to be video broadcast as well);
- General improvements in data and voice communications and office automation equipment;
- Enhanced/niche software solutions (video on demand from library databases, and Constituent Management System);
- Tailored, on demand, education services for members.

All IT services continue to be provided by Parliamentary Service (i.e. not outsourced) however the Parliamentary the IT services area now provides services to agencies outside the Parliament (Offices of the Information Commissioner and Ombudsman) as part of a public sector Shared Services Initiative.

Catering services

Actual services provided (dining rooms, café, coffee shop and wine bar plus function services) relatively unchanged, although the number of functions held in the precinct (and the types of functions) has increased significantly. All services continue to be provided in-house.

Financial, travel and entitlement services

Actual services provided are relatively unchanged and continue to be provided in-house. In addition, the financial services area now services agencies outside the Parliament (Auditor-General and Offices of the Information Commissioner and Ombudsman) as part of a public sector Shared Services Initiative.

South Australia House of Assembly

The Parliamentary Network, incorporating Internet and Intranet sites, was established in 1997–98, as phase 1 of the "Ministerial and Parliamentary Information and Communication Services Project".
The deliverables from phase 1 were:

- Network infrastructure which include workstations, laptops and the secure network;
- Foundation applications such as common operating systems, a word processing application, Internet access, email facilities, Hansard on-line, legislation on-line, and basic Internet and Intranet websites.

An extranet site was developed in 2002–04 to provide Ministers and their staff (external to Parliament House) with access to specific areas of the Intranet and to enable the Office of Parliamentary Counsel to provide electronic information to the Parliamentary Reporting Division and the Clerks of both Houses.

Tasmania Legislative Council

From the Legislative Council's perspective the two major developments relating to support services for Members of the Legislative Council have been in the areas of electorate office establishment and IT.

Electorate Offices

The trend in the past nine years or so has been toward the establishment of appropriately staffed electorate offices. The current Labor Government, which has been in office in Tasmania since 1998, has provided funding to enable Members to establish and operate electorate offices. Funding has also been provided to enable Members of the Legislative Council, who do not hold an official office position, to have one full-time equivalent staff member to support them in their work.

With the reduction in the number of Members of the Legislative Council from nineteen to fifteen, the work-load of Members has increased considerably. A factor in setting up electorate offices has been the perceived need to be closer to constituents thereby making access to the elected representatives much easier. Prior to the move toward individual electorate offices, Members generally operated from Government owned or leased premises situated in the major metropolitan regions of the State.

Electorate offices continue to operate successfully. Offices established to date have increased the profile of Members and the role of the Legislative Council. Constituents have expressed appreciation that their elected representative in the Legislative Council is located within the electorate and is accessible.

There has been however a substantial increase in costs to the Legislative Council as a consequence of the establishment of electorate offices. Operating costs, which include communications, equipment, stationery, and other related expenses have impacted considerably on the Council's budget. This has been recognized by an increased level of funding.

It is expected that the activity level will continue to increase. Constituents are aware of the service and support being provided by Members and their staff in electorate offices.

Judgements continue to be made by Members in relation to staff hours and presence in the offices. Decisions are made in light of available funding and Members' decisions with regard their mix of staff and other external research providers.

Members have been surveyed on issues connected to their office and associated activities.

Questions asked included:

- What percentage of overall office time is taken up with constituent enquiries?
- What is the number of weekly enquiries by phone and over the counter in each of the categories of health, housing, education, family and other?

- During the past six months has the number of weekly enquiries varied?
- Can you estimate the number of constituents who have commented on having a regional office in their electorate?
- Do you anticipate that enquiries will increase in number during your elected term as a consequence of having an office in the electorate?

The view of Members generally is that the establishment of an electorate office has brought about an increased level of interaction with the community. Responses from staff surveyed reflected the views of Members.

Constituents are made aware of the electorate office generally by newspaper advertisements, by actually passing by and seeing the office signage, by word of mouth, or by white pages telephone directory listings. As awareness of the offices has grown the demands upon staff in those offices has increased also. Further, the administrative staff in the finance section continue to experience an increase in the amount and type of administrative oversight which is required in terms of managing the staffing and budgetary components associated with the offices.

Information technology

The development of the Computer and Electronic Security Services Division of the Tasmanian Parliament commenced back in 1991. However over the past ten years or so there has been steady growth in the range of services provided and the support available to Members and parliamentary staff. The Division now administers a local area network in excess of 270 workstations, eight file servers, an Internet site and remote network access via ADSL, GPRS or dial-up.

The Computer and Electronic Security Services Division also has responsibility for access control and electronic security for the parliamentary precinct and buildings, closed circuit television monitoring and recording, audio broadcast of proceedings both 'in-house' and via the Internet, Hansard digital audio recording and broadcast system, MA Television system and PSDN, GSM and CDMA telephones.

The Division was developed to provide a comprehensive service to Members of Parliament and staff. The services that are currently available provide the important basic services needed for the efficient operation of the Parliament and to assist Members in the performance of their duties.

Database services are provided through two main mechanisms. Firstly, the Parliament's Internet site which provides information to all people with access to the Internet worldwide. Secondly, the Parliament's Intranet,

designed to provide a range of services within the Parliamentary local area network (LAN) for internal use within the Parliament.

As part of the ever evolving direction for computer requirements and mobile data, the focus has been on the requirement for portable communications which includes e-mail, electronic diary, contacts and of course voice communications.

The Computer and Electronic Security Services Division also offers a range of support and training. Members or staff requiring training in any software package or computer function are assisted by the Division who will either arrange a time for "in-house" training or arrange a training course most suited to individual needs with an external service provider.

Victoria (joint response from Legislative Assembly and Legislative Council)

The major structural change to the Victorian Parliament's administration was due to the passage of the *Parliamentary Administration Act 2005* which created a three Department structure. The Departments of the Legislative Council, Legislative Assembly and Parliamentary Services manage the operations of the Parliament. Parliamentary Services is the largest of the Parliamentary Departments and provides support services to the House Departments in Library, Information Technology, Hansard, Finance, Organisation Development and Precinct and Property Management. It is also responsible for the operation of 128 Electorate Offices across the State of Victoria.

Over the last ten years the Victorian Parliamentary Library Research Service has expanded from an establishment of two staff to a team of four researchers supplemented by some casual research assistants. Ten years ago, research staff were employed as generalist researchers covering all requests from Members of Parliament. Now there are two generalists and two specialist researchers, including a legal researcher and a statistical analyst. During this time the service has changed from an initial focus on providing written and verbal briefings for Members of Parliament in response to specific requests to a service which now produces proactive research papers addressing Parliament's legislative program and important issues before the legislature.

Over the last three years, eight to ten papers have been published each year containing original and peer reviewed research. The output of the service has also moved from paper based publications to electronic formats and publishing reports both on Parliament's Intranet site and the public website.

Hansard has introduced a number of improvements in the way it delivers its services to Members of Parliament and the public. These include a pilot program to give Members of Parliament electronic access to Members' proofs (known as pinks or greens), which is being trialled early in 2007; the ability for Members of Parliament to access and download the daily and revised weekly versions of Hansard electronically in either PDF or Microsoft Word format and the ability for members of the public to access and download Hansard electronically in PDF format; and the availability of copies of the bound sessional volumes on searchable CD.

Operational changes for Hansard include the installation of digital audio recording systems in the Legislative Assembly and Legislative Council Chambers and the installation of individual Member microphones in the Legislative Council Chamber (they were already installed in the Assembly Chamber); the introduction of a system of recording and monitoring of parliamentary committee hearings for later transcription, which has enabled more committee hearings to be reported by Hansard; the introduction of digital recording systems for and technical innovations in the recording of parliamentary committee proceedings, which has resulted in better quality sound recordings; and the ongoing replacement of computer-assisted transcription and keyboarding as transcription tools by the use of voice recognition software.

Electorate Office accommodation has changed substantially in the last ten years due to the requirements of Members, Occupational Health & Safety requirements, disabled access etc. The Parliament of Victoria has established a set of criteria by which it works in order to source an electorate office for Members. The coordination of these services is provided in-house, however, any specialist services, e.g. architects and property locators, are outsourced. The value of this service has increased substantially over the last ten years. The main issue in this regard is attempting to satisfy the Members while remaining within predefined guidelines.

Catering demands have also changed over the last ten years. There has been a challenge to provide a more diversified menu (à la carte, vegetarian, light meals, organic foods etc.) to cater for changed tastes. This has had to be achieved on the back of reduced or zero subsidies which has, in turn, increased the costs for Members and staff and adversely affected customer satisfaction. In order to balance the books, alternative avenues of funding have had to be identified such as the hiring out of the venue on commercial terms. This has included opening part of the Parliamentary Dining Room as a restaurant open to the general public in non-sitting weeks.

The biggest change in the past decade from an IT perspective has been in work practices due to better and more affordable technology. This has resulted in personal computers, laptops and associated equipment becoming commonplace within Members' and staff offices (and in the two debating chambers). The availability of this technology has driven an expectation of higher levels of service, including quicker response times and a greater knowledge of the equipment and software, which has created challenges for the IT Unit. The Victorian Parliament has been at the forefront amongst Australian legislatures in the introduction of BlackBerrys for communications, use of a wireless network since 1999, standardisation of the network environment and the implementation of SAN technology in 2002.

Western Australia Legislative Assembly

Over the last ten years, two significant changes have occurred with respect to the provision of support services in the parliamentary context. One of these, the amalgamation of separate service Departments into one Department, has seen the continuation of "traditional" service provision, albeit in a more streamlined and efficient environment, with the extension of support to include the Governor's Establishment. The second of these significant changes was a complete refurbishment of the Legislative Assembly Chamber and the installation of air-conditioning in the Chamber.

The amalgamation of the key Departments responsible for the provision of support services to members occurred in 1997, amid concerns that replication of the processes and functions of the Departments was inefficient and ineffective. Prior to 1997, the key support Departments consisted of the Legislative Assembly, Legislative Council, Joint House (Committee) Department, Joint Library (Committee) Department and Joint Printing (Committee) Department. After extensive consultation, it was proposed that the Joint House (Committee) Department, Joint Library (Committee) Department and Joint Printing (Committee) Department be amalgamated into one "service" department, the Parliamentary Services Department (PSD). Thus, post-restructure Members' support and services have been provided by the Legislative Assembly, Legislative Council, Parliamentary Services Department or a combination of these working collaboratively. This has seen a more efficient continuation of traditional support services to Members. The Parliamentary Services Department, however, did expand its provision of services to include two key support functions for the Governor's Establishment in September, 2004. These functions include

payroll processing and accounts processing. The services, provided free of charge to the Governor's Establishment, account for approximately 0.2–0.3 FTE (full time equivalent) staffing per week.

The second significant change to the provision of services in the parliamentary context saw an historic refurbishment of the Legislative Assembly Chamber during the 2006–07 summer recess, which included the installation of air-conditioning in the Chamber. The passage of legislation to increase the number of Members of the Legislative Assembly from 57 to 59 was the impetus for change. Prior to the refurbishment, there were 32 seats on the government side and 26 on the opposition side. Refurbishment saw the increase of seating to 33 seats on the government side and 29 on the opposition side.

Preliminary work on the refurbishment began during the 2005–06 summer recess, when foundation work for the installation of the air-conditioning was completed. The main Chamber refit, however, began in December 2006 and was completed in mid-March 2007. The official reopening of the new Legislative Assembly Chamber occurred on 19 March 2007. The Chamber was stripped of all the existing furniture and carpet, much of it dating from the previous refurbishment of the 1920s, and completely refitted with new carpet and new Members' seating which incorporates the latest technology to provide superior in-Chamber facilities for the Members. The traditional Speaker's Chair, Clerk's table and the Table of the House have been retained. The original blue toning of the seating and the carpet were also retained, with the State emblems of the black swan and red and green Kangaroo Paw incorporated into the carpet. In addition to the refurbishment of the actual Chamber itself, the installation of air-conditioning in the Chamber and galleries was completed, and the public gallery was renovated. The changes to the public gallery included new seating, the provision of flat screen television monitors to enable better viewing of all of the proceedings of the House, improved safety features and disabled access.

Western Australia Legislative Council

Effect of the Electoral Amendment and Repeal Bill 2005 on Chamber services

The passage of the *Electoral Amendment and Repeal Bill 2005* in May of that year saw the membership of the Legislative Council increased from 34 to 36 members following the next State general election. The increased membership provided for in the subsequent Act presented an opportunity to

modernise and refurbish the chamber to accommodate the future needs and services offered to members of the Council, and visitors observing proceedings from the public gallery.

Preliminary refurbishment of the Legislative Council Chamber commenced during the summer recess of 2005–06 with the installation of ducted air-conditioning, and improved seating and safety facilities in Public Gallery. The public gallery was extensively renovated and refitted with new seating that incorporated raised areas accommodating the new air-conditioning. In addition to the seating, new carpets and glass safety panels were installed along the balustrade to provide for improved safety for members of the public while viewing the proceeding of the Council.

The fit-out of the Chamber air-conditioning required the removal of all furniture from the immediate vicinity. Following the installation of the ducting, the chamber furniture was returned and individual access to the air-conditioning was provided for each member of the Council via small portals within the seating. Minor repairs to the stained glass doors and windows of the chamber were also carried out.

Completion of the works carried over into the first two sitting weeks of 2006. For the first time in the history of the Legislative Council, sittings were held in the chamber of the Legislative Assembly. The Legislative Council resumed sittings in its own chamber on 4 April 2006.

While the preliminary work on the refurbishment of the Chamber has been completed, the new seating arrangements to provide for the addition of a further two members has not yet begun.

The Northern Extension and staff accommodation

On 2 March 2004 the Northern Extension was officially opened by His Excellency, Lieutenant General John Sanderson, AC, Governor of Western Australia, and the Presiding Officers. The extension was adapted to the original structure of Parliament House and provided for additional office accommodation for the staff of the Legislative Council and an afternoon tea/function area for members of the Council. These offices have generally been occupied by Table Officers and the Executive Assistants to both the President and the Clerk.

Parliamentary Services Department (PSD)

In 1997, a number of departments responsible for the provision of support services to both members and staff of each of the Houses were merge to form an "all in one" service department known as the Parliamentary

Services Department (PSD). This department now oversees responsibility for everything from finance and administration, information technology, library and reporting services, security, and building and catering services. For further information on the establishment and services provided by PSD, please see the contribution forwarded by the Legislative Assembly.

IT Wireless Network

A wireless information technology network was installed throughout the Parliament House building, primarily to enable Members of both House to connect with the internal and external databases from anywhere within the building. The wireless network allows Members to log into their personal drives, access the intranet and internet, print and edit documents from anywhere within Parliament House, especially the Chambers. The wireless network was later expanded to include the Committee Offices as well.

The network uses the 802.11g wireless network protocols and is secured using WPA2 encryption which meets the standards recommended by a recent audit of the network by the Office of the Auditor General.

BANGLADESH PARLIAMENT

The Parliament is unicameral. The last ten years have seen developments in:

- Accommodation—residential accommodation has been provided to all MPs and office accommodation to all chairmen of Parliamentary Standing Committees;
- IT—including extended training, better email and Internet services, provision of hardware, development of the website, and random sampling software for the Question Branch;
- Research—better research support for members and committee chairs, publication of monographs, event-based reports and studies, and the development of formats for committee reports and proceedings;
- Refreshments—new techniques for budget analysis.

CANADA

Senate

Information technology

When information technology was introduced at the Senate in 1991, the needs were modest: they entailed automating such aspects of office work as

text processing, file management and internal e-mail. Over the past 10 years, we have seen an exponential increase in technology needs. In 1997, we were responsible for 350 workstations; today we have 850 computers plus a multitude of peripherals to support, an increase of 143 percent in eight years.

Currently the Senate's Information Systems Directorate (ISD) maintains a huge variety of data systems and platforms that facilitate many technology applications, including webcasting and the open and closed captioning of debates. ISD is also responsible for numerous management systems and tools, such as the remote terminals server, the BlackBerry servers and e-mail on the Internet, to name just a few.

In addition to the way service needs have evolved, our active participation in the cyber-community has made it necessary for us to strengthen the security of our computer installations by installing anti-virus and anti-spam software and a host of other applications and systems. Thanks to these, Senators and the Senate Administration have a stable and secure computer environment in which to work.

The Telecommunications Service is another sector that has been transformed over the past 10 years. Deregulation of the telecommunications industry, structured cabling, ownership of office computers, teleservices and the multiplication of wireless devices have radically changed the way we manage telecommunications. The Senate and the House of Commons now co-own the existing cabling in the Parliamentary Precinct, which ensures us a more secure and more flexible environment. Having taken charge of its own interconnections (relocations, additions and modifications), the Senate must continuously update its information.

The Senate's wireless communications needs have evolved as well: 10 years ago, only a few Senators had a cell phone for use in carrying out their parliamentary functions, whereas today most Senators and most of their staff members operate with a cell phone or a BlackBerry. We anticipate sustained growth of demand in this regard. The Senate Telecommunications Service is the central point at which requests involving portable devices at the Senate converge. Advising clientele, training users, assisting in the supply process, monitoring industry trends, staying abreast of the various world networks and doing repairs—these are all imperatives that have had an impact on the Service.

The Senate used to entrust the development and maintenance of applications to outside contractors. However, relying on external resources presented frequent inconveniences for the Senate. Knowledge of the systems created was lost and no one was able to ensure proper maintenance of the

applications. Moreover, it was not possible to implement changes rapidly and effectively when a contractor was not available. In addition, we did not have the technical skills or experience needed to make sure that standards and guidelines applicable to systems developed by Senate were complied with. We had to adjust, so we set up an applications development sector that could respond to the current and future needs of the Senate and its clientele. With all the parliamentary and governmental information management initiatives, the development sector will be expanding enormously in the next few years.

Over the past decade, the Senate has established management strategic directions, principles and practices that enable us to manage the technology services provided and our technology investments, relatively easily.

The Senate has developed concrete partnerships, with the House of Commons and others, designed to achieve operational effectiveness and efficiency in information technology and also to save considerable amounts of money.

Agreement and shared services with the House of Commons

In February 1996 an agreement on establishing a joint computer network on Parliament Hill was signed by the Chair of the Senate's Committee on Internal Economy and the Chair of the House of Commons' Board of Internal Economy. In 2006, given the agreement's success (especially in facilitating collaboration between the Senate and the House), we extended it to 2012.

The agreement provides for the sharing of infrastructures, services and expertise, as well as the harmonization of technologies and protocols, while unconditionally guaranteeing each party's autonomy and independence. Each party remains responsible for, and sole owner of, its hardware, its software and the technologies it uses to operate applications or link workstations to the general infrastructure.

In 1997 the Senate, the House of Commons and the Library of Parliament developed a joint parliamentary website. The goal was to improve services, exchanges of information, and communications with senators, MPs, staff, voters, the public and industry partners. A governance structure was put in place to manage the site's ongoing development.

In 1998, the Senate opted to subcontract to the House of Commons for multimedia and technical services. Because we did not have the infrastructure, the resources or the expertise in multimedia, it was much more cost-effective for the Senate to collaborate with the House.

In 2007, the Senate, the House and the Library developed a shared vision

and strategy for the management of parliamentary information. It gives strategic direction to the delivery of parliamentary information services.

The Senate also takes advantage of House standing offers when the volume of procurement enables us to make appreciable savings.

Memorandum of understanding—building components and connectivity program

Taking a broader perspective, the Senate, the House, the Library and Public Works signed a memorandum of understanding in 1997 (revised in 2000) to establish a joint information technology program for the Parliamentary Precinct. The purpose of the MOU is to achieve significant economies of scale by adopting a connectivity procurement strategy for the whole Precinct, within the framework of the Parliamentary Precinct Long-Term Renovation Plan.

Agreement with the Government Telecommunications and Informatics Services

Currently the Senate obtains a number of telecommunications services via the Government Telecommunications and Informatics Services (GTIS). The GTIS is responsible for negotiating the best rates for telecommunications services on behalf of the federal government. The Senate saves some 25–30 percent by using its services.

It is important to note that the Senate actively selects the aspects of its operations that are most suitable for being outsourced and shared. Our principle is to offer internally the services that have a direct impact on our clientele.

British Columbia Legislative Assembly

Support services to Members of the British Columbia Legislative Assembly are delivered through eleven departments that operate under the Authority of the Speaker acting on behalf of the Legislative Assembly Management Committee. While changes and upgrades have occurred in most departments of the Assembly during the last decade, the following highlights those branches that have experienced significant changes in service delivery.

Two themes emerge when reviewing the changes of the past ten years. The first is that we have entered the digital universe. The explosion of information technology, a global phenomenon, has had an impact on how the Legislative Assembly provides services in almost every branch. While some changes were precipitated by the demand for new information formats, others have

involved updates to existing services by adopting new technologies that have become available. The second theme that becomes apparent is the growing autonomy of the Legislative Assembly in providing services to Members. In several cases, where services were previously contracted to external parties, the Legislative Assembly has developed in-house capacity to serve the distinct needs of the Legislature.

Sergeant-at-Arms

The Office of the Sergeant-at-Arms has implemented new information technologies to provide a higher level of safety and security for users of the legislative precinct. Within the last ten years, Security Services has adopted closed-circuit television technology to monitor the exterior areas of the precinct, and a card-lock system to provide secure access to all buildings.

Legislative Library

The Internet has fundamentally changed the ways information is published and distributed. Today, institutions whose publications are central to the Legislative Library's collection—such as governments, think tanks and foundations—publish much of their information only on the Internet. Other electronic sources include listservs and information databases, which have been added to the Library's collection alongside more traditional print sources, such as publishers' blurbs and journals. Electronic information now co-exists with print, and has doubled the level of complexity that the Library deals with, from selecting and acquiring materials, to cataloguing them, creating them, and making them available for reference and research. That, in turn, has meant changes to staff training, workflow and equipment.

For example, the library has begun a preservation program, realizing that the British Columbia government is among those institutions that have embraced electronic publishing. Prior to the change of government in 2001, the Library decided not to risk the loss of publications found only on government websites, and began a program of downloading electronic publications to its own server. Many government e-publications still come and go quickly from the Internet, even during a government's term. But long-term preservation, and ease of use, still require the production of print copies. To that end, the Library has acquired a couple of high volume printers and has learned how to make "shelf ready" publications that formerly arrived that way.

The Library also finds itself publishing electronic materials, and has produced several resources that are available only on the Internet or the

Assembly's Intranet. Some of those sources are in text form, such as background papers, and some are in the form of databases, such as the MLA database—all made available electronically to Members' desktops.

Hansard

Hansard Services has undertaken numerous service improvements since 1996, many of which were facilitated by moving to a fully digital environment. Hansard Services moved from analog to digital over the past few years, with the final conversion to digital equipment completed in 2006. Hansard has added web-streaming, audio podcasting, video podcasting and web-clipping to its broadcast services. Other changes to service provision include an enhanced indexing service, which now includes hyperlinked indexes to committee transcripts, in addition to House indexes that are hyperlinked to subject, speaker and business entries.

Hansard Services has provided televised broadcasting of House proceedings, with closed captioning, since 1992, and with technological modifications to the main committee room, added televised coverage of debates on Estimates in 2005. The only staffing increases have been the addition of three full-time broadcast technicians, which allows for the concurrent broadcast of the debates from the House and from the Estimates committee. Hansard Services is also finalizing the installation of video conferencing facilities in the main committee room, with completion expected in the next few months.

Office of the Legislative Comptroller

Prior to 2003 the Office of the Legislative Comptroller maintained an independent financial system (AS400) to process all financial transactions. High level data were transmitted to the Ministry of Finance monthly to conform to their requirements. Cheque production was handled internally. Payroll and human resources management was handled through the government payroll system using Peoplesoft. Information was processed and managed locally (Ministry level) although the data was collected and stored centrally. All payroll cheques were produced and distributed from the central location.

In 2003, the Office of the Legislative Comptroller began implementation of an in-house, integrated system for managing payroll, human resources and financial services. The change coincided with government's decision to centralize and outsource its human resources and payroll services. While the Assembly had previously used the government's human resources and payroll system, the new method of service delivery meant the confidentiality

of the Assembly's payroll information could not be guaranteed. All data in the current system is stored locally and financial information (including salary information) is transmitted at a high level to Ministry of Finance on a monthly basis. Cheque production and distribution is done internally. The change to the new system did not alter the original staffing complement but did require a shift in job duties for some employees.

In 2005 an electronic funds transfer (EFT) component was executed for expense cheques. This was previously only available in the payroll module. Additional elements of the system will be introduced incrementally, including web-based timesheet (Time On-line) and expense-tracking features in 2007. Both are self-serve systems that will allow Members and staff to enter and view their own information online. A change to the current staffing is not anticipated with the implementation of the additional modules but may result in a further shift of some of the duties currently being performed.

Computer Systems

In the last decade, Computer Systems has moved from being an entirely outsourced operation to a fully in-house service. This was achieved gradually over a number of years, as Systems staff grew from four to nine members. New positions were filled by staff hired as Legislative Assembly employees, rather than by the IT firm that had previously provided its staff on contract. The need for an increased number of staff is related to other changes that have occurred in the past ten years.

The number of IT users in the Assembly has more than doubled, growing from 225 in 1996 to 500 in 2006. The primary reason for the increase is that Computer Systems now provides support to Members' constituency offices. Ten years ago, little IT support was offered to Members outside of the legislative precinct. Now, the Legislative Assembly supplies and maintains the majority of IT equipment in those offices. This has allowed Systems staff to standardize constituency and precinct operations, making support and the transfer of documents much simpler.

The second area of change is the increasing reliance on the Intranet and Internet as a means of disseminating information to Members, staff and the public. The majority of Legislative Assembly documents are now posted to the Internet, providing much easier public access to information, and a great deal of business is conducted via e-mail. Members are now issued Blackberries to facilitate their access to e-mail and documents, even while travelling.

The impact of the Web on Computer Systems' operation is evident in the following numbers:

	1996	2006
Help desk and network support staff	5	7
Web support staff	0	2
Servers maintained by Computer Systems	8	30
BlackBerrys maintained by Computer Systems	0	110
Notebook computers maintained by Computer Systems	5	100
Web site accesses—in session (average/month)	Unknown	118,000
Web site accesses—out of session (average/month)	Unknown	71,000

Public Education and Outreach

The Public Education and Outreach Office was established in August 2001 as an administrative branch within the Office of the Clerk. Its mandate is to provide informative and educational tools to the public to promote a better understanding of the parliamentary system in British Columbia, including the role of the Assembly and its Members in our democratic system. That mandate supports its organisational vision, which is an informed citizenry that appreciates and is engaged in the parliamentary process.

With the creation of this Office, the Legislative Assembly assumed responsibility for visitor services within the legislative precinct, a function that have previously been delegated to the Protocol Branch of the Intergovernmental Relations Secretariat within the Premier's Office. The visitor services provided by Public Education and Outreach includes tours led by multi-lingual guides, and a gift shop featuring legislative-themed giftware. Public Education and Outreach also manages the BC Legislative Internship Program, which offers work-learn opportunities to university-level students. However, most of the new initiatives developed by the Public Education and Outreach Office have centred on civics education programs and materials designed for both the general public and for specialized groups of learners, include elementary and high school students, and public service employees.

Committees Research Office

In the period 1996 to 2006, the Office of the Clerk of Committees has significantly increased the research services it provides to committees of the Legislative Assembly. Prior to 1998, research staff were hired by individual committees on a temporary basis, to assist with the analysis of evidence received through public consultations, undertake research on topics before the committees, and to prepare briefing notes and draft committee reports.

Since that time, the Office has incrementally hired three permanent, full-time researchers, and temporary researchers have augmented the regular complement of staff at times of peak activity. In the fall of 2006, for example, four temporary staff joined the Research Office to assist the seven active committees of the House.

Prince Edward Island Legislative Assembly

The major developments in the provision of support services to Members over the past ten years have been improvements to information and communications technologies, increased security, greater barrier-free access to the legislative building, and establishing Hansard for the Legislative Assembly of Prince Edward Island.

Over the past decade, as new technologies have been introduced and matured, Members have been provided with more and better equipment to enable them to keep in touch with their offices, constituents and to improve their access to parliamentary information. Laptop computers have been purchased for the private Members.

The Legislative Chamber has been wired to allow for network and Internet access at the Table and the Members' seats. The main committee room has likewise been wired for Internet access by Members.

The last ten years have also seen the Legislative Assembly develop, publish and improve its website (www.assembly.pe.ca) where Members, staff and the public can access House documents, along with background information and procedural reference materials. Additional development is planned in this area.

Beyond technological improvements, there have been enhancements made to other areas. Security measures have been increased greatly over the past ten years and are continually reviewed. As a direct result of a bombing of the legislative building in April 1995, the position of Security Officer was created. With ongoing world events, security continues to be a priority to ensure legislators, staff and the visiting public can go about their business in a safe yet accessible environment.

Hansard was established in 1996. Since then, transcription practices and the format of the printed document have evolved to more closely match national Hansard standards. The index which accompanies the Hansard in the bound version was re-organized and is now published separately. Hansard and its index are also available on-line.

INDIA

Rajya Sabha

Accommodation

In order to meet adequately the need for residential accommodation, a pool of residences for members of Rajya Sabha has been established. The allotment of residences to members from this pool is made by the House Committee of Rajya Sabha. The House Committee have adopted certain guidelines for allotment of bungalows and flats to members on the basis of seniority.

The Central Public Works Department (CPWD) is concerned with the general maintenance and upkeep of the members' residences. The House Committee of Rajya Sabha with the help of the CPWD constructed sixty residential units during the last ten years to augment the number of units available in the Rajya Sabha Pool for allotment to Members of Rajya Sabha.

The office accommodation in Parliament House and Parliament House Annexe is shared conventionally in the ratio of 2:1 by the Lok Sabha and the Rajya Sabha Secretariats. The other common support services shared by both the Secretariats are catering and telephone payments in the ratio of 2:1. However, these services are exclusively controlled by the Lok Sabha Secretariat.

Information technology

During the last ten years, the IT support services in Rajya Sabha have developed and progressed concurrently at two levels—for Members of Rajya Sabha and in the Rajya Sabha Secretariat.

The provision of computers to members was first considered by the General Purposes Committee of Rajya Sabha in February 1995. The rules (namely, Provision of Computers to Members of Parliament and Officers—Rules and Procedure, 1995) were framed. Notebook/laptop computers were procured and provided to members. In 1997, in view of the growing need and requirement of computers for members, the Chairman of Rajya Sabha constituted a Committee on Provision of Computers to Members of Rajya Sabha, under the chairmanship of the Deputy Chairman. The main functions of the Committee are: to decide on the areas and activities to be computerised for the benefit of the members; to decide the norms for provision of computer hardware and software to members and the terms and conditions applicable in this regard; to lay down policy guidelines for computer training to members.

The Committee's specific responsibilities include:

- Deciding the specifications of computer equipment (desktop or laptop or handheld computer, printer, scanner and UPS) for Members of Rajya Sabha;
- Creation of VCD record of proceedings of the Rajya Sabha and making it available to members and public on payment basis;
- Placing verbatim debates of the proceedings of the House on a day-to-day basis on the Internet;
- Making recommendations to the Government of India on enhancing the utility of websites of various Ministries/Departments, so that these can be used by Members of Parliament effectively;
- Devising procedural guidelines for the procurement, maintenance and insurance of computer equipment for Members of Rajya Sabha;
- Live webcasting of the proceedings of the House;
- Providing broadband facilities to Members of Rajya Sabha;
- Making the Rajya Sabha portion of the Parliament House wi-fi enabled.

In the Rajya Sabha Secretariat, the computerization process was initiated in the year 1987 by way of an online UNIX based system. Office productivity tools comprising a word processor (lyrix), spreadsheet and DBMS (FoxPro) were deployed in the first instance. Also, a payroll system was developed for preparing the staff salary. Since then, the IT Systems have steadily replaced many of the activities of the Secretariat which were being done manually and have become effective and efficient functional tools of the decision support system. Currently, most of the Sections and officers are using various IT applications in their day-to-day work. In order to handle the computerization process in the Secretariat and the activities relating to computerization, a Computer Cell was created in 1997 with the following responsibilities:

- To provide secretarial support to the Committee on Provision of Computers to Members of Rajya Sabha and the Secretariat's Computerization Coordination Committee;
- To co-ordinate with the National Informatics Centre (a Government organization which provides technical guidance/support to all the Government Departments) and user sections of the Secretariat;
- To procure and maintain hardware for members as well as for the Secretariat, and to work with the NIC on software development for members and the Secretariat;
- To provide secretarial assistance to various *ad hoc* or permanent Committees relating to computerization;

- To devise mechanisms to vet incoming information, locate delays and arrears and ensure consistency and quality of data being uploaded to Rajya Sabha website;
- To implement the IT Plan.

The detailed planning and scheduling for introducing computerization in the functioning of the Rajya Sabha Secretariat is the responsibility of a further committee, the Computerization Coordination Committee, which meets under the Chairmanship of the Secretary-General, Rajya Sabha. All the senior officers of the Secretariat representing various services are members of this Committee. This Committee decides the policy on computerization in relation to Rajya Sabha Secretariat and also monitors its implementation.

Various other initiatives have also been taken to provide Computerized Information Service to Members of Rajya Sabha. Some of these are:

- A bilingual Website (English and Hindi) of Rajya Sabha has been developed (http://rajyasabha.nic.in) from which Members, Secretariat staff, general public and media can access information;
- Most of the documents published by the Rajya Sabha Secretariat including Committee Reports have been made available on the Rajya Sabha website;
- In the process of the computerization of Parliamentary services to members of Rajya Sabha, some of the Notice forms have been made computer compatible and made available on the website;
- Since much of the information is available on databases, comprehensive Member information can be obtained on the Internet at the Members' Homepage.

Presently, the Rajya Sabha and Lok Sabha Secretariats pursue their own initiatives in getting developed IT based applications. The technical and network support for computerization activities for both the Houses of Parliament is, however, provided by the National Informatics Centre (NIC). As a result, the NIC takes care of the demand overlaps, if any. Since there is a lot of commonality of needs, there is considerable scope for fostering synergy between the two secretariats in so far as development of the IT is concerned.

As regards outsourcing of the IT services, it may be mentioned that the Rajya Sabha Secretariat has undertaken a Project named "Digital Archiving and Retrieval of Rajya Sabha Debates", which will make available proceedings of Rajya Sabha since 1952 in digitized form with a comprehensive

search facility. The responsibility for tendering, finalization and completion of the Project has been given to the NIC. The Secretariat has also collaborated with the Center for Development of Advanced Computing (C-DAC) for the development of a Hindi Office Software named ISM and a Hindi to English Translation Software named MANTRA (Machine Assisted Translation System). The Secretariat has hired engineers from the National Informatics Centre Services Incorporated (NICSI), a sister agency of the NIC, for placing material on the Rajya Sabha website and for attending e-mail/Internet related complaints at residences of members.

The Secretariat has also prepared a comprehensive Information Technology (IT) Plan for Rajya Sabha for the period from 2007 to 2009, which will ensure that further growth and expansion of computerization in the Secretariat is both systematic and focused.

Research Services

The Library and Reference, Research, Documentation and Information Service (LARRDIS) of the Rajya Sabha Secretariat has a small Research and Library Section which has been entrusted with the following work:

- Attending to references made by the Chairman, the Deputy Chairman and the Secretary-General on constitutional questions and questions concerning parliamentary procedures;
- Collection of information about the procedure followed in the State legislatures in India and in the legislatures of other countries;
- Preparation of speeches, messages, articles, research notes, etc. for use of the Chairman, Deputy Chairman and Secretary General;
- Furnishing of information to various national and international bodies, including the preparation of answers to questionnaires received from international bodies like the Inter-Parliamentary Union, Association of Secretaries-General of Parliaments, or Society of Clerks-at-the-Table in Commonwealth Parliaments;
- Preparation of publications on Parliamentary and procedural matters; and
- Preparing press cuttings for the Chairman, Deputy Chairman and Secretary-General.

To provide research inputs, two officers of the LARRDIS, Rajya Sabha Secretariat, have been posted in the Office of the Chairman. Some of the officials of the service have also been posted in some Department-related Parliamentary Standing Committees.

In the year 2003, a Press and Media Unit was created to act as the nodal section to liaise with Government publicity organizations and communication media, press correspondents, newspapers and other bodies. The Unit also prepares briefs and notes as and when required. The Press and Media Unit has now become a part of the LARRDIS.

Information is of vital importance for the members of Parliament. There is a well-equipped Parliament Library under the administrative control of the Lok Sabha Secretariat to cater to the information requirements of members. Further, the Library and Reference, Research, Documentation and Information Service or LARRDIS of the Lok Sabha Secretariat provides the reference services to members of both Houses of Parliament.

Refreshment services

Refreshment services are largely out-sourced. There is a refreshment room for members in the first floor in Parliament House run by the Northern Railway Catering Department, where members can have their meals, luncheon, refreshment, etc. at approved rates. There are also a Coffee Board Buffet, and a Tea Board Buffet, run by the Ministry of Commerce, and a Snack Bar run by the Northern Railway Catering Department, where only light refreshments are available. Railway catering units are also located on the ground floor in the Parliament House Annexe, Reception Office, Parliament House and Parliament Library Building. The Delhi Milk Scheme is running a Milk Stall each in Parliament House and Parliament House Annexe where milk and milk products of the Delhi Milk Scheme are on sale.

There is a Committee on Food Management in the Parliament House Complex, constituted by the Speaker, Lok Sabha in consultation with the Chairman, Rajya Sabha, consisting of 15 members, 10 from Lok Sabha and 5 from Rajya Sabha. It has the following mandate:

1. To consider the revision of rates of eatables served at Railway Catering Units located in Parliament House Complex;
2. To consider the level of subsidy to be given for running Railway Catering Units in Parliament House Complex;
3. To consider the provision of excellent canteen services to members; and
4. To consider other related issues.

Uttar Pradesh Legislative Assembly

Uttar Pradesh has a bicameral legislature. Services have been computerized, and the website is updated regularly. The Legislature Library provides reference services to both the Houses.

STATES OF JERSEY

Before 2002 members of the States of Jersey had access to virtually no support services or IT provision and often returned from visits to other legislatures feeling extremely aggrieved at the lack of facilities provided for them when compared to other parliamentary colleagues. Fortunately the Privileges and Procedures Committee of the States of Jersey has introduced significant improvements in the last 5 years to provide facilities for the 53 elected members.

As part of an overall refurbishment of the States Building, which houses the States Chamber, several rooms were converted for use as facilities for members. These include two Committee Rooms, two small interview rooms (where members can meet together or meet constituents) as well as a room with lockers for members where documents and other belongings can be kept securely. Two communications rooms were also created with photocopying and fax facilities as well as a number of computers where members can check their e-mails, access the Internet or use a range of Office software programs.

Members are given use of a laptop computer with access to the government e-mail network and they are also provided with free broadband Internet access at home or in their office (no individual office facilities are provided for members).

There are no refreshment facilities for members other than coffee and tea-making equipment in the members' rooms but a free lunch is provided by an outside caterer on each sitting day. Members are provided with free parking at two locations in the centre of St. Helier which are each some five minutes walk from the States Chamber.

MALAYSIA

Melaka State Assembly

Only refreshments services out-sourced.

NAMIBIA NATIONAL ASSEMBLY

IT Library and Computer support is a common service provided by the same unit to both Houses of Parliament.

The Parliament Restaurant is operated, on contract, by a private caterer. Refreshments and lunches can be bought by Members and staff at relatively low tariffs. These services are available to staff and Members of both Houses.

UNITED KINGDOM

House of Commons

Recent developments

In 1999 a management review conducted by an external consultant, Michael Braithwaite, recommended changes to strengthen the corporate nature of the House administration. Changes included the designation of the Clerk as Chief Executive of the House Service; the creation of a corporate office—the Office of the Clerk—to support him in this role; and the introduction of strategic planning and a "top-down" business planning process.

The year 2000 saw the opening of a new building, Portcullis House, which provided additional committee and meeting rooms, new refreshment facilities and improved accommodation for Members. The same year a second management review by Michael Braithwaite recommended that the Parliamentary Works Directorate, which managed and maintained the estate on behalf of both Houses, be divided into "client" and "supplier" functions: the Parliamentary Estates Directorate and the Parliamentary Works Services Directorate". These changes were duly implemented.

Then in 2004 a report by the Select Committee on the Modernisation of the House of Commons provided a catalyst for development of outward facing services. These are mainly provided on behalf of both Houses. Recent developments in this area include the creation of a Central Tours Office, the introduction of visitor assistants to provide an improved welcome, a radical redesign of the Parliament website and (Commons only) the creation of a single point of contact for the media.

After the 2005 General Election the five "domestic committees" that advised the Speaker and the Commission on support services (Accommodation and Works, Administration, Broadcasting, Catering and Information) were replaced by a single Administration Committee.

In 2006 Information and Communication Technologies (ICT) services across both Houses were consolidated into a new Parliamentary ICT Service

("PICT"). For legal reasons PICT was initially formed as a Commons Department, but it is expected to be re-established as a joint-House department in 2008. A Bill to provide for the creation of joint departments was introduced in January 2007.[11]

In 2007 the initial findings of a management review led by Sir Kevin Tebbit, former permanent secretary at the Ministry of Defence, have recommended the re-merger of the Estates and the Parliamentary Works Services directorates, reversing the Braithwaite changes of 2000. The final report, which may bring changes to other areas of the House Service, is due in July 2007.

Joint working with the House of Lords

Various services are provided on a joint House basis. These include accommodation and works, archives, security, education services, tours and the staff magazine. These are generally organised by one House with the other re-charged for a proportion of the costs. As noted above, in 2006 ICT services across Parliament were brought together in PICT. These included services previously provided on a joint-House basis (e.g. IT infrastructure) as well as those provided locally. The legislation that will enable PICT to become a joint department of the two Houses (the Parliament (Joint Departments) Bill) would enable the creation of further joint departments; however, there are no plans at present to make use of this possibility.

Outsourcing

The largest single area of outsourcing is security, which is provided under contract by the Metropolitan Police Service. The administration of staff pensions was outsourced in 2005. Cleaning is carried out by a mix of in-House and contract staff. The following ICT services currently have significant outsourced elements: telephone operator bureau and voicemail system; telephone maintenance; installation and warranty-covered support of desktop equipment; network engineering support; data backup, spam management; electronic publishing and web hosting (including education website); major application support (PIMS); major application development (HAIS). Major works projects often include a range of bought-in services (architects, project management, construction, etc). In 2006 the Administration Committee recommended the examination of options for contracting out parts of the catering services, but this was rejected by the House of Commons Commission.

[11] For more on the establishment of PICT see Richard Ware, "A new joint department at Westminster", in *Table*, 74 (2006), pp 22–34.

PRIVILEGE

AUSTRALIA

Senate

Right of reply

The Privileges Committee tabled in June 2006 a report recommending that a right of reply be granted to a group of people referred to in the Senate. The reply was duly published by the Senate. It involved a number of unusual aspects: the adverse references in the Senate to which the response referred were not made in debate, but in a notice of motion which had not been moved; no individual was referred to in the notice of motion, which referred to a religious group called the Brethren, but three persons claiming to speak on behalf of the group were allowed to make the response. In debate on the publication of the response, a long-serving senator, Senator Ray, drew attention to the readiness with which the Senate grants rights of reply, contrasted with other houses which are more reluctant to accept replies.

Search warrants

The President tabled in August 2006 a memorandum of understanding entered into with the Tasmanian government to regulate the execution of state search warrants in the premises of senators and members. This follows the similar agreement with the federal government, and provides in identical terms for the determination of claims of parliamentary privilege in respect of materials seized under warrant (see *The Table*, 73 (2005) p 175).

Committees and parliamentary privilege

A report of the Legal and Constitutional Affairs Committee on a bill provided an example of a committee dealing with a parliamentary privilege matter without the necessity of referring it to the chamber. The committee reported that it appeared that a person who made a submission to the committee may have been threatened with a possible penalty in relation to the evidence given by the person. The committee investigated the matter, and found that the person who made the apparent threats had not done so with the intention of threatening the submitter and that the submitter had not felt threatened. The person concerned also made an apology which was provided to the committee.

Privilege case: no partisanship?

The President of the Senate determined that a matter of privilege should have precedence under standing order 81 in February 2007, and the reference to the Privileges Committee was passed without debate on the following day. The matter relates to a suggestion that a witness before a committee may have given false or misleading evidence. The person concerned is involved in politics, and the treatment of the matter contrasts with that of a similar matter, given precedence by the President in September 2005, but in respect of which the motion to refer it to the committee was rejected, with a vote on party lines and with complaints about privilege matters being dealt with on a partisan basis (see *The Table*, 74 (2006) p 169). Following that incident, the President was asked at an estimates hearing for the Department of the Senate to ensure that privilege matters are determined on a non-partisan basis in the future. So far the signs are favourable.

New South Wales Legislative Assembly

Whilst there were no significant cases of breaches of privilege or contempt established in the Legislative Assembly of New South Wales in 2006, two privilege issues were raised and are worthy of note.

A member rose on a matter of privilege under standing order 101 in relation to threats of violence that had been made against female members of the Liberal Party and The Nationals of the NSW Parliament by a Government member in the Legislative Council. The Speaker reserved his decision and later ruled that whilst comments made by members in the other House might have been inappropriate, such remarks did not form the basis for a claim of breach of privilege. He noted that previous Speakers had indicated that one element of a breach of privilege was a reflection upon the character or the actions of a member which prevented that member from carrying out his or her duties. The Speaker went on to argue that the member had not been obstructed in her duties as a member of Parliament in that she had not been prevented from exercising her freedom of speech in the House nor impeded in attending the service of the House. The Speaker concluded that a *prima facie* breach of privilege had not occurred and that to make a privilege issue out of every alleged insult or reflection made about a member in this House or the Legislative Council would, arguably, in turn threaten a member's right to freedom of speech. (Parliamentary Debates 03/05/2006, pp 22522–22524 & 22546)

A member rose on a matter of privilege that the Hansard record of the

previous day's proceedings did not reflect what was said by a Minister. After consideration of the matter the Speaker ruled that the matter was not one of privilege noting that in the editing of Hansard obvious mistakes are corrected and redundancies removed and that the matter raised related to an obvious error that had been corrected. (Parliamentary Debates 18/10/2006, p 2908; PD 19/10/2006, pp 3067–8)

New South Wales Legislative Council

Seizure of a member's documents under search warrant—further update

In April 2005 the House referred an inquiry to the Privileges Committee to develop appropriate protocols for the execution of search warrants on members' offices by investigative and law enforcement agencies. The referral of such an inquiry had been recommended by the Committee in its first inquiry concerning the execution of a search warrant on the office of the Honourable Peter Breen MLC by the Independent Commission Against Corruption in 2003.

In February 2006 the Privileges Committee reported on its inquiry recommending that protocols for the execution of search warrants on members' offices be adopted by the House. The recommended protocol was based on procedures incorporated protocols followed by the Australian Federal Police when executing search warrants on offices of members of the federal Parliament, and the procedure adopted by the Legislative Council in the case involving the Mr Breen. The report also addressed a number of issues raised by various investigative and law enforcement agencies to which a draft of the protocol had been referred by the Committee for comment.

The protocol sets out the procedures to be followed prior to obtaining a warrant, prior to executing a warrant, during the execution of the warrant, and at the conclusion of the search. Notable features include:

- Presiding Officer to be notified of the proposed search before execution of warrant (or Clerk/Deputy Clerk/relevant Committee Chair);
- Clerk to arrange for office to be sealed;
- Reasonable time to be allowed for member and Clerk to seek legal advice in relation to execution of the warrant prior to execution;
- Member and Clerk to be advised of nature of allegations being investigated and nature of material sought;
- Reasonable opportunity to be given for member to claim parliamentary privilege on documents prior to search;

- Warrant not to be executed on a sitting day or when a committee involving the member is sitting, unless compliance would affect integrity of the investigation;
- Warrant to be executed in presence of member or member's staff and Clerk/Deputy Clerk unless compliance would affect integrity of the investigation.

The protocol also sets out the procedures to be followed where claims of parliamentary privilege are made. These include requirements for the member and the Clerk to identify any documents which fall within the scope of "proceedings in Parliament" (including by applying the three-step test developed by the Privileges Committee in the case involving Mr Breen); the release of other material to the investigating agency; the identification of any documents in respect of which the claim of privilege is disputed; and the determination of any such dispute by the House.

The recommended protocol has yet to be considered by the House.

Review of the Members' Code of Conduct and draft Constitution (Disclosures by Members) Amendment Regulation 2006

On 8 June 2006 the Legislative Council referred to the Privileges Committee an inquiry into draft amendments to the Constitution (Disclosures by Members) Regulation 1983 and draft amendments to the Members' Code of Conduct, which had been tabled in the House by the Government the previous day. A similar inquiry had been referred to the Legislative Assembly's Committee on Parliamentary Privilege and Ethics in May 2006, the recommendations of which, tabled on 1 September 2006, were considered by the Council committee in the drafting of its final report.

According to the government, the amendments would address issues raised in recent Independent Commission Against Corruption reports. In particular, the amendments to the Code of Conduct sought to expand an existing prohibition on bribery to encompass benefits to a member's family or business associates, and a new requirement for members to disclose details of secondary employment before participating in related proceedings in Parliament. The amendments to the regulation provided for twice-yearly rather than annual returns by members disclosing specified interests, provisions for supplementary returns, and a more extensive level of disclosure of details of member's income and secondary employment.

The committee received submissions from relevant agencies and other parliaments, and met with representatives of the Cabinet Office for the

purpose of a briefing on the intended effects of the draft provisions. On 3 October the Privileges Committee tabled its report in which it identified difficulties with the proposed new twice-yearly system of returns, and requirements that primary returns be lodged within one month of the member taking the pledge of loyalty. As an alternative, the Committee proposed that primary returns be required within three months of the pledge of loyalty, alongside a new system of exception reporting requiring members only to report changes to disclosed interests; and that members of the Legislative Council (elected for two terms of the Assembly) be required to submit a further full return at the start of the second Parliament of their term, and report any changes against that return for the remainder of their term.

With regards to the Members' Code of Conduct, the Committee supported a new amendment to the Preamble to the Code declaring that members' "principal responsibility is to their constituents and the people of New South Wales"; the addition of qualifications to the bribery clause specifying that a member must act "knowingly or improperly" and that a breach of the prohibition amounts to a "substantial" breach of the Code; a new clause requiring members to disclose any secondary employment before participating in related proceedings in Parliament; and the introduction of legislation to codify parliamentary privilege.

Following the tabling of the Council committee's report, in November 2006 the Assembly committee tabled a further report which identified areas in which the two committees agreed and diverged.

In March 2007 the Constitution (Disclosures by Members) Amendment Regulation 2007 was published in the Government Gazette, and commenced on 24 March 2007. The new regulation reflects the Committee's recommendation that primary returns be required within three months of the member taking the pledge of loyalty, rather than within one month as proposed under the draft regulation, but has not introduced exception reporting as per the Committee's recommendation, opting instead to replace the current system of annual returns with the addition of six monthly returns and voluntary updates.

Queensland Legislative Assembly

Alleged threat against a member and alleged reflections on the Chair

The Members' Ethics and Parliamentary Privileges Committee (MEPPC) dealt with an apparently unprecedented case involving the investigation of the conduct of a presiding officer (the Speaker). It was alleged that the

Speaker had threatened a member in the chamber. Relevant to the Speaker's response to the allegation was the Speaker's counter-allegation of reflections on the Chair by numerous members.

In Report No. 71 the MEPPC reported that it was unable to establish a contempt in relation to the Speaker's conduct or comments attributed to or made by members in relation to the Chair. The MEPPC recommended that the House take no action in relation to the allegations. However, the committee recommended that the Standing Orders be amended to include reflections on the Speaker as an example of contempt (see item under Standing Orders in this volume).

In Report No. 73 the MEPPC dealt with a further allegation that a member had reflected on the Speaker in a media interview. The committee concluded that there was no *prima facie* case of reflection on the Chair and recommended that the House take no action in relation to the matter.

Alleged misleading evidence before a budget estimates committee

The matter referred to the MEPPC concerned an allegation that a minister had deliberately misled a parliamentary budget estimates committee. At the time, deliberately misleading a parliamentary committee in Queensland was an criminal offence under s 57 of the *Criminal Code* and a contempt of Parliament.[1] In this matter, the possible criminal offence was the subject of an investigation by the Crime and Misconduct Commission (CMC).

The *Parliament of Queensland Act 2001* has a double-jeopardy provision (s 47). Where a person's conduct is both a contempt and an offence against another Act a person may be prosecuted for a criminal offence or proceeded against for a contempt, but cannot be punished twice for the same conduct. The MEPPC followed its established procedure for dealing with allegations of contempt which may also involve a possible criminal offence (awaiting the finalisation of the possible criminal offence before taking any action in relation to the alleged contempt).

The CMC recommended that prosecution proceedings should be considered against the minister and the minister resigned as a minister and a member of the Executive Council. The matter culminated in the recall of Parliament from recess to determine whether to direct the Attorney-General to prosecute the member concerned for an offence under the *Criminal Code* or to deal with the matter as a possible contempt.

[1] The *Criminal Code Amendment Act 2006*, assented to on 1 June 2006, repealed s 57 of the *Criminal Code*. False evidence before a parliamentary committee is now no longer a criminal offence, but remains liable to be dealt with as a contempt of Parliament.

The member made a personal explanation and apologised to the House. The Premier moved that "the House accepts the member's resignation as a minister and a member of the Executive Council and the apology made today to the parliament as the appropriate penalty in accordance with section 39—Assembly's power to deal with contempt—of the Parliament of Queensland Act 2001". The motion was debated, and the question put and passed in the affirmative.

After the recess, the member raised as a matter of privilege legal issues arising from the report of the CMC. The Speaker referred to the MEPPC "general matters relating to the privileges of the House and its members arising from the matter and its wider implications".

In Report No. 72, the MEPPC reported that the reference relating to the alleged misleading of a committee was closed.

The MEPPC concluded in Report No. 78 that there was no *prima facie* case of breach of privilege or contempt in relation to the conduct of the CMC, as there was no evidence of improper interference by the CMC with the free performance by the member of the member's duties as a member, nor of intimidation or molestation of the member by the CMC. The committee recommended that the House take no further action in relation to the matter.

The committee recommended that s 47 of the *Parliament of Queensland Act* be amended to clarify its intended operation. The government's response to the report supported the committee's recommendation. The MEPPC also recommended measures to ensure natural justice and procedural fairness where contempt proceedings are instigated without having followed the process set out in the *Standing Rules and Orders: Legislative Assembly Queensland* (the Standing Orders) as occurred in relation to the member in this instance.

Allegations of electoral bribery

The Legislative Assembly referred to the MEPPC allegations of electoral bribery, namely that a party leader (the Leader of the Liberal Party) offered a bribe to an Independent Member to stand as a party candidate at the next election. The offering of a bribe to, or attempting to bribe, a member is an example of contempt under s 37 of the *Parliament of Queensland Act*. Section 60 of the *Criminal Code* provides that a person is liable to imprisonment for seven years for bribery of a member of Parliament.

As the matter had also been reported to the Police, the MEPPC again followed its established procedure for dealing with allegations of contempt

which may also involve a possible criminal offence and awaited the finalisation of the possible criminal offence before taking any action in relation to the alleged contempt. An extensive police investigation established that there was insufficient evidence to substantiate the commencement of criminal proceedings against the Leader concerned.

In report No. 74 the MEPPC accepted that there may be circumstances in which a member offering another member a bribe to change party status at the next election could constitute a contempt. However, the committee noted that to constitute a contempt, it would need to be demonstrated that the conduct amounted to, or was intended or likely to amount to, an improper interference with the free performance by a member of the member's duties as a member.

The MEPPC was satisfied that in this case there was no *prima facie* case of improper interference with the free performance by a member of the member's duties as a member and recommended that the Legislative Assembly take no further action in relation to the matter.

Alleged irregularities and failure to comply with conditions of use of petitions

The Standing Orders provide that the Parliament recognises two forms of petitions: paper petitions and electronic petitions (e-petitions) and sets out the rules relating to petitions. The Conditions of Use for e-petitions are published on the Parliament's website. This matter related to the alleged failure to comply with the Conditions of Use in relation to two e-petitions (which at the time had not been presented to the House) and alleged irregularities with three paper petitions (which had been presented to the House and responded to by the relevant minister).

The petitions related to the same subject: a proposed development. The paper petitions opposed, and the e-petitions supported, the proposed development. Following the presentation of the paper petitions, and prior to the MEPPC reporting on its inquiry into the matter, the Premier advised the House that the development proposal application had been rejected and the development proposal was called-in, in accordance with Queensland's *Integrated Planning Act 1997* (s 3.6.6).

Standing Order 266 provides that deliberately misleading the House or a committee (by way of submission, statement, evidence or petition) may be treated as a contempt. The e-petitions Conditions of Use advise that failure to comply with the conditions may amount to a contempt of Parliament.

The committee found *no prima facie* case of breach of privilege or

contempt in relation to the allegations relating to the e-petitions or paper petitions, as there was no evidence of fraud or falsification of the petitions, nor of persons being induced to sign the e-petitions by fraudulent means to mislead the House. In report No. 75 the MEPPC recommended that the House take no further action in relation to the matter of the e-petitions.

Committee reports can be accessed on the Legislative Assembly's Internet website at: http://www.parliament.qld.gov.au/Committees.

Tasmania Legislative Council

An interesting case involving parliamentary privilege in the Tasmanian jurisdiction arose during the latter part of the 2006 calendar year. It centred around the establishment of a Legislative Council Select Committee on the accreditation of building practitioners in Tasmania and the contractual relationship at that time between the Tasmanian government and a firm called Tasmanian Compliance Corporation (TCC). Issues relating to privilege surfaced when the Select Committee requested a copy of a report prepared by KPMG, at the request of the Premier, into the performance of the TCC.

The Premier declined to produce the report on the basis of advice from the State Solicitor-General. Part of that advice related to the Solicitor-General's concern that there was a real risk that the report would be found to be defamatory of the directors of the TCC and that any "unprotected" publication of the report would expose the publisher to the risk of action for defamation. If that publisher was the Premier, the liability to fund any award of damages would rest with the State.

There was an added concern that, were defamation proceedings to be taken in respect of the Premier's publication of the KPMG report to the Select Committee, the defence of parliamentary privilege might be met by an argument that the Committee was either not properly appointed or exceeding its power, whereby the publication was not protected by privilege. The issues identified were as follows:

- The powers of an Australian Parliament, its Houses and Committees, must be derived either from legislation of the Imperial Parliament or from the exercise by the Australian Parliament of the legislative powers conferred upon it by the Imperial Parliament.
- The conferral of power by the Imperial Parliament upon the Tasmanian Parliament was in not identical but materially indistinguishable terms to its grant of power to the Commonwealth parliament.

- Based on the decision in MacFarlane, that means that the Imperial Parliament did not vest in the Tasmanian Parliament a power of inquisition unrelated to the exercise by that Parliament of its legislative powers. Nor has the Tasmanian Parliament exercised its broad legislative powers to give a power of inquisition to its committees generally, although it has done so in specific instances—for example, the *Public Works Committee Act 1914* and the *Public Accounts Committee Act 1970*. Without the Parliament legislating to give to its committees a general power of inquisition, they do not have that power.

A brief chronology of events between 6 and 11 October 2006 follows:

6 October: The Committee wrote to the Chairman, KPMG requesting him to give verbal evidence and to table at that time a copy of the report on KPMG's Investigation of the Tasmanian Compliance Corporation.

10 October: As the Solicitor-General advised the Premier that a formal summons was required to cover issues of Parliamentary Privilege, the Committee formally demanded a copy of the KPMG report from the Premier.

10 October: A letter from the Chairman of KPMG requested a legal demand for attendance and documents.

11 October: Letter sent to Mr Green, KPMG, assuring him that all evidence given to the Committee is protected by parliamentary privilege and quoting sections 1 and 2 of the *Parliamentary Privilege Act 1858*.

11 October: The Committee formally demanded the attendance of Mr Green of KPMG and the KPMG Report.

11 October: Letter sent from Premier to Chairman enclosing a copy of the KPMG report, but restating the Solicitor-General's advice. KPMG tabled a copy of their report with the Select Committee and gave verbal evidence in public.

In a speech at the Legislative Council sitting in Launceston on 17 October the President made a statement outlining this issue. He restated the cornerstones of our powers and privileges and in particular Sections 1 and 3 of the *Parliamentary Privilege Act 1858*. He also read Section 27 of the *Defamation Act 2005*, which provides for a defence of absolute privilege to an action for defamation in respect of evidence provided to a parliamentary committee and quoted from advice received by the President of the Senate from his Clerk, Mr Harry Evans. This advice clearly and comprehensively expressed

the legal and constitutional position on these matters as understood and traditionally applied by the Tasmanian Parliament and its committees, without challenge for 150 years.

In an attempt to put this issue to rest, the Clerk of the Legislative Council sought the advice of Mr Bret Walker SC. The advice has been received and has confirmed that "there is no doubt worth attending to that a committee constituted and delegated powers in the manner that this Legislative Council Select Committee was, represents an infringement of the limits of power of the Legislative Council, so as to expose participants in its activities to a loss of parliamentary privilege (in the narrow or colloquial sense of an immunity from defamation action)."

It should also be noted that the Select Committee continued its inquiry for a further period until 29 November 2006 when the Legislative Council suspended its operation until "such time as the Legislative Council can be satisfied that such proceedings would not prejudice related proceedings in the Supreme Court of Tasmania (Criminal Division)".

Principals of the TCC have been charged with conspiracy and the former Deputy Premier, Mr Bryan Green MHA has also been charged. A Supreme Court trial is scheduled.

Victoria Legislative Assembly

On 28 February 2006 the Speaker informed the Assembly that the Member for Preston, Michael Leighton, had written to her to raise a matter of privilege. It involved a constituent who had provided information to the member relating to a local issue he had raised several times in the House. The constituent later received a letter from a solicitor threatening legal action if the constituent repeated the information or if Mr Leighton raised the matters in the House. The House resolved that the matter be referred to the Privileges Committee for investigation and report. It was the first matter referred to the Committee by the House since the early 1990s. The Committee's report was tabled on 18 July 2006, in which the Committee found that in threatening legal action against the constituent the law firm had committed a contempt.

The letter sent to Mr Leighton's constituent read, in part "We hereby put you on notice that, should your false allegation be repeated in any media or by Mr Leighton in Parliament or by yourself or any other person, we will bring action against you to recover the damages suffered by our client." The attempt to hold a constituent legally responsible for the comments made by a

member in the course of contributing to debate was of some concern to the Committee.

The Committee took the view that there were two main components to the inquiry:

- Whether the immunity afforded by parliamentary privilege extends to the communication of information to members by other persons; and
- Whether the threat of adverse action against a constituent could be considered as an improper means to influence a Member of Parliament in the performance of their duties.

The Committee found the principles explored in earlier cases such as the *Erglis v Buckley* case from Queensland to be very instructive.

The law firm, Mills Oakley Lawyers, wrote to Mr Leighton in March to explain that it had not been the firm's intention to stop him from contributing to debate, and apologised for that interpretation. Mr Leighton forwarded that correspondence to the Committee. The Committee wrote to various lawyers named in the correspondence to determine the responsibilities of those involved in sending the original correspondence to the constituent; the law firm responded promptly and also indicated that the letter had been sent without going through the normal checking processes.

After considering the evidence, submissions and comparable precedents, the Committee formed the opinion that in this case, the flow of information between constituent and member was a "proceeding in Parliament", because of the context in which it was communicated and the close connection between the information provided and the member's (intended) use of it in the House. Therefore, in seeking to stop that flow of communication, the law firm sought to interfere with a proceeding in Parliament. Secondly, the Committee concluded that despite the law firm's subsequent apology, the intention of the letter to the constituent was clearly intended to prevent Mr Leighton from representing his constituent's concerns in the House. The Committee found that the law firm's actions constituted a contempt. A copy of the report is available at www.parliament.vic.gov.au/committees.

The House considered the findings of the report in August 2006. The Leader of the House moved a motion which had three main parts:

- Endorsing the finding of the committee;
- Noting that Mills Oakley's usual practice for outgoing correspondence was not followed in this case;
- Directing the Speaker to inform Mills Oakley, and the solicitor

concerned, of the House's resolution, and to place a notice in the Law Institute Journal to remind the legal profession of the importance of parliamentary privilege.

In taking this approach, all three political parties broadly agreed that the House should use the finding as a chance to educate the public—and the legal community—about the rights of Parliament, rather than to exercise its more notorious penal jurisdiction. There were several comments in debate about the failure of law schools to include the rights of Parliament in courses and how this lack of knowledge could have serious consequences for the Parliament and constituents.

After moving the motion, the Leader of the House incorporated into *Hansard* a submission from Mills Oakley. Mills Oakley did not dispute that a contempt had been committed, but argued that as the firm (via the Chairman of Partners or CEO) had not given evidence—only the solicitor who had written the letter gave evidence—it had not had an opportunity to put forward the firm's view. It acknowledged that the committee was not obliged to follow the principles of natural justice, but explained the difficulties this presented Mills Oakley in participating in a decision that affected it quite seriously. The submission gave Mills Oakley a belated opportunity to put its view, reaffirm the company's protocols in relation to outgoing correspondence, and to distance itself from the actions of its solicitor who, the submission noted, had since resigned. The firm had been held vicariously liable for its employee's actions without an obvious opportunity to defend itself. The submission is available at *Hansard*, vol 471, pp 3,036–9 or online at http://www.parliament.vic.gov.au/ then follow the links to *Hansard*.

In the debate, Opposition members expressed the view that the contempt should have been found against the lawyer, not the firm. The Opposition's lead speaker, Mr Cooper (Deputy Chair of the committee) moved an amendment to the proposed wording for the notice in the *Law Institute Journal* to refer to "a solicitor from a law firm", rather than to simply Mills Oakley. After debate, Mr Nardella from the Government (and Chair of the committee) moved an amendment to Mr Cooper's amendment to change the wording to "a solicitor from Mills Oakley". While subsequent Opposition speakers indicated that they were not really satisfied with this compromise wording, the motion was agreed to as amended.

Western Australia Legislative Assembly

What detail should be included in a Member's annual return and what constitutes an unauthorised alteration of a public record came under the spotlight in December 2005. On 1 December, the Legislative Assembly referred a potential contempt of the House to the Procedure and Privileges Committee, when it came to light that the Leader of the Opposition had, while viewing the original register of Member's Financial Interests, placed supplementary information on an undated and unsigned piece of paper at the back of his 2002–04 return in the Register, without notifying the Clerk or Deputy Clerk of this action. The paper contained details of one of his company's shareholdings. The Committee tabled a report of its findings on 22 December 2005.

The inquiry by the Procedure and Privileges Committee essentially addressed two issues—the omitted information on the original return, and the manner in which the official Register was amended. In the first instance, the Committee investigated whether the omission of details of the shareholdings of a company included on the Leader of the Opposition's return constituted a failure to comply with the provisions of the *Members of Parliament (Financial Interests) Act 1992*. In doing so, the Committee needed to establish if the Leader of the Opposition had a "relevant interest" in the company, as per the Commonwealth *Corporations Act 2001*, and if his actions had been wilful, and, therefore, a punishable contempt. The Committee found that although the Leader of the Opposition did have a relevant interest in the company under scrutiny and had failed to comply with the *Members of Parliament (Financial Interests) Act 1992*, his actions were not wilful and did not constitute a punishable contempt under the Act. In the second instance, the Committee investigated if the Leader of the Opposition's amendment to his return in the Register constituted an unauthorised alteration of an official record; could be judged as "misconduct" as defined in the *Corruption and Crime Commission Act 2003*; and/or was a breach of Parliamentary privilege. The Committee found that the Leader of the Opposition's actions constituted an unauthorised alteration of an official record. Although these actions were not deemed as misconduct as per the *Corruption and Crime Commission Act 2003*, the Committee did find them to be a contempt of the Legislative Assembly.

The Committee tabled its report during the summer recess. On the first sitting day of 2006, the Leader of the Opposition made a personal statement concerning the findings of the Procedure and Privileges Committee, in

which he stated that he accepted the findings of the Committee and apologised to the House and the Clerks. No further action was taken by the Legislative Assembly with respect to this matter.

CANADA

Manitoba Legislative Assembly

In part as a result of a dispute between the opposition parties and the government over the need for a public inquiry, 25 alleged matters of privilege were raised during the spring session of the 38th Legislature. No *prima facie* case of privilege was found in any of these matters, but a few of them are notable.

On 17 March 2006 the Official Opposition House Leader raised an alleged matter of privilege regarding the death of a child that had been in the care of the Department of Family Services and Housing and the responses provided by the Minister of Family Services and Housing. He concluded by moving a motion of non-confidence in the minister recommending that she be relieved of her duties. In his ruling Speaker George Hickes noted that allegations of misjudgement or mismanagement or maladministration on the part of a minister in the performance of ministerial duties does not come within the purview of parliamentary privilege.

On 5 May an independent Member raised an alleged matter of privilege regarding a lack of funding to the Auditor General's Office, asserting that this lack of funding impeded him in performing his duties as an MLA. Speaker George Hickes made note of a virtually identical matter from the Canadian House of Commons in March 1972 when several privilege motions concerning the failure of the federal Auditor General to table his annual report were brought forward. The House of Commons motions contended that the government had failed to properly fund the office of the federal Auditor General, leading to delays in reporting which impeded members in the discharge of their duties. Speaker Lucien Lamoureux ruled no *prima facie* case of privilege at the time as the complaint did not relate to privilege but rather to a matter of administration. In the current Manitoba case, Speaker George Hickes ruled that the matter was not in order as a *prima facie* case of privilege, but noted that it could be raised as a question in the House or the Public Accounts Committee.

Also on 5 May another independent Member raised an alleged matter of privilege regarding the need to consider changes the Rules, Orders and Forms of Proceedings of the Legislative Assembly of Manitoba. Speaker

George Hickes ruled that a matter concerning the methods of the House in the conduct of business is a matter of order and not privilege. Speaker Hickes also used this ruling to address Members' apparent confusion on what constitutes a matter of privilege.

INDIA

Uttar Pradesh Legislative Assembly

Police brutality

A question of breach of privilege and contempt of the House was moved by Honourable Sri Salil Bishnoi, and MLA from the Bhartiya Janata Party (BJP), against Sri Abdul Samad, the then Circle Officer of Police, and other policemen of Babupurwa Police Station in Kanpur.

It was said that on 15 September 2004 Sri Bishnoi with his party-workers was going to the Deputy Mayor of Kanpur to hand over a memorandum regarding electricity supply problems. As soon as the procession reached the gate of Prayag narain Shivalaya the police took them into custody and began to abuse and brutally beat them. The police, led by Sri Abdul Samad, made derogatory remarks about the Assembly and its members. As a result of the "lathi charge", Sri Bishnoi suffered a fracture to his right leg.

The Honourable Speaker referred the matter to the Privilege Committee on 29 November 2004. The committee's report, submitted to the House on 28 July 2005, recommended that the officer concerned be punished with imprisonment and his colleagues reprimanded. The committee also recommended that a number of policemen responsible for filing false affidavits be prosecuted under the relevant law.

Sting operation

A sting operation entitled "Neta Bikta Hai" was broadcast on 15 February 2006 by Channel 7 and CNN-IBN, in which charges of bribery were leveled against Sri Meboob Ali, member of the Samajwadi party and Minister of State for the Welfare of Backward Classes, Sri Somaru Ram Saroj, an MLA from the BJP, and Sri Anil Kumar Mauraya, and MLA from the Bahujan Samaj Party.

A notice was subsequently given to the Speaker by members of the Assembly on 16 February, under Rule 311 of the Rules of Procedure. This notice was debated on 17 February. After hearing the debate the Speaker announced the appointment of an Enquiry Committee. The Enquiry

Committee, in its interim report presented to the House on 14 September, concluded that in the absence of an unedited master CD it was not possible to come to a conclusion regarding the charges leveled against the members. Since the Chief Editor of CNN/IBN had failed to provide the master CD to the Enquiry Committee, the Committee found him guilty of breach of privilege, and recommended that action be initiated against him accordingly.

NAMIBIA NATIONAL ASSEMBLY

The Privileges Committee was established in 2006 and it is chaired by the Honourable Speaker. Other members of the Committee are: Hon. Ben Amathila, Hon. Hansina Christiaan, Hon. Hage Geingob, Hon. Katuutire Kaura and Hon. Ben Ulenga.

NEW ZEALAND

House of Representatives

Disadvantaging a person on account of his or evidence to the House or a committee

On 16 February 2006 the Speaker ruled that a question of privilege arose from the action taken by Television New Zealand Limited (TVNZ) in relation to its chief executive following evidence he gave to a select committee. This proved to be a matter with historic overtones.

On 14 December 2005, Mr Ian Fraser, the departing chief executive of Television New Zealand Limited (TVNZ), appeared before the Finance and Expenditure Committee during an inquiry into the company and made comments that were highly critical of its board. After Mr Fraser's appearance, the chairperson of the board (Mr Craig Boyce) wrote to Mr Fraser stating that his comments to the committee "amounted to serious misconduct" and relieved him of his duties for the balance of his notice period. Mr Fraser raised these actions with the select committee, and, despite a subsequent retraction and apology from Mr Boyce, the Speaker referred the matter to the Privileges Committee, noting that a general question about the status of select committee witnesses arose that warranted the attention of the House.

In the course of the inquiry, the legal advisors to the board, Bell Gully, admitted they had given advice only from an employment law point of view and overlooked Standing Orders.

The Privileges Committee, in its interim report presented on 5 April 2006 and adopted by the House on 6 April, found that TVNZ had committed a contempt, and the House punished that contempt by requiring a formal written apology from the board and imposing a $NZ1,000 fine. While this fine was small, it marked the first time in 103 years that the Privileges Committee had recommended a fine be imposed.

The previous occasion, in 1896, concerned the refusal of the President of the Bank of New Zealand, William Watson, to answer questions put to him about clients' accounts during a select committee inquiry into the conduct of the bank; he was adjudged guilty of a breach of privilege and fined 500 pounds.

This represented a strong warning shot. The committee noted that it was "not prepared to merely repeat past warnings" regarding obligations of State agencies to Parliament and its committees, and stated that future breaches of privilege or contempt of this nature might incur a higher fine. The committee also stated its intention to continue to examine the wider issue of the protection of witnesses and the extent to which any action may be taken against them as a result of their appearance at a select committee.

TVNZ wrote a letter of apology which the Speaker read to the House and paid the fine which was lodged in the Crown Bank Account.

The wider issue formed the basis of the Committee's final report to the House on the question of privilege presented on 17 October 2006 and adopted by the House on 19 October. In the final report, Committee members reaffirmed the fundamental importance of protecting witnesses who give evidence to select committees. They were in no doubt that witnesses participating in select committee proceedings must be able to do so without fear of intimidation or disadvantage as a result. However, members questioned whether it was realistic for the House or a witness to assume that no consequences to relationships would result from their giving evidence to a select committee, particularly if it were prejudicial or critical evidence.

As the various categories of contempt are not absolute, the House has to decide case by case whether or not a particular action or omission has the tendency to directly or indirectly obstruct or impede the House in the performance of its functions, or a member or officer of the House in the discharge of the member's or officer's duties. Disadvantaging a witness on account of his or her evidence before a select committee *may* amount to a contempt, but whether it does so in any particular case is a different matter.

Deciding whether to intervene is therefore a matter of discretion. But the extent of the discretion is not clearly recognised in the Standing Orders. The

relevant standing orders both say the House "may" hold defined conduct to be a contempt, but make no more of it.

The Privileges Committee agreed that the discretion to hold in contempt had to be defined more explicitly by setting out, at least in general terms, the circumstances in which it may be justifiable to invoke the power to punish for contempt or not to do so.

It therefore developed some principles and guidance for use in these situations, which the House subsequently adopted.

A reference to the factors that the House will consider in determining whether conduct constitutes a contempt will be added to the relevant standing order. These factors are:

- The conduct of any person in parliamentary proceedings;
- The nature of the action taken against any person on account of that person's parliamentary action.

Thus a person who acts irresponsibly in their parliamentary evidence by making extravagant or unjustifiable assertions cannot expect to be defended by the House if this leads to action outside the House. The rule of law preventing the calling into question of their evidence would still operate, but the House might not take affirmative action to protect the witness by using its power to punish for contempt.

On the other hand, even if a witness's evidence is justified or responsible, the House may decide not to use its power to punish for contempt if the action complained of (the disadvantage) could be seen as justifiable or understandable from the point of view of the person taking it. For example, a public servant who criticised a Minister or Government policy in evidence to a committee could hardly expect to retain the confidence of the Minister or of his or her department. Moving the public servant to a position that involved no contact with the Minister or to one where the official no longer worked on that policy would be seen as justifiable in these circumstances.

Moreover, evidence given to a select committee cannot form the sole basis for an action against the person who gave it. The evidence might act as a prompt for an employer to establish a separate inquiry into the conduct of the staff member, but any action taken against the staff member must be based on the results of the separate inquiry.

In making this recommendation, Committee members made the further point that parliamentary processes should not be used to encourage witnesses to disclose information when other more appropriate means can be used (such as the Protected Disclosures Act 2000). Members noted that if

this were to occur, there would be a danger that Parliament might be brought into disrepute.

Reflection on a member in his capacity as a member of the House

On 15 November 2006 the Speaker ruled that a question of privilege arose from a statement in the email newsletter "Robson-on-politics", published on the *Scoop* website on 1 November.

The Privileges Committee's report on this question relating to a reflection made on a member in his capacity as a member of the House was debated on 14 February 2007 and adopted. The committee found that Hon Matt Robson, a former member, had committed a contempt when he stated in the email newsletter that a current member, Hon Peter Dunne, had "faithfully delivered his vote" for the interests of the liquor and tobacco industries in return for their support. The House accordingly ordered Mr Robson to make an unqualified apology to the House and to the member, which was done.

STANDING ORDERS

AUSTRALIA

House of Representatives

As recommended by the Procedure Committee in 2006, standing orders 240 (Admission of visitors) and 241 (Admission of other Members) were amended and standing orders 1 (Maximum speaking times), 39 (Presentation of reports), 40 (Resumption of debate on reports), 187 (Maintenance of order), 190 (General rules for suspensions and adjournments of the Main Committee), 192 (Main Committee's order of business), and 193 (Members' three minute statements) were amended by sessional order on 9 February 2006, and adopted as permanent standing orders on 29 November 2006.

Standing orders 11 (Election procedures, up to and including paragraph (h)), 141 (First reading and explanatory memorandum), 142 (Second reading) were amended on 29 March 2006.

Standing orders 2 (Definitions), 18 (House informed of absences), and 41 (Private Members' business—procedure) were amended, and new standing order 40A (Removal of committee and delegation reports orders of the day) was inserted; standing orders 100(f) (rules for questions, anticipate discussion) and 248 (Consideration of report by House) were deleted on 29 November 2006.

Senate

The following changes were made to Senate procedures:

- The committee system was restructured (see above, under Miscellaneous Notes);
- The chairs of committees, or the deputy chairs when acting as chairs, were given the ability to appoint temporary chairs from the members of the committee when both the chairs and deputy chairs are to be absent from a meeting;
- Members of committees were given the power to appoint temporary substitutes for themselves on committees; such appointments may be made by party leaders if the committee members concerned are incapacitated or unavailable;

- The time for senators to register changes in their pecuniary interests in the Register of Senators' Interests was extended from 28 to 35 days.

It will be apparent that all of these changes have come about because of increasing pressures on senators' time.

Australian Capital Territory Legislative Assembly

In June 2005, the Standing Committee on Administration and Procedure resolved to undertake a review of the standing orders. This review will be the first major overhaul of the standing orders since self-government in 1989. It is expected that the review will be completed by December 2007.

New South Wales Legislative Assembly

The Legislative Assembly adopted new standing orders on 21 November 2006, which were subsequently approved by the Governor on 21 February 2007. The new standing orders will come into effect from the beginning of the 54th Parliament commencing after the election on 24 March 2007.

A review of the standing orders during the Parliament's sesquicentennial year was timely. The new standing orders reflect the evolution of the House's procedures over the past 150 years. While the changes have not altered many procedures, the terminology has been modernised and some procedures that were considered unwieldy have been streamlined.

Practical and necessary changes

Since the first Legislative Assembly in 1856 the standing orders have provided for the practice of the United Kingdom House of Commons to be followed in all cases where no standing, sessional or other orders or practice exists. This provision was practical in the early days of the Parliament. However, the parliamentary system in New South Wales has not followed the same path as the United Kingdom and the practicality of such a provision was questioned, particularly now that the Legislative Assembly has had 150 years of practice and precedents. Accordingly, the provision has been removed from the new standing orders.

An amendment to the *Constitution Act 1902* during 2006 necessitated an amendment to the standing orders regarding the swearing in of Members. Members no longer swear or affirm allegiance to the Queen but are required to take a Pledge of Loyalty to Australia and the people of New South Wales

before they are permitted to take a seat in the Parliament. The new standing orders have been amended accordingly.

Since May 1934 a prayer has been read at the commencement of each sitting day. The prayer was in old-fashioned English and it was considered practical to modernise the language. The new prayer maintains the sentiments of the old prayer by asking for God's blessing upon the Parliament and direction to ensure the deliberations of the Parliament are for the true welfare of the people of New South Wales. The new prayer remains non-sectarian and can be applied to a number of faiths.

In addition, provision is made for an acknowledgement of country to be given at the commencement of each sitting after the prayer. The acknowledgement of country is a statement acknowledging the traditional owners of the land, both where the Parliament resides and in the electorates Members represent. It has been the practice of the Speaker since November 2005 to acknowledge the traditional owners of the land the Parliament sits upon. In addition, it has become widespread practice in New South Wales for such an acknowledgement to be given before official events and openings. Accordingly it was considered appropriate to include the procedure in the new standing orders.

Under the previous standing orders the Address in Reply was to take precedence over all business. This provision necessitated a suspension of standing orders or the adoption of a sessional order to enable the Government to proceed with its legislative program during the currency of the Address in Reply. The new standing orders have been amended to provide that the Address in Reply has precedence of General Business only.

The standing orders adopted in 1994 provided for the election of the Speaker by secret ballot. The general procedure for the election was contained in the standing orders and is elaborated on in section 31B of the *Constitution Act 1902*, which states that where there is no existing provision the standing orders of the Senate are to apply. A number of administrative procedures in place for the election such as the procedure for nominations to be made were not recorded in any official document. The new standing orders have included these administrative procedures.

Changes to streamline proceedings

The procedure to amend bills has been streamlined with the House considering the amendments rather than resolving into a committee of the whole. Under the new consideration in detail stage there is no need for the Speaker to be replaced by a Chairman of Committees or for a report to be made to the House. The House can also consider matters other than bills in detail in

the same way that the House previously had the power to refer other matters to a committee of the whole.

There are many consequential amendments as a result of this change. For example, under the previous standing orders the Clerk was required to publish a weekly list of divisions in committee of the whole. Under the new procedure the divisions conducted on any amendments to bills are conducted in the House and will be recorded in the Votes and Proceedings so there is no need for a separate list. The standing orders have also been amended to clarify that a member may speak more than once in debate when the House is considering a bill or matter in detail and the Chairman of Committees has been replaced by an Assistant Speaker. The Assistant Speaker will be responsible for certifying that a bill is in the same form as passed by the Parliament before it is presented to the Governor for assent.

The routine of business has been changed in the new standing orders to bring on Question Time closer to 2.15 p.m. on Tuesdays, Wednesdays and Thursdays. Under the previous standing orders a number of procedures were conducted prior to the asking of questions such as the tabling of papers, the announcement of receipt of petitions and the placing and disposal of business. Under the new standing orders the only business that will take place before Question Time are Ministerial Statements, Notices of Motions other than general notices, and notices of motions to be accorded priority (these notices are considered at the conclusion of Question Time and the House determines which notice is accorded priority and is subsequently debated). All other routine procedures are conducted after questions.

Changes modifying terminology

The most significant change to the terminology used in the House relates to the passage of legislation. In addition to the committee of the whole being replaced with the consideration in detail stage, there will no longer be three "readings". Rather, the first reading has been replaced with the introduction of the bill, the second reading with the agreement in principle and the third reading has been dispensed with. If there is no consideration in detail stage the Speaker will declare a bill to have passed the House unless a motion has been moved "That the bill be not passed."

Under the new standing orders "strangers" will now be referred to as "visitors". It was considered more appropriate to refer to persons who are not members as "visitors" rather than "strangers".

Other changes in the terminology include changes to questions. Questions without notice will now be referred to as questions asked orally. The question

period is now officially referred to as Question Time. Questions on notice have been renamed written questions, which is arguably a more meaningful description of the questions that are recorded in the Questions and Answers Paper.

In addition, the new standing orders have been drafted with gender-neutral language. Of particular note chairman has been replaced by chair in relation to committees appointed by the House.

Procedures considered no longer necessary

Under the new standing orders members no longer have to pay obeisance to the Chair when entering or leaving the chamber. It was considered that this procedure was archaic and no longer necessary.

Under the previous standing orders members were required to seek the leave of the Speaker to wear a head-dress in the Chamber. This requirement was to ensure that members were respectful to the House and did not wear hats upon entering the Chamber. It was considered that this provision was outdated and had the potential to discriminate against members of particular faiths who wear a head-dress.

Members no longer have to place a piece of paper on their head when they wish to raise a point of order in divisions. The purpose of this procedure was to gain the attention of the Chair during a division where members are required to remain seated. It was considered that the Chair's attention could be sought in other, more practical, ways, such as by the member loudly advising the Chair that they wished to raise a point of order.

New standing orders

A number of new standing orders have been adopted. These include Friday sittings, parliamentary secretaries and the authorisation of the broadcasting/publication of the proceedings.

Over recent years a sessional order has been adopted setting out the business to be conducted when the House sits on a Friday. The new standing orders have incorporated this sessional order, which provides that:

- Government business shall have precedence in the routine of business;
- No quorums can be called and any divisions called are deferred, set down as orders of the day for the next sitting day and determined after Question Time;
- Private members' statements may be called at the conclusion of Government Business, after which the House will adjourn without motion until the next sitting day.

The standing orders setting out the procedure for no confidence and censure motions now make provision for the closure to be moved after a minimum number of speakers have spoken to the original question. For a number of years a sessional order has been in place that has provided that the closure could be moved on a motion of no confidence in a Minister or the Speaker. It was considered that the closure should be allowed to be moved on both censure and no confidence motions but given the gravity of such motions a minimum number of members should be allowed to speak to the original motion before the closure is moved. Four members must speak on a motion of no confidence in a Minister or the Speaker or on a motion to censure a member before the closure can be moved. However, eight members must speak to any motion of no confidence in the Government before the closure can be moved.

Over recent years sessions have become quite long. For example, the first session of the 53rd Parliament went from May 2003 until May 2006. This resulted in a large number of items on the business paper that were out of date and would never be dealt with by the House. It also required the publication of a smaller business paper indicating the business that was likely to come before the House. The new standing orders provide that General Business (General Notices) and the take note debate on committee reports that have not been commenced or not completed within 12 months lapse.

The *Constitution Act 1902* provides for the appointment of parliamentary secretaries. With the increasing administrative responsibilities of Ministers away from the Parliament many of the procedures traditionally performed by Ministers are being deferred to parliamentary secretaries including the introduction of legislation and being on duty in the Chamber. It was considered important that significant procedures such as answering questions, declaring bills urgent and suspending members, remained acts that only a Minister could perform. This has been reflected in a sessional order over recent sessions and has been incorporated in the new standing orders.

The new standing orders specifically authorise the publication of its debates (Hansard), the filming of its proceedings and the broadcasting and re-broadcasting of the proceedings in any form and by any medium, both within and outside the Parliamentary precincts. It was considered important for the House to specifically authorise the publication and broadcasting of its proceedings in the numerous forms that are produced i.e. in print, television footage or on the Internet.

In addition, many of the sessional orders that were in place during the 53rd Parliament have also been adopted in the new standing orders, including the

removal of the formal business procedure and the way that the program for general business (or private members') day is determined.

New South Wales Legislative Council

For the sessional order relating to the tabling of reports by independent legal arbiter see p. 98 above.

Northern Territory Legislative Assembly

The Standing Orders Committee reviewed standing orders relating to the operation of Assembly committees. The main purpose of the review was to rewrite and restructure standing orders to reflect contemporary Assembly committee practice; include less formal and more flexible approaches to the gathering of information and providing public input to committee activities.

The Committee compared and conducted a comparative analysis of the committee-related standing orders of the Senate and the House of Representatives of the Commonwealth. In doing so due care was taken to faithfully reflect the meaning and intention of existing standing orders but also to reflect contemporary practice. The opportunity was also taken to remove some obsolete provisions.

The revised Chapter 27 now contains all relevant standing orders relating to the operation of all Assembly committees. In order to minimise the requirement for renumbering, the committee agreed not to incorporate the committee provisions of Chapter 4 relating to standing committees appointments.

Queensland Legislative Assembly

Standing Order 31 was amended on 30 March 2006 to allow the Speaker to table documents during the recess. Prior to this only ministers and the Governor were able to table documents when the House was not sitting.

As recommended by the Members' Ethics and Parliamentary Privileges Committee (MEPPC) in Report No. 71, Standing Order 266 was amended to include commenting or reflecting on the decisions or actions of the Chair as an example of contempt. The contempt provision applies to reflections about the Chair's actions inside the House and the character of the Chair in general.

Other amendments recommended by the MEPPC in its Report Nos.67 and 71 related to Standing Order 263 and Schedule 2, Register of Members'

Interests and Register of Related Persons' Interests. The most significant amendment was a new requirement for members to register details of any interests in private (self-managed) superannuation funds. Further amendments included adding a "purpose" for the registers and clarification of the requirement for members to register when they had received 'sponsored' accommodation. The forms for use under Schedule 2 were also changed in relation to members' interests; Members are now required to complete a *Confirmation of Correct Particulars* form instead of a *Notice of No Change of Details* form.

South Australia House of Assembly

Sessional Orders were adopted by the House of Assembly on 9 May 2006 in relation to the sitting, order of business and adjournment of the House.

Tasmania Legislative Council

The last major review of standing orders in the Legislative Council was undertaken by the Standing Orders Committee between 1999 and 2004. The Legislative Council agreed to new and revised standing orders on 19 October 2004 and they were approved by His Excellency the Governor on 6 January 2005.

Victoria Legislative Council

Joint Standing Orders

In July 2006, a review was completed by the Standing Orders Committees of both Houses, meeting jointly, and reports were tabled setting out recommended new joint standing orders. The joint standing orders and joint rules of practice of the Parliament were adopted by the Legislative Assembly on 9 August 2006 and by the Legislative Council on 22 August 2006. They came into operation on the first sitting day of the 56th Parliament on 19 December 2006.

The following are features of the new joint standing orders and joint rules of practice:

- Redrafted to use gender neutral language and plain English;
- The omission of joint standing orders which reflect obsolete procedures;

- The incorporation into joint standing orders of procedures that have previously been facilitated by sessional resolutions, such as access to joint parliamentary committee records not tabled; and, where a bill has been amended, to allow the Clerk of the Parliaments to carry out any consequential renumbering required;
- The drafting of joint standing orders to cover new procedures, such as in relation to bills which require approval by referendum;
- Previously rules have been adopted at each joint sitting held due to a Senate vacancy, or to elect a member to the Victorian Health Promotion Foundation. It was decided that these rules should form part of the joint standing orders;
- Constitutional changes during the 55th Parliament have provided two new circumstances in which joint sittings may arise—where a bill becomes deadlocked and, after an election, is still disputed; and to fill casual vacancies in the Legislative Council. As the *Constitution Act 1975* requires rules to be adopted at the joint sitting, the joint standing orders will not cover these procedures. However, joint rules of practice have been created, with a view to the relevant rule then being considered for formal adoption by members present at future joint sittings.

Victoria Legislative Council

Legislative Council standing orders

Following a report from the Standing Orders Committee, Victoria's Legislative Council adopted new standing orders on 14 September 2006, in the penultimate sitting week of the 55th Parliament. The new standing orders took effect from the first sitting day of the 56th Parliament, on Tuesday 19 December 2006.

The Standing Orders Committee reported to the House that:

> "The new draft omits 25 existing Standing Orders and substantially revises many others. It incorporates the current Sessional Orders and the Rules of Practice and updates the current Standing Orders in clearer, more concise language where appropriate. The draft also includes new Standing Orders considered necessary to further improve the conduct of business of the House or to give effect to current practice not enshrined in the Standing Orders. Two completely new chapters are also included." *(Final Report on a Review of the Standing Orders,* August 2006, paragraph 5)

The adoption of the new standing orders was notable both in terms of new procedures and the way in which the House dealt with the adoption.

Following the motion to adopt the draft standing orders recommended by the Committee, the Opposition moved an amendment seeking to exclude two provisions of the draft standing orders from the adoption motion. The Opposition was largely satisfied with the draft standing orders, but opposed the continued imposition of limits on debating time for Members and overall business. They also opposed the entire chapter providing for a Government Business Program (the Program only has effect if agreed by the House for a sitting week).

The Opposition's amendment was defeated on division, which was then followed by a division on the original motion to adopt the standing orders. The votes of the Government party Members ensured that the question was carried.

The new standing orders feature a number of significant amendments to procedures and some entirely new procedures:

- Amended procedures for the election of President and Deputy President;
- Amended wording to reflect the constitutional change to the President having a deliberative rather than a casting vote;
- Incorporation of time limits for debates which had previously operated by sessional orders only;
- Conduct of normal business on the Friday of sitting weeks unless otherwise ordered (previously the Council sat only very occasionally on a Friday and only for the purposes of completing the Government Business Program);
- Reference to Autumn and Spring sitting periods discontinued due to the increasing trend to have sitting years spread out across all calendar months except January;
- Establishment of a Legislation Committee, which was trialled by sessional orders during 2006.

Administrative implications of new standing orders

The most significant administrative implication of the new standing orders is the creation of two new positions in the department, a Secretary of the Legislation and Select Committees and a Research Assistant, who will report to the Secretary.

New joint standing orders

On 22 August 2006 new joint standing orders were adopted by the Council following the first complete revision of the orders by both Houses since they were first approved in 1893. Some of the changes have come about as a result of amendments to Victoria's Constitution:

- A joint sitting to consider a Disputed Bill, which would follow a general election for a deadlocked Bill and subsequent dispute over the Bill; and
- Filling of casual vacancies for the Council under the new, proportional representation electoral system which came into effect at the November 2006 election.

Other changes included updating the procedures governing the appointment and operations of Joint Committees, particularly in the context of rules and practice governing select committee operations and the operations of Joint Investigatory Committees established by the *Parliamentary Committees Act 2003*.

Western Australia Legislative Assembly

In June 2005 changes were made to the standing orders as a result of the shift from annual prorogation to prorogation when deemed necessary for the "good management of Parliament". This led to the development of the Premier's Statement, which provides an opportunity for the Premier to outline major policies for the year ahead and for members to respond to this, as a substitute for the Address in Reply for the years in which the parliamentary session has not been prorogued. On 7 March 2006, the Legislative Assembly adopted a temporary order enabling the Premier's Statement to replace the Address in Reply to the Governor's Opening Speech in these instances, giving the Premier's Statement precedence over business not of a formal or procedural nature for the first three sitting days, and enabling bills to be introduced and taken up to the second reading stage during these three days. Consequent amendments to the standing orders relating to the Address in Reply time limits on speeches, to include the Premier's Statement, were also adopted.

The Legislative Assembly held its second regional Parliament in May 2006. Temporary orders pertaining to the regional sitting were agreed to by the Legislative Assembly on 12 April. The temporary orders included details of where and when the Assembly would sit, the order of business and admin-

istrative arrangements for and during the regional Parliament, and the suspension of standing orders to effect the arrangements articulated within the temporary orders.

On 28 June 2006 minor changes were made to the standing orders, further to recommendations made by the Procedure and Privileges Committee. These minor changes included:

- Enabling video-conferencing to be used for committee members to be counted as present for the purpose of a quorum and for examining witnesses, unless the committee is taking *in camera* evidence;
- Including a maximum of one hour debate on any question and/or amendment to the adoption of the report of the Estimates Committee in the "Time limits on speeches" standing order;
- Allowing a member to stand when speaking to a point of order during a division;
- Enabling the Speaker to call for a division of the Assembly in instances where the Speaker forms the view that an absolute majority is required;
- Providing for a quorum for a legislation committee to be either three members or one-third of the committee's membership; and
- Allowing a maximum one hour debate on any question and/or amendment with respect to the presentation of a legislation committee report.

On 30 November the Legislative Assembly made further changes to the standing orders. These changes included:

- Modifications to the manner in which members acknowledge the Chair due to a refurbishment of the Legislative Assembly Chamber;
- Enabling the Legislative Assembly or standing committees, in instances where the committees have set their own terms of reference and the Assembly has not set the reporting date, to vary the reporting date for committee reports;
- Replacing the temporary order for the Premier's Statement with a new standing order for the Premier's Statement. The new standing order retained all of the points discussed above, except for the ability to introduce bills and take them to the second reading stage during the first three sitting days;
- Amending the time limit for the Address in Reply to include the Premier's Statement, and reducing the amount of time for members to speak from 30 minutes to 20 minutes, with the option to request a further 10 minutes;

- Reducing the time available for members to speak on the principal appropriation bill from 45 minutes to 20 minutes, with the option to request a further 10 minutes; and
- Adopting a temporary order until 31 December 2007 to enable disallowance motions to be exempt from the Standing Order which causes notices of motion to automatically lapse and require renewal after a period of 30 sitting days on the Notice Paper.

Western Australia Legislative Council

Procedure and Privileges Committee Report 8

In March 2007, the Standing Orders of the Legislative Council were reprinted to reflect a number of amendments bought about by recommendations proposed in the Procedure and Privileges Committee report *Matters Referred to the Committee and Other Miscellaneous Matters*[1], tabled in November 2005.

On 20 September 2006 the Committee of the Whole House agreed to the following motion, as amended, moved by Hon George Cash: "That recommendations numbers 2, 3, 6, 7, 8, 9, 10, 11, 13 and 14 contained in the eighth report of the Standing Committee on Procedure and Privileges be agreed to and adopted."

The following standing orders were amended as a result of the motion being agreed to:

Standing Order 153

Recommendation 2 proposed to amend Standing Order 153(c) which provided for the deemed passing of a resolution to disallow an instrument upon prorogation. The committee[2] concluded that the occurrence of prorogation effectively resolved a question in the affirmative without an actual vote of the House taking place, and that the deeming provision in SO 153(c) was not permitted by law due to the legal provision in section 14 of the *Constitution Acts Amendment Act 1899* which requires all questions to be decided by a majority of votes of all members present. Section 14 reads in part: "The presence of at least one-third of the members of the Legislative Council, exclusive of the President, shall be necessary to constitute a quorum for the despatch of business; and *all questions which shall arise in the*

[1] Western Australia, Legislative Council, Procedure and Privileges Committee, Report 8, *Matters Referred to the Committee and Other Miscellaneous Matters*, 16 November 2005.

[2] Legislative Council, Procedure and Privileges Committee.

Legislative Council shall be decided by a majority of votes of the members present, other than the President, and when the votes are equal the President shall have the casting vote" [*emphasis added*].

The committee resolved to amend SO 153(c) by removing the deeming provision with the addition of a new paragraph (ii) that provides for a deliberative vote on the question in compliance with section 14 of the *Constitution Acts Amendment Act 1899*. The standing order now requires that the question on all disallowance motions listed on the notice paper be put and determined at the expiration of 10 sitting days, or on the proposed last sitting day before a general election.

Standing Order 230 and Schedule 1

Recommendation 6 amended the standing orders following the insertion of the new standing order No. 230B: "Unless otherwise ordered, a standing committee is not to inquire into the policy of a bill."

The committee considered whether the policy of a bill, regardless of what stage it has reached, should be open to consideration by standing committees upon referral for inquiry. The committee noted that:

> "The consideration of the policy of a bill by committees has been a recurrent theme over the years. Previous procedural review by standing and select committees of this House have made observations on the scrutiny of policy by committees, particularly when considering proposals for the conduct of both pre-legislative scrutiny and the scrutiny of bills introduced into the chamber. Approaches have been influenced by the political landscape at the time; considerations related to the role of the chamber as an upper house and the desire to extend the amount of time available for legislative scrutiny by committees without unreasonably affecting the Government's legislative program."[3]

The outcome of discussions led the committee to form the view that a standing committee should not inquire into the policy of a bill unless otherwise ordered.

Recommendations 7 and 8 made consequential amendments to standing order 230A and to the terms of reference for the Legislation Committee in Schedule 1, clause 4. The references relating to an inquiry into the policy of a Bill were deleted to align the standing orders with the amendment made by recommendation 6.

[3] Western Australia, Legislative Council, Procedure and Privileges Committee, Report 8, *Matters Referred to the Committee and Other Miscellaneous Matters*, p 14.

Standing Order 325 [4]

Recommendation 9 altered the standing orders by inserting the following new standing order 325 on the Reporting of a Resolution to commence own motion inquiry: "Where a committee initiates am inquiry of its own motion, notice of that inquiry shall be reported to the House within 2 sitting days of the committee's resolution."

In the Cash Report[5] it was suggested that where committees commence an inquiry of their own motion they should report the commencement of that inquiry to the House. Notification would inform the Council of the committee's workload. The Cash Report also mooted that the "own-motion" resolution of the committee to conduct an inquiry could be subject to disallowance by the Council or require ratification by the Council within a certain period of time.

Committees are being encouraged, at an operational level, to table a report to the House when they resolve to commence an own motion inquiry. However the Committee is of the view that the standing orders should be amended to require notification to the House. The Committee observed that its amendment in does not alter which committees have the power to institute own motion inquiries. It requires those committees that already have the power to commence own motion inquiries to report the resolution to the House within two sitting days.

If at any future stage Schedule 1 is amended to change a committee's terms of reference interpretation of this proposed standing order will remain consistent without the need for further amendment.

Standing Order 3

Recommendation 10 sought to amend Standing Order 3 to include the following definition: "'Chairman' includes the term 'Chairwoman', 'Chairperson', or 'Chair'".

The President made the following statement in relation to the view of the Procedure and Privilege Committee that resulted from recommendation 40 of the Cash Report:

[4] See Procedure and Privileges Committee, Report 8, *Matters Referred to the Committee and Other Miscellaneous Matters*, p 16.

[5] Western Australia, Legislative Council, Hon George Cash MLC, *Reflections on the Legislative Council Committee System and its Operations During the Thirty-Sixth Parliament: Discussions with the Chairs and Deputy Chairs of Parliamentary Committees* (**Cash Report**), Tabled paper No. 367, 19 May 2005.

> "The procedure and privileges committee is of the view that, regardless of formal nomenclature in the standing orders and legislation, the practice of the house is to acknowledge and endorse individual discretion in the form of address used for members who chair committees or who preside over the Committee of the Whole. The committee acknowledged that the house and committees of the house have in the past acquiesced in the use of different titles when members address chairmen; for example, 'Chairman', 'Chairwoman', 'Chairperson' and 'Chair' have all been used when addressing the Chairman and Deputy Chairmen of Committees presiding over the Committee of the Whole. Currently, a member convening a standing or select committee may elect to be known as 'Chair', and that title is then used in all committee proceedings and in all committee communications, whether informal or formal. Accordingly, the practice of this house is that a convenor of a committee or a member presiding over the Committee of the Whole may be referred to as 'Chair', 'Chairperson', 'Chairman' or 'Chairwoman', as he or she so chooses. The same practice would apply to a member deputising. If a member occupying a position mentioned above does not make known his or her choice of title by which he or she should be addressed, the member may be referred to by whichever of the above titles that the member addressing that member considers appropriate.[6]

The standing order was amended to reflect this practice.

Standing Order 230A[7]

Recommendation 11 contained two amendments to provide that uniform legislation stands referred at the conclusion of the second reading speech of the Minister or Member in charge and to clarify the calculation of the period of time.

The operation of SO 230A with respect to the stage at which bills are referred to a committee for inquiry and the period for which they stand referred, has been the subject of two reports by the former Uniform Legislation and General Purposes Committee.

On 30 August 2005, that committee's successor, the Uniform Legislation and Statutes Review Committee, tabled a Special Report entitled *Standing Order 230A—Referral of Uniform Legislation and Reporting Time Frames (Special Report)*.

[6] Hon Nick Griffiths MLC, President, Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, 13 October 2005, p 6271.

[7] See Procedure and Privileges Committee, Report 8, *Matters Referred to the Committee and Other Miscellaneous Matters*, pp 19–22.

The Special Report concerns two aspects of SO 230A, namely:

- The process whereby a bill, when read a first time, stands referred to the Committee, unless otherwise ordered (SO 230A(3)); and
- The requirement that the Committee present its final report not later than 30 days after the referral of the bill or such other period ordered by the House (SO 230A(4)).

The Special Report makes two recommendations which the Uniform Legislation and Statutes Review Committee considered would clarify and assist with the scrutiny of uniform legislation.

The Committee considered each of the recommendations separately and also considered the calculation of the period of time referred to in SO 230A(2) and (4).

Standing orders 230A(2) and (4) refer to periods of time as being "within 30 days of" or "not later than 30 days of" a particular event. The calculation of time is important as it determines when an embargo on debate is lifted (SO 230A(2)) or when a committee is to report (SO 230A(4)).

It is not clear whether the day of the event is to be included in the calculation of time and the practice of the House should be consistent. The provisions of the *Interpretation Act 1984* (section 61) provide some guidance as to the interpretation of such matters in legislation, however does not apply to the interpretation of standing orders. The Committee observed that the standing orders do provide greater clarity in other matters, for example, SO 153(c) refers to "the expiration of 10 sitting days (exclusive of the day on which the motion was first moved)".

The standing order was amended to promote a consistent approach and to clarify that the date of the relevant event is not included in the calculation of time—that is "(exclusive of that date)" or "(exclusive of the referral day)".

Standing Order 433[8]

Standing orders require when moving a suspension of standing orders under SO 433 for the President to provide an opinion if the motion is urgent. The Committee noted the ruling of former President Cash on 18 December 1998 where he stated, "it has been the custom in the past in respect of SO 433 for the House itself to make that decision." Former President Cowdell applied the same ruling on 16 April 2002.

The ruling ensures the President does not have to make what might be

[8] See Procedure and Privileges Committee, Report 8, *Matters Referred to the Committee and Other Miscellaneous Matters*, pp 22–24.

perceived as political decision. Further, as stated by former President Cash the decision should be left in the hands of the House, which requires an absolute majority. The Committee formed the view that SO 433 should be amended to remove the reference "In cases which in the opinion of the President are of urgent necessity" to reflect the practice of the House.

Sessional Orders 2006 [9]

The sessional orders put in place on 30 June 2005 that operated during 2005 sittings from 16 August 2005 expired on 31 December 2005. The Council commenced its 2006 sittings on 14 March 2006 under its standing orders. The original sessional orders arose from recommendations of the *Report of the Select Committee on the Rules, Orders and Usages of the House*, tabled on 12 March 2003.[10] They have operated in several forms for various periods since 20 March 2003.

The new sessional orders were adopted on 23 March 2006. This sessional order, with minor modifications, reflected the three previous sessional orders that had been put in place in March and December 2003, and June 2005. The 2006 sessional orders, like previous sessional orders, altered the schedule of sittings and times allocated for specific business under the standing orders.

The 2006 sessional orders maintained the traditional three day weekly sitting pattern, which included two evening sittings on Tuesday and Wednesday, but altered the times of sitting so that the House commenced sittings earlier on Tuesday, Wednesday and Thursday. Set times were scheduled for concluding business.[11] The number of sitting weeks in the calendar year was increased when compared with the previous sessional orders to 22,[12] more closely resembling the number of sitting weeks scheduled when the House operated under standing orders.

In the Legislative Council the Government does not presently command a majority of votes and is not in a position to unilaterally require the House to sit beyond the hours specified in the Standing or Sessional Orders. The objects of the sessional orders since 2003 have been to provide, amongst other things:

[9] See *Work of the Legislative Council Chamber in 2006: 14 March 2006 to 7 December 2006* - tabled on 21 March 2007 (Tabled Paper No. 2391).

[10] Tabled Paper No. 838. See also *Report of the Select Committee on the Rules, Orders and Usages of the House—interim report*, tabled on 5 March 2003 (Tabled Paper No. 793).

[11] The House did not return to the 2004 Sessional Orders experiment of four day sittings which included a Friday sitting in 15 of the 19 sitting weeks. Regular Friday sittings were included for the first time under the 2003 Sessional Orders.

[12] 2002 - 25 weeks; 2003 - 18 weeks; 2004 - 19 weeks; 2005 - 18 weeks; 2006 - 22 weeks.

- For additional Government business time;
- For specified times for opposition and non-official business while retaining a similar total hours of sitting that occurred under the standing orders;
- A balance between Members' parliamentary and electorate responsibilities; and
- More family friendly hours by reduction of evening sittings/late sittings.

An analysis of times under the Standing Order and Sessional Order regimes indicates that Government business time[13] has increased during periods in which a sessional order has operated. Three factors have contributed to this increase in Government business time. These are:

1. Increased time for orders of the day and total weekly sitting hours under sessional orders;
2. Government policy on sessions; and
3. A decision by Members supporting the Government not to take non-official business.

Effect of Government sessions policy on Government time

As a result of the current Government's policy on sessions there is only an official opening and Address-in-Reply debate after a State general election. Unlike in the Assembly, where a debate is permitted following the Premier's speech outlining the Government's intended legislative program for the year, no general debate has replaced the Address-in-Reply in the Council. This leaves the debate on the budget papers as the only general debate each year other than in a year following prorogation for a general election as occurred in 2005.

The absence of an annual Address-in-Reply debate has resulted in an increase in time devoted to Government business. For example, in 2005 over 26 hours were devoted to the Address-in-Reply. This debate did not occur in

[13] Under Sessional Orders, Government business time has been calculated as time other than that spent on motions on notice/urgency motions, disallowance motions, consideration of committee reports and ministerial statements, questions without notice, Members' Statements and non-official business. Not all non-official business time has been counted as, during times allocated to Members supporting the Government, the House has proceeded with Government business. Under Standing and Temporary Orders, Government business time has been calculated as time other than that spent on motions on notice/urgency motions, disallowance motions and the adjournment debate. The calculation of time assumes 15 minutes per sitting day is allocated to formal business at the commencement of each day.

2006. If the Government's policy is maintained, no Address-in-Reply debate will occur until the opening of Parliament in 2009 after the next State general election. During the remainder of this session (2007 and 2008), this will result in approximately 78 hours of additional time available to the Government during orders of the day that otherwise would have been spent on debating the Address-in-Reply.

An attempt to determine the relative influence on Government business time of the change to sessional orders and the Government's policy on sessions can be made by comparing the additional time the Government would have had if there were no Address-in-Reply debate during 2002 when the standing orders operated.

If the Government's policy on sessions had dispensed with the prorogation in August 2002, the proportion of Government business time would have increased. For example, if no Address-in-Reply debate occurred in 2002 and the Government had an additional 26 hours of orders of the day to deal with its business, the Government's proportion of total time would have increased from approximately 36 percent to around 42 percent (179 hours from a total of 430 hours).

This is still well below the proportion of total time devoted to Government business under the four versions of Sessional Orders since 2003. Under the sessional orders regime, Government business time has averaged over 58 percent during the four periods in which they have operated.

In 2006 the average proportion of total time devoted to Government business has been approximately 61 percent. This is less than the 69 percent achieved under sessional orders MKIII in 2005 and greater than the 52 percent achieved under sessional orders MKI and MKII during 2003 and 2004 (See Figure 1). It is clear that under any version of the sessional orders, Government business time is significantly greater than under the standing orders regime even if there had been no Address-in-Reply debate in 2002.

Given the current political composition of the House, the Government does not command a majority of votes. Under the standing orders, Members supporting the Government cannot, without the support of other Members, extend the sittings of the House. The Government's decision to support the introduction of sessional orders combined with its policy on sessions has resulted in significant gains for Government business time when compared with the standing orders regime.

As with the previous sessional orders, one of the consequences of the specific allocation of times for business was the need for the House to

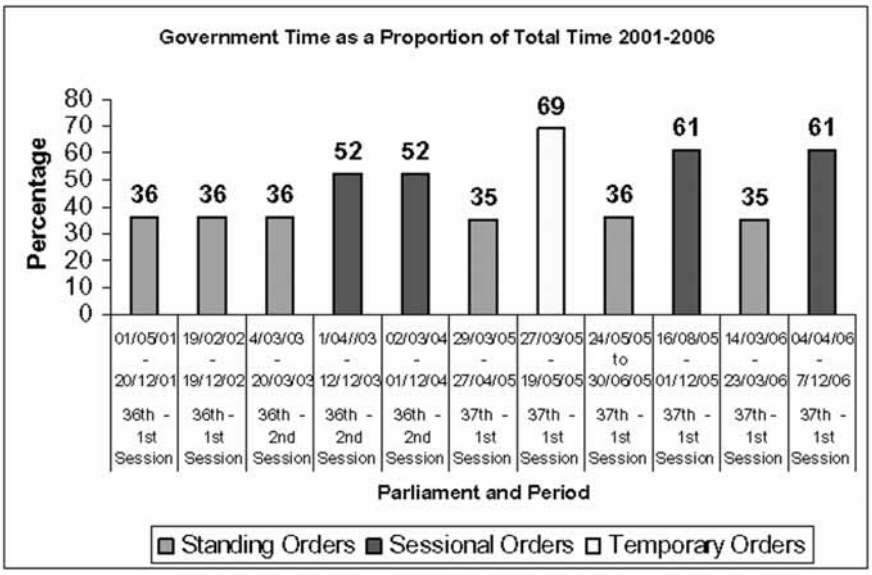

Figure 1

suspend them when matters arose that the Government argued were required to be dealt with urgently. As the Government did not command an absolute majority of votes, it required the co-operation of other Members to enable the standing or sessional orders to be suspended.

From 4 April, when the sessional orders first took effect for 2006, until 7 December, the sessional and standing orders were suspended on eight occasions. Two of these were on the last sitting day so as to enable the completion of the remaining stages of the *Financial Legislation Amendment and Repeal Bill 2006*, *Financial Management Bill 2006* and *Auditor General Bill 2006* at that day's sitting. The incidence of suspension was less than in 2005 when the House suspended sessional or standing orders on eight occasions from August to December.

BANGLADESH PARLIAMENT

The Standing Committee on Rules of Procedure of the 8th Parliament on 20 September 2006 submitted before the House a report recommending amendments to some rules. This report was considered and adopted on 26 September. The main features of the amendments were as follows:

- Inclusion of an hour of Prime Minister's Questions in the Rules of Procedure—an additional half an hour for questions will be allotted at the start of the session each Wednesday;
- Inclusion of a provision for balloting starred questions;
- Formation of a Ministerial Standing Committee within three sessions of each new Parliament
- A concise written ministerial statement, in response to statements made by members on matters of urgent public importance, is to be laid on the table within the first three sittings of the session following.

CANADA

Senate

There were two changes to the Rules of the Senate in 2006.

Rule 28 (3) was amended to facilitate the reviewing of proposals under the *User Fees Act*, following a report presented by the Standing Committee on Rules, Procedures and the Rights of Parliament on 13 June 2006 to amend Rule 28 (3). The text of the report is reproduced below:

> "The *User Fees Act*, S.C. 2004, c. 6, received Royal Assent on March 31, 2004. It originated as a private Member's bill in the House of Commons. The purpose of the Act is to provide a consultation process with stakeholders before the introduction of new user fees, or the increase or extension of existing user fees, followed by parliamentary approval.
>
> "The *Act* requires Ministers to cause proposals to be tabled in each House of Parliament. Each proposal that is tabled is deemed referred to the 'appropriate standing committee' of each House. The committee may submit a report containing recommendations regarding the proposal. If after 20 sitting days, no report has been tabled by the committee, it is deemed to have recommended the approval of the proposal. The Senate and House of Commons may pass a resolution approving, rejecting or amending the recommendation made by the committee …
>
> "Given the tight timeframe envisaged by the *Act* for reviewing proposals—20 sitting days—your Committee believes that it is important that they be referred to a committee without delay. We are recommending an amendment to the *Rules of the Senate* to facilitate this."

The report was adopted on 27 June 2006.

Rule 86(1)(*h*) was amended to change the name of the Senate Committee

on Foreign Affairs to "Standing Senate Committee on Foreign Affairs and International Trade".

British Columbia Legislative Assembly

In 2006 there were three amendments to the standing orders of the Legislative Assembly of British Columbia, each designed to foster co-operation and civility in House proceedings. The amendments were originally passed as sessional orders to endure for the First Session of the Thirty-eighth Parliament. With the government and opposition finding the temporary provisions mutually agreeable, they were adopted more permanently in the Second Session of the Thirty-eighth Parliament as amendments to the standing orders. The changes are as follows.

- Standing order 14 (Deputy Speaker and Deputy Chairperson) was amended to establish the position of Assistant Deputy Speaker and to allow the House to appoint a Member of the Official Opposition to that position;
- Standing order 25B (Statements) was amended to double the number of daily two-minute Private Member Statements from three to six;
- Standing order 47A (Oral Questions) was amended to double the time allotted to oral questions by Members, an increase from fifteen to thirty minutes.

Prince Edward Island Legislative Assembly

Work has started on a review of the Rule Book based on the recommendations made by the Standing Committee on Privileges, Rules and Private Bills to the Legislative Assembly in November 2006. The Committee recommended the following:

> "1. That the Committee Guidelines be incorporated into the full body text of the Rules of the Legislative Assembly of Prince Edward Island. This will enable the production of one document for ease of reference and provide for the elimination of inconsistencies between the Rules for the House and the Guidelines for Committees.
> "2. That work commence on the annotation of the Rules (where required) to provide a brief explanation of certain Rules in an effort to provide for greater clarity and interpretation. Implementation of this recommendation will provide Members with a valuable reference docu-

ment and facilitate a better understanding of the origin of certain rules and why continued application of certain provisions is in the best interest of the House.

"3. That the Rules be updated with respect to appearance, presentation and layout in an effort to improve the usefulness of the Rule Book for Members, Assembly staff and others.

"4. That Table Officers begin work on the above recommendations and submit the results to this Committee for its consideration and review before the Spring 2007 sitting of the House.2

Yukon Legislative Assembly

On 9 May 2006 Hon Elaine Taylor (Whitehorse West, Yukon Party) gave notice of a motion to change the normal hour of adjournment which, according to standing order 2(1), was 6.00 p.m., to 5.30 p.m. The motion was brought forward for debate on 11 May 2006. Although the motion was brought forward as a government motion, it was the product of discussions conducted by the recently formed "women's caucus", comprised of the three female MLAs—Ms Taylor, Pat Duncan (Porter Creek South, Liberal) and Lorraine Peter (Vuntut Gwitchin, New Democratic Party). The caucus' success in fashioning this amendment to the standing orders inspired other members to suggest that the caucus address other rules and practices that, in the opinion of some members, require amendment.

During the course of his remarks Hon Jim Kenyon (Porter Creek North, Yukon Party) thanked the Premier, Hon Dennis Fentie (Watson Lake, Yukon Party) for allowing a "free vote" on the motion. The Premier made no reference to a free vote during his speech. Mr. Kenyon was the only member to vote against the motion on division. The Assembly adopted the motion by a vote of 15–1. (*Hansard* 6245–6246; *Journals* 465–466)

INDIA

Rajya Sabha

The Committee on Rules of the Council of States (Rajya Sabha) presented its eleventh report to the House on 8 December 2006, which was adopted by it on 12 December. The Committee, *inter alia*, recommended amendments in rule 241 relating to personal explanation by a Member and rule 252 relating to the division of the Rules of Procedure and Conduct of Business in the Council of States.

The effect of the amendment to rule 241 is that a member or a Minister may, with the permission of the Chairman, make a personal explanation although there is no question before the Council. In this case no debatable matter may be brought forward, and no debate shall arise. This has made the rule more explicit by including a provision for a Minister also, who is not a Member of the Council, to make a personal explanation in the Council.

The amendment made in rule 252(4) (b) means that after the lapse of three minutes and thirty seconds, the Chairman shall put the question a second time and declare whether in his opinion the "Ayes" or the "Noes" have it. By amending the rule pertaining to divisions, the duration of the ringing of the division bells has been increased from two minutes to three minutes and thirty seconds in order to facilitate members coming to the Council's Chamber for the purpose of voting.

MONTSERRAT PARLIAMENT

There was one amendment to No.19 of Montserrat Standing Orders in 2006. The change was to grant members, to whom a question is put or a motion made, sufficient time to reply.

NEW ZEALAND PARLIAMENT

Standing orders have not been directly amended but their application has been modified or varied by sessional orders in a few cases.

A review of standing orders by the Standing Orders Committee of the House is ongoing.

Reporting of bills

One of the orders related to changes to the form and style of bills. On 15 March 2006 the House agreed that the Clerk of the House of Representatives, when reprinting bills at any stage during their passage through the House or when preparing them for the Royal assent, after consultation with the Chief Parliamentary Counsel or (as the case may be) the Commissioner of Inland Revenue, may make amendments to bills currently before the House or its committees—

> "(a) to incorporate the changes in drafting style adopted by the Parliamentary Counsel Office referred to in the document *Changes in drafting style: List of proposed changes in drafting style in legislation*, presented to the House on 15 March 2006; and

"(b) to amend bills by omitting where applicable any clause 1(2) (relating to the principal Act) and substituting a new clause that describes the principal Act being amended"—

but, in each case, not so as to alter the meaning of the provisions of those bills.

An order had been renewed on 24 November 2005 to provide for amendments to be made in like manner so that reprinted bills conformed to standing orders as amended on 8 September 1999 and to incorporate other changes relating to the format of legislation effective from 1 January 2000.

Preliminary clauses

A companion order made by the House on 15 March 2006 provided that a clause in a bill confined to stating that the bill amends an existing Act (a principal Act clause) be treated as a preliminary clause that may be taken together with the title and commencement clauses in committee. This affects the scope of debate of the preliminary clauses, which are debated together last if the bill is drafted in parts (but separate questions put on them).

UNITED KINGDOM HOUSE OF COMMONS

The Standing Orders were amended in November 2006 to provide for it be the normal practice for programmed government bills which start in the House of Commons to be committed to committees with the power to take evidence.

Standing (legislative) Committees were renamed. Those examining Bills are now known as Public Bill Committees.

Under Standing Order No 42A, which was passed on 1 November 2006, the Speaker or chairman may direct any Member who breaches the terms of the *sub judice* resolution of the House to resume his seat.

WALES NATIONAL ASSEMBLY

An all-party Committee on Standing Orders was established in June 2006 to produce proposals for standing orders in relation to the proceedings of the Assembly following the 2007 election. The Committee reported to the Assembly in January 2007. Its proposals were agreed unanimously by the Assembly on 7 February 2007 and the Secretary of State for Wales made the new standing orders in March 2007.

SITTING TIMES

Lines in Roman show figures for 2006; lines in Italic show a previous year. An asterisk indicates that sittings have been interrupted by an election in the course of the year.

	Jan	Feb	Mar	Apr	May	June	July	Aug	Sep	Oct	Nov	Dec	TOTAL
Ant & Barb HR	*1*	*0*	*2*	*1*	*1*	*1*	*1*	*1*	*1*	*1*	*3*	*3*	*16*
Ant & Barb Sen	*0*	*1*	*2*	*1*	*1*	*1*	*1*	*0*	*1*	*2*	*2*	*2*	*14*
Aus H Reps	0	9	6	0	10	8	0	7	8	10	6	4	68
Aus Sen	0	7	4	0	3	8	0	7	8	8	8	5	58
Aus ACT	0	3	6	3	4	6	1	7	3	3	6	3	45
Aus N Terr	0	6	3	0	3	4	0	6	0	6	3	0	31
Aus NSW LA	0	1	8	3	9	3	0	3	9	6	6	0	48
Aus NSW LC	0	1	8	3	10	3	0	3	8	6	6	0	48
Aus Queens LA	0	4	8	3	7	4	0	3	0	4	5	0	38
Aus S Aus HA	0	0	0	1	9	11	0	2	6	1	6	3	39
Aus S Aus LC	*0*	*8*	*7*	*1*	*9*	*6*	*5*	*0*	*7*	*8*	*8*	*4*	*63*
Aus Tasm HA	*0*	*0*	*6*	*3*	*6*	*6*	*0*	*3*	*3*	*5*	*8*	*1*	*41*
Aus Tasm LC	0	0	0	0	2	7	4	0	4	5	9	0	31
Aus Vict LA*	0	4	5	3	5	7	3	6	3	2	0	2	40
Aus Vict LC*	0	4	5	3	5	7	3	6	3	3	0	3	42
Aus W Aus LA	0	0	6	6	11	9	0	9	9	7	8	1	66
Aus W Aus LC	0	0	6	6	11	9	0	6	9	7	8	3	65
Bangladesh													71
Belize House	*2*	*1*	*1*	*0*	*0*	*1*	*0*	*1*	*1*	*0*	*1*	*2*	*10*
Belize Senate	*1*	*2*	*2*	*0*	*0*	*1*	*0*	*1*	*0*	*1*	*1*	*2*	*11*
Berm House	*0*	*4*	*7*	*1*	*2*	*5*	*4*	*2*	*0*	*1*	*4*	*2*	*32*
Berm Sen	*0*	*1*	*7*	*0*	*1*	*2*	*4*	*4*	*0*	*1*	*2*	*2*	*24*
Botswana	*0*	*16*	*23*	*0*	*0*	*9*	*18*	*0*	*0*	*0*	*17*	*13*	*96*
*Canada HC**	*1*	*19*	*9*	*14*	*17*	*19*	*0*	*0*	*5*	*15*	*15*	*0*	*114*
Canada Sen*	0	0	0	7	11	11	0	0	3	11	12	7	62
Canada Alb	*0*	*3*	*12*	*14*	*8*	*0*	*0*	*0*	*0*	*0*	*7*	*3*	*47*
Canada BC	0	9	14	8	12	0	0	0	0	0	3	0	46
Canada Man	0	0	13	12	17	10	0	0	1	1	19	5	78
Canada N Bruns	*8*	*15*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*5*	*12*	*40*
Canada Newf	*0*	*0*	*8*	*12*	*16*	*6*	*0*	*0*	*0*	*0*	*7*	*9*	*58*
Canada NWT	*0*	*0*	*7*	*11*	*4*	*0*	*5*	*0*	*4*	*0*	*0*	*0*	*31*
Canada Ontario	0	10	7	15	15	13	0	0	4	17	13	12	106
Canada PEI	0	0	2	14	14	2	0	0	0	0	9	9	50
Canada Québec	*0*	*0*	*10*	*12*	*14*	*12*	*0*	*0*	*0*	*6*	*15*	*9*	*78*
Canada Sask	*0*	*0*	*11*	*20*	*16*	*0*	*0*	*0*	*0*	*0*	*16*	*2*	*65*
Canada Yukon*	0	0	1	15	14	0	0	0	0	0	5	7	42
Cayman Island	*0*	*0*	*13*	*0*	*0*	*7*	*0*	*0*	*10*	*0*	*15*	*0*	*45*
Cook Islands													*78*
Cyprus	*5*	*1*	*4*	*3*	*4*	*5*	*2*	*1*	*0*	*5*	*4*	*3*	*37*
Dominica	*0*	*0*	*0*	*3*	*1*	*3*	*4*	*0*	*1*	*0*	*3*	*2*	*17*
Falklands	*1*	*0*	*1*	*0*	*5*	*0*	*1*	*0*	*1*	*1*	*1*	*0*	*11*
Ghana	*13*	*16*	*13*	*0*	*13*	*18*	*16*	*4*	*0*	*18*	*18*	*11*	*140*
Gibraltar	*5*	*3*	*1*	*1*	*3*	*2*	*4*	*1*	*0*	*2*	*1*	*3*	*26*
Grenada Reps	*4*	*4*	*1*	*0*	*2*	*1*	*1*	*1*	*2*	*0*	*1*	*1*	*18*
Grenada Sen	*1*	*1*	*0*	*1*	*1*	*2*	*1*	*0*	*0*	*1*	*1*	*1*	*10*
Guernsey	*2*	*1*	*1*	*2*	*2*	*1*	*4*	*2*	*2*	*2*	*2*	*4*	*25*
India LS	*0*	*10*	*9*	*12*	*6*	*0*	*9*	*12*	*0*	*0*	*0*	*16*	*74*
India RS	0	9	16	0	10	0	6	16	0	0	7	13	77

India Gujarat	0	4	23	0	0	0	0	0	2	0	0	0	29
India Haryana	*2*	*8*	*0*	*0*	*0*	*1*	*3*	*0*	*0*	*0*	*2*	*0*	*16*
India Him Pr													*35*
*India Kerala**	*0*	*1*	*12*	*0*	*2*	*0*	*12*	*0*	*19*	*0*	*7*	*0*	*53*
India Maharash													*33*
India Nagaland	*0*	*0*	*4*	*0*	*0*	*5*	*0*	*0*	*0*	*0*	*0*	*1*	*10*
India Orissa	*0*	*0*	*12*	*0*	*0*	*0*	*12*	*3*	*0*	*0*	*0*	*7*	*34*
India Punjab	*0*	*0*	*13*	*0*	*0*	*0*	*0*	*0*	*2*	*0*	*0*	*0*	*15*
India Rajasthan	*0*	*5*	*19*	*6*	*0*	*0*	*0*	*0*	*10*	*0*	*0*	*0*	*40*
India Sikkim													*9*
India Tamil Nadu	*5*	*0*	*7*	*16*	*6*	*0*	*0*	*0*	*0*	*0*	*5*	*0*	*39*
India Uttar P	1	5	10	0	6	0	0	6	2	1	2	4	37
IoM Keys	*1*	*3*	*4*	*1*	*3*	*2*	*0*	*0*	*0*	*1*	*5*	*1*	*21*
IoM LC	*1*	*3*	*4*	*1*	*1*	*2*	*0*	*0*	*0*	*1*	*5*	*1*	*19*
IoM Tynwald	*1*	*3*	*1*	*2*	*1*	*1*	*3*	*0*	*0*	*2*	*1*	*1*	*16*
Jersey	3	2	2	3	3	7	4	0	4	4	4	2	38
Kenya	*0*	*0*	*6*	*12*	*5*	*12*	*13*	*7*	*0*	*13*	*13*	*5*	*86*
Lesotho	*0*	*0*	*16*	*0*	*1*	*18*	*3*	*1*	*16*	*17*	*9*	*0*	*81*
Malawi													
Malaysia Reps	*0*	*0*	*12*	*6*	*0*	*8*	*0*	*0*	*14*	*19*	*5*	*0*	*64*
Malaysia Sab	*0*	*0*	*0*	*4*	*0*	*0*	*0*	*1*	*0*	*0*	*0*	*6*	*11*
Malaysia Sara	*0*	*0*	*0*	*7*	*0*	*0*	*0*	*0*	*0*	*0*	*1*	*6*	*14*
Malaysia Sen	*0*	*0*	*0*	*11*	*0*	*0*	*6*	*0*	*0*	*0*	*12*	*0*	*29*
Malaysia Melaka	0	0	5	0	0	0	0	2	0	0	3	0	10
Montserrat													9
Namibia													83
NZ H Reps	0	7	11	3	12	9	6	9	6	9	9	5	86
Nigeria Borno	*20*	*19*	*24*	*10*	*10*	*20*	*25*	*18*	*28*	*20*	*6*	*2*	*202*
Pak MWFP	*0*	*5*	*0*	*0*	*0*	*25*	*3*	*0*	*10*	*0*	*0*	*0*	*43*
Pak Pun	*15*	*0*	*0*	*11*	*0*	*12*	*0*	*11*	*10*	*0*	*0*	*0*	*59*
St Lucia	*0*	*1*	*1*	*3*	*1*	*0*	*1*	*1*	*1*	*0*	*1*	*1*	*11*
St V & G	*1*	*0*	*0*	*1*	*1*	*1*	*0*	*2*	*0*	*0*	*0*	*4*	*10*
Samoa	*10*	*0*	*0*	*4*	*1*	*12*	*0*	*0*	*0*	*1*	*0*	*2*	*30*
Scotland	*8*	*6*	*8*	*5*	*9*	*6*	*0*	*0*	*8*	*6*	*8*	*6*	*70*
Singapore	*6*	*2*	*9*	*4*	*1*	*0*	*4*	*1*	*1*	*2*	*1*	*0*	*31*
*S Africa NA**	*0*	*11*	*0*	*1*	*5*	*7*	*0*	*5*	*7*	*5*	*8*	*0*	*49*
S Africa NCOP	*0*	*3*	*9*	*3*	*6*	*10*	*0*	*2*	*7*	*2*	*7*	*0*	*49*
S Africa NW PL	*0*	*3*	*3*	*5*	*1*	*2*	*0*	*4*	*5*	*0*	*2*	*4*	*29*
*Sri Lanka**	*1*	*8*	*1*	*5*	*3*	*6*	*8*	*8*	*8*	*8*	*4*	*2*	*62*
Swaziland	*13*	*13*	*13*	*13*	*13*	*13*	*13*	*13*	*13*	*13*	*13*	*13*	*156*
T&T HR	*4*	*2*	*4*	*2*	*4*	*3*	*4*	*0*	*4*	*7*	*2*	*2*	*38*
T&T Sen	*2*	*4*	*3*	*5*	*4*	*4*	*4*	*0*	*3*	*4*	*4*	*3*	*40*
Turks & Caic LC	*2*	*0*	*0*	*0*	*4*	*1*	*0*	*2*	*2*	*1*	*0*	*1*	*13*
Uganda													*101*
UK Commons	15	12	21	7	16	17	15	0	0	15	15	10	143
UK Lords	15	13	20	7	17	17	15	0	0	16	16	11	147
Wales	7	6	9	2	8	8	4	0	4	8	8	4	68
W Samoa	*0*	*0*	*4*	*0*	*1*	*13*	*14*	*0*	*0*	*1*	*15*	*2*	*50*
Zambia	*9*	*16*	*14*	*0*	*0*	*0*	*3*	*11*	*0*	*0*	*16*	*0*	*69*

UNPARLIAMENTARY EXPRESSIONS

AUSTRALIA

Australian Capital Territory Legislative Assembly	
He is a goose	15 February
Intellectually dishonest	7 March
Parrot as the Leader of the Opposition	7 March
Would not know the difference between truth and clay	8 March
Moo	3 May
Make a dickhead of yourself	15 August
Somewhere these people have spoken have spoken the truth and it is up to people to work out when	15 August
Pseudology	17 August
Artfully, disingenuously, essentially dishonestly	19 September
Crass, jump through your backside	20 September
If the Gestapo can be honest	20 September
Bejesus	14 November
New South Wales Legislative Assembly	
Some of us have not forgotten that he was caught out, engaged in criminal activity, hacking into computers of Opposition members of Parliament	25 May
Perhaps there is some medication for that	28 September
New South Wales Legislative Council	
Minister for Road Kill	28 February
Fruitcake	26 September
Northern Territory Legislative Assembly	
All right, smarty	14 February
Full of booze and bad manners	21 February
You are an absolute grub	22 February
Did you bring your box of tissues today?	14 June
I know you are thick, but have you got it? Do you understand it?	14 June
He has continued to demonstrate his lewd, vulgar, offensive behaviour time and time again	22 August
The tongue from Sanderson	22 August
They were a racist government	23 August
It is the tongue from Sanderson! He speaks! Woo hoo!	23 August
That is something that you have to be bloody careful about when you are talking about this	24 August
Just keep the bastards honest	31 August
Queensland Legislative Assembly	
Boofhead	30 March
Go and get stuffed	8 June

Victoria Legislative Assembly	
I had never heard anything so ridiculous in my bloody life	7 June
Bloody good speech	7 June
In fact, it has been a bloody disgrace	7 June
God you are sad!	18 July
You are evil!	10 August
Victoria Legislative Council	
Put the monkey back in the chair	30 March
Factional hack	5 April
I would like to remind Mr Dalla-Riva, who, I believe was sacked by the Kennett Government when he was in the police force	5 April
I do not go around trying to use my position as a Member of Parliament for my own personal benefit	6 April
The mall rent when he illegally rented his office	30 May
Silly creodont	1 June
Mr Forwood is a toenails man!	19 July
This is not the Adjournment, idiot child	9 August
Western Australia Legislative Council	
The minister has a hide as thick as that of a rhinoceros. Appeals to good form and decency will fall on deaf ears	19 September
CANADA	
British Columbia Legislative Assembly	
Not consistent with the fact pattern	27 February
Using hearsay and innuendo	28 March
A very, very sneaky, despicable, awful, awful amendment	6 April
I'll read it slowly so the minister can comprehend it	6 April
The member's psychosis	9 May
Absolutely asinine comments	11 May
Manitoba Legislative Assembly	
I call him the master of deception	19 April
He is scared chicken	24 April
He is just a bag of wind	24 April
It is not a matter for high jinks and for a bravura performance by the class clown	18 May
I suspect they are spending a million dollars more on propaganda than telling the truth to Manitobans	23 May
It should be his own political party that pays for this crap, not the taxpayer of the province	23 May
Who's the coward inside this Chamber?	29 November
Did I interrupt you when you were speaking? No, I didn't, so shut up	7 December
Yukon Legislative Assembly	
The Yukon Party government simply picks up cheques from Ottawa and spends them on friends and pet projects	3 April
Is this backroom price higher or lower than the five bucks it costs to become a member of the Yukon Party?	6 April

There appears to be a lot of butt-covering here that I am extremely uncomfortable with	10 April
A former mayor, a former city manager and a former treasurer … are liable for about $1.2 million to $1.4 million worth of stupidity	10 April
Quoting only a portion of the facts in a manner that creates an impression 180 degrees from what the facts are is not very ethical	18 April
What are you trying to market now? A porno site?	27 April
It's very difficult to answer the Member … seeing as his reflection of history is so grossly contrary to the facts of the matter	28 November
Why is this government contributing to … moral decay by sanctioning the use of a sex shop as [a government] employment office?	30 November

INDIA

Rajya Sabha

Fauj Mein R.S.S. Ke Camp Chal Rahe Hain [R.S.S. camps are running in Forces]	17 February
Muslim Leagui	17 February
Pakistani	17 February
Ahankari [egotist]	20 February
Dadagiri [bullying)]	21 February
Chaploosi [flattery]	22 February
Chatukarita [sycophancy]	22 February
Thookain Chatain [licking the spit]	22 February
Phirkaparasti ka prachar kar raha tha [he was spreading communalism/ sectarianism]	7 March
Barking	25 July
Pan Islamic terrorism, Islamic terrorism, Hindu terrorism, Christian terrorism	13 July
Harijan [untouchable]	11 August
Jis Tarah Se Hitler Ne Kiya Tha [as Hitler did]	21 August
Mahatma Gandhi Ke Hatyaron [assassins of Mahatma Gandhi]	24 November
Like a Dhobi Boy	28 November
Nikrisht, Neech Aur Kamina [Inferior, most vile and wicked]	18 December

Gujarat Legislative Assembly

Spread propaganda in a Goebbels-way	2 March
It is a communal government	2 March
Boast	7 March
What's the damn use of such … Committee	22 March

Uttar Pradesh Legislative Assembly

Illegal child

NEW ZEALAND HOUSE OF REPRESENTATIVES

Dr Doom	15 February
Pathological bully, liar, and pervert	1 March
Government's little lapdog	13 June
Poodle extraordinaire	20 June
Wrenching himself from his leadership ambitions	2 August
A terrible bigot	30 August

Unparliamentary Expressions

Anti-Christianity is to Labour Party members today what anti-Semitism was to the Nazis	30 August
A troppo bill from a troppo member	11 October
As the crazy horse walks out the door	15 November
Yes, mum	15 November
	Not given

BOOKS AND VIDEOS ON PARLIAMENT

AUSTRALIA

Australian constitutional law and theory: commentary and materials, 4th Edition, by A.R. Blackshield and George Williams, Annandale, NSW, Federation Press, $A125.00, ISBN 1862875855.

Decision and deliberation: The Parliament of New South Wales, 1856–2003, by David Clune and Gareth Griffith, Sydney, Federation Press, $A59.95, ISBN 186287591X.

Federal constitutional law: a contemporary view, 2nd Edition, by Sarah Joseph and Melissa Castan, Pyrmont, NSW, Lawbook, $A84.95, ISBN 0455221200.

State constitutional landmarks, ed. by George Winterton, Annandale, NSW, Federation Press, $A75.00, ISBN 286287607X.

The 41st Parliament: middle-aged, well educated and (mostly) male, by Sarah Miskin and Martin Lumb, Canberra, Department of Parliamentary Services, Parliamentary Library, no price.

The Premiers of New South Wales, 1856–2005, ed. by D. Clune & K. Turner (Editors). Published in two volumes, the set contains the biographies of all Colonial and State Premiers from 1856. Volume 1 covers the period from responsible government (1856) to Federation (1901) and Volume 2 covers the Premiers from Federation to 2005. The biographies have been written by academics, writers and politicians, both current and former.

Colonial Law Lords: the judiciary and the beginning of responsible government in New South Wales, by J. M. Bennett, , Federation Press.

The Nationals: the Progressive, Country and national Party in New South Wales 1919 to 2006, by Paul Davey, Federation Press.

Parliament, Politics and Public Works: a history of the New South Wales Public Works Committee 1888–1930, by Clive Beauchamp, NSW Parliamentary Library.

You didn't get it from me: a reporter's account of political life in New South Wales from 1988–2001, by Stephen Chase, ABC Books.

People and Politics in Regional New South Wales, 1856–2006, ed. by Jim Hagan, 2 volumes, Federation Press.

Gavel to gavel: an insider's view of Parliament, by Kevin Rozzoli, University of New South Wales Press.

From Hustings to Harbour Views: electoral institutions in New South Wales 1856–2006, by Marian Simms, University of New South Wales Press.

"No fit place for women"? Women in New South Wales Politics 1856–2006, ed. by Deborah Brennan and Louise Chappell, University of New South Wales Press.

Against the Machines: minor parties and independents in New South Wales 1910–2006, by Rodney Smith, Federation Press.

The Seeds of Democracy: early elections in colonial New South Wales, by Max Thompson, Federation Press.

The Constitution of Victoria, by Greg Taylor, Sydney, Federation Press, $A100.00, ISBN 9781862876125.

The Victorian Premiers: 1856–2006, by Dr Paul Strangio and Prof Brian Costar, Sydney, Federation Press, $A55.00, ISBN 9781862876019.

The Western Australian Parliamentary Handbook, 21st Edition, ed. by David Black, Perth, State Law Publisher, $A35, ISBN 1 920830 464.

INDIA

Parliamentary Procedure, by Subhash C. Kashyap, New Delhi, Universal Law Publishing.

Felicitations Hon'ble Chairman, Sir: Congratulatory remarks made in the House on the completion of four years of Shri Bhairon Singh Shekhawat as the Chairman of Rajya Sabha on 18 August 2006, Rajya Sabha Secretariat, New Delhi.

Rajya Sabha and its Secretariat: A Performance Profile—2005, Rajya Sabha Secretariat, New Delhi, Rs. 25/-.

NEW ZEALAND

General Information Booklet, compiled by the Office of the Clerk of the House of Representatives, gratis

The booklet provides a general overview of the Office, its internal structure for the delivery of services, its accountability framework and its relationship with the other agencies that service the New Zealand Parliament. The booklet complements more specialist publications (a number of which are listed in it).

The Baubles of Office: The New Zealand General Election of 2005, ed. by Stephen Levine and Nigel S Roberts, Victoria University Press, $NZ49.99, ISBN 978 0 86473 539 3.

Electoral Law in New Zealand: Practice and Policy, by Andrew Geddis, LexisNexis NZ Limited, $NZ102.59, ISBN 978 0 408 71836 3.

Public Interest Litigation: New Zealand Experience in International Perspective, ed. by Rick Bigwood, LexisNexis NZ Limited, $NZ137.69, ISBN 13: 978 0 408 71865, ISBN 10: 0 408 718161.

The New Zealand Legal System: Structures and Processes, 4th Edition, by Morag McDowell and Duncan Webb, LexisNexis NZ Limited, $NZ77.39, ISBN 10: 0408718390, ISBN 13: 9780408718394.

The Governors: New Zealand's Governors and Governors-General, by Gavin McLean, Otago University Press, $NZ59.95, ISBN 1 877372 25 0.

UNITED KINGDOM

The House of Lords in 2005: A More Representative and Assertive Chamber?, by M. Russell and M. Sciara, Constitution Unit, £10.00, ISBN 1903903475.

Time for a New Convention: Parliamentary Scrutiny of Constitutional Bills 1997–2005, by R. Hazell, Constitution Unit, £10.00, ISBN 1903903507.

Parliament in the Public Eye 2006: Coming into Focus?, by G. Rosenblatt, Hansard Society, Free Download, ISBN 0900432438.

British Political Facts Since 1979, by D. Butler and G. Butler, Palgrave Macmillan, £26.99, ISBN 9781403903723.

Augustus Welby Pugin: Designer of the British Houses of Parliament, by C. Powell, Edwin Mellen Press, £79.95, ISBN 9780773457690.

Dod's Handbook of House of Lords Procedure, Dod's Political Publishing, £87.00, ISBN 0905702646.

How Parliament Works, by R. Rogers and R. Walters, Pearson Longman, £19.99, ISBN 9781405832557.

The Editor writes: *How Parliament Works*, which originally appeared in 1987, has become the standard guide to the workings of the Westminster Parliament, accessible enough for non-specialists and general learners, yet authoritative enough to offer useful insights even to the insider. The original edition was written by Paul Silk (who was later to become the first Clerk of the Welsh Assembly); more recent editions, including the latest, 6th edition, have flourished under the care of Robert Rogers and Rhodri Walters, senior officers of the Commons and Lords respectively.

The authors bring formidable experience (more than 30 years in each case) to bear, but carry that experience lightly—*How Parliament Works* is always readable, even amusing at times. The text is not weighed down by procedural detail. The chapter on "Influences on Parliament", for

example, gives an admirably balanced and pragmatic account of the interactions between party whips, constituents, lobbyists, the media and others in shaping the day-to-day work of Parliament. At the same time, where procedural accuracy is required, for instance in explaining the procedures for dealing with legislation, it is there in abundance.

The pace of change in Westminster shows no sign of slackening. Inevitably, therefore, some details have already been overtaken by events. But as the final chapter, "The Future of Parliament", notes, Parliament is "an organism as much—or more—that it is an organisation". Growth and change are thus signs of its continuing vitality. No doubt a 7th edition will appear in due course to bring the story up to date, but until that time, *How Parliament Works* will remain the standard work in the field.

CONSOLIDATED INDEX TO VOLUMES 71 (2003) – 75 (2007)

This index is in three parts: a geographical index; an index of subjects; and finally lists, of members of the Society specially noted, of privilege cases, of the topics of the annual Questionnaire and of books reviewed.
The following regular features are not indexed: books (unless reviewed), sitting days, unparliamentary expressions. Miscellaneous notes and amendments to Standing Orders are not indexed in detail.

ABBREVIATIONS

ACT	Australian Capital Territory
Austr.	Australia
BC	British Columbia
HA	House of Assembly
HC	House of Commons
HL	House of Lords
LA	Legislative Assembly
LC	Legislative Council
LS	Lok Sabha
NA	National Assembly
NI	Northern Ireland
NSW	New South Wales
N. Terr.	Northern Territory
NZ	New Zealand
Reps	House of Representatives
RS	Rajya Sabha
SA	South Africa
Sask.	Saskatchewan
Sen.	Senate
Vict.	Victoria
WA	Western Australia.

GEOGRAPHICAL INDEX

For replies to the annual Questionnaire, privilege cases and reviews see the separate lists.

SUBJECT INDEX

Sources and authors of articles are given in brackets.

LISTS

Members of the Society

Abbreviations: R retirement, O obituary.

Privilege Cases

⋆ Marks cases when the House in question took substantive action

Questionnaires

Reviews