The Table

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IN
COMMONWEALTH PARLIAMENTS

EDITED BY
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EDITORIAL

This year's comparative study concerned procedures for the scrutiny of delegated legislation. The responses revealed the enormous volume of such legislation that Commonwealth Parliaments are called upon to consider: in Australia the Senate Standing Committee considers some 1,800 instruments each year; in India the number of instruments registered in the national Parliament in 2004 was over 1,700; in Canada the number is 3,000; in the United Kingdom 4,000. It appears that most provincial or state legislatures also see hundreds of instruments registered annually.

Effective scrutiny of delegated legislation thus presents a major practical challenge—but also a philosophical one. The fundamental object of most systems of scrutiny is to ensure that governments, in introducing delegated legislation, do not exceed the powers granted by statute. Detailed scrutiny of content is secondary. In the words of the Canadian Parliament, 'devoting too much … time to regulatory minutiae', would be 'contrary to the philosophy behind the original delegation of legislative power'. The primary rationale for the scrutiny of delegated legislation is 'to ensure that the provisions of subordinate legislation do not exceed the powers approved by Parliament itself'. Similarly, the Committee on Subordinate Legislation in the Rajya Sabha reports on whether the powers to make secondary legislation have been properly exercised.

At the same, time, many legislatures also scrutinise content, at least to the extent of ensuring that fundamental rights and freedoms are not breached. In Canada, the Parliament's Standing Joint Committee is 'responsible to ensure that all regulations conform to the Canadian Charter of Rights and Freedoms'. In Australia and New Zealand scrutiny committees similarly report on whether statutory instruments 'trespass unduly on personal rights and liberties'.

In the United Kingdom the system of scrutiny is still more complex. As Christine Salmon describes in her article on 'Scrutiny of Delegated Legislation in the House of Lords', one Committee, the Delegated Powers

and Regulatory Reform Committee, is charged with scrutinising primary legislation, with a view to assessing the appropriateness of the delegated powers contained therein; another, the Joint Committee on Statutory Instruments, scrutinises the technical correctness of instruments themselves, and their *vires*; while the new House of Lords Select Committee on the Merits of Statutory Instruments, as its name suggests, has a wide-ranging remit, allowing it to draw any matters of importance or interest to the House's attention. The rationale underlying this new Committee, which appears to be unique in Commonwealth legislatures, continues to evolve.

At the same time, significant gaps remain in many legislatures. In Canada in particular there were expressions of dissatisfaction: the Québec National Assembly described the system of scrutiny as 'woefully inadequate'; the Saskatchewan Legislative Assembly commented on the 'paucity of resources' made available by the Assembly and the 'disinclination of elected officials' to assign a high priority to the task; while in the Yukon Legislative Assembly there was 'almost no scrutiny of delegated legislation'.

Finally, in South Africa there is no scrutiny of delegated legislation. The Joint Rules Committee is currently considering proposals for a scrutiny mechanism. The Committee clearly has a difficult task ahead of it, as do the clerks and other staff of the Parliament in making any new mechanism work effectively.

The Editor would, as ever, like to thank most warmly all those who have contributed articles, notes or other material to this year's *Table*. It is perhaps slightly regrettable that, with the exception of a note by Priyanee Wijesekera, Secretary General of the Sri Lanka Parliament, describing the acrimonious election of a Speaker, all the articles come from Australia, New Zealand and the United Kingdom. While the Editor is extremely grateful to those who have contributed articles, he hopes that future editions will include articles from a more diverse range of sources, so as to ensure that the *Table* continues to reflect the diverse experiences of Table Clerks across the whole Commonwealth.

OBITUARIES

Douglas (Doug) Leslie Wheeler, former Clerk of the New South Wales Legislative Assembly, passed away on 5 December 2004. Doug served as a Clerk-at-the-Table from January 1967. He undertook an attachment at the House of Commons in May and June 1975. He was appointed Clerk from 19 February 1981 until his retirement on 12 October 1984. He was also Clerk to

the Australian Constitutional Convention on several occasions. In all, Doug provided 37 years' service to the Legislative Assembly.

Doug also served with the Royal Australian Air Force as a navigator during WWII. He saw two years' service while based in England with his squadron operating over Germany. Doug was Secretary for 58 years of the 463/467 Lancaster Squadron Association. He was aged 80 years.

Shri Zhangulie, Secretary of the Nagaland Legislative Assembly, died on 20 March 2004.

RETIREMENTS

Mrs Sylvia Walker, Clerk to the Parliament of Antigua and Barbuda, retired in 2004. She was succeeded on 15 October by **Ms Yvonne Henry**.

Marcus Bromley, Deputy Clerk, resigned on 10 September 2004 after almost 35 years of service with the Parliament of Victoria. **Liz Choat**, previously Assistant Clerk and Clerk of Committees, was appointed as the Deputy Clerk in his place.

Mr Pierre Duchesne, special advisor to the Secretary General of the National Assembly of Québec and Secretary General from 1984 to 2001, retired from the service of the Assembly on 7 January 2004.

At the sitting of the South Africa National Assembly on 6 May 2004, the Speaker announced that the Secretary to Parliament, **Mr Sindiso Mfenyana**, would retire from the Parliamentary Service with effect from 1 June 2004.

On a motion of the Deputy Chief Whip of the Majority Party, on behalf of the Chief Whip of the Majority Party, the House agreed to place on record its appreciation of the distinguished service rendered by Mr Mfenyana as an officer of Parliament since 1994.

APPOINTMENTS AND HONOURS

Australian Capital Territory

Mark McRae, the ACT Legislative Assembly's inaugural Clerk from 1989-2003, and an honorary member of ANZACATT, was awarded an Order of Australia medal (OAM) in the Australia Day's honours list. The citation for his OAM read: 'For service to the Legislative Assembly for the Australian Capital Territory and the Australian Parliament, particularly through encouraging improvement in the standards of parliamentary practice and procedure.'

New South Wales Legislative Council

During 2004 the Department of the Legislative Council was restructured, providing for three principal sections, Procedure, Committees and Corporate Support. The new senior positions within the department are Clerk Assistant Committees (Mr Warren Cahill), Clerk Assistant Corporate Services (Mr Mike Wilkinson) and Usher of the Black Rod and Director—Procedure (Mr David Blunt).

David Blunt was appointed Usher of the Black Rod, Legislative Council, Parliament of New South Wales, on 1 September 2004, replacing Mr Warren Cahill, who had held this position for the past 13 years. Mr Blunt has served in a range of positions with the Legislative Council since December 1995: Director—Procedure, Director of General Purpose Standing Committees, and inaugural Director for the Standing Committee on Law and Justice. He had previously been a senior research officer to the NSW Public Accounts Committee and the Parliamentary Joint Committee on the Independent Commission Against Corruption. Mr Blunt has qualifications in law (LLB Hons) and government (MPhil) from the University of Sydney.

Nagaland Legislative Assembly

Shri I Soyah was appointed Secretary with effect from 21 March 2004, succeeding the late Shri Zhangulie.

South Africa National Assembly

Mr Zingile Alfred Dingani was appointed as Secretary to Parliament with effect from 1 June 2004.

Uganda

Mr Aeneas Medrate Tandekwire, the Clerk to Parliament received a Centennial Vocational Award from the Rotary Club of Kampala in recognition of his exemplary high ethical standards in business and in his profession.

Mr Wabwire Paul Gamusi, formerly a Senior Principal Clerk Assistant, was promoted in November 2004 to the rank of Deputy Clerk (Legislative Services).

ESTIMATES HEARINGS: THE GRAND INQUISITION

HARRY EVANS
Clerk of the Australian Senate

During question time in the House of Representatives on 15 February 2005 the Prime Minister declined to answer questions about whether Australian personnel were involved in interrogation of prisoners in Iraq, a matter of intense political controversy at that time, on the basis that the questions would be answered in the imminent Senate estimates hearings. This unusual prime ministerial advertisement for Senate processes was taken by some to be a long-delayed embrace of full accountability; but such a conclusion may be premature, if not naïve. At the estimates hearings for the Department of Defence, the Minister, Senator Hill, who had previously stated that Australian personnel were not involved in interrogations, explained that they had been involved in 'interviews' of prisoners. He declined to answer a question on communications to the Government about the matter.

The Iraq war had earlier haunted the estimates hearings, in the shape of allegations about mistreatment of Iraqi prisoners. The question was: what did the Australian Government know about it and when did they know it? The regular estimates hearings were used to question ministers and officers about the subject. After extensive questioning at the hearings a ministerial statement was made, accompanied by the tabling of documents in further explanation. The outcome of this information, however, was that the Minister for Defence, Senator Hill, was censured by the Senate for failing either to take seriously the Government's responsibility or to correct serious communications problems within his office and the Defence Department, contrary to assurances which were given after the 'children overboard' affair of 2001-02 (see *The Table*, vol.71, pp 13-27).

These incidents illustrate the central importance which has been assumed by the estimates hearings in the Australian parliamentary system. They provide an example of the way in which parliamentary institutions designed for a limited role develop a life of their own and become adapted to largely unforeseen purposes.

Estimates hearings were first held in 1970. A coalition of parliamentary reformers, crossing party lines, were looking to establish a more comprehensive and active committee system in the Senate, and at the same time to

replace the inefficient procedure whereby ministers were questioned about departmental expenditures and operations in the committee of the whole stage on the appropriation bills, a process which often extended over many days. The more radical reformers wanted to establish a comprehensive, subject-specialised standing committee system at once, and include the examination of annual estimates amongst those committees' functions. Those in favour of more gradual reform moved to establish estimates committees to hold hearings on the estimates, as a first stage towards the establishment of a standing committee system. Due to the complexity of numbers in the Senate, both proposals were simultaneously adopted, and estimates committees operated alongside the specialised standing committees until 1994, when they were amalgamated and the standing committees took over the estimates hearings function.

The relevant rules provide that all estimates hearings are to be held in public, and any documentary evidence received in connection with the hearings is automatically published. Three rounds of hearings are held in each budget cycle (which runs from 1 July to 30 June). The main round of hearings is held in May and June in conjunction with the presentation by government of the annual budget and appropriation bills. Supplementary hearings are held in October-November to follow up information provided in the main hearings and matters which senators nominate for further examination. The Government presents additional appropriation bills in February, and additional estimates hearings are then held, not confined to expenditure in the additional appropriation bills, but covering all aspects of departmental operations. By that time the departments have presented their annual reports for the previous financial year, and these give rise to questioning about departmental activities.

At the hearings, ministers in the Senate attend to deal with questions about their own ministerial portfolios as well as those of ministers in the House of Representatives whom they represent. House ministers may also be represented by Senate parliamentary secretaries. Officers of the various Government departments and agencies attend and answer questions about their expenditures and activities.

The hearings are regarded as an opportunity for senators to question ministers, departments and agencies about any aspects of Government activities. They are, in effect, a general inquisition into Government operations. Numerous statements have been made by leading parliamentarians that the hearings are the most valuable accountability mechanism available to the Parliament. They are also of great political importance, because matters of

political controversy are often explored, as illustrated by the incidents already recounted. Because officers can be questioned as well as ministers, there is opportunity to identify the respective parts played by the political wing of Government, consisting of ministers and their politically-appointed ministerial staff, and the professional public servants.

The only limitations placed on the hearings by the rules of the Senate are that questions must be relevant to the activities and operations of ministers and departments (which allows virtually any questions), and must be asked in an orderly fashion. Officers must be given reasonable opportunity to refer questions to more senior officers or to ministers, and cannot be asked for opinions on matters of Government policy.

The ability to question ministers and departments about any of their activities does not mean that expenditure-based questioning is neglected. On the contrary, much time is devoted to the financial performance of departments and agencies and their likely call on resources in the future. The weighing of costs against public benefits is central to the hearings. The committees have often enlisted the aid of the Auditor-General's Office in subjecting particular projects and agencies to that analysis.

All departments and agencies provide detailed written explanations of their expenditures before the hearings. These documents, which have been known over the years by several names, and are now called Portfolio Budget Statements, were brought into existence by the original estimates committees and have been developed and refined largely in response to demands for information by senators at the estimates hearings.

Occasionally the Senate directs particular committees to hold extended or special estimates hearings devoted to particular departments and agencies or subjects, where it is thought that more information should be forthcoming or matters require further exploration.

Over many years the Senate has passed resolutions declaring that all recipients of public funds are obliged to answer questions about their use of those funds, and no departments or agencies have discretion to withhold information about their expenditures. These resolutions arose principally from attempts by statutory bodies and government business corporations to claim that their statutory independence or commercial nature shielded them from inquiries into their operations.

Even some bodies which do not receive money from the appropriation bills are subjected to questions at the hearings. This is on the basis that those bodies are a contingent liability on the public purse, and therefore their financial positions and activities should be open to public scrutiny. Thus the major-

ity Government-owned telecommunications carrier, Telstra, which supposedly operates on a commercial basis in the telecommunications market, is regularly subjected to extensive questioning at the estimates hearings.

Occasionally ministers and officers decline to answer particular questions. Where such reticence is based on well-recognised grounds, such as avoidance of a risk of prejudice to legal proceedings, this is readily accepted by committees. Where ministers appear to avoid questions merely because of political embarrassment, however, this can lead to lengthy and heated exchanges. Most ministers recognise that this is counter-productive for them, and they therefore usually respond to even the most politically dangerous questions.

In 1999 there appeared to be a concerted attempt by ministers to restrict the hearings strictly to questions about money, with the claim that only such questions are relevant to estimates hearings. This led to a report by the Procedure Committee and a resolution of the Senate declaring that all questions relating to the financial positions, activities and operations of Government departments and agencies are relevant questions for the purpose of estimates hearings. This principle has generally been adhered to since that time.

Senators who are not members of particular committees may attend the hearings of those committees and ask questions. This right is frequently exercised.

Oral questions at the hearings are supplemented by questions which are taken on notice during hearings, and written questions placed on notice by any senators. Deadlines are provided at each round of hearings for answering the questions taken on notice and the written questions, and any tardiness in answering those questions is followed up at the hearings.

The significance of written questions is illustrated by a special resolution passed by the Senate following the 2004 general election. The election disrupted the supplementary estimates hearings due to be held in November. A prorogation ahead of a general election is regarded as setting aside a Senate order directing the standing committees to hold estimates hearings, although the committees are theoretically free to do so if they choose. This was the case with the order requiring that supplementary hearings occur in November 2004. It was open to the Senate, however, to reinstate the order when the Senate next met. In the event the Senate made an order to the effect that questions placed on notice in the last round of estimates hearings in June 2004 should be answered by 31 January 2005, and that senators could place additional questions on notice up to 2 December

2004, which should also be answered by 31 January. This gave senators the capacity to ask questions of departments and agencies without further hearings. The regular additional estimates hearings were held in February 2005, and the answers to the questions on notice were then followed up.

The hearings are followed with great interest by the news media. Indeed, they provide the media with a major source for news items. Information about matters of political controversy and generally newsworthy Government activities, not available through any other source, flows forth in a veritable fountain when the hearings occur. Journalists, interest groups and lobbyists therefore eagerly look forward to the hearings as the opportunity to pursue their various interests. Senators obtain questions from many sources, not only their own political sources in their parties, and from their constituents, but from groups and individuals of all kinds who are interested in finding out about multifarious Government activities.

The hearings are useful not only to those who wish to influence Government, but to Government itself. Ministers have stated that the hearings allow them to find out more about the activities of the departments and agencies for which they are responsible, and to assist them to direct their attention to matters which require ministerial scrutiny and interest. Ministers have been known to provide senators with questions in order to find out about matters or to provide them with an opportunity for pursuing their own inquiries into subjects they think may need attention. They use the hearings as a means of getting across political points which might otherwise not receive media attention. Ministers are said sometimes to rebuke or chastise their own departments indirectly through hostile questions by other senators at the hearings, thereby avoiding making themselves unpopular with their officers. Ministers with a genuine interest in the quality of public administration value the hearings as an irreplaceable accountability mechanism.

Public servants and officials of public agencies occasionally complain about the imposition on their time of the estimates hearings, but some have been heard to praise the hearings as a means of sharpening their performance, by compelling them to explain their activities to critical scrutineers, and, for that purpose, to review and internally justify those activities. The 'estimates test' has become well known in public administration: if you will not feel assured in defending a proposed action at the next estimates hearings, then that is a good sign that there is something wrong with the proposal, and it should be reviewed. In this way the hearings support the efficiency and integrity of administration.

The estimates hearings have thereby assumed a significant role in the

system of government, which would be very different without them. Because that role is valued by so many players in and around Government, and in society generally, it is commonly believed that the hearings are as firmly entrenched as any institutions which are in the written Constitution.

A PROCEDURAL THROWBACK: THE SELECT COMMITTEE ON THE CONSTITUTIONAL REFORM BILL [HL]

RHODRI WALTERS
Clerk of Committees and Clerk of the Overseas Office, House of Lords

Background

The Constitutional Reform Bill [HL] was introduced by the Government into the House of Lords on 24 February 2004. Its purpose was threefold—to make provision for replacing the office of Lord Chancellor and to abolish that office; to establish a Supreme Court for the United Kingdom and to abolish the appellate jurisdiction of the House of Lords; and to establish for England and Wales a Judicial Appointments Commission to recommend appointment of all judges (other than those of the Supreme Court who would be appointed by a separate Supreme Court Appointments Commission).

On 8 March 2004 the bill was read a second time and was subjected to the usual general debate on the policy of the bill. At the end of the debate the bill would normally have been committed to a Committee of the Whole House, on a motion of the Government. But, somewhat surprisingly, the bill was committed instead to a Select Committee on a motion moved by Lord Lloyd of Berwick, a crossbench (independent) member of the House and a retired law lord.

Why?

It is perhaps worth pausing to reflect why, contrary to Government wishes, the House had departed from its usual practice. The Government's announcement that it intended to abolish the office of Lord Chancellor and establish a Supreme Court had taken everyone by surprise when it was made on 12 June 2003. The announcement followed the news that Lord Irvine of Lairg, the then Lord Chancellor, had resigned and had been replaced by Lord Falconer of Thoroton. The Government's case for change was that it was no longer appropriate for a Government minister (the Lord Chancellor) to appoint judges, albeit after consultation and upon advice; that the Lord

Chief Justice and not the Lord Chancellor should be head of the judiciary in England and Wales and that the post of Lord Chancellor should therefore be abolished; and that it was no longer appropriate for the House of Lords, in its judicial capacity, to act as a final court of appeal. A Supreme Court, separate from the legislature, should assume this function. There followed a period of hurried public consultation on the three principal elements of reform (abolition of the office of Lord Chancellor, establishment of a Supreme Court and setting up of a Judicial Appointments Commission). The responses to these consultations were published in late January 2004, just weeks before the bill was introduced.

At second reading, feelings in the House of Lords ran high. The establishment of a Judicial Appointments Commission was generally welcomed and few now questioned that the Lord Chief Justice should become head of the judiciary nor sought to question the elaborate 'concordat' which had by then been arrived at between the Lord Chief Justice and the Government setting out the principles whereby this would be given effect. But many members disliked the Government's policy on the Lord Chancellor and Supreme Court, and for a variety of reasons.

It was argued that the office of Lord Chancellor should remain: it was ancient; it ensured that a senior lawyer sat in Cabinet; and it helped to safeguard the independence of the judiciary and the rule of law at the heart of government. So far as concerned the proposed Supreme Court, why replace a system which worked well and economically? The constitutional doctrine of separation of powers had never been rigidly observed in the UK. The presence of the law lords (Lords of Appeal in Ordinary) in the House of Lords was better understood by the public than the proponents of change would credit and, while serving law lords now took little or no part in the legislative process, they served on committees of the House and brought valuable knowledge to bear on other aspects of the work of the House.

These, then, were some of the principal arguments which were adduced in support of Lord Lloyd of Berwick's motion to submit the bill to scrutiny by Select Committee. But there was also a quasi-procedural argument. Many members undoubtedly felt that the bill should have been published in draft and subjected to pre-legislative scrutiny. The practice of publishing a bill in draft for scrutiny by a departmental Select Committee in the House of Commons or a Joint Committee of both Houses has been developed since 1998 by the present Labour administration. The bills in question tend to be non-controversial in a party sense, though often highly significant in other respects. Evidence is heard and the committee's views on the policy of the

bill reported to the respective Houses, often at great length. Suggestions for modification are made in general terms. (The bill is still in draft, published but not introduced into Parliament, so it is not subjected to clause by clause scrutiny and amendment.) The Constitutional Affairs Committee of the House of Commons had considered the Supreme Court and judicial appointments issues in tandem with the Government's public consultation and had recommended on 3 February 2004 that the proposed bill would be 'a clear candidate for examination in draft'. This proposal had been taken up by a number of speakers in a keenly argued debate in the Lords on 12 February, before the bill had been introduced. It is highly probable that most of the members of the House who voted (by 216 to 183) to commit the Constitutional Reform Bill to a Select Committee thought they were committing it for some kind of pre-legislative scrutiny. They, along with most other members of the House, were in for a bit of a shock.

Select committees on public bills

A select committee on a public bill (whether a Government bill or a private member's bill) has considerable powers over that bill. It can hear evidence upon the policy of the bill—indeed, its order of reference is the bill itself—and report its opinion on the policy to the House. It can also determine whether the bill should proceed or not. If it reports to the House that it should not proceed, the bill dies and is not re-committed to a Committee of the Whole House. If the committee decides that the bill should proceed, it can report the bill with or without amendment. If it wishes to amend the bill, the committee considers it clause by clause, making such amendments as are agreed and standing each clause part of the bill.

Plainly, remitting a bill—particularly a complex and long bill—to a select committee is likely to subject it to very considerable delay. The procedure is well suited for the detailed consideration of questions of policy raised in private members' bills where time is not of the essence and where—given that a private member's bill's prospects of a successful passage to the statute book is so remote—scrutiny of issues is paramount. Thus since the 1980s a number of private members' bills have been committed to select committees which have reported on their merits but have made no attempt to amend them. And none of them proceeded to a later stage.

But, given the political pressures on the legislative timetable of all administrations, the procedure is not well suited to Government bills. The only Government bill to have been so committed within living memory was the

Hare Coursing Bill in 1975. This short bill sought to make illegal the sport of coursing hares with dogs. It was committed to a select committee (against the Government's wishes) which reported that the bill should not proceed. No attempt was made to amend the bill.

The precedents for a Government bill being referred to a select committee and being allowed to proceed with amendments were much earlier. The Titles Deprivation Bill [HL][1] was committed to a select committee in the Lords in 1917 and, after the taking of evidence, was extensively amended in the committee. In 1919, the Government of India Bill[2] was committed to a joint committee of both Houses. A huge amount of evidence was taken and the bill then considered and amended clause by clause.

The setting up of the select committee

For the Government, the loss of the vote on 8 March was at first sight little short of disastrous. Months of committee work would mean that the bill would have no chance of proceeding to the statute book in the 2003-04 session.

In subsequent discussions between the 'usual channels' (the Chief Whips and the Convenor of the Cross-bench Peers) it was agreed that the select committee would not seek to prevent the bill from proceeding and that it would report by the end of June. Even with such a timetable it would not have been possible for the bill to reach the statute book in the 2003-04 session. After all, the Lords remaining stages on the floor of the House and all stages in the Commons remained. It was therefore also agreed that the bill would be 'carried over' into the next session (a procedure available, subject to agreement between the parties, in respect of any Government public bill still in the first House at the end of a session).

The Committee was selected, as is usual, by the Committee of Selection on the nomination of the political parties and the Convenor of the cross-bench peers—five members from the governing Labour party, five Conservative, three Liberal Democrat, and three Cross-Bench. But in other respects the Committee's composition was most unusual. The Labour membership included the Lord Chancellor, Lord Falconer of Thoroton; the Conservative membership included four former Cabinet Ministers and the

[1] This relatively short bill was to deprive Britain's enemies at the time (chiefly the Germans) from holding British titles of nobility.

[2] Establishing the principle of 'diarchy' into Indian administration, this was an enormously important piece of legislation for the constitutional development of India.

Shadow spokesman on legal affairs; and one of the cross-bench members was Lord Lloyd of Berwick, former Law Lord and a leading opponent of the bill. The Chairman was Lord Richard, a former Leader of the House. Of the 16 members, seven were Queen's Counsel. The Committee was supported by the usual rather lean team—its Clerk, a Committee Specialist, a Secretary Administrator, and a Specialist Adviser.[3]

Evidence

At its first meeting the Committee resolved to meet twice a week and in the event met twenty times. Evidence was heard at nine sessions and eleven meetings were deliberative. A public call for evidence was, as is usual, issued as a press notice after the first meeting and placed on the Committee's web page. By the end of the inquiry the views of 31 bodies or individuals had been heard orally, and some 86 items of written evidence received. Not surprisingly most of this evidence came from the Government, judges, the various branches of the legal profession and constitutional academics. The Committee also heard Dame Sian Elias, Chief Justice of the newly established New Zealand Supreme Court.

Some way into the inquiry the Committee also decided to embark upon an e-consultation (commissioned from the Hansard Society) with a view to reaching out to a wider public opinion. E-consultation can be a useful means of engaging the interest of the general public in the scrutiny function of select committees. But except perhaps where public opinion is particularly germane to an inquiry (say into an ethical matter), the actual results of an e-consultation are of less value to a committee than is often supposed. The questions posed have to be very few in number and greatly simplified. Even where the responses are 'moderated' by the organisation carrying out the consultation, the findings are essentially a synthesis of the opinions of a self-selected group of individuals rather than of a statistically representative group. The responses in this case were disappointing. With only 32 participants and 54 messages posted, the views expressed added little to the information at the Committee's disposal.

The Committee also received the report of the Justice 2 Committee of the Scottish Parliament on the Scottish implications of the bill. While the report was received too late to influence the Lords Committee, with one or two exceptions there was remarkable congruence of opinion between the two committees on the Scottish aspects.

[3] Professor Andrew Le Sueur of the University of Birmingham.

Deliberation, amendment and report

After some five weeks of intensive hearing of evidence the Committee began to deliberate on the issues raised by the bill. One of the great advantages of having the Lord Chancellor as a member of the Committee was that, in a number of areas of concern to the Committee, he was able to indicate in the course of proceedings those areas where he proposed to make changes which might meet with the Committee's approval. The Lord Chancellor had also indicated he would invite the Committee to make a large number of drafting and technical amendments to the bill along with some more substantial, though uncontroversial, changes. In the main these latter were connected with the 'concordat' with the Lord Chief Justice and other changes foreshadowed at Second Reading. There remained certain issues of principle on which the Committee was likely to remain divided. In these areas, the Committee decided that nothing would be served by voting on amendments in committee on issues best left to the House as a whole. Instead, such amendments would be tabled, moved and then withdrawn after discussion. In all, almost four hundred amendments were tabled by the end of the Committee's deliberations.

As most of these were Government amendments which would be agreed by the Committee and as the bill would have to be reported out of the committee and re-printed 'As Amended in Select Committee', it was clearly desirable that the amendments be tabled, processed electronically and marshalled in the usual way using the 'Framemaker' bills software. (Framemaker is a SGML based software developed five years ago by the two Houses and Parliamentary Counsel for the drafting, amendment and publication of bills. It has proved to be a highly sophisticated, robust and reliable system.) The Lords Public Bill Office thus very kindly undertook to handle the processing of amendments, the production for the committee of a Marshalled List, and the eventual reprinting of the bill—just as for a Committee of the Whole House.

But the handling of amendments was only one part of what now remained to be done. In its deliberations the Committee would be expected to come to a view on all major issues (and some perhaps not so major) in the bill. To assist the Committee, the specialist adviser and committee staff prepared notes on the issues raised in each Part of the bill. This was quite an undertaking at such short notice but proved a highly successful way of proceeding. In the end some 43 'issues' were identified. Some were issues of great principle relating to the office of the Lord Chancellor, judicial independence, the rule of law and

the administrative independence of the proposed Supreme Court. Others were issues of detail, like those arising out of the 'concordat' with the Lord Chief Justice, the composition of the selection panels for judicial appointments, the duty of confidentiality in relation to appointments, court fees and so on. Although on some of the major issues the Committee were to remain divided, on a large number of other issues there was a broad measure of agreement. On the basis of the discussions held it was then possible for the Clerk and Specialist Adviser to assist the Chairman in preparing his draft report.

In all, the Committee held eleven deliberative meetings, painstakingly coming to a view on the issues. In the later meetings they came to a view informally on the amendments to be proposed by the Lord Chancellor and others and on the drafts of the report. In a final flurry of formality all the amendments were considered and agreed to or withdrawn and all clauses and schedules stood part of the bill. To allow additional time for the Lord Chancellor to bring forward (unsuccessfully in the event) an amendment relating to the rule of law, formal consideration of Clause 1 was postponed until after the other Clauses and Schedules. Thus even the most formal of procedures can be flexibly used when occasion demands. As is usual, the final questions on the bill itself were that the Title be agreed to and that the bill be reported to the House with amendments.

On the final day of deliberation, 24 June 2004 (well within the Committee's deadline!), the Committee formally agreed its 485 paragraph report, a process rendered easier by the fact that earlier drafts had already been considered informally. It was with no small sense of achievement that the Committee agreed the last formal question, 'That the Lord in the Chair do make the Report to the House.' The report and the reprint of the Bill were published on 2 July[4].

The final outcome

The Committee failed to agree on certain fundamental issues. Members could not agree whether the office of the Lord Chancellor should be abolished, or whether or not he (or she) should be a lawyer sitting in the Lords. In the event the House of Lords as a whole was later to vote in favour of retaining the office (though with changed responsibilities); and the 'lawyer and lord' issue was not insisted upon by the Lords during later exchanges ('ping-pong') between the Houses on the bill. The Committee could not agree on

[4] Report of the Select Committee on the Constitutional Reform Bill [HL], Session 2003-04, HL Paper 125.

the Supreme Court issue. In the event the House itself was to agree with the Government's proposal.

But there were major areas (and a host of lesser ones) where the Committee were in agreement and to that extent subsequent discussions on the floor of the House of Lords and in the Commons were rendered easier. There was agreement that whatever the future of the office of the Lord Chancellor, the Lord Chief Justice would in future be the head of the judiciary in line with the 'concordat'. The terms of the 'concordat' were endorsed and indeed published as an appendix to the report so as to render them more publicly available. The Committee broadly agreed the role and functions of the Judicial Appointment Commission and the proposal for appointing the judges in the Supreme Court, were it to be set up. The jurisdiction of the court as proposed in the bill was also agreed, particularly in respect of Scottish appeals.

There were also areas in which the Committee brought about considerable shifts in the policy of the bill or at least in the manner in which the policy was expressed. Thus the Lord Chancellor was able to meet by way of amendment or by undertakings a number of concerns. Provision was made so that the bill referred to the upholding of the rule of law; that the selection process for Supreme Court judges should provide one name only for appointment; that the Supreme Court should have much more financial and administrative autonomy from the Department of Constitutional Affairs than had originally been proposed; and that the separate jurisdictions exercised by the Court in respect of Scotland, Northern Ireland, and England and Wales would be expressed on the face of the bill. It was further agreed that appointment of judges be made on 'merit', and that the definition of 'merit' should not rest with the Minister. The Committee also endorsed the promotion of diversity among the judiciary and that guidance be issued by the Minister with a view to securing that. The bill was also amended to curtail the discretion of the Minister to reject a selection made by the Judicial Appointments Commission; to involve the Lord Chief Justice in any decision by the Minister to withdraw a request to the Commission that an appointment be made; and to extend the provisions relating to the duty of confidentiality in making appointments.

No doubt other constitutional commentators will one day write in greater detail about the significance of these changes. But the purpose of this short article is to describe an interesting procedural episode rather than to go into detail about issues of constitutional debate.

A final assessment?

Was it worth it? The precise answer to that will of course vary depending on who is asking the question. But the members of the Committee certainly were left with the feeling that the exercise had been worthwhile. Even if some of the major issues were left unresolved—and it was never likely that they would be fully resolved by the Committee—the issues had at least been fully explored and defined; on other major issues, agreement in the Committee rendered further debate virtually unnecessary; and in some significant areas changes had been secured that could not have been foreseen before the Committee began its work.

On the other hand the whole exercise had only been possible because of the agreement to carry-over the bill into the next session (from 2003-04 to 2004-05). The four months' delay could therefore be accommodated. Moreover the amending process had been in private, in the context of the Committee's deliberations. It was only by publishing elaborate and formal Minutes of Proceedings as one of the appendices to the report that other members of the House and the public at large were able to see what changes the Committee had made. From a clerkly viewpoint, while it had been fascinating to engage in a long dormant procedural process, one would probably conclude that at Westminster at least committing a bill to a select committee is no substitute for pre-legislative scrutiny followed, after introduction of a bill, by generous provision of time on the floor. Interestingly, no-one has yet been heard to suggest that the exercise be repeated!

'BLEEDING THE BRAKES'—A RESPONSE TO LEGISLATION AFFECTING THE NEW ZEALAND APPROPRIATION PROCESS

MARY HAY
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'The history of Parliament was the history of the power of the purse over the Crown' [1]

The Public Finance (State Sector Management) Bill was introduced to the House of Representatives in New Zealand in December 2003. Its purpose was to amend the financial management and accountability measures for the state sector as well as establishing overarching legislation for the operational, governance, and reporting requirements of all statutory entities. This paper discusses the issues raised in the submission made in response to the bill by the Office of the Clerk of the House of Representatives in New Zealand. This was presented to the Finance and Expenditure Committee, the select committee responsible for the examination of the bill. The House passed the legislation in December 2004, and in consequence changes to Standing Orders will be required. The specifics of these changes, however, are outside the scope of this paper.

The comments in this paper are those of one participant who worked on preparing the submission.[2] Such a role has been compared to that of 'a mechanic covered in oil and grease climbing out from underneath a car, with nothing more interesting to talk about than how to bleed brakes.'[3]

Background

The public-sector financial management system in New Zealand includes processes that hold the Government accountable to the House for its

[1] B Crick, *The Reform of Parliament* (2nd ed, London, 1968), p. 80, quoted in P A Joseph, *Constitutional and Administrative Law in New Zealand* (2nd ed), p. 328.

[2] The members of the project team were David McGee (Clerk of the House), Fay Paterson (Senior Parliamentary Officer), Allan Bracegirdle (Legislative Counsel), and Mary Hay (Parliamentary Officer).

[3] G E Tanner, Paper for New Zealand Centre for Public Law, Second annual conference on the Primary Functions of Government, 'The Legislative Process: Observations', October 2004.

financial performance. The Public Finance Act 1989 and the erstwhile Fiscal Responsibility Act 1994 set out the legislative framework of the public management system in New Zealand. This accountability is facilitated by the provision of information to the House of Representatives by Government departments explaining how money is proposed to be spent and then how it has been spent.

The Public Finance (State Sector Management) Bill amended the Public Finance Act 1989 and the Fiscal Responsibility Act 1994. It also established generic operational, governance, and reporting requirements for all statutory entities in a new Crown Entities Act. The changes aimed to improve the public management system 'by improving flexibility of the Executive in managing public finances, while retaining and improving accountability mechanisms to Parliament'.[4] The impetus for the bill resulted from recommendations from the Government's 2001 *Review of the Centre*, established (among other things) to examine strengths and weaknesses in the public management system.

Submission by the Clerk of the House

The core legislation governing the appropriation process in New Zealand is the Public Finance Act 1989. Consequently it is a determining factor in the scheduling of House sittings and in determining the House's business programme. As principal adviser to the Speaker and members on parliamentary law and procedure, the Clerk of the House took an interest in the Public Finance (State Sector Management) Bill because of the proposed amendments to the Public Finance Act. An important part of Standing Orders (Chapter VI) is directly derived from the Public Finance Act, giving procedural expression to the Act's legislative rules. It was felt that the Office of the Clerk, because of its knowledge of parliamentary procedure and practice, was uniquely placed to consider legislation that might affect Parliament.

The Clerk, in his submission, sought to ensure that the proposed changes did not reduce Parliament's current ability to approve and examine the spending of public money and to gain information pertaining to this spending from Government departments and organisations.

The Clerk gave oral evidence before the Finance and Expenditure Committee. The committee's immediate response to the submission was to

[4] *Pre-introduction Parliamentary Briefing, Public Finance (State Sector Management) Bill*, Hon Dr Michael Cullen, Minister of Finance and Hon Trevor Mallard, Minister of State Services, August 2003.

ask the Clerk and the officials advising the committee on the bill to work together in addressing concerns raised by the Clerk.[5] The outcomes discussed in this article resulted from the meetings between the Office of the Clerk's project team and the officials. In some cases agreement was reached; where no agreement was reached options were provided to the committee. It was a robust debate which, from the perspective of the Office of the Clerk, has enabled more workable legislation to be developed than that originally proposed.

Key issues

Eleven issues of principal concern were set out in the Clerk's submission as well as other recommendations. Three of these are set out below:

- The removal from public finance legislation of the terminology 'Estimates' and 'Supplementary Estimates';
- Legislating for the convention of ministerial accountability to the House;
- Possible restriction of information to Parliament.

Removal of key parliamentary terminology

The proposal in the bill to remove references to the well-known parliamentary terms 'Estimates' and 'Supplementary Estimates' met opposition from the Clerk. The Estimates are required to provide specified information in respect of each appropriation.[6] The Supplementary Estimates are adjustments to the Estimates, making further appropriations in response to further spending requirements by departments.

The form of the Estimates document includes tables showing aggregated totals for proposed appropriations by type, and comparable figures from the previous year. The main content of the Estimates is a listing by vote of the appropriations contained in each Vote, along with supporting information. Parliament considers all this information when examining an Appropriation Bill and authorising the Government's spending intentions. An Appropriation Bill is unintelligible without reference to the detailed Estimates document. The Public Finance (State Sector Management) Bill was unclear on what, if anything, would replace this detailed document.

[5] The officials advising the committee were the Treasury, the State Services Commission, the Parliamentary Counsel Office and the Office of the Auditor-General.

[6] Public Finance Act 1989, s9(2)–(6).

The Clerk's recommendation was that a central document should be retained, setting out the appropriations being sought, and including comparable information from the previous year.

The proponents of the bill argued in favour of omitting the terms 'Estimates' and 'Supplementary Estimates'—an amendment that was described as a 'technical change'. The rationale for the change was to 'ensure that the information presented to the House of Representatives in support of the appropriations … being sought is not linked to specific or named documents and that there is scope for innovation in the manner in which this information is presented in the future'.[7] Officials argued that the problem was less in the terminology than in the fact that the Public Finance Act requires a specified set of information to be presented in a single document. They said that the current Estimates supplied only some of the information provided to the House to support consideration of the Appropriation Bill, and the current legislation had constrained the evolution of the 'suite of documents' published with the Budget.

The bill was looking to future innovations in the presentation of information to the House on the basis that production runs of the hard-copy Estimates were declining, and because CD-ROMs were smaller, cheaper, easier to search, and capable of holding more information. In practical terms officials did not believe that the amendments in the legislation required the demise of the Estimates as a document and as a concept; but they expected the eventual demise of the Estimates document as a stand-alone paper document.

The Office of the Clerk accepted that technology would continually change the available methods of presenting and sharing information. But change did not necessarily imply the need to abolish the concept of a recognisable central document—at present called the Estimates. Historically in New Zealand, when Treasury has sought any significant change or 'innovation' in the Estimates document it has discussed the proposal with the Finance and Expenditure Committee first. In practical terms the Estimates have proved to be an adaptable and flexible means of presenting the requisite information to the House.

To remove the terms 'Estimates' and 'Supplementary Estimates' from the parliamentary lexicon suggested the possibility that this central document, used by members and the public to understand the Government of the day's use of public money, might disappear or become an unspecified collection of documentation—the 'documents formerly known as the Estimates'.

[7] Public Finance (State Sector Management) Bill, 99–1, p. 7.

The drive for innovation came from the idea that more or different information might be provided or required by Parliament to support decision-making. This raised two issues—quantity and comparability. While parliamentarians are interested in having all relevant information at their disposal when making decisions, more or different is not always better. The Clerk argued that:

> Quality, consistency and comparability in information from year to year are as important, if not more important, than the quantity and breadth of information that is presented … Members of Parliament are being asked to make hard financial decisions. They need to be able to rely on consistent, comparable information from year to year, in order to make these decisions.[8]

Too much information can lead to obfuscation. Currently, the information in the Estimates is comparable, and consistent. A stated aim of the bill was to enhance transparency and accountability to Parliament; the elimination of well-established terms and recognisable documents would not obviously achieve this purpose. The abolition or potential abolition of Estimates and Supplementary Estimates would create a discontinuity in the financial record, and deprive Parliament of practical tools it has historically found useful in understanding and analysing Government's public spending plans.

In the event the Finance and Expenditure Committee recommended that the House retain the terminology 'Estimates' and 'Supplementary Estimates'.[9] It accepted that to change these well understood terms would cause confusion. The committee acknowledged that while the bill was intended to allow greater flexibility in the presentation of appropriation information, it was also important that flexibility should be balanced by controls on the presentation of Budget documents to ensure comparable and consistent information was provided to the House from year to year.

It further recommended that the legislation require the Minster of Finance to consult the House on any significant changes to the format or content of the Budget documents, including the Estimates and the Supplementary Estimates. In this way, what had been a convention or practice going back some 30 years has now become a statutory obligation.

[8] Clerk of the House of Representatives, *Submission to the Finance and Expenditure Committee concerning the Public Finance (State Sector Management) Bill*, April 2004, p. 8.

[9] Finance and Expenditure Committee, *Public Finance (State Sector Management) Bill*, 99-2, p. 2.

Ministerial accountability to the House

The impact upon constitutional convention was a further consideration in the Clerk's submission, regarding ministerial accountability to the House. Constitutional conventions have been described as providing 'the flesh which clothes the dry bones of the law; they make the legal Constitution work; they keep it in touch with the growth of ideas.'[10] As formal changes in the law are not required in order to change conventions, this relative lack of formality has the effect of enabling conventions to evolve with the benefit of inherited wisdom and institutional knowledge thus resulting in constitutional flexibility and growth. Despite this lack of formality, conventions are the 'pre-eminent non-legal source of the Constitution'.[11] The most important conventions promote responsible government, ensuring that the Government is responsible for its actions to the elected representatives in the House.

An aspect of responsible government as practiced in New Zealand is the convention of individual ministerial accountability. This convention holds Ministers responsible to Parliament for their personal acts and the general conduct of their departments including acts or omissions perpetrated in their name by departmental officials.[12] This is a broad concept of political accountability.

Clauses 69 and 131 of the bill appeared to legislate for the convention of ministerial responsibility:

> The Responsible Minister is accountable to the House of Representatives for the exercise and performance of the functions and powers given to him or her in relation to a statutory entity. (Clause 69)
>
> The shareholding Ministers are accountable to the House of Representatives for the exercise and performance of the functions and powers given to them in relation to a Crown entity company. (Clause 131)

In the Clerk's view these clauses were an unsuitable use of legislation, first, in inappropriately attempting to put into law a long-standing convention and, second, because they had the effect of narrowing the convention by expressing it in confined legal terms. Ministerial accountability as it currently exists is a political obligation not a legal one. It makes a Minister and the Government accountable to the House in the widest political sense. No one else in the constitutional framework is responsible to the House in this way.

[10] Sir Ivor Jennings, *The Law and the Constitution* (5th ed), pp 81–82, quoted in P A Joseph, *Constitutional and Administrative Law in New Zealand*, p 271.

[11] P A Joseph, *Constitutional and Administrative Law in New Zealand*, p. 31.

[12] P A Joseph, *Constitutional and Administrative Law in New Zealand (2nd ed)*, p 287.

A daily expression of the convention of Ministerial responsibility is question time, which has been part of parliamentary practice in New Zealand since 1856. Question time takes place at the beginning of each sitting day of the House, with normally up to an hour devoted to questions from members to Ministers about matters within their ministerial responsibility. Question time ensures that Ministers and the organisations for which they hold responsibility are on notice that their activities can always be subject to public enquiry, not only in a legal sense but also in the political arena.

A Speaker's Ruling of 1990 echoes this view, stating that the fact that a Minister has no legal control over a certain action does not mean that there is no ministerial responsibility to answer a question about it.[13] The ruling notes that many questions are answered by Ministers who have no statutory power over the matter on which they are replying. While statutory power may lie with a public official, the Minister nonetheless, assumes the political responsibility to the House to answer questions on such matters.

The Clerk was concerned that expressing ministerial accountability in narrow legal terms might undermine the wide political accountability which the House expects of Ministers in New Zealand. The Clerk was further concerned that clauses of this nature might become standard in legislative drafting, and spread 'virus-like' through the statute book without any regard to the constitutional consequences (in fact previous examples, in less conspicuous legislation, were identified).

The officials' response to this was that the clauses had been included in order to clarify the responsibilities of the Crown and Ministers, consistent with the Crown's role as owner or steward of statutory entities. Examples were given of similar provisions in other legislation, with an acknowledgement that the examples differed in that the statement of accountability in them was qualified by reference to a particular Act. Officials acknowledged that this absence of a limiting reference to a particular piece of legislation might have caused an unintended implication that the clauses were narrow definitive statements of a Minister's accountability to the House. Wording changes to include a limiting reference were suggested to take account of parliamentary concerns, but these offers were not accepted by the Clerk.

The Finance and Expenditure Committee concluded that the convention of Ministerial responsibility should not be legislated for. It recommended that these clauses be omitted from the bill. The committee viewed the potential consequence that Ministers might refuse to answer questions in

[13] Speaker's Ruling 132/4, *New Zealand House of Representatives Speakers'Rulings:1867 to 2003 inclusive.*

Parliament, on the basis that they had no legal responsibility for a particular matter, as undesirable and a potentially severe reduction of the scope of Ministerial accountability. The committee went further, recommending that consideration be given to removing any other provision of this nature currently in, or proposed for, legislation.

Restricting the supply of information to Parliament

Parliamentary examination of publicly-funded organisations depends upon those organisations providing information about their performance and policy intentions. The Public Finance Act 1989 establishes reporting requirements to be followed by departments. Clause 17 (for departments) and clause 198 (for statutory entities) of the Public Finance (State Sector Management) Bill proposed changes to these requirements. The changes would have permitted information to be excluded from reports or statements that must be presented to the House if that information could properly be withheld under the Official Information Act 1982 or would limit the statutory obligations or rights of persons to act independently.

The Official Information Act establishes that all official information should, upon request, be made available to citizens unless there is a good reason for withholding it. The principle of availability is over-ridden by section 6, which specifies five 'conclusive reasons' not to provide information (for example, prejudice to New Zealand's security or defence) and by section 9, which defines 'other reasons' for withholding information, such as the confidentiality of advice tendered to Ministers.

Philip Joseph notes that 'The [Official Information] Act expressly speaks to its constitutional functions of promoting participatory government and public accountability'.[14] But it has never applied to information to be supplied to Parliament. The obligation to respond to Parliament's information requests rests on constitutional grounds, it was not introduced (and potentially circumscribed) by the enactment of the Official Information Act in 1982.

The bill thus appeared to be extending the Official Information Act to Parliament by saying that a Government department or other statutory entity need not include information in any report or statement to Parliament if it 'could properly be withheld on any of the grounds for withholding information set out in the Official Information Act'.

The Clerk expressed the view strongly to the committee that the Official Information Act's purpose was to enhance public access to Government

[14] P A Joseph, *Constitutional and Administrative Law in New Zealand*, p. 151.

information and was not enacted to restrict the flow of information to Parliament. Furthermore, the provision seemed to run counter to the express objects of the amending legislation, which was to clarify parliamentary examination of Government departments and provide more information to Parliament than in the past, not potentially reduce it.

Officials viewed the clauses as being a protection on departments and statutory entities, to ensure that the bill did not unintentionally force departments or Crown entities to disclose information to the public where there were grounds for withholding it under the Official Information Act. They thought that this risk was more likely under the provisions in the bill than previously because the new legislation was to impose greater non-financial disclosure requirements. An example cited was the Defence Force's concern at the potential requirement to disclose information on defence capacity and security readiness. Officials argued that there was no intention to restrict the House's ability to request or obtain information from Government departments or Ministers. They believed that clauses 17 and 198 had limited scope to those reports or information that Government departments had to provide under specific parts of the bill.

Officials also argued that similar provisions already existed in other legislation. In fact clause 198 was merely a repetition of existing law. In response, the Clerk argued that the fact that the law exists is not a reason for retaining a provision that is bad in terms of constitutional principle.

The Clerk maintained that Government departments must make judgments consistent with the Public Finance Act as to the information to be included in accountability documents; but the Official Information Act does not give departments legal grounds to withhold information from the House. Departments and other Government agencies are obliged to co-operate with the House and its select committees. That relationship rests on constitutional grounds. This was an attempt to give departments and entities legal grounds to restrict information requests from Parliament.

The Clerk acknowledged that it was clear that there was no advantage in the publication of particularly sensitive information, but the House was able through its Standing Orders to regulate and if necessary protect sensitive information supplied to it.[15] Arrangements could be made to protect the interests involved, in ways that were also consistent with the House and select committees being able to carry out their duties. A balancing act was already successfully achieved by the House and its select committees with regard to

[15] Standing Orders 218–220 deals with private and secret evidence.

sensitive information provided by departments and statutory entities. The Official Information Act did not bind the House, but was not wholly ignored by it either; the principles of the Act were a reference for the House in responding to questions regarding the publication of sensitive information.

The Clerk viewed clauses 17 and 198 as a 'Trojan horse', potentially giving Government departments plausible reasons for treating parliamentary requests for information as official information requests. This would not be a desirable state of affairs from a parliamentary perspective. The House would be at risk of being denied information on legal grounds, whereas at present it operated on the assumption that it could not be legally (as opposed to politically) denied information that it requested.

The Finance and Expenditure Committee noted that these provisions were intended, among other things, to allow departments to protect sensitive information when reporting to the House. The committee further acknowledged that a requirement that departments publish sensitive information was an issue of concern to some Government organisations. Nevertheless, the committee recommended that the clauses in question should be omitted from the bill. It formed the view that whether or not information should be provided to the House was a political decision for the Minister, with political consequences, and that to provide legal grounds for withholding information in accountability documents presented to Parliament was inappropriate. To do so could 'severely impair the accountability of departments to Parliament'.[16]

The committee also accepted that cases concerning sensitive or secret information would occur from time to time, but that Standing Orders provided appropriate protection in such circumstances.

Concluding remarks

The guardianship role of the Office of the Clerk, for the institution of Parliament, was clearly demonstrated in the interest it took in the Public Finance (State Sector Management) Bill. The Clerk's proactive approach in presenting a submission contributed to the consideration of legislation with significant parliamentary implications. The Finance and Expenditure Committee decision to have the officials responsible for the bill liaise with the Clerk on issues raised in his submission resulted in a positive, robust and constructive dialogue. From a parliamentary perspective the outcome was more workable and robust legislation. The brakes are bled—until next time.

[16] Finance and Expenditure Committee, *Public Finance (State Sector Management) Bill*, p. 8.

THE ELECTION OF THE SPEAKER IN SRI LANKA

PRIYANEE WIJESEKERA
Secretary General of Parliament

The election of the Speaker is the first and the most important task of a newly elected Parliament. Following the general elections on 2 April 2004, the President summoned Parliament by proclamation to commence its first session on 22 April at 10 o'clock. On this day the House commenced the inaugural session of the 13th Parliament, which proved to be a most volatile meeting. Technically the House was not properly constituted as the Members had not yet taken the oaths. Therefore under the Standing Orders the only business which they could transect before their official oath-taking was the election of the Speaker.

The role of the Secretary General

The Secretary General is required on this day to officiate at the election of the Speaker. He does not, even for this purpose, have the status of a presiding officer. He is only the chief official of Parliament and thus serves only in the capacity of a returning officer during the election.

He is expected to act strictly in accordance with the Standing Orders and in keeping with the established practices and procedures. In the absence of the latter he would be in the hands of the House and until a Speaker is elected the House remains collectively responsible for the maintenance of proper order and the preservation of its own dignity.

Standing Order 4(4) states that for the purpose of a ballot the Secretary General shall give to each Member present a ballot paper on which the Member may write the name of the Member for whom he wishes to vote. Ballot papers shall also be folded so that the name written thereon shall not be seen and shall be signed by the Member voting.

Party position

The Parliament consists of 225 Members and following the general elections on 2 April the Government party secured 106 seats, while the combined Opposition had 119 seats (UNF—88, TNA—22, and JHU—9). To under-

stand the events of the day it is essential to have a good view of the role of the parties in the Sri Lankan Parliament. The party is the primary representative in Parliament and at the general elections, which are conducted on a system of proportional representation, a citizen first votes for the party and then for the candidate of his choice. Once a Member is elected to Parliament he is under the control of his Party Whip. A Member who violates the collective decision of the Party is liable to be expelled from the Party thereby automatically losing his membership of Parliament.

The First Ballot

With the session commencing on 22 April the Opposition parties proposed the name of Mr W J M Lokubandara for the post of Speaker, while the Government proposed Mr D E W Gunasekera. In accordance with the Standing Orders and the earlier practice I distributed the ballot papers, which were serially numbered and authenticated. This was to ensure that no forgeries were introduced and to also ensure that only 225 papers were distributed.

The JHU had at the outset arrived at a collective decision not to vote at the election of the Speaker and while the ballot papers were being distributed seven of its Members walked out of the Chamber. At the close of the distribution of the ballot papers, Members from the Government benches alleged that the Members of the JHU had handed over their ballot papers to the UNF Members as they walked out. Thus there was a clamour for the ballot papers to be recalled.

Accordingly I cancelled the first set of ballot papers which was issued and in order to ensure that each Member got only one ballot paper, proposed that each Member should walk to the well of the House when called upon to do so a collect a ballot paper from the Deputy Secretary General of Parliament, write out his preference, sign the document and insert it in the ballot box which would be placed close by. At this stage the Opposition Members protested as I was deviating from the earlier practice of distributing and collecting the ballot papers at the desk of the Members. However I explained that my intention was to ensure a fair election and that the manner of distributing and collecting ballot papers was for me to decide.

Having accepted my decision under protest the Members proceeded to cast their votes and the two Members of the JHU who remained in the Chamber also cast their ballots. At the conclusion of the election I announced the result as follows:

Mr D E W Gunsekera	108
Mr W J M Lokubandara	108
Spoilt	1
Unused	8

Equality of voting being the result I was required under Standing Order 4(6) to call for another round of voting. Tension in the Chamber was running high at this stage and by this time I became fully aware and conscious of the fact that it was imperative for a Speaker to be elected on that day as the House could not even be adjourned for another day in the absence of an order from the Speaker.

The second ballot

On calling for the second ballot I followed the same procedure, upon which a new problem surfaced: some Members, in order to prove their party loyalty, began displaying their completed ballot papers to their party leaders. At this stage the Government Members protested and demanded that I should ensure the secrecy of the ballot. Amidst continuous verbal protests they prevented the voting, having walked into the well of the House; one Member in fact sat on the ballot box.

On a plain reading of the Standing Order it was clear that the ballot was not a secret one because the requirement of placing one's signature means in effect that the voter reveals his identity. Yet it is true that the Standing Order requires the Member to fold the ballot paper so that his choice of candidate is not visible to anyone else. This problem had not arisen on previous occasions where the Speaker had either been elected uncontested or when contested the issue of secrecy had not been asserted. In the pre-independence Legislative Council a secret ballot was taken in 1931 to elect the Speaker and the Clerk of the Council required Members to write the name of the Member for whom they wished to vote on the ballot paper without signing their names. However under the present Standing Orders I was faced with the task of grappling with this apparent contradiction.

A further problem was to ensure that secrecy was maintained when the voter himself wanted to reveal his choice. It was also not possible for me to reject a vote merely because an allegation could be made that the ballot paper was shown to another.

After giving detailed consideration to the problem I decided to place the ballot box near the Speaker's table well away from the Members, and to place a screen to cover the voter as he filled it.

The last ballot

The Opposition Members agreed to this arrangement under much protest and the vote was conducted for the last time. The final round yielded a positive result and the Opposition candidate Mr W J M Lokubandara scored 110 votes while the Government candidate scored 109. Six ballots were not cast. Thus Mr W J M Lokubandara was elected Speaker of the 13th Parliament of the Democratic Socialist Republic of Sri Lanka. This brought to an end the most bitterly contested election in the Parliament of Sri Lanka—a task which took nearly eleven hours.

THE HUNTING ACT 2004 AND THE PARLIAMENT ACTS

TOM MOHAN
Clerk of Public and Private Bills, House of Lords

Introduction

The issue of hunting wild mammals with dogs gave rise to one of the most prolonged and bitterly-fought parliamentary debates in the United Kingdom in recent years. The passage of the Hunting Act 2004, under the Parliament Act procedures, in November 2004 brought an end to this debate. However, it also marked the start of a significant legal challenge to the validity of the Parliament Act 1949, which has thrown new light both on the Parliament Acts and on the constitutional relationship between the Lords and Commons. This article summarises the procedures followed for the enactment of the Hunting Act under the Parliament Acts, and gives an account of the judgments of the High Court and the Court of Appeal. The judgment of the House of Lords is not expected until July 2005, and will be reported in next year's *Table*.

Proceedings in Parliament up to the end of session 2002-03

Several private members' bills attempting to ban hunting of wild mammals with dogs were introduced in the late 1990s, but all failed to reach the statute book. In 2000-01, the Government introduced a bill which allowed the Commons and Lords to choose between three options on free votes. This bill fell, due to the announcement of the 2001 General Election, but it served to highlight the deep difference of view between the Lords and the Commons on this issue.

In 2001 the Labour Government was re-elected, with a manifesto commitment to resolve the issue of hunting with dogs. Free votes on motions in both Houses were followed by a consultation process that resulted, in the 2002-03 session, in the introduction of the Government's Hunting Bill. This initially contained compromise proposals, prohibiting deer hunting and hare coursing, exempting certain practices (such as hunting rats and rabbits) and allowing registered hunting of other animals. A registrar would have been

appointed, with the duty of processing applications for registered hunting, basing his decisions on the tests of utility and least suffering. The Bill extended to England and Wales only. For Scotland, the issue of hunting wild mammals had been settled in March 2002 by the Protection of Wild Mammals (Scotland) Act 2002.[1]

The Government's bill was heavily amended in the House of Commons. The proposed system of registered hunting was replaced with a total ban on hunting with dogs, and the bill received a Third Reading in the Commons on 9 July 2003, by 317 votes to 145.

The Lords considered the Bill for the first time in the autumn of 2003. The House rejected the Commons' plan for a total ban on hunting with dogs, and voted instead (by 261 votes to 49) for a system of regulated hunting, which would have allowed the continuation of fox and stag hunting, as well as hare coursing. After two days in Committee, the bill ran out of parliamentary time, and the Session ended on 20 November 2003.

Reintroduction of the bill in session 2003-04

On 9 September 2004 Alun Michael MP, the Rural Affairs Minister, announced the Government's intention to reintroduce the Hunting Bill and to use the Parliament Acts procedure. He said:

> The Government intends to fulfil its manifesto commitment to enable Parliament to deal with the issue of hunting with dogs.
>
> The Government has made efforts to find a constructive way forward ... The proposals put to the House last year would have banned hunting except where a particular activity could be proved—to the satisfaction of an independent tribunal—to be necessary for pest control and to involve less suffering than available alternatives. The House decided by a substantial majority on a free vote to go further and require a complete ban apart from a very few restricted statutory exceptions … It will be a matter for this House to decide, but the Government believes that the provisions of the Parliament Acts will be available if an unaltered Bill is sent to the Other Place.
>
> In addition to the Bill, I shall ask the House to agree a motion to commence the Bill's provisions in relation to hunting, but not hare coursing events, two years after its enactment. Special procedures exist under the Parliament Act 1911 for changes to be made if agreed to by both

[1] Passed by the Scottish Parliament in Edinburgh (2002 asp 6).

Houses. This period will give those involved in hunting more than adequate time to cease the activities which are to be banned, for humane arrangements, like the dispersal or re-honing of dogs, and for refocusing any business activities like drag hunting or disposal of fallen stock if they wish to do so.[2]

In order to explain the procedures—particularly the procedure 'for changes to be made if agreed to by both Houses'—it is necessary to describe in some detail the working of the Parliament Acts.

The Parliament Acts 1911 and 1949, and the suggested amendments procedure

The Parliament Act 1911, as amended by the Parliament Act 1949, lays down conditions under which public bills which have passed the Commons may be enacted without passing the House of Lords. Public bills are divided for the purposes of the Act into 'money bills' as defined by section 1 of the 1911 Act (which are not discussed here) and other public bills. For a public bill, other than a money bill, to be enacted under the Parliament Act procedures, the conditions to be satisfied are set out in section 2 of the 1911 Act.

Subsection (1) provides the basic framework and conditions as to time which must be satisfied:

> 2 Restriction of the powers of the House of Lords as to Bills other than Money Bills
>
> (1) If any Public Bill (other than a Money Bill or a Bill containing any provision to extend the maximum duration of Parliament beyond five years) is passed by the House of Commons [in two successive sessions] (whether of the same Parliament or not), and, having been sent up to the House of Lords at least one month before the end of the session, is rejected by the House of Lords in each of those sessions, that Bill shall, on its rejection [for the second time] by the House of Lords, unless the House of Commons direct to the contrary, be presented to His Majesty and become an Act of Parliament on the Royal Assent being signified thereto, notwithstanding that the House of Lords have not consented to the Bill: Provided that this provision shall not take effect unless [one year has elapsed] between the date of the second reading in the first of those sessions of the

[2] HC Deb, 8 September 2004, cols 1239-40W.

Bill in the House of Commons and the date on which it passes the House of Commons [in the second of those sessions].[3]

To comply with this subsection the bill had, in each Session, to be sent to the Lords at least one month before the end of that Session. In 2002-03, the bill was sent to the Lords on 9 July 2003, and the Session ended on 20 November 2003. In 2003-04, the bill was sent to the Lords on 16 September 2004, and the Session ended on 18 November 2004.

A year had to elapse between the Second Reading in the Commons in Session 2002-03 (16 December 2002), and the date on which the bill was sent to the Lords in Session 2003-04 (16 September 2004).

The bill also had to be 'rejected' by the House of Lords in both Sessions. The meaning of 'rejected' is wide, as explained by section 2(3):

(3) A Bill shall be deemed to be rejected by the House of Lords if it is not passed by the House of Lords either without amendment or with such amendments only as may be agreed to by both Houses.

In 2002-03, the Bill failed to complete its Lords Stages. In 2003-04, the bill was returned to the Commons with Lords amendments which were unacceptable to the Commons. In the exchanges which followed, the Lords sent the bill back to the Commons twice, with amendments which remained unacceptable to the Commons.

Subsection (2) requires the Bill to be endorsed with a certificate from the Speaker that the provisions of the Parliament Acts have been complied with:

(2) When a Bill is presented to His Majesty for assent in pursuance of the provisions of this section, there shall be endorsed on the Bill the certificate of the Speaker of the House of Commons signed by him that the provisions of this section have been duly complied with.

Finally, subsection (4) sets out the criteria by which it will be determined whether the bills are 'the same bill' in the two Sessions, and provides a procedure for the House of Commons to propose compromise amendments:

(4) A Bill shall be deemed to be the same Bill as a former Bill sent up to the House of Lords in the preceding session if, when it is sent up to the House of Lords, it is identical with the former Bill or contains only such alterations as are certified by the Speaker of the House of Commons to be

[3] The words in square brackets indicate the modifications introduced by the Parliament Act 1949, which reduced the Lords' power of delay from three sessions to two, and (effectively) from just over two years to just over a year.

necessary owing to the time which has elapsed since the date of the former Bill, or to represent any amendments which have been made by the House of Lords in the former Bill in the preceding session, and any amendments which are certified by the Speaker to have been made by the House of Lords [in the second session] and agreed to by the House of Commons shall be inserted in the Bill as presented for Royal Assent in pursuance of this section:

Provided that the House of Commons may, if they think fit, on the passage of such a Bill through the House [in the second session], suggest any further amendments without inserting the amendments in the Bill, and any such suggested amendments shall be considered by the House of Lords, and, if agreed to by that House, shall be treated as amendments made by the House of Lords and agreed to by the House of Commons; but the exercise of this power by the House of Commons shall not affect the operation of this section in the event of the Bill being rejected by the House of Lords.

The first part of the subsection was complied with, and in the second Session the bill was brought from the Commons with the Speaker's certificate 'that the bill as compared with the Hunting Bill of last session contains only such alterations as are necessary owing to the time which has elapsed since the date of that bill'.[4] The proviso to subsection (4)—the 'suggested amendments procedure'—will now be discussed in more detail.

The suggested amendments procedure

Although the Parliament Acts procedure operates only when the two Houses cannot reach agreement as to whether a bill should pass into law, section 2 nevertheless allows for some compromise to take place. The Lords may make amendments, which may be agreed to by the Commons, even though the bill itself is enacted under the Parliament Acts (s 2(3)). The Commons may, according to the proviso to s 2(4), 'suggest any further amendments without inserting the amendments in the Bill'. But the final words of s 2(4) make it clear that even though the Commons may have suggested compromise amendments, the Commons' right to insist on the enactment of the bill in its original form is not prejudiced.

Erskine May sets out the procedure for dealing with suggested amendments in the Commons:

[4] Lords Minutes of Proceedings, 16 September 2004.

> Such amendments must be suggested before the third reading of the bill, each suggested amendment being moved as a separate resolution. Suggested amendments can be moved only if they are included among the effective orders of the day. The Speaker has ruled that suggested amendments cannot be moved without notice. If agreed to they are sent to the House of Lords with the bill after it has passed the House of Commons.[5]

The Parliament Acts require that 'any such amendments shall be considered by the Lords'. But they do not specify when the amendments shall be considered, nor do they require the House to come to any decision on them.

On the Hunting Bill, the Commons agreed to a suggested amendment, delaying commencement of most of the bill. This was agreed to on 15 September 2004, the same day as the Second Reading and remaining stages of the bill.

In the Lords, a motion to 'consider' the suggested amendment was moved formally after the motion for Second Reading, thus fulfilling the requirement of the Parliament Acts. But no decision was taken on the suggested amendment at this stage. In the end, the motion to agree to the Commons' suggested amendment was not decided until the second 'ping-pong' stage, on 17 November 2004—the day before the Session was expected to end. By this time, the Government's bill had been rewritten in the Lords, and the Lords had twice overturned the Commons' attempts to restore the bill to its original form. Lord Whitty, the Minister, explained that, in these circumstances:

> The suggested amendment by the Commons relates to a Bill structured in the form in which it came to this House—namely, in the form of a ban. Noble Lords chose not to deal with the Bill in the form of a ban, even by the increase in the number of exemptions, which was a possibility. So we are faced with the possibility of the Commons insisting on a Bill with a ban and of the Parliament Act being implemented—in that sense, it is a contingency amendment. The amendment relates to that Bill rather than the one that we are sending back to the Commons.[6]

Perhaps unsurprisingly in the circumstances, the motion to agree to the suggested amendment was defeated by 155 votes to 119 and the bill, in the form in which it had originally been sent from the Commons, was passed under the Parliament Acts the following day.

[5] *Erskine May Parliamentary Practice*, 23rd edition, 2004, p 660.
[6] HL Deb, 17 November 2004, cols 1596-97.

The suggested amendments procedure was, therefore, not carried through to a conclusion on this occasion. To date, no Act passed under the Parliament Acts has included a suggested amendment.

Legal challenges to the Hunting Act

Following the enactment of the Hunting Act, the Countryside Alliance[7] announced that it planned to mount two legal challenges to the Act. One of these cases has not yet been heard fully, although leave to bring the case was granted in the High Court on 4 March 2005. It argues that the ban contravenes Article 1, Protocol 1 of the European Convention on Human Rights (the right to enjoy property, cited on the basis that contracts entered into for servicing hunts will become worthless and that compensation has not been offered).

The other case is an application for judicial review of the validity of the Hunting Act based on doubts about the validity of the Parliament Act 1949, which reduced the Lords' delaying powers under the 1911 Act from three sessions to two, and from two years to one. The claimants presented three main arguments (which all overlap to some extent) in support of their case:

1. It is inherent in the 1911 Act that it could not be used to amend itself (this argument was not pursued in the Court of Appeal).
2. As the Parliament Act 1949 was itself passed, under the 1911 Act, not by the Commons, Lord and Sovereign, but only by the Commons and the Monarch, it is a form of delegated legislation rather than an Act of Parliament. The 1949 Act, because it 'purports to attenuate or remove the conditions imposed by [the 1911] Act, infringes the principle that a delegate may not enlarge the scope of his own authority.'[8]
3. The Commons and the Sovereign form a 'subordinate legislature'. Authorities concerned with the relationship between the Westminster Parliament and the Commonwealth legislatures establish the principle that a subordinate legislature may not, in the absence of an express power, modify or amend the conditions under which its power to legislate was granted.

The application for judicial review failed in the High Court (judgment delivered on 28 January 2005), and an appeal against that judgment was

[7] A campaigning group for 'the countryside, country sports and the rural way of life'—see http://www.countryside-alliance.org.

[8] Skeleton argument for the Claimants in the High Court, quoted in the judgment of the Court, [2005] EWHC 94 (Admin), at para 11.

dismissed by the Court of Appeal on 16 February 2005. The case was heard by the House of Lords on 13-14 July 2005, and it is an indication of the importance of the principles involved that the case was heard by nine law lords, instead of the more usual panel of five.

The judgment of the High Court

Lord Justice Maurice Kay's judgment rejects all three of the arguments put forward by the claimants. He said that the submissions 'founder on the clear language of the 1911 Act'. Rejecting the argument that the 1949 Act is 'delegated legislation', he pointed out that, by section 2(1) of the 1911 Act, a Bill enacted under that section becomes 'an Act of Parliament'.

Section 2(1) of the Act also expressly refers to '*any* Public Bill' (other than Money Bills, which are dealt with separately, and a Bill to extend the maximum duration of Parliament). In Maurice Kay LJ's view 'the word 'any' is deliberately wide, and the existence of express exclusions militates against the implication of additional excluded categories'. So the modifications of the 1911 Act effected by the 1949 Act were valid.

Similar arguments were used in respect of the 'subordinate legislature' point. Sir Sydney Kentridge QC, for the claimants, relying on Commonwealth authorities, argued that because the 1911 Act did not expressly provide for its own amendment by the section 2 procedure, the procedure cannot be used for that purpose. The court rejected this argument: 'what section 2 permits is what it permits … the formulation used in section 2(1) is wide enough to embrace a Bill which amends section 2 itself.'

Maurice Kay LJ concluded his judgment as follows:

> It follows from what I have said earlier in this judgment that I am not persuaded that the 1949 Act is invalid. As such invalidity is a prerequisite to this challenge to the Hunting Act, I conclude that the application for judicial review must fail. Constitutionally, I can well understand the argument that it would have been preferable if amendments to the 1911 Act had been excluded from the machinery of section 2. However, they were not. Apart from the two specifically excluded matters, resort to section 2 is constrained more by political self-restraint and accountability than by legal inhibition.[9]

[9] EWHC 94 (Admin), at para 34.

The judgment of the Court of Appeal

The Appeal was heard by the Lord Chief Justice (Lord Woolf), the Master of the Rolls (Lord Phillips of Worth Matravers) and Lord Justice May. The judgment of the court begins by remarking that 'this is no ordinary public law case', and goes on to say:

> In the Administrative Court this case was treated as an ordinary case turning on a point of statutory interpretation. It is not such a case. English courts do not normally have jurisdiction to consider the validity of an English statute.[10]

After rehearsing the history of the passing of the 1911 Act, and considering whether the issue of the validity of the 1949 Act was justiciable, the court concludes:

> The reality is that the 1911 Act was a most unusual statute. By that statute the House of Lords, the House of Commons and the King used the machinery of legislation to make a fundamental constitutional change. Nearly 100 years after the event, the court has been invited to rule on the precise nature and extent of that change. We have decided that it was right for the Administrative Court to accept that invitation. The authority of the 1949 Act purported to be derived from the 1911 Act. The latter Act, by s.3, expressly envisaged the possibility that the validity of subsequent Acts enacted pursuant to its provisions might be subjected to judicial scrutiny. The effect of the 1911 Act was undoubtedly susceptible to judicial analysis. However, in considering that effect, the Administrative Court was acting as a constitutional court. There was no precise precedent for the jurisdiction that it was exercising.[11]

The court dismissed the appeal, but entered a substantial caveat about the extent to which it would be proper for the Parliament Acts to be used to make fundamental constitutional change. The court disagreed with the Attorney General's argument that 'once legislation has been created by the 1911 Act it is no different from other legislation.' Their reasoning was as follows:

> The main reason for our reservations as to this outcome is that it involves it being accepted that the 1911 Act could be used to extend the life of Parliament contrary to the express language of s.2(1) of the 1911 Act for

[10] [2005] EWCA Civ 126, at para 3.
[11] [2005] EWCA Civ 126, at para 12.

such period as the Commons determines. All that would be required would be for Parliament, in the shape of the Commons, to pass legislation deleting the words 'Bill containing any provision to extend the maximum duration of Parliament beyond five years' and then to pass further legislation extending the life of Parliament. This would be quite contrary to the express limitation on extending the duration of Parliament contained in s.2(1) and we are not prepared to accept that this is the position.

We appreciate that it is most unlikely that the Commons would ever contemplate seeking to use the 1911 Act, either in its amended or unamended form, to enact legislation to which the House of Lords had not consented, in order to extend the duration of Parliament or, for that matter, to abolish the House of Lords. However, if, contrary to our expectations, it did contemplate such action we would regard this as being contrary to the intention of Parliament when enacting the 1911 Act. So, here we disagree with the views to the contrary expressed by the Administrative Court.

The purpose of the 1911 Act was to establish a new constitutional settlement that limited the period during which the Lords could delay the enactment of legislation first introduced to the Commons but which preserved the role of the Lords in the legislative processes. In our view it would be in conflict with the 1911 Act for it to be used as an instrument for abolishing the House of Lords. This would be so whether or not there was initially an attempt to use the 1911 Act process to amend the 1911 Act to provide an express power to abolish the Lords. We would view such an endeavour in the same way as an attempt to delete the prohibition on extending the life of Parliament. The preamble of the 1911 Act is inconsistent with the Attorney General's contention. The preamble indicates that the 1911 Act was to be a transitional provision pending further reform. It provides no support for an intention that the 1911 Act should be used, directly or indirectly, to enable more fundamental constitutional changes to be achieved than had been achieved already.

Thus, it does not necessarily follow that because there is compliance with the requirements in the 1911 Act, the result is a valid Act of Parliament.[12]

In considering the 1949 Act, the court concluded that 'it involved no more than a modification of the 1911 Act, and we recognise that such a modification of the 1911 Act is a change of a different dimension from the dramatic

[12] [2005] EWCA Civ 126, at paras 40-43.

changes that we have just been discussing'. The court drew attention to the fact that the Hunting Act is the fourth Act to be passed under the Parliament Act procedures since 1949. These Acts, and the legal proceedings which had flowed from them were 'cogent examples of the general recognition by Parliament, the Queen, the courts and the populace, that the 1949 Act was a proper exercise of sovereign legislative power and that the same is true of legislation enacted pursuant to the provisions of the 1949 Act.'

The final paragraphs of the court's judgment are as follows:

> For the reasons we have given we have accepted that there was power to amend the 1911 Act to the extent of the amendment contained in the 1949 Act. We have not been prepared to go further than that. This is because, to an extent, we have been prepared to accept part of the argument that Sir Sydney advanced so eloquently. Once the 1911 Act had made the fundamental change of allowing the consent of the House of Lords to be dispensed with as long as the conditions in s.2(1) of the 1911 Act were complied with, the reduction of the period referred to in s.2(1) in its original form to those contained in the 1949 Act, was a relatively modest and straightforward amendment.
>
> However, accepting a power of amendment of this nature exists is quite different to allowing the power of amendment to extend to making changes of a fundamentally different nature to the relationship between the House of Lords and the Commons from those which the 1911 Act had made. The 1949 Act left the relationship between the House of Lords and the House of Commons substantially the same as it was before the 1949 Act. It reduced the length of the period for which the House of Lords could delay legislation proposed by the Commons.
>
> What, if any, further power of amending the 1911 Act that Act authorises should not be determined in advance of an attempt to make a more significant amendment than that contained in the 1949 Act. It is, however, obvious that on our approach, the greater the scale of the constitutional change proposed by any amendment, the more likely it is that it will fall outside the powers contained in the 1911 Act. Our decision is limited to indicating that if what is involved is properly described as a modification of the 1911 Act it is legally effective.[13]

[13] [2005] EWCA Civ 126, at paras 98-100.

Conclusion

The judgment of the Court of Appeal is novel. It adjudicates on matters of constitutional principle, rather than the interpretation of a statute. In doing so, it attempts to set limits on the potential meaning of words in a statute which the High Court found to be unambiguous. If that approach were to be upheld by the House of Lords, it would admit that the courts could make judgments about the significance (and therefore the legality) of any constitutional changes made using the Parliament Act procedures.

The judgments of the High Court and Court of Appeal also raise matters of Parliamentary privilege. The first is whether the cases should have been heard at all, and whether the courts were right to examine the validity of the 1949 Act. For the reasons given in the High Court, the only way to examine the question of whether Acts passed under the Parliament Acts were 'primary' or 'secondary' legislation was to consider in detail the provisions of the 1911 and 1949 Acts. But having done this, the courts went further, to examine, for example, the Preamble to the 1911 Act and the question of what 'any bill' meant in the context of section 2 of the 1911 Act. In doing so, the courts were arguably ignoring s 3 of that Act which states without qualification:

> Any certificate of the Speaker of the House of Commons given under this Act shall be conclusive for all purposes, and shall not be questioned in any court of law.

Finally, the Court of Appeal argues that the actions of Parliament in passing Acts under the 1949 Act (and subsequently amending or referring to the Acts so passed) can be used as supporting evidence for the validity of the 1949 Act. Arguably the only matter which is material to this issue is Parliament's intention at the time the 1911 Act was passed.

It remains to be seen to what extent the Law Lords will uphold the views of the High Court and Court of Appeal.

SCRUTINY OF DELEGATED LEGISLATION IN THE HOUSE OF LORDS

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Introduction and some statistics

Whether because of what a House of Lords Select Committee has called the 'increasing complexity of Government activity', or because of the need for 'substantial and complex regulations' to implement European Union directives, the volume and importance of delegated legislation in the United Kingdom has increased dramatically in recent decades.[1] In 1950 2,144 statutory instruments were registered, with the figure almost unchanged in 1980 at 2,051. In 1990 it rose to 2,667, and now stands at around 4,000 (including Scottish instruments). In terms of numbers of pages, the figure for registered statutory instruments rose from 2,970 in 1950, to 5,440 in 1980, to 6,550 in 1990 and since then has exceeded 10,000 pages in a year on several occasions.[2]

A report by the House of Commons Procedure Committee, published in June 1996, noted that 'the volume of delegated legislation has undoubtedly grown in recent years', with the number of instruments subject to Parliamentary procedure having risen 'by around 50 per cent in the past 15 years from under 1,000 a year to 1,500 a year'.[3] The report continued:

> It can also be argued that there has been a change in the nature of delegated legislation, in that it includes policy rather than only matters of detail. It is as a result longer and more complex ... It is not disputed that it is of much more than technical significance in terms of its direct impact on people outside the House in all walks of life'.[4]

[1] 3rd (Special) Report of the House of Lords Merits of Statutory Instruments Committee, *The Committee's Methods of Working*, HL Paper 73, Session 2003-04, para 1.

[2] These figures have been taken from House of Commons Standard Note, SN/SG/2911, *Acts and Statutory Instruments: Volume of Legislation 1950 to 2003* (7 December 2004).

[3] 4th Report of the House of Commons Procedure Committee, *Delegated Legislation*, HC 152, Session 1995-96, para 10.

[4] *Ibid*, para 11. Footnotes not included.

The report made a number of recommendations for changes to the procedure for Parliamentary scrutiny of delegated legislation.

In January 2000 the report of the Royal Commission on the Reform of the House of Lords (under the chairmanship of Lord Wakeham) was published, endorsing 'the spirit of the Procedure Committee's report'.[5] The Royal Commission noted a concern that the increase in the number of statutory instruments 'represented a substantial shift of legislative power away from Parliament and toward the executive', a concern 'compounded by the perceived shortcomings of the arrangements for scrutinising statutory instruments'.[6] Whilst acknowledging the advantages which derive from the delegation of power, the Royal Commission concluded that there was 'a strong case for enhanced scrutiny of secondary legislation'.[7]

A further report by the House of Commons Procedure Committee, published in March 2000, suggested that, although the numbers of instruments laid before Parliament had not changed significantly since the 1996 report, there was no reason to dissent from the overall conclusion of the earlier report that 'there is … too great a readiness in Parliament to delegate wide legislative powers to Ministers, and no lack of enthusiasm on their part to take such powers. The result is an excessive volume of delegated legislation'.[8]

With the growth in delegated legislation, Parliament has developed mechanisms for scrutinising the ambit and exercise of delegated powers. In the House of Lords, provision has been made for the scrutiny by select committees of both the primary legislation which confers legislative power on the executive to make delegated legislation and the secondary or delegated legislation itself. The most recent addition to these mechanisms is the Lords Merits of Statutory Instruments Committee, which was appointed in December 2003.

Scrutiny of delegated powers

In February 1992 the House of Lords Select Committee on the Work of the House, under the chairmanship of Lord Jellicoe, noted that there had been growing disquiet over 'the problem of wide and sometimes ill-defined order-making powers which give Ministers unlimited discretion'.[9] The Jellicoe

[5] *A House for the Future*, January 2000, Cm 4534, para 7.16.

[6] *Ibid*, para 7.2.

[7] *Ibid*, para 7.6 and Recommendation 35.

[8] First Report of the House of Commons Procedure Committee, *Delegated Legislation*, HC 48, Session 1999-2000, para 26.

[9] HL Paper 35, Session 1991-92, para 133.

Committee recommended the establishment of a delegated powers scrutiny committee in the House of Lords. As a result, the Select Committee on the Scrutiny of Delegated Powers was appointed in Session 1992-93, the purpose of which was to report to the House whether the provisions of any bill inappropriately delegated legislative power or whether they subjected the exercise of legislative power to an inappropriate degree of Parliamentary scrutiny.

The committee, initially appointed on an experimental basis, was made sessional at the beginning of Session 1994-95. Its terms of reference remained the same, save that they were extended in Session 1994-95 when the committee was given the additional role of scrutinising deregulation proposals under the Deregulation and Contracting Out Act 1994, and they were later amended when that Act was superseded by the Regulatory Reform Act 2001 (see paragraph 24 below). The committee is now called the Delegated Powers and Regulatory Reform Committee (DPRRC).

The DPRRC considers all public bills after introduction in the Lords and before their committee stage. In Session 2003-04, the committee met on 22 occasions and published 21 reports covering 46 bills. In Session 2004-05, a short session, the committee met on 12 occasions and published 12 reports on 23 bills. In scrutinising the delegation of power provided in bills, the committee is assisted by written evidence from sponsoring Government departments in the form of delegated powers memoranda each of which is later published by the DPRRC as an annex to the relevant committee report. In addition, the DPRRC scrutinises Government amendments with a significant delegated powers aspect which are tabled in the course of the passage of a bill through the Lords. The sponsoring Government department provides a supplementary delegated powers memorandum to explain the amendments.

The DPRRC is an advisory committee only, and it is the House of Lords, and not Government, which it advises. In the final analysis, it is the House of Lords, therefore, which decides whether or not to agree to the committee's recommendations. The DPRRC has however developed a formidable reputation and was able to report recently that: 'the Government almost invariably accepts our recommendations so that the relevant amendment is tabled before the bill is considered on the floor of the House or the Minister is able to announce to the House that such an amendment will be forthcoming'.[10]

[10] First (Special) Report of the Delegated Powers and Regulatory Reform Committee, *Session 2001-02 and 2002-03: The Work of the Committee*, HL Paper 9, Session 2003-04, para 29.

Scrutiny of delegated legislation

Affirmative and negative instruments

Delegated legislation consists mostly of statutory instruments. The kinds of statutory instrument can be distinguished by the Parliamentary procedure (if any) to which they are subject, and this is determined by the relevant parent Act. Of those instruments laid before Parliament, some require the express approval of Parliament if they are to come into force or remain in force. These are called affirmative instruments. Some are subject to annulment following a resolution of either House. These are called negative instruments, the procedure governing which is standardised by the Statutory Instruments Act 1946. Starting from the date of laying, there is a 40-day 'praying period'[11] during which a motion praying Her Majesty that the instrument be annulled may be moved in either House. A negative instrument can be annulled after it has come into force and had substantive effect. But a convention exists that it should not come into force until 21 calendar days after laying. This is called 'the 21-day rule'.

Two select committees have been established to scrutinise affirmative and negative instruments. These are the Joint Committee on Statutory Instruments and the Merits of Statutory Instruments Committee. Other types of delegated legislation (for example, remedial orders under the Human Rights Act 1998) are scrutinised by other designated select committees. In addition, certain instruments are laid before Parliament but are not subject to any further proceedings, and some instruments do not come before Parliament at all.[12]

[11] The 40 days do not include periods of dissolution, prorogation or adjournment of both Houses for more than four days.

[12] The implementation of European Union legislation generates a distinct class of delegated legislation. The process by which the parent European legislation is negotiated and agreed is scrutinised in detail by the House of Commons European Scrutiny Committee and the House of Lords European Union Committee. However, once this legislation (typically a Directive) is agreed at the European level the Government has wide discretion in choosing how to implement it—either by using delegated powers contained in existing UK primary legislation, or, if no such powers exist, using a general power contained in section 2(2) of the European Communities Act 1972. In many cases the negative procedure is followed, with the result that Parliament has had little or no opportunity formally to debate and approve such regulations. Only with the establishment of the Merits of Statutory Instruments Committee was a mechanism established within Parliament for scrutinising whether or not such regulations properly implemented the original European legislation.

Joint Committee on Statutory Instruments

The Joint Committee on Statutory Instruments (JCSI) is a joint committee of both Houses of Parliament, with seven members from each House. It was established following a recommendation of the Joint Committee on Delegated Legislation in 1972. The JCSI considers all negative and affirmative instruments, all general statutory instruments which are laid before Parliament but for which there is no subsequent Parliamentary proceeding, and all general instruments which are not required to be laid before Parliament unless they are instruments made by a member of the Scottish Executive or by the National Assembly for Wales. The JCSI provides what may be described as technical scrutiny of instruments, and will consider, for example, the *vires* of instruments and drafting defects. In addition to the grounds specified in the committee's terms of reference, it may rely on any ground for drawing the special attention of Parliament to an instrument so long as it 'does not impinge on its merits or on the policy behind it'.

The JCSI is an advisory committee and no procedure necessarily follows from a report by the committee drawing special attention to an instrument. In the Lords, under Standing Order 73, no motion for a resolution to approve an affirmative instrument can be moved until a report on that instrument of the JCSI has been laid before the House.[13] No similar provision applies in the Commons.

Merits of Statutory Instruments Committee

The Merits of Statutory Instruments Committee (MSIC) was established relatively recently, in December 2003. Its appointment followed the recommendation of the Royal Commission, under the chairmanship of Lord Wakeham,[14] already alluded to, which called for enhanced Parliamentary scrutiny of delegated legislation and recommended that a reformed House of Lords should establish a 'sifting' mechanism to identify those statutory instruments which were important and merited further debate or consideration.

The MSIC has 11 members. Unlike the JCSI, the MSIC is not a joint committee of both Houses of Parliament, and there is no counterpart in the Commons. The House of Commons Procedure Committee, in two reports in Sessions 1995-96 and 1999-2000,[15] indicated support for the appointment of a statutory instruments sifting committee. A further report,

[13] SO 73(1), *The Standing Orders of the House of Lords relating to Public Business*, HL Paper 89, 2002.

[14] *A House of the Future*, Recommendation 37.

[15] 4th Report, HC 152, Session 1995-96; First Report, HC 48, Session 1999-2000.

published in March 2003, welcomed the Lords proposal to appointment a sifting committee but recommended immediate discussions with a view to setting up a joint committee.[16] The Government did not accept this recommendation, preferring first to see how the Lords committee worked.[17]

The MSIC complements the JCSI in that, unlike the JCSI, it considers the policy aspects of instruments but does not undertake any technical scrutiny. Its terms of reference require it to consider all affirmative and negative instruments with a view to determining whether the special attention of the House of Lords should be drawn to any instrument on one (or more) of the following grounds:

- That it is politically or legally important or gives rise to issues of public policy likely to be of interest to the House;
- That it is inappropriate in view of the changed circumstances since the passage of the parent Act;
- That it inappropriately implements European Union legislation;
- That it imperfectly achieves its policy objectives.

Since March 2001 Government departments have been required to provide Parliament with explanatory memoranda (EMs) for all affirmative instruments. After the appointment of the MSIC, the Government agreed to provide EMs for all negative instruments as well. These are provided in printed form to members of both Houses and are published electronically. The MSIC has noted in its sessional reports the value of EMs and has called for them to be made available in printed form to accompany instruments purchased by the public.

Like the JCSI, the MSIC is an advisory committee and no procedure necessarily follows from a report by the committee drawing special attention to an instrument. In Session 2003-04, from April 2004 until the end of the session, the MSIC considered 657 statutory instruments (89 affirmative and 568 negative). Of these, 14 affirmative instruments and 16 negative instruments (of which nine constituted one group) were drawn to the special attention of the House. All affirmative instruments are debated by the House in any event. Of the negative instruments reported by the MSIC, 75 per cent were subsequently debated.[18]

Hybrid instruments are affirmative instruments which, if they were

[16] First Report, HC 501, Session 2002-03.

[17] 2nd Report, HC 684, Session 2002-03.

[18] 25th (Special) Report of the Merits of Statutory Instruments Committee, *Review of the Work of the Committee*, HL Paper 206, Session 2003-04, paras 10-11.

primary legislation, would be subject to private business standing orders. The House of Lords alone has a procedure for considering such instruments, which allows for them to be opposed by petitioning against them. Special procedure orders are required where certain protected categories of land are subject to compulsory purchase. They are subject to a procedure laid down by the Statutory Orders (Special Procedure) Act 1945 (as amended by the Statutory Orders (Special Procedure) Act 1965), supplemented by private business standing orders.[19] Both hybrid instruments and Special Procedure Orders are considered by the JCSI and the MSIC.

Other types of delegated legislation

Both the JCSI and MSIC are excluded from considering the following instruments:

- Any Order in Council or draft Order in Council made or proposed to be made under paragraph 1 of the Schedule to the Northern Ireland Act 2000;
- Any remedial order or draft remedial order under Schedule 2 to the Human Rights Act 1998;
- Any draft order proposed to be made under section 1 of the Regulatory Reform Act 2001 or any subordinate provisions order made or proposed to be made under the 2001 Act.

Orders in Council or draft Orders in Council under paragraph 1 of the Schedule to the Northern Ireland Act 2000 are akin to primary legislation and are 'by reason of their character' excluded from the terms of reference of the JCSI and MSIC.[20] They may be referred to the Commons Northern Ireland Grand Committee.

Under section 10 of the Human Rights Act 1998, if primary legislation is found by a higher United Kingdom court or by the European Court of Human Rights to be incompatible with the European Convention on Human Rights, a Minister may, by order, make such amendments to the legislation as he considers necessary to remove the incompatibility. These orders or draft orders are called remedial orders and are subject to special procedures set out in Schedule 2 to the 1998 Act. The Joint Committee on Human Rights (JCHR) is charged with considering such orders. It performs

[19] The procedure for hybrid instruments and special procedure orders is described in the *Companion to the Standing Orders and Guide to the Proceedings of the House of Lords* (2003), pp 175-181.

[20] *Erskine May Parliamentary Practice*, 23rd edition, p 699.

the functions otherwise carried out by the JCSI. As with the JCSI, in the Lords, Standing Order 73 applies so that no motion to approve a remedial order may be moved until the report of the JCHR has been laid before the House.

Under the Regulatory Reform Act 2001, Ministers are able to amend primary legislation by way of delegated legislation (called regulatory reform orders), with a view to removing or reducing burdens, so long as certain tests under the Act are satisfied. After a period of consultation, regulatory reform orders are subject to a two-stage Parliamentary procedure. At the first stage, they are laid before Parliament in the form of a proposal. The two Houses have 60 days in which to report on the proposal. At the second stage, they are laid before Parliament in the form of a draft order. At each stage, they are considered, and subsequently reported on, in parallel, by the Lords DPRRC and by the Commons Regulatory Reform Committee. Standing Order 73 applies to the Lords committee so no motion to approve a regulatory reform order can be moved in the House before the DPRRC has reported. In a recent report, the DPRRC has expressed concerns about the operation of the Regulatory Reform Act 2001 and a review by the Government is anticipated.[21]

Conclusion

The experience of the post-war period, but especially of the last 15 years, has been of a marked increase in the Government's use of powers to promote delegated legislation. It may be argued that this experience inevitably led to the response by Parliament of strengthening its scrutiny of delegated legislation. The advent in 1992-93 of the DPRRC and in 2003-04 of the MSIC exemplify this response by the House of Lords, and their role has been seen by some as particularly well-suited to the deliberative character of the Second Chamber.

[21] 18th (Special) Report, *Sessions 2003-04 and 2004-05: The Work of the Committee*, HL Paper 110, Session 2004-05.

NATURAL JUSTICE ISSUES FOR PARLIAMENTARY COMMITTEES

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Introduction

This article examines the application of principles of natural justice or procedural fairness to parliamentary committees, from the premise that parliamentary committees need to be vigilant in endeavouring to protect the rights of persons whose reputations or interests might otherwise be damaged unfairly as a result of committee inquiry.

The article is based on a paper prepared for a workshop at the annual professional development seminar of the Australian and New Zealand Association of Clerks at the Table (ANZACATT) held in Wellington, New Zealand in January 2005.[1] It focuses on the situation applying in Australia and New Zealand.

Natural justice principles and administrative law

Rules or principles of natural justice or procedural fairness have been developed to ensure that administrators, in the course of making decisions which may have adverse consequences, have available to them relevant information, hear from the parties affected and do not make judgments which are without foundation. The three principles of procedural fairness are:

- The hearing rule—a decision maker must give an opportunity to be heard to a person whose interests will be adversely affected by a decision. The obligation to extend an opportunity to be heard involves ensuring that a person is given the opportunity of ascertaining the relevant issues and being informed of the nature and content of material which is being considered against the person;

[1] Ms Robina Jaffray and Ms Tracey Rayner were co-presenter and rapporteur, respectively, for the workshop, and their contributions are acknowledged with thanks. Thanks are also extended to: Mr Brenton Holmes, leader of the second ANZACATT workshop on the topic, to other workshop contributors, and to Ms Mary Harris, Deputy Clerk, New Zealand and colleagues for comments on a draft paper.

- The bias rule—a decision maker must be disinterested or unbiased in the matter to be decided; and
- The evidence rule—the decision should be based upon logically probative evidence.[2]

Application of natural justice principles to administrative law has been accepted in Australia for some time. In *Kioa v West*[3], Mason J stated:

> The law has now developed to a point where it may be accepted that there is a common law duty to act fairly, in the sense of according procedural fairness in the making of administrative decisions which affect rights, interests and legitimate expectations, subject only to the clear manifestation of a contrary statutory intention.[4]

The administrative law framework at Commonwealth level in Australia provides for judicial review of administrative decisions.

Application of natural justice principles to parliamentary committees

The view has been put in the past that there is no legal requirement in Australia for the parliament or a parliamentary committee to conduct proceedings in accordance with the principles of natural justice,[5] and from a strictly legal perspective this is correct.[6] However, contemporary standards of public administration and fairness would seem to require parliaments and their committees to be guided by principles of natural justice, when circumstances arise which warrant invoking such principles and to the extent that such principles can reasonably be applied.

Considerations supporting application of natural justice principles

An important consideration, identified in New Zealand material, is that parliamentary proceedings are subject to and protected by parliamentary

[2] Allars, M *Introduction to Australian administrative law*, Sydney: Butterworths, 1990, p 236. See also: *Report of the Standing Orders Committee: Review of Standing Orders*, New Zealand, 1995.

[3] 1985, 159 CLR 550.

[4] *Ibid*, at 584.

[5] Senate Standing Committee of Privileges, PP No. 239/ 1985, p 29.

[6] In New Zealand, under the *New Zealand Bill of Rights Act 1990*, every person has the right to the observance of the principles of natural justice. The Act's application provision includes the legislative branch of government.

privilege, meaning that persons about whom allegations have been made cannot seek redress in the courts to sue for damage to their reputations. Nor can parliamentary material be used in court proceedings as evidence. Natural justice principles therefore require that a person about whom allegations have been made be given an opportunity to respond to the allegations in the course of parliamentary proceedings.[7]

Another important consideration is the impact of technology on committee processes and the greater potential for persons to be adversely affected by committee inquiry as a result. Committee inquiries may receive extensive publicity and evidence given in public hearings may be broadcast widely.[8] The proceedings of many committees are available live through the Internet. Similarly, submissions to many parliamentary committee inquiries are now available quickly and easily through the Internet.

A further consideration is the desirability of checks or protections against possible misuse of committee powers. Committees have wide powers to compel witnesses and evidence. While most evidence is given willingly, committees have a responsibility to treat witnesses fairly. Such practices are probably in the long-term interests of committee systems.[9]

However, application of natural justice principles to parliamentary committees cannot be a straight transfer of the administrative law framework. Parliamentary committees are not administrative decision makers and allegations against individuals are not really the core work of parliamentary committees. Indeed, depending on the type of inquiries undertaken in particular jurisdictions, natural justice issues may arise infrequently or not at all. In any case, the nature of parliamentary committee inquiry could make strict application of the previously mentioned bias and evidence rules problematic. And there is no right of review of parliamentary committee findings.

[7] PIE Segment—Application of natural justice provisions, New Zealand, April 2001, updated October 2004, p 1.

[8] The interests of witnesses are reflected in the reference to televising of proceedings in Harris, I C (ed), *House of Representatives Practice*, 4th edn, Canberra, Department of the House of Representatives, 2001, pp 682-4.

[9] In New Zealand, the natural justice procedures are seen as providing some balance against the considerable coercive powers of the House. Since 1999 New Zealand committees have not had the power to send for persons, papers and records. The power resides with the House and committees can call upon the Speaker to exercise the power, if the Speaker is satisfied that the circumstances warrant the issue of a summons. The removal of the power from committees was part of the balancing act. In its 1999 report I.18B, the Standing Orders Committee took the view that the power was an extremely serious infringement of a person's civil liberties and if misused could be challenged in the courts and that it should only be used as a last resort (pp 17, 18).

Breaches of natural justice

Breaches of natural justice arise when individual rights are infringed or interests adversely affected without a fair hearing. For parliamentary committees, this may occur when:

- Untested allegations with potentially seriously damaging consequences are made in written or oral evidence during the course of a committee inquiry; or
- Committees make findings that reflect adversely on individuals, without a fair hearing having been given or without evidence having been adequately tested.

Breaches may arise, or more accurately in the main, parliamentary committee procedures may not be totally fair, for many reasons:

- Committees may receive references requiring them to perform roles that they are not well placed to perform (adjudication of matters of fact[10]);
- Witnesses may make allegations;
- There may be a political imperative for committee members to deflect or pursue a line of inquiry;
- There may be prejudice on the part of committee members against certain witnesses or their organisations;
- A witness may not be given adequate opportunity to address or respond to a case against them; and
- Committees may not always be attentive to issues of procedural fairness.

In examining the adequacy of procedures applying for protection of witnesses from the perspective of natural justice, we need to consider the role of parliamentary committees and the nature of committee inquiry. Parliamentary committees are a forum for Members of Parliament to scrutinise executive government, to hear community views on policy issues, and to investigate matters of concern. Committees need to be able to investigate a wide range of matters, and to do so in a reasonably untrammelled manner. While committee scrutiny may be reasonably rigorous in nature, committees are not generally established or designed to investigate matters in a forensic manner. Committee inquiries are often admirably short and cost effective compared to other forms of inquiry.

[10] Senator P Durack, Senate Hansard, 25 February 1988, p 626 (cited in Stuart, C, 'Natural justice on trial', *Legislative Studies*—the then journal of the Australasian Study of Parliament Group—1989, Vol. 4, No. 2, p 9).

Current approaches to procedural fairness

All Australian and New Zealand jurisdictions have procedures, formal or informal, for protecting witnesses appearing before parliamentary committees. The term 'natural justice' is applied in New Zealand but generally not in Australia. Review of Erskine May[11] and Marleau and Montpetit suggests that the term is also not generally applied to committee proceedings in the United Kingdom and Canada, respectively.

The New Zealand natural justice procedures were adopted in 1996. They drew on procedures for the protection of witnesses (and others) recommended by the Joint Select Committee on Parliamentary Privilege in 1984 and formally adopted by the Australian Senate in resolutions known as the Privilege Resolutions of 28 February 1988.[12]

In the Australian Senate, the principal procedural protections for witnesses are contained in Privilege Resolution 1—Procedures to be observed by Senate Committees for the protection of witnesses. The protections are summarised in *Odgers' Australian Senate Practice* 11th edition, pp 415-416. They include provisions relating to the 'hearing rule' (that is, provisions relating to 'adverse reflections') and for witnesses to be accompanied by and to consult counsel.

The provisions in respect of adverse reflections are as follows:

- Where a committee has reason to believe that evidence about to be given may reflect adversely on a person, the committee shall consider hearing the evidence in private;

[11] There is reference to 'natural justice' for investigations involving Members—McKay, W (Ed) *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament*, 23rd edn, United Kingdom, Lexis Nexis, 2004, p 495.

[12] The text of the resolutions is in: Evans H (ed.), *Odgers' Australian Senate Practice* 11th edn, Canberra, Department of the Senate, 2004, Appendix 2, pp 591-604. Proposed resolutions and explanatory notes were tabled in both Houses of the Australian Parliament during debate on the Parliamentary Privileges Bill 1987—in the Senate on 17 March 1987 and in the House of Representatives on 6 May 1987. They have been formalised in the Senate but not in the House. Procedures for the protection of witnesses were recommended by the House Standing Committee on Procedure in 1989 and again in 1998 and in 1999—but have not been accepted by government. In its response to the report: *It's your House. Community involvement in the procedures and practices of the House of Representatives and its committees*, October 1999, the Government stated that it 'does not consider that a resolution is the most appropriate device to describe committee procedures, and remains concerned that a resolution of the House detailing procedures for dealing with witnesses could lead to arguments over the interpretation and application of committee rules.' In practice, however, House committees have regard to such considerations.

- Where a witness gives evidence reflecting adversely on a person and the committee is not satisfied that the evidence is relevant to the committee's inquiry, the committee shall consider expunging the evidence from the transcript of evidence, and forbidding its publication; and
- Where evidence is given which reflects adversely on a person and action to expunge and forbid publication is not taken, the committee shall provide reasonable opportunity for the person to have access to the evidence and to respond to the evidence by written submission and appearance before the committee.

Privilege Resolution 9—Exercise of Freedom of Speech—is also relevant in a natural justice context. It encourages Senators to exercise their freedom of speech responsibly.

In New Zealand, responsibilities of committees for procedural fairness are set out in the Standing Orders of the House of Representatives. The requirements are also outlined for the public in a booklet entitled: *Natural Justice before Select Committees*.[13] The New Zealand provisions go a good deal further than Australian procedures. In addition to the hearing rule, they include provisions relating to bias (narrowly interpreted) and to evidence (a more active role for counsel and the opportunity to comment on adverse findings before report presentation).

There are provisions for:

- A witness to apply to have evidence heard in private or secret;
- A committee to return evidence containing allegations or adverse reflections and to ask that it be resubmitted without the offending material, to expunge the evidence from any transcript, or seek an order of the House to prevent disclosure;
- A person (including a body corporate) to be given a reasonable opportunity to respond to adverse evidence. Persons accorded a right of reply may ask the committee to hear additional witnesses;[14]
- A witness to be accompanied by counsel who may make submissions about procedure and raise objections to questions. If there is a risk of a person's reputation being seriously damaged, counsel may ask the

[13] Office of the Clerk of the House of Representatives, 2004.

[14] A situation faced in New Zealand is the claim and counter claim that has the potential to go on forever. Committees on occasions have decided not to hear from witnesses further even though there may be possible damage to reputation, because the committee runs the risk of simply giving a witness a further opportunity under the protection of privilege to have a go at another witness.

committee to hear further witnesses. There is no provision for counsel to cross-examine witnesses;

- Comment on adverse findings before presentation of a report to the House;
- A member to be excluded from committee proceedings where that member has alleged that a person has committed a crime or has expressed a concluded view on a person's involvement in conduct or activity of a criminal nature. A member can also be excluded from other committee proceedings where serious damage to a person's reputation may occur. These provisions are initiated by the person whose reputation may be seriously damaged or by another committee member[15]; and
- A committee not to inquire into allegations of crime by persons who are named or otherwise identifiable without the express authority of the House.

In New Zealand the test for invoking procedures for right of response is that an allegation or finding may be seriously damaging to reputation or interests. There is no defined standard by which to determine whether an allegation or finding is seriously damaging and this must be considered on a case by case basis. A higher threshold will apply for organisations than for individuals, with public organisations withstanding a higher level of criticism than private organisations.[16]

Similarly, *Odgers' Australian Senate Practice* outlines general principles of interpretation applying to whether evidence reflects adversely on a person (including an organisation), invoking the adverse reflection provisions:

> To bring the rules into operation, a reflection on a person must be reasonably serious, for example, of a kind which would, in other circumstances, usually be successfully pursued in an action for defamation … Reflections involving allegations of incompetence, negligence, corruption, deception or prejudice, rather than lesser forms of oversight or inability which are the subject of criticism in general terms, are regarded as adverse reflections. Mere disagreement with another person's views, methodology or premises is not considered as an adverse reflection.[17]

[15] Another situation faced in New Zealand is persons misconstruing the apparent bias rule to suggest that a member who has a strongly held view on an issue should stand aside from a committee inquiry on the basis of conflict of interest or bias.

[16] PIE Segment, *op cit*, p 1.

[17] *Op cit*, p 418.

While issues of fairness of treatment of witnesses arise not infrequently in the proceedings of some parliamentary committees they generally do not invoke procedures for right of response.[18]

Committees of Privileges

Special additional procedural protections apply for witnesses before committees of privileges in the Australian House of Representatives and Senate when the committees consider any referred matter which may involve or give rise to an allegation of contempt. These procedures are set out, respectively, in House of Representatives Standing Committee on Privileges, *Parliamentary privilege: the operation of the committee, some historical notes and guidelines for Members*, 2002, and in Senate Privilege Resolution No. 2 of 25 February 1988—Procedures for the protection of witnesses before the Privileges Committee.

Compared with Australian procedures for parliamentary committees generally, there is:

- Tighter specification of matters to be dealt with;
- Provision for a person appearing before the committee to be accompanied by an adviser/counsel and for consultation with the adviser/counsel during the appearance;
- Provision for a witness not being required to answer in public session a question where the committee believes that the answer may incriminate the witness;[19]
- Provision, where oral evidence is given containing allegation/adverse reflection on a person, for the committee to ensure as far as possible that that person is present during the hearing of that evidence, and to afford opportunity for the person, by counsel or personally, to examine witnesses in relation to that evidence (Senate only); and
- Provision for comment on adverse findings prior to report presentation.

[18] See, for example, Boucher, D, 'The application of administrative law to parliamentary committees', in R Creyke and J McMillan (Eds), *Administrative law—the essentials: papers presented at the 2001 National Administrative Law Forum*, Canberra, 2001, pp 105-127; and Selby-Smith C and Corbett, D, 'Parliamentary committees, public servants and due process', *Australian Journal of Public Administration*, 1995, (vol 54), 19-34.

[19] Boucher refers to the situation in the United States, where, under Fifth Amendment protection against self-incrimination, witnesses appearing before Congressional committees cannot be compelled to give evidence against themselves unless granted immunity, *ibid*, p 127.

Concluding comments

Parliamentary committee procedures and practices in Australia and New Zealand do have regard to the need to protect the interests of witnesses and others. In relation to principles of natural justice or procedural fairness, procedures which can be seen as relating to the 'hearing rule' are well established. New Zealand procedures go further than those in Australia, perhaps reflecting, amongst other things, the different legal frameworks applying.

At the ANZACATT workshops in New Zealand various examples were discussed of parliamentary committee proceedings where natural justice provisions for right of response to adverse reflections and other matters had been invoked. There was a range of perspectives from jurisdictions represented at the workshops. In some jurisdictions, natural justice issues and issues of fair treatment of witnesses were a cause for concern on occasion, and in others these issues arose infrequently or not at all. This probably reflected the different role and operation of committees across jurisdictions.

There was a general view at the workshops that there needs to be knowledge, awareness and understanding of these issues on the part of parliamentary committee members and staff, and appropriate procedures in place. It was also recognised, however, that procedures can only go so far, and that many factors influence the performance of committees.

PREPARATION FOR LIFE AT THE TABLE: PERSPECTIVES FROM AUSTRALIA AND NEW ZEALAND

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Introduction

The annual Professional Development Seminar of the Australia and New Zealand Association of Clerks-at-the-Table (ANZACATT) was held in Wellington from 26 to 28 January 2005. During the seminar two workshops were held on the topic, 'Preparation for life at the Table'. In anticipation of these workshops, a survey form was circulated in November 2004 to Clerks-at-the-Table of member legislatures. This survey included questions about preparation for the Table, both in the long term (career paths and relevant skills) and the short term (strategies for preparing for daily sittings and dealing with issues arising in the House). This paper summarises the responses to this survey, and notes further issues and conclusions arising from the workshops that followed.

In this summary, the term 'Clerk' is used to describe the principal officer or Clerk of the House. Other respondents who work as Clerks-at-the-Table are called 'Table officers'. While this shorthand does not really do justice to the senior officers who work at the Table, it is a useful distinction to make when looking at some of the information gathered by the survey.

General

Thirty-eight responses to the survey were received, 12 from Clerks, and 26 from other Table officers. Clerks were asked to fill out a longer version of the questionnaire. This response rate was commendable, and we are grateful to those who were able to turn their minds to the survey at a busy time of year. The publication of a summary of the survey results was approved at the biennial meeting of Clerks of Australian and New Zealand legislatures.

The survey was not scientific by any means, with a limited pool of potential respondents and with questions of a general nature. Most questions were open, without specified response options for people to choose from. A further caveat is that the duties performed and the terminology used at the Table vary significantly amongst the different legislatures in the region (see the Appendix). But with these points in mind, it is possible to derive a number of useful messages from the responses to the survey.

The two workshops were prepared by separate teams, but the survey results were shared and, in each case, the material was organised into the broad areas of 'working towards a Table role' and 'surviving once at the Table'. The themes that emerged from both workshops were similar, raising issues relating to changes in the workforce and recruitment, desirable skills and experience, and training and development.

Working towards a role at the Table

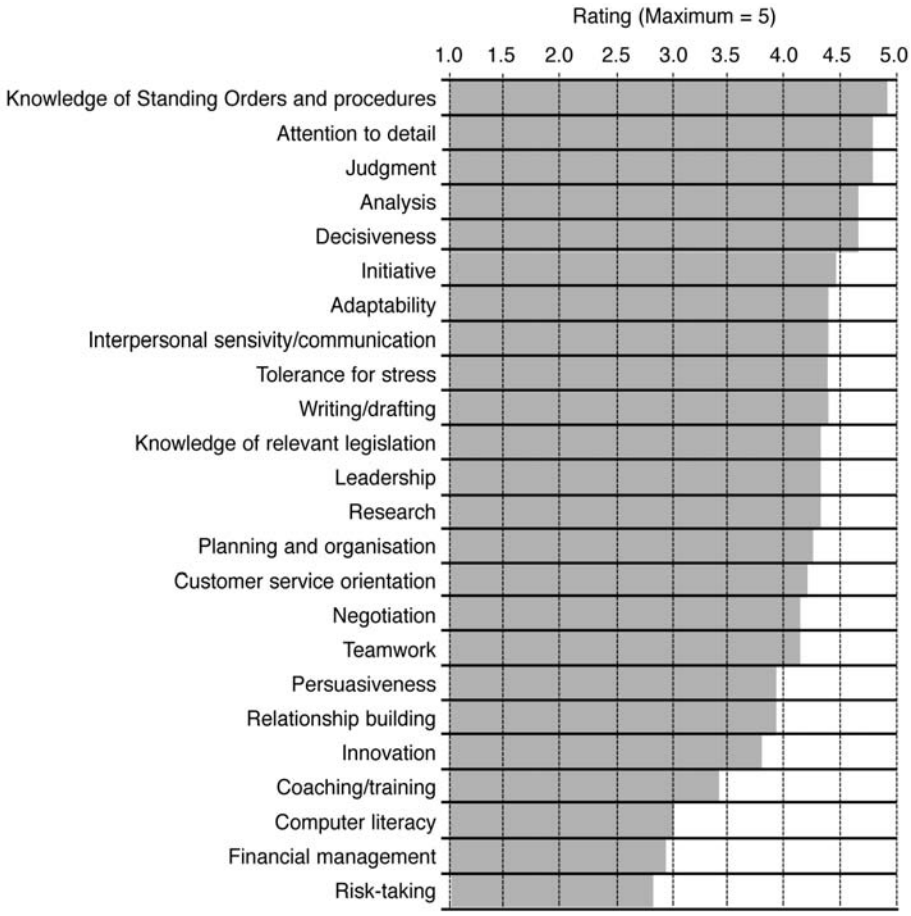
Being attracted to the Table

Those responding to the survey were asked, 'What is the best thing about a Chamber role?' Overwhelmingly, people who work at the Table valued having a unique vantage point, contributing and being involved in the legislative process, 'at the centre', or 'on the cutting edge of politics', and 'being able to see the "play" as it evolves' (25 responses). Many also enjoyed the challenge of giving advice, solving procedural problems, dealing with new issues and having their knowledge and expertise tested in a public forum (12 responses). Other enjoyable aspects of a Chamber role included the variety of the work, the tradition of the role of Clerk-at-the-Table, and the sense of professional satisfaction arising from it. A couple of people even appreciated the opportunity to listen to the debate.

Relevant skills and competencies

Clerks were asked to identify which skills or competencies are most important for Table officers (for all duties, including those at the Table). A list of skills was provided, and the Clerks gave each one a rating from 1 to 5. The answers to this question were collated to produce an average weighting for each of the competencies, as shown on the following table.

Comparative importance of skills for the Table



The areas of competence emphasised by Clerks as the most important should not raise many eyebrows. They were ranked in the following order: knowledge of Standing Orders and procedures; attention to detail; judgment; analysis; and decisiveness. Nor would many be surprised to hear that the least favoured quality for a Table officer would be a propensity to take risks. The next four competencies placed at the bottom of the table are interesting: financial management; computer literacy; coaching and training; and innovation. To some extent this result may represent generational differences

between Clerks and the sample of Table officers (who, on average, may be younger). On the other hand, it may indicate that, in responding to the question, Clerks did not give much weight to those skills not directly required in the Chamber.

A number of Clerks also volunteered other skills or competencies, not listed in the question, that are desirable in staff who perform Table duties. These were: anticipation; objectivity; diplomacy; determination; discretion; knowledge of precedent and history; and impassivity; as well as the capacity to sleep with one's eyes open, and the ability to laugh without showing it outwardly. Further qualities identified by workshop attendees included the mastery of a quirky set of rules and practices, a respect for history and tradition, and a talent for theatre! It was also noted that staff with the knowledge and abilities on paper to work at the Table may not necessarily be any good at it.

Previous experience

Clerks and Table officers were asked to look back to the parliamentary jobs they each had had before taking on a Table role, and to identify what of all the experiences and knowledge gained in those earlier roles had proved most useful for working at the Table.

As would be expected, one natural path to a Table role is through a procedural position associated with the Chamber and its proceedings. Six people previously worked on the preparation of Journals, Minutes or Votes and Proceedings, and another was Procedures Officer. This work is directly relevant in terms of gaining an understanding of House procedures and concepts, and becoming aware of precedents. A number also highlighted their work in other positions that allow people to observe first-hand how things happen in the House, most notably in the Bills and Papers Office (5 responses), but also the position of Serjeant-at-Arms (2 responses). One person arrived at the Table after doing Chamber duties in another, smaller legislature.

Committee work is the other important training ground. In fact, six Clerks cited such work as their primary source of experience prior to working at the Table, as did seven other Table officers. Committee work allows people to work closely with members, is 'a very valuable learning tool to develop procedural knowledge and research, analysis and writing skills', and provides 'a scaled-down version of the type of procedural and administrative experience necessary for Table work.'

Other relevant work experience cited in responses included: Executive

Officer in the Office of the Leader of the House, study of the workings of politics and Parliament, and work as a librarian in the Parliamentary Library, as well as experience in finance, personnel, and general administration. Further responses set out relevant desirable experience without referring to specific positions:

- The ability to navigate statutes and other authorities;
- Knowledge of Standing Orders, procedures and precedents, and awareness of the legislative process;
- All-round experience (including experience of life and people);
- Jobs that give knowledge of parliamentary privilege and *sub judice* rules, the role of parliamentary committees and 'internal party workings' (e.g. factions).

Potential deterrents

When Clerks and Table officers were asked about the worst aspects of work at the Table, the most common complaint was about long sitting hours and late nights (10 responses), which meant that 'your private life is often secondary'. Another sore point was being required to witness bad behaviour from members, such as during question time, as well as awful speeches and boring debates (6 responses). Several cited the pressure of working at the Table, with advice being tested immediately in such a public forum (the flipside of one of the most satisfying aspects of the role), and six people hated occasions when they realised their advice was incorrect.

People also felt frustrated by:

- Attempts by members to blame Chamber officers or involve them in political issues, without the ability to respond (4 responses), and members making unreasonable demands;
- Inability when in the House to put members straight on complex procedural issues (2 responses);
- 'Speed wobbles', when things start to move too quickly (2 responses);
- Difficulty keeping on top of work outside the Chamber (2 responses);
- The sense of unpredictability;
- From the perspective of a rostered Table officer not normally working in the Table Office and not having as regular stints in the Chamber as others, it can be difficult walking in 'cold'—especially when times are challenging.

Recruitment not generally a problem

Those working at the Table, therefore, identify a mix of desirable competencies and experience for the role, and point to certain aspects of the work that make it attractive or less attractive. When asked whether they had experienced any problems in recruiting Table staff, six Clerks answered this question with a straight 'No', with one adding that 'they all want to come and work for me.' Three others noted in their responses that their offices are small or experience limited staff turnover. One said that, 'Table staff are not so much recruited, as identified.' However, two Clerks expressed some concern about the number or quality of applicants or potential recruits, 'due to increased mobility of the work force, working hours and lack of interest in the work.'

Steps taken to assist in recruiting potential Table officers included convincing prospective recruits to 'continue soaking up experience', developing procedural knowledge among other staff through regular sharing of procedural information, and affiliation with a government graduate recruitment scheme. Other answers to this question indicated that there is a fine line between, on the one hand, increasing the exposure of staff to procedure so as to develop their interest in this core aspect of the business of the Clerk's Office, and, on the other hand, spreading Table experience too thinly.

Workforce trends

The survey did not seek information about the length of parliamentary service people had worked before they were appointed to perform Table duties. However, attendees at the workshops observed that wider workforce trends are also becoming apparent among the staff of New Zealand and Australian parliaments. Many Clerks had been working in their departments for twenty years or more before being appointed to that position, and in a number of instances this will continue to be the case in the future. However, overall longevity in the workplace may reduce as career changes become more frequent and the workforce becomes more mobile, as increasing value is placed on experience and skills that are found elsewhere than in the parliamentary environment, and as work arrangements become more flexible to take account of family commitments.

The traditionally low turnover of Table staff therefore may change, and it may become increasingly common for officers to be appointed who do not have the benefit of many years of parliamentary experience behind them. A succession plan that seeks to retain experienced candidates for senior

positions is useful, but learning and development practices may also need to cope with higher levels of staff turnover.

Preparing prospective new Table officers for the job

Getting thrown into the deep end

There were two schools of thought on how best to prepare people for working at the Table. One view, which tended to be that of the older hands, was that new Table officers should learn on the job, with limited formal preparation beforehand. This 'sink-or-swim' approach found less favour with those who had been more recently initiated into working in the Chamber, who generally would have preferred more in the way of structured training.

Both approaches have their merits, and each office in every legislature will find its own balance between them, depending on the make-up of its workforce. There is no substitute for experience, but not everything can be learnt by osmosis, particularly if a person has not spent much of his or her career in the parliamentary environment before working at the Table.

Exposure to Table procedures

As noted above, potential Table officers are well served by working in procedural jobs before starting in the Chamber, particularly the preparation of the Journals and other roles in the Table Office. As well as learning about House procedure, this would provide 'a better knowledge of the nuts and bolts of the workings of the department (as it relates to activities in the Chamber)'.

A further step in preparing staff for the Table would be to have limited exposure to work in the Chamber during sittings, possibly through an observer's seat. This would give people the opportunity to view the Clerks' roles and the workings of the Chamber from a different perspective. One advantage of this approach is that it would provide a painless way for people to gauge from the outset whether they were suited to a Chamber role.

There was much support for regular debriefing sessions to be held, at which staff who do not work in the Chamber could hear about how Table officers have dealt with issues, including highlights, lowlights, and how things could have been approached better. This would enable people to develop an interest in Table procedures that could lead them to consider working at the Table as a career path.

The survey asked Clerks for a picture of what exposure to Chamber procedural issues or debriefings is currently offered to non-Table officers.

Responses from eight Clerks referred to regular meetings involving non-Table staff, to discuss House business and procedure, both beforehand and in review. There are also occasional workshops on specific issues. Four referred to rosters for non-Table officers to work in the Chamber on tasks associated with the Table (such as the processing of papers). One Clerk proposed to increase the involvement of non-Table staff by giving them responsibility for bills in the committee of the whole House. Two Clerks stated that non-Table officers would not work at the Table within their jurisdictions.

Structured training

The survey invited people to reflect on the development opportunities that would assist in 'unlocking the "mysteries" of Chamber experience', by asking them to identify what training and opportunities they wished they themselves had had before starting work in the Chamber. Some responses called for direct training in preparation for Chamber work (6 responses), including tuition in principles underpinning the relevant Standing Orders and matters that most commonly arise in practice.

It was suggested that role-playing would enable an appreciation of the momentum and flow of activity in the House, or even that footage from debates could be used that shows particular procedural issues arising (a clip could be stopped at the time the Clerk-at-the-Table was asked for advice, and the staff being trained could be asked to advise, 'what should happen next'). Other items on the wish-list included:

- New staff each being aligned with an experienced mentor;
- More training in Chamber etiquette;
- A manual of procedure and practice relevant to work in the House.

While some of these ideas would have significant implications in terms of the work and resources required to prepare training materials, participants in the workshops certainly expressed strong interest in finding practical and imaginative ways to train new Table officers. There was general agreement that a staged approach to introducing new Table officers is the best: first allowing them to get used to being in the Chamber; then enabling them to participate under supervision; and, finally, giving them full responsibility.

Surviving once at the Table

Ongoing training and development

Most would agree that becoming a proficient Clerk-at-the-Table involves a steep learning curve whose gradient does not flatten for quite some time after starting the job. However, the survey showed that there is less agreement about the best way to approach that learning experience, when it sought views from people about what training would have been helpful for them once they had started out as Table officers. Again, responses varied between those who would not propose more than exposure to the work, and those who sought structured training.

Some people called for properly structured training in procedure, common issues, and unwritten practices and policies, with follow-up training and revision, including 'at-the-Table exercises' (4 responses). Another person pointed to professional development seminars (such as the ANZACATT seminar) as a good way to raise questions and possible scenarios. Four people emphasised the value of ongoing collegial exchanges of experience between Table officers, with two of those recommending regular debriefing sessions and forums.

On the other hand, several people stressed the need for Table officers to learn through direct exposure to work in the Chamber (6 responses). As one put it, 'nothing substitutes for first-hand experience'. Three of these responses spoke about gaining this experience under the guidance of a senior colleague with Chamber experience 'to guide and fast-track their learning'. The assigning of mentors in this way would avoid the need for an intensive course, which would be time-consuming for busy senior staff to organise and may overwhelm new staff anyhow. One further response suggested that a good way to learn is through greater exposure to other parliaments.

It became apparent that the more hands-on learning approach reflects the current state of play in most member legislatures when Clerks were asked what specific training they offered Table officers. Five Clerks stated that much of the training for Table officers is simply 'on the job', and one Clerk reported that there is no specifically tailored training for Table officers in that jurisdiction. A further response referred to experience sitting adjacent to the Deputy Clerk's seat in the Chamber. Two noted that they held regular debriefing sessions, and one spoke of training sessions with experienced officers. One other response described how staff are rotated regularly through each of three Chamber positions. Of course, the Clerks were not averse to structured training in more general aspects of parliamentary law and proce-

dure: six emphasised opportunities offered through inter-parliamentary professional development attachments, seminars and courses, and three referred to formal courses and study at outside institutions.

Clocking up hours at the Table

Perhaps, then, the most difficult scenario for a new Table officer would be to approach the Table with little structured training, and also to be given only sporadic opportunities to increase his or her experience in the Chamber. However, most Table officers have other jobs to juggle, and in reality many do just the odd stint at the Table. The survey asked each person to guess, in percentage terms, how much of their time is spent in relation to each of: (a) duties in the Chamber (including preparation and follow-up work); (b) support services to the Chamber; (c) management and administration; and (d) other activities.

Responses to this question were, of course, very rough estimates, but were interesting all the same. While Clerks regarded themselves as working on sitting days primarily in the Chamber and in work that supports the Chamber, the lion's share (57 percent) of their time over a year is spent on management and administration—reflecting their position as chief executive officers. Arrangements (or perceptions) varied significantly between individuals: some estimated that barely 20 percent of their time was spent on Chamber-related work, and another placed that figure at 90 percent.

Overall, the time of other Table officers was more evenly spread between Chamber duties and support services (36 percent), management and administration (32 percent), and other duties (32 percent). These figures also varied widely, on account of the many different roles and arrangements of those who work at the Table. While some were primarily focused on providing services to the Chamber, others felt that their time in the Chamber forms an insignificant proportion of their time over the year (6 people estimated that Chamber-related work occupied 10 percent or less of their time). These numbers suggest that some Table officers are valiantly 'filling in' without much in the way of regular experience of being in the firing line.

Clerks were asked what other roles are performed by Table officers when they are not in the Chamber. Many of these roles are Chamber-related or are naturally associated with the work of the House, such as the preparation of the notice paper, scrutinising questions on notice and dealing with answers, recording or drafting of Chamber minutes, administration of bills and papers, tracking of amendments in the committee of the whole House, and specific project and procedural support to Clerks (it should be noted that a

number of these roles are actually performed at the Table in some legislatures—see the Appendix). However, a number of Clerks specified that Table officers also have responsibilities in the committee office (7 responses), and corporate support and administration (3), and some Table officers identified their positions as significantly focused on such roles as writing, research and publications, Serjeant-at-Arms, parliamentary education, delegations, statutory functions, tours and visits, and running a Youth Parliament. After all, as two Clerks noted, Table officers could be drawn from any part of the office, as long as they have general parliamentary experience and aptitude to perform Table duties.

Survival tips

One of the outcomes from the survey that was of immediate practical use to Table officers was the wealth of advice generated by the question, 'If you could give one tip to someone who has been newly appointed to a Table role, what would it be?' The advice most frequently given by both Clerks and other Table officers was to anticipate issues and prepare carefully before going into the Chamber (8 responses). Four Clerks emphasised the need to be impartial, and to avoid being drawn into the politics. Other tips frequently given would be, 'Don't give advice you're not sure about', and 'Know your Standing Orders and procedures' (5 and 6 responses respectively). Table officers would make repeated calls to newcomers along the lines of, 'Stay calm!', 'Don't panic!', or 'Don't allow yourself to be rushed' (5 responses).

Other pieces of advice tendered included (in abbreviated form):

Preparation

- First familiarise yourself with the issues that most commonly arise in practice, as you will often not have time to look up Standing Orders and Sessional Orders.
- Don't be afraid to ask those around you for advice on procedural and other matters (2 responses).
- Find a mentor with whom you can have regular question and answer sessions, even about the basics.
- Keep notes about new procedures or unusual events.
- Take an interest in what is happening across the whole parliamentary environment—and not just in your immediate area of responsibility.
- Spend as much time in the Chamber as possible (2 responses).

When actually working at the Table

- Always back your own judgement (2 responses).

- Be courteous and helpful, and treat the members with respect (2 responses).
- Get to know the members (2 responses).
- Listen carefully (2 responses).
- When in doubt, always apply logic.
- Don't smile or laugh at jokes: you are sure to offend someone.
- Take the time to listen, and then take a moment to think of the answer.

Avoid the equipment blues

- Have the operation of the clocks worked out!
- Make sure you have the right chair and equipment.

And, finally, some general wisdom

- Knowledge is useless without analysis, and vice versa.
- Observe as much as possible and note all.

Is there life after the Table?

The skills and experience gleaned from working at the Table can equip people for other career paths. Clerks were asked to recall, for any of their Table officers who had not made 'life at the Table' their whole careers, what other roles or jobs they had gone on to. Four responses indicated that staff had moved on from work at the Table to do parliamentary committee work, and four reported that staff had gone into the public service. Three noted that senior staff had shifted into other parliamentary administration roles that do not include Table duties.

Other jobs that Table officers had left for included: Hansard; international parliamentary relations; Federal Magistrate; political adviser; work at another Parliament; Auditor-General's office; Royal commission staff; private industry; marketing manager; private tax consultant. In two cases the answer given was 'not applicable', as no Chamber staff had left in recent memory.

Conclusion

While it is difficult to derive conclusions from the specific data gathered by the survey (because, as noted at the outset, it was hardly scientific in its scope or approach), some strong themes were emphasised by the attendees of the two workshops. In particular, as potential Clerks-at-the-Table no longer necessarily have years of experience behind them, there is more of a case for a structured approach to professional development for Table officers, both

before and after appointment. Table officers with less 'on-the-job' experience will need to assimilate knowledge in a shorter time period, and are more likely to depend on records of practices and precedents in their own legislatures. There was wide support for a staged approach to introducing new staff to Table duties and responsibilities, and for regular debriefing sessions about issues arising at the Table. Finally, it may be helpful to create further opportunities for staff to gain experience in working at the Table.

APPENDIX: MANY AND VARIED TABLE DUTIES

Clerks were asked to indicate which duties are performed in the Chamber itself on sitting days. These are set out in the table below, in descending order. For each activity, the numbers in the right column show how many Clerks indicated that that activity is performed at the Table in their respective Chambers. The maximum score for any activity is twelve (as that is the number of Clerks who responded).

'Giving procedural advice' was not specified as an option in the survey, as it was assumed that this occurs everywhere. Note that some discrepancies may be due to the varied ways in which work is described in different parliaments.

Checking amendments for admissibility	12
Preparing Chamber minutes	11
Timing debates	11
Drafting motions	10
Preparing running sheet of questions for Committee/consideration in detail	10
Using a computer/laptop	10
Preparing Votes & Proceedings/Journals/Minutes of Proceedings	9
Preparing the Notice/Order Paper, including editing notices of motion	8
Proofreading the Notice/Order Paper and clearing for publication	8
Proofreading the Question Paper and clearing for publication	7
Proofreading Votes & Proceedings/Journals/Minutes of Proceedings and clearing for publication	7
Preparing the Question Paper, including editing the questions	6
Drafting amendments	5
Reading bills to check requirements for appropriation messages and/or absolute majorities	5

Updating online information about bills/releasing bill prints online	2
Adding captions/rolling text to broadcast vision	1
Drafting bills	1
Preparing call/speaking lists	1

MISCELLANEOUS NOTES

ANTIGUA AND BARBUDA

The Legislature of Antigua and Barbuda passed three Bills in 2004: the Integrity in Public Life Act 2004; the Prevention of Corruption Act 2004, and the Freedom of Information Act 2004.

AUSTRALIA

House of Representatives

General Election and new session of Parliament

The 40th session of the Australian Parliament ended in August 2004 and a general election for the House of Representatives and half the Senate was held on 9 October. The Coalition Government (Liberal Party of Australia and National Party) was re-elected for a fourth term under Prime Minister Howard. In December there was a change of leadership of the Opposition (Australian Labor Party) when the Hon Kim Beazley became leader in place of Mr Mark Latham, who retired because of ill health.

The 41st session of the Parliament commenced on 16 November 2004. The Hon David Hawker was elected Speaker. Revised standing orders came into effect on the first day of sitting (see section on standing orders).

5th Edition of 'House of Representatives Practice'

The adoption by the House of revised and reorganised standing orders meant that a new edition of *House of Representatives Practice* is necessary to ensure that all references to the standing orders have the correct number and the text relating to the standing orders is updated. The opportunity was taken to review and revise the document. It is expected that the new edition will be available during the Winter/Budget sittings (May/June 2005).

Amendment to the 'Anticipation Rule'

In December 2004, following a series of points of order on the application of the 'anticipation rule', the Speaker asked the Procedure Committee to consider the operation of the rule. The Procedure Committee recommended that the relevant standing orders be replaced by sessional orders limiting the

application of the rule. The House adopted the proposed changes on 17 March 2005. For the remainder of the session the rule will apply only during debates (i.e. when there is a question before the House). In particular it will no longer apply during Question Time. In addition the rule will only apply to subjects expected to be debated on the same or next sitting day and should not be applied to prevent incidental reference to a subject. The object of the trial is to discourage the use of the standing orders on anticipation as a tactic for stifling debate, while retaining the rule as part of a series of standing orders which support the effective management of House business.

Senate

Senate inquiries and bicameralism

Before the 2005 sittings began there were demands for a Senate inquiry into allegations by an independent member of the House of Representatives that he had been offered inducements by the Government not to contest his seat in the House at the 2004 election. The demands indicated again that such an inquiry is seen as the answer to all evils.

There were, however, barriers in the way of such an inquiry. Most of the principal players in the matter were members of the House of Representatives, and two of them had made statements in the House about the matter. It is a long-established parliamentary convention, strictly observed in the past by the Senate, that one House does not:

- Inquire into the conduct of members of the other House;
- Seek to compel members of the other House to give evidence about any matter;
- Inquire into proceedings in the other House.

Even if the member agreed to give evidence voluntarily, the Senate or its committees could not properly inquire into his conduct as a member, or require another member to give his side of the story, or examine their statements in the House of Representatives. It is well established that the Senate may inquire into the conduct of ministers as ministers, but that does not set aside the stated limitations, and even if it could be said that the alleged inducement was offered in some ministerial capacity, that would not get any inquiry very far. The only place in which an inquiry could be conducted would be the House of Representatives, but no one expected that the Government would allow such an inquiry.

In the event, the matter developed into a general concern about alleged

misuse of government grants for regional development, and questions relating to the administration of such grants were referred to the Senate Finance and Public Administration References Committee. The accusing member gave evidence voluntarily, and some of the questioning of him certainly infringed the stated limitations. It was hoped, however, that the committee would confine its report to the administration of grants.

Commercial confidentiality

The Senate passed a resolution in October 2003 declaring that the Senate and its committees shall not entertain a claim of commercial confidentiality unless the claim is made by a minister and accompanied by a supporting statement. The resolution specifies preconditions for a committee to consider a claim. It is for a committee to determine whether those preconditions have been met in committee proceedings. If the preconditions have been met, the committee may then consider the claim. It is open to a committee to reject a claim of commercial confidentiality even if the preconditions for consideration of the claim have been met. It is for the committee to determine whether the claim should be accepted and whether a question should be pressed. A refusal to answer a pressed question is reported to the Senate.

A question arose in relation to the application of this order to statutory bodies or companies which have such a degree of independence from ministerial control that it would be inappropriate for claims by such bodies to be made by ministers. It was advised that if a committee is satisfied that there is such a degree of independence from ministerial control that involvement of a minister would not be appropriate, the requirement for a minister to make the claim could be regarded as inoperative, but that the other requirement of the order, that a claim be supported by a statement of the kind specified, remains operative. This interpretation preserves the intention of the Senate in the application of the order to such bodies.

'Children overboard' returns

The 'children overboard' affair (see *The Table,* vol.71, pp 13-71) returned to haunt the Senate in late 2004.

A select committee of five senators was appointed to inquire into statements by a former Government adviser and others that the Prime Minister was told that asylum seekers had not thrown their children overboard, contrary to his subsequent statements just before the 2001 general election.

The select committee reported in December on the light that these state-

ments cast on what the Prime Minister knew, and when he knew it, about the falsity of the 'children overboard' claims. Unsurprisingly, the non-Government committee members thought that the evidence indicated that the Prime Minister knew more than he admitted, while the Government members found the evidence unconvincing. Considerably more information about the handling of the matter, however, was revealed, ensuring that it will be recorded as one of the notorious affairs of Australian political history.

Orders for documents: the federal dimension

In making orders for the production of documents, the Senate has encountered several cases in which, when the documents in question belong to state and territory governments as well as the federal Government, the federal Government will not release them without the approval of all state and territory governments, and not all state and territory governments agree to release them. On this basis the federal Government refuses to provide them to the Senate. No solution to this problem has yet been found, other than political pressure on the governments concerned.

Orders for documents and the internet

A Senate order required the tabling of exchanges of correspondence relating to an Australian/United States Free Trade Agreement. In a statement the Government indicated that the documents were available on the Internet. A senator asked the Deputy President of the Senate whether publication on the Internet was the equivalent of tabling in the Senate, and was told that it was not, but did not pursue the matter further. The Senate has made orders for the publication of documents on the Internet, but a publication on the Internet in response to an order for the tabling of a document would not be a publication pursuant to an order of the Senate within the meaning of the Parliamentary Privileges Act, and therefore would not attract parliamentary privilege. Presumably this did not matter in this case.

Orders for documents to a committee

Two orders for documents were made on the Australian Competition and Consumer Commission, an independent statutory body. There is a considerable line of precedents of orders requiring that body to produce reports to the Senate. One of the orders provided that the required document be produced to a committee on a confidential basis. There are also several precedents of such orders.

Ministerial accountability

The report on estimates hearings by one of the standing committees in March 2005 referred to the refusal by an officer and a minister to answer a question at an estimates hearing without articulating any public interest ground for that refusal. The Opposition reservation attached to the report referred to relevant past resolutions of the Senate, going back to 1971, and listed the following principles drawn from these resolutions:

a) Ministers and officers do not have a discretion to decline to answer relevant questions;
b) Any refusal to answer a relevant question should be made by a minister on the basis of a properly advanced claim of public interest immunity based on specified grounds; and
c) It is for the committee in the first instance and the Senate ultimately to consider whether a properly advanced claim of public interest immunity is to be sustained.

This was reinforced in debate on the report. It is expected that this matter will be watched at the next round of estimates hearings in May 2005 (see also the article in this volume, 'Estimates Hearings: the Grand Inquisition').

Right of reply

There was a reminder that the Senate's right of reply procedures apply to estimates hearings, as well as other committee proceedings, and to all persons regardless of their status. The heads of the Australian Security and Intelligence Organisation and the Australian Federal Police made allegations in estimates hearings that a former Guantanamo Bay prisoner was associated with terrorist organisations. The committee duly wrote to the person to invite him to make a written response if he chose to do so.

Shortest committee inquiry

A copyright bill was the subject of the shortest recorded reference to a Senate committee. On the recommendation of the Selection of Bills Committee on 6 December 2004, it was referred to the Legal and Constitutional Legislation Committee for report by the *next day*. Witnesses were heard by the committee that night, and the report duly presented. It was a complex bill which gave rise to considerable debate, but was passed on 7 December.

Financial control

The Senate's attention was directed to two Auditor-General's reports, one on special appropriations and one on investments by government agencies, both disclosing widespread illegalities, lack of appropriate information and absence of accountability and control. The report on special (i.e. continuing) appropriations verified the traditional parliamentary concern with these appropriations. The reports were the subject of debate in the Senate and questioning in the estimates hearings, particularly of the Department of Finance and Administration, which promised that controls and scrutiny would be improved.

Bills revived

Several bills provided demonstrations of the principle that a bill which has been rejected by the Senate may be revived regardless of how long it has been 'dead'.

The Workplace Relations Amendment (Codifying Contempt Offences) Bill had been negatived at the third reading in March 2004 when amendments moved by the Democrats were not accepted. In June the bill was revived as a result of an agreement between the Government and the Democrats. The bill was resumed as previously amended in committee, but returned to the committee stage to allow further amendments. Extensive amendments moved by the Democrats and the Government were then adopted, and the bill finally passed. Included amongst the amendments was a provision that guidelines to be made under the bill for it to operate are to be subject to disallowance by the Senate and are not to commence until the disallowance period has passed, giving the Senate virtual control of the future operation of the legislation. Other safeguards were included in the amendments.

The National Health Amendment (Pharmaceutical Benefits—Budget Measures) Bill, which had been negatived at the third reading in March 2003, and rejected on an earlier occasion, was revived and passed as a result of the Opposition deciding to support it.

The Marriage Amendment Bill 2004, having been negatived at the first reading in June 2004, was revived in August by means of a motion on notice for the first reading of the bill to be put again.

Senate budget

In 2003 the Senate was persuaded to agree to a recommendation by a management review that the three joint parliamentary departments, the Parliamentary Library, Hansard (transcripts and broadcasting) and Joint

House (building maintenance and works) should be amalgamated. The review promised great financial savings from this measure.

In spite of statements by the President of the Senate and the Clerk at the estimates hearings that any savings attributable to the amalgamation of the three joint departments should be found in the new Department of Parliamentary Services, the Government attempted to impose a cut in the Senate Department's budget to reflect the supposed savings of the amalgamation. The Senate Appropriations and Staffing Committee, however, recommended to the Senate a scheme for a rearrangement of funding, adopted by the President on the recommendation of the Senate Department, whereby the cuts would be transferred to the joint department and the Senate Department's budget would not be affected. This arrangement involved the transfer of funds for security formerly held by the Senate Department and paid to the joint department under a purchaser-provider system.

The Appropriations and Staffing Committee also recommended that additional steps be taken to ensure that this did not reduce the ability of the Senate and senators to oversight the security system. The committee suggested to the Senate that its terms of reference be amended to provide it with the explicit capacity to scrutinise security funding and administration, and that an interdepartmental Security Management Board be put on a statutory basis. These recommendations were subsequently adopted by the Senate. This action by the Senate, the Appropriations and Staffing Committee and the President also prevented the budget of the House of Representatives Department being cut.

Later in estimates hearings it was discovered that the savings from the amalgamation of the joint departments would not remotely approach the figure claimed by the management review and adopted by the Government.

Election prorogation: extraordinary events

Extraordinary events accompanied the prorogation for the 2004 federal general election. The Prime Minister announced on Sunday 29 August that the Parliament would be prorogued and the House of Representatives dissolved on the following Tuesday afternoon. The sittings of the House of Representatives which were to commence on 30 August were then dispensed with by the Speaker. The Senate, however, met in accordance with its resolution setting its days of meeting for the rest of the year. It is not clear whether this is what the Government intended, and there were various theories about it. One, referred to by a senator in debate, was that the Government simply

did not realise that it could not dispense with the sittings of the Senate by the same kind of *fiat* exercised by the Speaker. Even if the Government had gained support of other parties to do this, it was not possible: the provisions in Senate standing order 55, whereby the Senate may be recalled by a majority of senators, provides only for the calling of a meeting not otherwise scheduled, and does not extend to cancelling a scheduled meeting. Another theory, based on subsequent statements by the Prime Minister, was that he wished to demonstrate that he was not attempting to avoid the appointment of a Senate committee to inquire into the latest revelations about the children overboard affair (see above).

Having appointed that committee, passed three relatively uncontentious bills, and transacted some other business, the Senate adjourned to a date to be fixed, this resolution superseding the earlier resolution fixing the sitting days.

Party majority equals government control?

In the 2004 general election the Liberal-National Party Coalition Government gained a majority of one in the Senate, taking effect when the Senate places turn over on 1 July 2005. There followed much talk of 'Government control'. The question is whether a Government party majority amounts to Government control.

Government parties have held majorities in the Senate for approximately 47 of its 104 years, but it may accurately be said that there was never 'Government control' of the Senate. Labor governments had Senate party majorities for approximately ten years, but even with the tight party discipline in the Labor Party, those governments could not always control their senators. On one occasion the vote of the Labor Party President of the Senate brought about a defeat of the Government. Conservative governments had party majorities in the Senate for well over 30 years, but were notoriously unable to control their senators.

The last Government to hold a party majority in the Senate was the Fraser Coalition Government from 1976 to 1981. Within a few months of that Government taking office, it was defeated in the Senate, on a social security bill in relation to funeral benefits for pensioners, by six Coalition senators voting against it. It was widely stated at the time that those senators were sending a message to their Prime Minister not to take them for granted. Thereafter the Government appeared anxious not to do so. The Government was defeated in the Senate on several occasions afterwards while it still held a party majority, with up to nine Coalition senators voting against it.

It is generally believed that party discipline has greatly strengthened since that time, particularly in the Coalition parties. Recently Senator Hill, the Leader of the Government in the Senate, was quoted as saying that the Coalition party majority did not detract from the independence of the Senate. As he was one of the 'rebels' of the Fraser era, perhaps he knows something.

Attention has so far focused on the Government being able to pass legislation which was not passed by the Senate in previous parliaments. From an institutional parliamentary perspective, however, the most interesting development to observe will be any attempts by the Government to dismantle the many accountability mechanisms put in place by the Senate over long periods of lack of Government control. Governments have nearly always resisted new accountability mechanisms, and have sought to weaken or dismantle them when opportunity offered. It will be interesting to see whether such attempts are made, and whether they are successful.

Particularly interesting will be any attempts to change the electoral law applying to the Senate to entrench a Government majority or remove minority parties, or to dilute the Senate committee system.

Future contributions to this journal will report results.

Australian Capital Territory

Election for Sixth Assembly

The election for the Sixth Legislative Assembly was held on Saturday 16 October 2004, in accordance with the Electoral Act, exactly one week after the Federal Election had been held. The Stanhope Labor Government increased its representation gaining 9 seats, the Opposition claimed 7 seats, and the Greens claimed the remaining seat (17 seats in total). For the first time in its short history, one party had claimed majority government for the Territory.

At its first meeting on 4 November (the Self Government Act requires the Assembly to meet no later than one week after the declaration of the polls), the Assembly elected unopposed Mr Wayne Berry, MLA as Speaker, and elected Mr Jon Stanhope as Chief Minister by ten votes to seven.

The Assembly sat for one further week in 2004 (5-7 December), and the early signs of changes from the practices of minority governments began to show. These included:

- A reduction in the number of Assembly committees and placing the Green member on the two committees that she didn't wish to be on;

- Amending the standing orders to provide that the Assembly would not sit later than 6.30 pm on any sitting day;
- Refusing leave for extensions of time for speeches;
- Provision for 6 Friday morning sittings to deal only with Government legislation.

Presentation of Mace

On Tuesday 3 August 2004 the Speaker made a statement in relation to the presentation of the Mace, which was a gift by the Australian Region of the Commonwealth Parliamentary Association, and which he had received whilst attending the Presiding Officers and Clerks' Conference in Melbourne in July.

The design of the Mace was to be a blend of traditional symbolism and contemporary lines and material representing the authority of the Speaker and the modern, forward looking feel of today's ACT Legislative Assembly.

The body of the Mace is divided into three sections, representing the 'Y' plan of Burley Griffin's planned city. The spine is made of stainless steel and the locally sourced Yellow Box timber used on the Mace is not a traditional cabinet making timber but was selected by Designcraft, the local company who designed and manufactured the Mace, to compliment the joinery detail within the Legislative Assembly Chamber itself. The detailed carving of the *Wahlenbergia gloriosa*, more commonly known as the Royal Bluebell, was undertaken by local craftsman Myles Gostelow.

Physically the Mace is 95cm long and weighs approximately 8.5 kgs.

Certified Agreement for Members' Staff

On 16 November 2004 the Australian Industrial Relations Commission certified the Legislative Assembly Members' Staff Certified Agreement 2004-07. The agreement replaced an earlier agreement (the first of its kind in Assembly's history) that, together with a specific Award covering Members' staff, had been certified in December 2003.

The agreement provides a unique classification structure and associated work level standards, pay scales and conditions of service for those staff that work for Ministers and Members of the Legislative Assembly.

Citizen's Right of Reply

On Thursday 19 August 2004 the Standing Committee on Administration and Procedure's report was tabled in the Assembly. The report dealt with a complaint raised by the husband of one of the Members of the Legislative

Assembly and dealt with comments made by a Minister during Question Time earlier that year about the individual's cleaning company. The Committee recommended that no right of reply be granted, and so when the report was presented, one of the Committee's Members moved that the Committee's recommendation be agreed to. An opposition member moved an amendment to the effect that the Assembly reject the recommendation, and that the matter be again sent back to the Committee and the Committee negotiate with the individual concerned about a form of words that could be included as a citizen's right of reply. The amendment was defeated after a division, and the recommendation of the committee was duly agreed to, after some fairly acrimonious debate.

New South Wales Legislative Assembly

Policy on the acceptance and registration of gifts

In December 2003 the Speaker approved a policy on the acceptance and registration of gifts for the Legislative Assembly. The policy provides guidance about offers of gifts or benefits to employees and office holders in their capacity as representatives of the Legislative Assembly.[1] This includes any member who is a leader or a member of a parliamentary delegation or a member hosting a delegation visiting Sydney.

The guidelines on the acceptance of gifts and/or benefits are designed to protect the reputation of the Legislative Assembly and the individual by providing protection from accusations of bribery and corruption. Guidelines are also provided on the giving of official gifts on behalf of the Legislative Assembly.

In brief, the features of the policy are as follows:

- The policy complements the provisions relating to the receipt of gifts and benefits in the Legislative Assembly's Code of Conduct for staff and in the Legislative Assembly Asset Policy. In developing this policy, guidance was provided by the Independent Commission Against Corruption publication, *Gifts, benefits or just plain bribes? Guidelines for public sector agencies and officials* (1999), and comparisons were made with policies regarding the acceptance of gifts and/or benefits operating in other public sector agencies and Legislatures in Australia.

[1] See Part 2 of Schedule 1 of the *Parliamentary Remuneration Act 1989*. Recognised office holders include the Speaker, Deputy Speaker, Chairman of Committees and committee chairmen. For purposes of this policy, the term does not include party leaders, whips or parliamentary secretaries.

- In relation to the acceptance of gifts, there is a general prohibition on staff using their position to seek offers of gifts and/or benefits; members and staff are not prevented from accepting gifts that are trivial or of nominal value. The Independent Commission Against Corruption considers that gifts of nominal value include such items as: inexpensive pens; key rings; T-shirts; or a moderate amount of alcohol such as a bottle of wine. Gifts/benefits that are deemed to be more than nominal include: tickets to sporting events or other entertainment; discounted products for personal use; use of facilities such as gyms and holiday homes; and free discounted travel. Nominal or token gifts do not have any significant monetary value and are inconsequential or trivial. This definition has been applied in the policy. Gifts are also allowed to be accepted where nonacceptance might be offensive, or where the gifts constitute moderate or casual acts of hospitality.
- In the case of members, gifts over $500, which is the figure in the Members' Disclosure Regulations, and in the case of staff, gifts over $100, which is the amount in the Department's Asset Policy, are to be recorded in a Gifts Register kept in the Clerk's Office. This is in addition to the requirement that they be recorded in the Asset Register.
- The Gifts Register requires the recording of certain specified details such as: the date the gift or benefit was received; a description of the gift/benefit; the name of the person who received the gift/benefit and the name and organisation of the person whom the gift was from; and any comments or explanations. Members and staff may retain gifts below the above-mentioned amounts without formal approval so long as no apparent conflict of interest exists.
- In relation to the giving of gifts, the policy provides guidelines to help ensure that the gifts/benefits are only given for official reasons. The nature of the gift given, if above the thresholds already mentioned, must be recorded in the Gifts Register.

The mini-budget

On 6 April 2004 the Government took the opportunity to announce a number of financial and taxation measures prior to the handing down of the Budget through the means of a mini-budget statement by the then Treasurer. This was in addition to the annual Budget, which was delivered in accordance with the usual practice on Tuesday 22 June.

The Treasurer, at the time, was a member of the Legislative Council. For this reason a resolution was passed by the Legislative Assembly requesting

the Treasurer to address the House and a message advising the Legislative Council of this request was sent. The resolution also provided for the House to sit at 11.00 am on a Tuesday, earlier than the time prescribed in the Routine of Business.

Unlike the annual Budget, where all members are provided with an opportunity to speak on the Appropriation Bills, members were not given a chance to speak on the mini-budget until the related legislation was introduced to the House in May 2004. However, the House did pass a resolution to enable the Leader of the Opposition to reply to the mini-budget statement.

This lack of opportunity to speak to the mini-budget did not prevent members from raising issues in relation to it during private members' statements or through the asking of questions in the House.

Liquor Amendment (Parliamentary Precincts) Bill

Following a number of concerns raised in the House about responsible service of alcohol in Parliament House, a bill was introduced to ensure that harm minimisation measures applied to the sale and service of alcohol in the parliamentary precincts.

The legislation endorses harm minimisation requirements that are already applied in the precincts. For instance, Food and Beverage staff have been trained in the responsible service of alcohol and signage is in place to inform patrons that responsible service of alcohol applies.

Historically, parliamentary precincts have been exempt from the liquor laws, not just in New South Wales but also across all States of Australia. In his second reading speech the Minister for Gaming and Racing noted that this exemption dated back to at least the early 1900s.

The legislation, which will bring the New South Wales Parliament into line with current harm minimisation practices such as the responsible service of alcohol, will enable the Governor to issue a licence authorising the sale of liquor within the parliamentary precincts. This type of licence, which is referred to as a Governor's Licence, has already been granted to certain Crown facilities including the Sydney Opera House, the Art Gallery of New South Wales and the Royal Botanic gardens and Domain.

This licence will provide for the Governor to impose conditions in respect of Parliament House. Such conditions may, for example, delineate certain areas as licensed premises in which liquor may be served.

The legislation has amended the *Parliamentary Precincts Act 1997* to enable the Presiding Officers to enter into a memorandum of understanding with the Director of Liquor and Gaming, the chief regulatory officer in the

Department of Gaming and Racing. This agreement will enable the Government liquor law inspectors, who undertake a range of compliance related functions under the Director's delegation, to enter the parliamentary precincts for the purposes of ensuring the Parliament is complying with the liquor laws.

The legislation was passed by the Parliament during the 2004 autumn session and assented to on 6 July 2004, although it is yet to be proclaimed to commence. Discussions are currently taking place to ensure that appropriate arrangements are in place prior to the resumption of the sittings in late August.

Committees website redesign project

As part of a project to completely redesign the Parliament's web site, a steering committee, consisting of both Legislative Assembly and Legislative Council committee staff, was appointed in January 2004 to review the Committees section of the website.

This report documents the key problems that were identified with the old website, which was replaced with a new design in the second half of 2004, and some features of the redesigned website.

The following problems were identified with the old website:

- The layout was cumbersome. This was due, in large part, to the fact that much of the text had been grouped together into a series of long lists (see Fig. 1). The steering committee found that the layout was somewhat inaccessible to unfamiliar users, who often experienced difficulties in navigating the website and locating specific items (e.g. committee reports, inquiry details etc).
- The search function on the 'Parliamentary Committees Search' page was problematic, as conducting searches by entering text in the 'Text Anywhere' field often returned irrelevant results.
- Web page URLs (Uniform Resource Locators) were too long and complicated as a result of them being extensions of the central Parliament site URL. For example, the Committees front page URL http://www.parliament.nsw.gov.au/prod/web/phweb.nsf/frames/committees?open&tab=committees. This was problematic because the URLs were not readily identifiable as those belonging to Committee websites and the task of referring clients to Committee pages via their URLs was made more difficult.
- The archives section of previous reports was confusing and large reports were difficult to download.

The layout of the redesigned website has been improved, both from an aesthetic point of view and with respect to the site's overall user-friendliness. For example, the redesigned website presents the majority of its data in a series of aesthetically pleasing and user-friendly tables, rather than in lists. The improved layout also means that the links to the other areas of the Committees website (e.g. the 'Reports' and 'Inquiries' sections) are now clearly discernible, even for first-time users, making for easy navigation of the site (see Fig. 2).

Accessing specific committee pages has been made easier by users now being able to sort Committees by their type (e.g. Assembly, Joint and Council). Similarly, users can sort current Committee inquiries (by Committee type, inquiry status and Committee) and Committee reports tabled this Parliament (by date, report title, Committee and inquiry).

The redesigned website features an improved search function on the 'Parliamentary Committees' front page which is both more user-friendly and will yield more accurate and relevant search results.

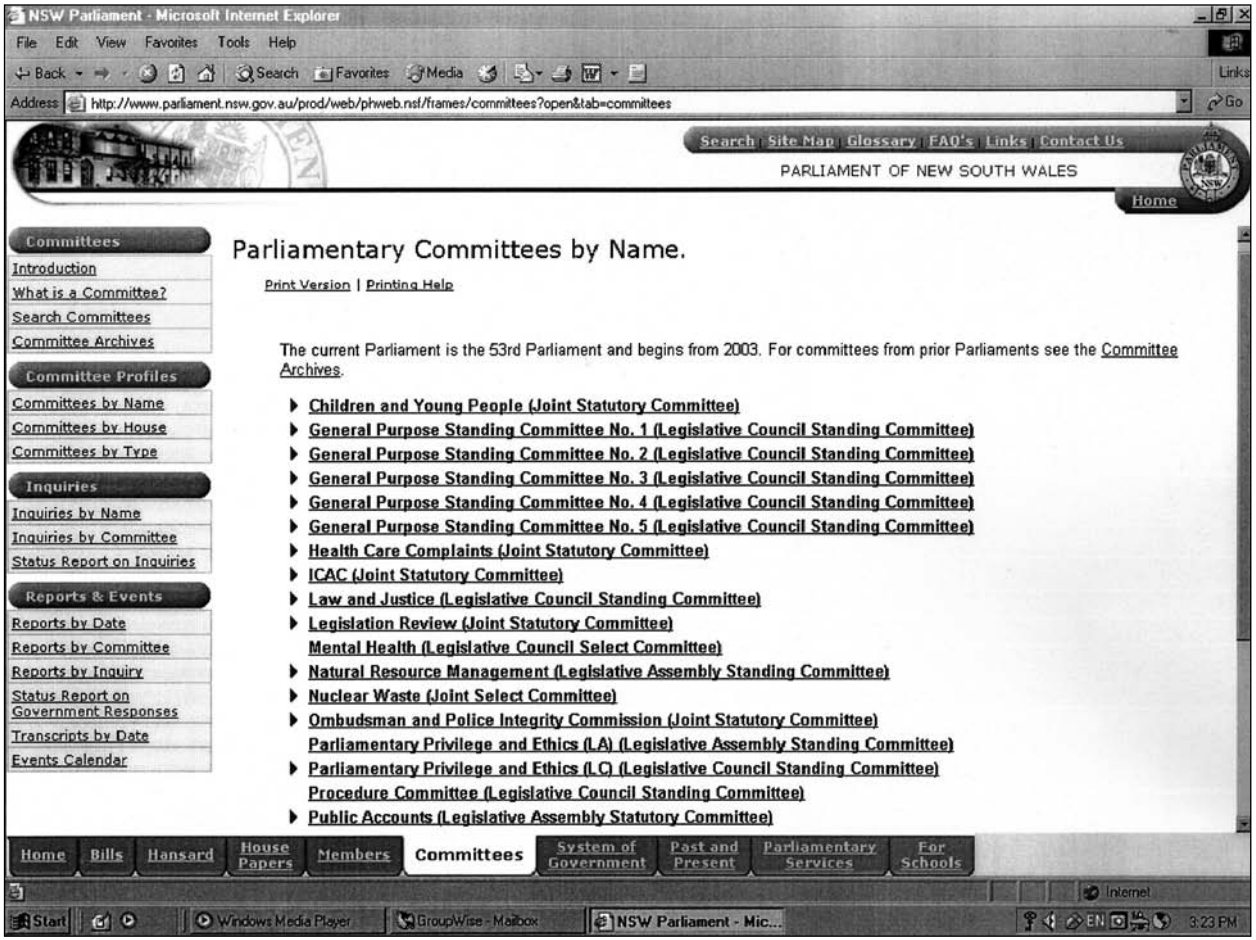
The 'Parliamentary Committees' front page now features up-to-date information on hearings, submissions and reports, as well as a calendar which highlights various Committee events such as hearing dates, dates on which submissions close and due dates for reports. This can be used as a key performance indicator in terms of making information available to the public in a timely manner. In addition, there is a clearly discernable link to a Parliamentary Archives site for users wishing to locate Committee records prior to 1999.

With the new system in place the Committees website now has its own URLs, distinct from those of the central Parliament website. This means that all of the Committees web pages now have shorter URLs, thereby solving the problems associated with longer web addresses.

The layout of the new Committees website has been designed in consultation with the Parliament Website Redesign Steering Committee. As a result, the layout of the Committees site is consistent with the design concept which has been utilised in the redesign of the wider Parliamentary website. Usability testing by a focus group of 15 testers (comprising staff and Members) took place prior to the new website going live.

New Committees—Joint Standing Committee on Electoral Matters

The Joint Standing Committee on Electoral Matters was established by a resolution of both Houses, which was agreed to in September 2004. It has been appointed to inquire into and report upon such matters as may be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PARLIAMENT OF NEW SOUTH WALES
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Committees
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Status Report on Inquiries
Reports & Events
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Reports by Committee
Reports by Inquiry
Status Report on Government Responses
Transcripts by Date
Events Calendar
Parliamentary Committees by Name.
Print Version | Printing Help
The current Parliament is the 53rd Parliament and begins from 2003. For committees from prior Parliaments see the Committee Archives.
Children and Young People (Joint Statutory Committee)
General Purpose Standing Committee No. 1 (Legislative Council Standing Committee)
General Purpose Standing Committee No. 2 (Legislative Council Standing Committee)
General Purpose Standing Committee No. 3 (Legislative Council Standing Committee)
General Purpose Standing Committee No. 4 (Legislative Council Standing Committee)
General Purpose Standing Committee No. 5 (Legislative Council Standing Committee)
Health Care Complaints (Joint Statutory Committee)
ICAC (Joint Statutory Committee)
Law and Justice (Legislative Council Standing Committee)
Legislation Review (Joint Statutory Committee)
Mental Health (Legislative Council Select Committee)
Natural Resource Management (Legislative Assembly Standing Committee)
Nuclear Waste (Joint Select Committee)
Ombudsman and Police Integrity Commission (Joint Statutory Committee)
Parliamentary Privilege and Ethics (LA) (Legislative Assembly Standing Committee)
Parliamentary Privilege and Ethics (LC) (Legislative Council Standing Committee)
Procedure Committee (Legislative Council Standing Committee)
Public Accounts (Legislative Assembly Statutory Committee)
Home Bills Hansard House Papers Members Committees System of Government Past and Present Parliamentary Services For Schools
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NSW Parliament - Mic...
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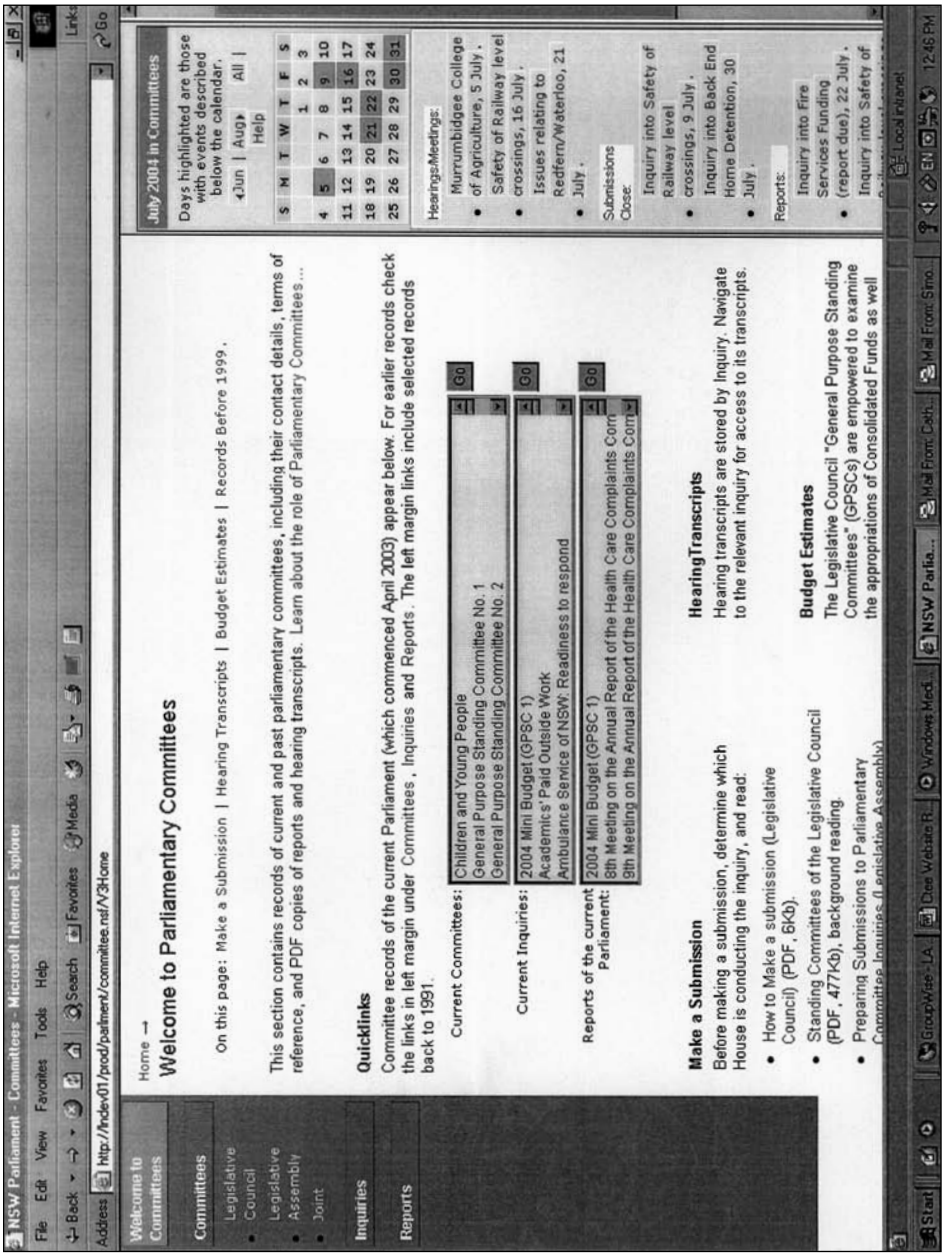
Figure 1

Figure 2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Address http://hndev01/prod/parlment/committee.nsf/V3Home
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Legislative Council
Legislative Assembly
Joint
Inquiries
Reports
Home →
Welcome to Parliamentary Committees
On this page: Make a Submission | Hearing Transcripts | Budget Estimates | Records Before 1999.
This section contains records of current and past parliamentary committees, including their contact details, terms of reference, and PDF copies of reports and hearing transcripts. Learn about the role of Parliamentary Committees...
Quicklinks
Committee records of the current Parliament (which commenced April 2003) appear below. For earlier records check the links in left margin under Committees, Inquiries and Reports. The left margin links include selected records back to 1991.
Current Committees:
Children and Young People
General Purpose Standing Committee No. 1
General Purpose Standing Committee No. 2
Go
Current Inquiries:
2004 Mini Budget (GPSC 1)
Academics' Paid Outside Work
Ambulance Service of NSW: Readiness to respond
Go
Reports of the current Parliament:
2004 Mini Budget (GPSC 1)
8th Meeting on the Annual Report of the Health Care Complaints Com
9th Meeting on the Annual Report of the Health Care Complaints Com
Go
Make a Submission
Before making a submission, determine which House is conducting the inquiry, and read:
How to Make a submission (Legislative Council) (PDF, 6Kb).
Standing Committees of the Legislative Council (PDF, 477Kb), background reading.
Preparing Submissions to Parliamentary
Hearing Transcripts
Hearing transcripts are stored by Inquiry. Navigate to the relevant inquiry for access to its transcripts.
Budget Estimates
The Legislative Council "General Purpose Standing Committees" (GPSCs) are empowered to examine the appropriations of Consolidated Funds as well
July 2004 in Committees
Days highlighted are those with events described below the calendar.
◂Jun | Aug▸ All | Help
S M T W T F S
1 2 3
4 5 6 7 8 9 10
11 12 13 14 15 16 17
18 19 20 21 22 23 24
25 26 27 28 29 30 31
Hearings/Meetings:
Murrumbidgee College of Agriculture, 5 July, Safety of Railway level
crossings, 16 July, Issues relating to Redfern/Waterloo, 21 July,
Submissions Close:
Inquiry into Safety of Railway level crossings, 9 July, Inquiry into Back End Home Detention, 30 July,
Reports:
Inquiry into Fire Services Funding (report due), 22 July, Inquiry into Safety of
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referred to it by either House of the Parliament or a Minister that relate to:

a) The following electoral laws:
   (i) *Parliamentary Electorates and Elections Act 1912* (other than Part 2);
   (ii) *Election Funding Act 1981*; and
   (iii) Those provisions of the *Constitution Act 1902* that relate to the procedures for, and conduct of, elections for members of the Legislative Assembly and the Legislative Council (other than sections 27,28 and 28A, which relate to the redistribution of boundaries for electorates);
b) The administration of and practices associated with the electoral laws described at (a).

In addition, the resolution establishing the Committee has referred all matters that relate to (a) and (b) above in respect of the 22 March 2003 State election to the Committee for any inquiry the Committee may wish to make.

The Committee was established following concerns raised by members of the Opposition in the Legislative Council in relation to the management of the State Electoral Office, its lack of resources and the need to oversight the office. The Committee's first inquiry into the administration of the 2003 NSW election, which called for submissions in December 2004, will cover these issues. The Committee is required under its terms of reference to report by September 2005.

In addition, a new Electoral Commissioner was also appointed during 2004, Mr Colin Barry, a former Electoral Commissioner for the State of Victoria. The Committee is establishing a good working relationship with the new Commissioner.

New South Wales Legislative Council

Order for papers—House response to committee request for documents

During a budget estimates hearing, General Purpose Standing Committee No. 4 requested a witness, the Chairman of Sydney Water, to provide the committee with a copy of an internal report on its Managing Director, which had been referred to in evidence. The witness declined to provide the report to the committee prior to seeking advice, as the report had been provided to the Independent Commission Against Corruption (ICAC) in the context of an ICAC investigation. The Chairman of Sydney Water subsequently informed the committee that the ICAC was of the view that it had

no property in the report, while also foreshadowing that Sydney Water might have a claim for privilege in relation to production of the report, on the grounds of public interest immunity.

Prior to the committee convening to consider what action it should take, the Leader of the Government in the House gave notice of a motion under standing order 52 ordering the report, and certain written comments on the report, to be tabled in the House and made available only to members of the Legislative Council and not published or copied without an order of the House. During debate on the motion an amendment to require certain documents to be made public, but with particular information obliterated or rendered illegible, was defeated.

In accordance with the resolution, the documents were provided to the House and made available only to members of the Legislative Council. On the same day the Board of the authority dismissed the Managing Director.

Over recent years, opposition and cross bench members have taken great advantage of the power of the House to make orders for the production of papers. It is unusual in this case that it was a member of the Government who initiated the order. It would appear that the Minister's actions were taken in order to pre-empt either the House or the committee from obtaining the documents and making them public.

Money bills—State Revenue Legislation Amendment Bill 2004 and powers of the Legislative Council

On 6 April 2004 the Treasurer, the Hon Michael Egan MLC, delivered a mini-budget. In his speech, the Treasurer indicated that legislation would be introduced to change property related duties.

Those parts of the State Revenue Legislation Amendment Bill which sought to increase some duties and impose others were fiercely opposed. Before the bill was introduced in the Legislative Council there was considerable debate as to whether, under the New South Wales *Constitution Act 1902*, the bill, being a 'money bill', was capable of being amended or rejected by the Legislative Council and whether, in the event of a dispute, the will of the Legislative Assembly would prevail.

In the second reading debate on the bill the Opposition read into Hansard advice received from Mr John Evans, Clerk of the Parliaments, as follows:

> Before considering the powers of the Council in relation to the bill it is perhaps useful to discuss the provisions of the *Constitution Act 1902* in relation to money bills, which can be broadly classified as:

- Bills appropriating public revenue;
- Bills imposing a new rate, tax or impost (raising revenue).

Sections 5, 5A and 5B of Constitution Act 1902. Section 5 of the Act states that the Legislature, subject to the Commonwealth of Australia Constitution Act, has power to make laws for the peace, welfare and good government of New South Wales in all cases whatsoever, provided that 'all Bills for appropriating any part of the public revenue, or for imposing any new rate, tax or impost, shall originate in the Legislative Assembly.'

The prohibition in section 5 is that the above two types of money bills must *originate* (my emphasis) in the Assembly.

Sections 5A and 5B, inserted in the Act in 1933,[2] contain provisions for the resolution of deadlocks between the two Houses over bills.

Section 5A provides the procedures for resolving disagreements between the two Houses on appropriation bills for annual services. Under section 5A (1) 'any Bill appropriating revenue or moneys for the ordinary annual services of the Government', which the Legislative Council 'rejects or fails to pass … or returns …to the Legislative Assembly with a message suggesting any amendments to which the Legislative Assembly does not agree', may be presented to the Governor for assent 'notwithstanding that the Legislative Council has not consented to the Bill'.

The effect of section 5A on bills 'appropriating revenue or moneys for the ordinary annual services of the Government', is twofold. Firstly, the Council may *reject, fail to pass or return the bill* to the Assembly *suggesting amendments* (my emphasis). Secondly, despite the actions of the Council the Assembly may direct that such bills, with or without any amendments suggested by the Council, be presented to the Governor for assent.

It should be noted that the section does not apply to section 5 bills 'imposing any new rate tax or impost' and any amendment by the Council to bills of that class would fall within the provisions of section 5B. This is discussed further below.

Section 5A (2) provides that the Council is taken to have failed to pass any such bill if it is not returned to the Assembly within one month after transmission to the Legislative Council and the session continues. The effect of this provision is to prevent the Council, for example by delay or inactivity,

[2] Originally there was no prohibition on the Council amending money Bills and this provision was inserted as part of a package of reform of the Legislative Council by the *Constitution Amendment (Legislative Council) Act 1932*, No. 2 of 1933.

frustrating the wishes of the Assembly in respect of appropriations for ordinary annual services of the Government. For this to occur, however, the session must continue during this period and must not be prorogued.

Under section 5A (3) if a bill becomes law under the section then any provision in the Act dealing with 'any matter other than such appropriation shall be of no effect.' This provision is to prevent the Assembly from 'tacking on' or including provisions alien to 'ordinary annual services of the Government' in an appropriation bill.

Section 5A applies only to bills 'appropriating revenue or moneys for the ordinary annual services of the Government.' With respect to all other bills, the Council may reject, fail to pass, or pass the bill with amendments, to which the Assembly may not agree. Where this occurs the mechanism for resolving deadlocks between the two Houses is laid down in section 5B of the Act.

Under section 5B (4) the Council is taken to have failed to pass a bill for the purposes of the section if the bill is not returned to the Assembly within two months after transmission to the Council and the session continues.

Apart from the restriction in section 5 that all bills 'appropriating any part of the public revenue' or 'imposing any new rate tax or impost' must originate in the Assembly, and the limitations in section 5A (1) on the power of the Council regarding bills 'appropriating revenue or monies for the ordinary annual services of the Government', the Council has the same powers in relation to bills imposing any new rate, tax or impost as it possesses in relation to all other bills.

The limitation on the power of the Council contained section 5A (1) of the Act is specific to appropriation bills for the ordinary annual services of the Government and does not apply to other types of bills appropriating money or bills imposing taxation. The latter bills may be amended by the Council and in the event of a deadlock between the Houses they must be dealt with under section 5B.

This view is supported by the debate on the *Constitution Amendment (Legislative Council) Bill 1932* which inserted section 5A into the *Constitution Act 1902*. During debate on the bill several members of the Council emphasised that section 5A (1) was intended to be limited to appropriation bills only and not to extend to other types of money bills (e.g. bills imposing taxation).[3] The Hon H E Manning stated in debate:

[3] *Parliamentary Debates*, 21 September 1932, p. 405 (Hon H E Manning); 15 December 1932, p. 3049 (Hon H J Connell), p.3070 (Hon W J McKell).

> I should like to point out ... the essential difference between a bill appropriating revenue or moneys for the ordinary annual services of the Government and a taxation measure ... An Appropriation Bill appropriates money for the ordinary services of the Crown, whereas a taxation bill does not appropriate money, but merely affirms that there shall be charged, levied, collected and paid a tax upon the incomes or whatever it may be of certain individuals. It may provide that incomes from personal exertion or incomes from property shall be subject to a tax. But it does not appropriate any money derived from such tax. That money is paid into consolidated revenue, and an Act of Parliament is required to appropriate it for the annual services of the Crown. [T]he language used in proposed new section 5A(1) has been employed for the express purpose of differentiating between those two things.[4]

Conclusions on effect of sections 5, 5A and 5B of the Constitution Act 1902. From the above discussion of the wording of sections 5, 5A and 5B of the Act it may be concluded as follows:

- Section 5 of the Act requires that bills *appropriating* any part of the public Revenue or *imposing* any new rate, tax or impost must *originate* in the Assembly;
- The proviso to section 5 of the Act merely requires that appropriation and taxation bills originate in the Assembly and does not inhibit any amendment by the Council;
- Section 5A bills which 'appropriate revenue or moneys for the ordinary annual services of the Government' may be rejected by the Council, not passed or returned to the Assembly suggesting amendment;
- The Council has one month to return section 5A bills to the Assembly, otherwise the Assembly may direct assent;[5]
- The Assembly may direct that section 5A bills be presented for assent, with or without any amendments suggested by the Council;
- Where bills for 'ordinary annual services' assented to under section 5A contain appropriations other than for ordinary annual services, those provisions are of no effect;[6]

[4] *Ibid*, 28 September 1932, p. 588.
[5] Section 5A (2).
[6] Section 5A (3).

- Section 5A applies only to 'any Bill appropriating revenue or moneys for the *ordinary annual services* of the Government' and not to other types of bills;
- All bills other than a section 5A bill, including bills 'imposing any new rate, tax or impost' are caught by the provisions of section 5B
- For all other bills, under section 5B the Council has two months to return these bills to the Assembly, otherwise the Assembly may follow the procedures for resolving the disagreement;
- The Council may reject, fail to pass or pass with amendment all bills other than a section 5A bill, including:
  - Bills 'imposing any new rate tax or impost';
  - Bills appropriating revenue or moneys other than for 'ordinary annual services of the Government'.[7]

As the State Revenue Legislation Amendment Bill did not appropriate revenue or moneys for the ordinary annual services of the Government, it was not a 5A bill and was therefore capable of amendment by the Legislative Council and subject to the provisions of section 5B of the *Constitution Act 1902*.

In committee of the whole the Australian Democrats and the Greens proposed amendments to the bill, which were not agreed to. The question of the Legislative Council's ability to amend the bill was not raised during debate on the amendments. While the Opposition did not propose amendments, it called for a division on those schedules of the bill it opposed. The bill was finally agreed to and reported to the House without amendment.

On 24 June 2004 the House received the State Revenue Legislation Further Amendment Bill from the Legislative Assembly. In his second reading speech, the Minister stated that the bill would clarify a number of issues that had emerged following passage of the State Revenue Legislation Amendment Bill. During debate on the second reading, and on amendments proposed in committee, the issue of the Legislative Council's ability to amend the bill was not raised.

Inquiry into the Designer Outlets Centre, Liverpool

During the second half of 2004 the Legislative Council experienced one of its most politically controversial and procedurally difficult inquiries to date.

In November 2003 the Designer Outlets Centre on Orange Grove Road, Liverpool, was officially opened. In early 2004 Westfield successfully

[7] *NSWPD* (LC), 12/05/04, pp. 8826.

challenged the legality of the consent provided by Liverpool City Council to allow a warehouse outlet to operate on this site. Despite multiple appeals by the centre's owner, Gazcorp, the decision of the courts was upheld and the centre was ordered to close.

In an attempt to keep the centre open, the newly appointed administrator of Liverpool City Council, sought to re-zone the land on which the centre was built. This application was refused by the Minister Assisting the Minister for Infrastructure and Planning, the Hon Diane Beamer MP. The centre closed on 25 August 2004 resulting in the loss of approximately 400 jobs and significant financial losses for tenants.

It is in this context that General Purpose Standing Committee No. 4 resolved to inquire into the approval process relating to the centre.

The inquiry was completed on 20 December but aspects of the Orange Grove affair are currently the subject of an investigation by the Independent Commission Against Corruption.

Summoning ministerial advisors. The inquiry was notable in that it created a precedent for the NSW Parliament for summoning of a ministerial advisor. During the course of the inquiry the committee invited a number of ministerial staff to give evidence. Although there are no restrictions on the power of a committee of the Legislative Council to invite ministerial staff as witnesses, there has been a mutual understanding between the major parties that ministerial staff are not called as witnesses.

On 17 August 2004 the committee invited the Chief of Staff to the Premier (Mr Graeme Wedderburn) to appear before the committee. The Premier agreed to make his Chief of Staff available to appear before the committee on a voluntary basis.

The committee also invited the Chief of Staff to the Hon Diane Beamer MP (Mr Michael Meagher) to appear before the committee at the same hearing as Mr Wedderburn. Mr Meagher declined the committee's invitation on the basis that, unlike Mr Wedderburn, he had not been authorised by his Minister to appear before the committee. Despite this, the majority of the committee decided that they wished to hear from Mr Meagher and resolved to invite him again. Mr Meagher again declined to appear, although he offered to assist the committee by answering questions on notice.

As Mr Meagher had not agreed to appear voluntarily, the committee deliberated as to whether the importance of Mr Meagher's evidence warranted compelling him to appear before the committee. The committee took the unusual step of issuing a summons on Mr Meagher under the

Parliamentary Evidence Act 1901 requiring Mr Meagher to appear before the committee on 30 August 2004. This is the first time a ministerial staff member has been served a summons to appear before a parliamentary committee since the formation of upper house standing committees in 1988.

The committee invited other ministerial and political staff, including staff of the Leader of the Opposition in the Legislative Assembly, to appear before the committee following Mr Meagher's appearance, and all attended voluntarily.

Order for papers. The inquiry was also notable for an escalation of the ongoing debate between the Legislative Council and the Executive regarding the powers of a parliamentary committee to order the production of documents.

Twice during the inquiry the committee resolved to order the production of documents under standing order 208 (c) from relevant government departments. Firstly, on 28 July 2004 the committee ordered the production of documents from the Department of Infrastructure, Planning and Natural Resources (DIPNR), relating to the preparation and consideration of the Draft Liverpool Local Environmental Plan (LEP) 1997.

In a letter dated 9 August, DIPNR indicated that it had obtained legal advice which cast doubt on the committee's power to call for documents. The department was also concerned that the committee's inquiry might prejudice proceedings before the Land and Environment Court.

Subsequently, on 11 August, DIPNR provided to the Acting Clerk of the Legislative Council copies of two advices from the Crown Solicitor. The first, dated 11 March—well before the committee was appointed—related to powers of committees to order the production of documents, and the second, dated 6 August, related to the Orange Grove Inquiry—*sub judice*.

After seeking advice from the Acting Clerk of the Legislative Council, on 12 August the Committee Director wrote to the Director General of DIPNR asserting that the House had delegated to the committee the power to call for documents.

During a hearing by the committee on 13 August, the department 'voluntarily' provided the documents requested together with a letter claiming legal professional privilege and statutory secrecy. The accompanying letter stated that 'the Government remains of the view that the Committee does not have the power to call for the Department's documents'.

The second incident occurred on 25 August, when the committee ordered the production of documents held by the Premier's Office or the Premier's Department relating to briefing notes and records of any meetings concerning

the approval of the Designer Outlets Centre and the proposed amendment to the Liverpool Local Environment Plan.

In a letter dated 7 September the Director General of Premier's Department declined to provide documents to the committee on the basis of the opinion of the Crown Solicitor that committees do not have the power to require documents to be produced; that there is no statute that confers powers on committees to require the production of documents; and that while the House does have power to call for documents under standing order 52, there is no clear evidence to suggest that the House can delegate that power to its committees.

On 11 October the Chair of the committee wrote to the Director General of the Premier's Department adhering to the view that the House had delegated to the committee the power to order the production of documents, and noting that there are numerous precedents of the House conferring on committees the power to call for documents, and of governments complying with such orders. The Chair noted that the committee viewed non-compliance with the order seriously and that failure to comply might interfere with the work of the committee, and it would be likely to report any such failure to the House for consideration as a possible contempt.

In a letter dated 21 October the Director General of the Premier's Department indicated that he had sought further advice from the Crown Solicitor on the scope of the committee's alleged power to order the production of documents. The advice of the Crown Solicitor referred to uncertainty as to whether the power of the Legislative Council to order the production of documents is delegable, and argued that relying on standing order 208 as a delegation by the Legislative Council to order the production of documents gave rise to issues as to the validity of the standing order.

Notwithstanding the committee's view that it had power to order the production of documents, on 21 October, on the motion of the Hon. John Ryan, a member of the committee, the Legislative Council passed an order under standing order 52 for various papers regarding the Orange Grove Designer Outlets Centre. The resolution of the Council also provided that documents already provided to the committee during its inquiry, and subject to a claim of privilege by DIPNR, be made available to all members of the Legislative Council.

On 11 November the papers ordered by the House were duly delivered by the Director General of the Premier's Department and tabled in the Legislative Council. A claim of privilege was made over several documents. A supplementary return of papers was made on 15 November, providing

further documents from the Attorney-General's Department and Integral Energy, with a claim of privilege again made over several documents.

On 29 November the committee resolved to request that the Clerk obtain independent legal advice in relation to the power of the committee to order the production of state papers. The Clerk is currently awaiting the advice.

South Australia House of Assembly

The Joint Committee of inquiry into the necessity of a Code of Conduct (see the 2004 *Table*, p 88) has reported with the recommendation that a Statement of principles rather than a Code be adopted. The Statement has no penalties for breaches and brings together all of the law as it relates to the personal and professional conduct of Members. The Statement is yet to be debated.

The Bill introduced to provide for a separate appropriation for the Parliament (also see the 2004 *Table*, pp 88-89) has been referred to a Select Committee for inquiry and report.

For the first time in its 148 year history the House of Assembly will sit outside the capital for a three day sitting in the regional city of Mount Gambier in May 2005. This is the first time any House of the Parliament of South Australia has done so but is consistent with the practice of regular regional sittings adopted by State and Territory legislatures in other Australian jurisdictions.

Victoria Legislative Assembly

New division procedure

During the spring sitting in 2003 the Legislative Assembly trialled a new division procedure. The new procedure was then adopted with the new standing orders in March 2004 and has successfully operated since then.

The new division procedure allows for a party vote rather than a personal vote. Members stay in their allocated seats with the whip or representative of each party casting the vote. The independent members cast their vote first and then the parties in order of their parliamentary membership. After all votes have been cast, members voting contrary to their party vote may cast a vote. Votes must only be cast for members present in the Chamber and every member present must vote. The Clerk tallies the votes and the Chair announces the result to the House. The whips must inform the Clerk of members not present for the vote. The names of the members voting aye and

no are recorded with the result of the vote in the Votes and Proceedings and also in Hansard.

The new procedure has worked well and has saved considerable time in the House, particularly where there are consecutive votes. Members do not have to move to either side of the House and there have been fewer errors when the votes are tallied.

The new procedure allows for a personal vote to take place if the subject of the vote is to be treated as a conscience issue or if the party vote is challenged.

'One Parliament' restructure

The Parliament of Victoria's Strategic Plan for 2003-06, *One Parliament*, proposed that the three service departments of the Parliament be brought together as one administrative area. In 2004 the Parliamentary Library, the Department of Parliamentary Debates (Hansard) and the Joint Services Department joined together and became the Department of Parliamentary Services.

A secretary of the new department was appointed in April 2004. In December legislation was passed amending the *Parliamentary Officers Act 1975* to reflect the changed structure of the Parliament, to give the Department of Parliamentary Services status as an administrative department of the Parliament, and to assign the President and the Speaker joint jurisdiction over the Department.

The Departments of the Legislative Assembly and Legislative Council remain as independent departments.

Victoria Legislative Council

Revised Sessional Orders

As outlined in last year's *Table*,[8] the Legislative Council adopted a large number of new and significant Sessional Orders in February 2003. The Government augmented these changes with further, although less far-reaching, revisions to Sessional Orders on 31 March 2004. Amongst the most significant of these was the introduction (for the first time in the Council's history) of formal procedures for dealing with Ministerial Statements. Such statements can now be made without leave at any time during Government

[8] Stephen Redenbach, 'A Period of Reform for Victoria's Legislative Council', *The Table*, vol. 72, 2004, pp. 36-45.

business provided that there is no question before the Chair. However, the Minister is obliged to provide a copy of the statement to the President, and party leaders, a minimum of two hours prior to it being made and, most notably, time limits now apply. Ministers and lead speakers of other parties are restricted to twenty minutes and the total debate to two hours.

Several other new procedures were introduced into the Legislative Council via the Sessional Orders. These included: 1) automatic discharge from the Notice Paper of any Notice of Motion or Order of the Day, General Business (other than consideration of a Bill) after being listed for twenty consecutive sitting days; and 2) establishment of a Minister's right to move any number of government amendments to a Bill as soon as the House goes into Committee of the whole.

Certain Sessional Orders were also replaced with alternative procedures such as: 1) the thirty minutes previously set aside on Thursdays for 'Motions to take note of reports and papers' was replaced by a sixty minute period for 'Statements on reports and papers'. Members are now limited to proposing one report or paper (although they may speak on any number) and must give a minimum of one day's notice concerning the item they wish to have listed; 2) interruption of the House's business by the President at 4.30 pm on Thursdays, rather than 4.00 pm, to propose the House's adjournment. This provides sufficient time for the Assembly to dispose of any remaining business under its Government Business Program at, or shortly after, 4.00 pm and to deliver related messages to the Council. Any Bills can then be read a first time prior to the Council going on the Adjournment; and 3) a requirement for Ministers incorporating a Bill's second reading speech into Hansard to make a formal statement in relation to any section of the Bill that has implications under section 85 of Victoria's *Constitution Act 1975* (which relates to the Supreme Court's powers and jurisdiction).

Further revisions to the Sessional Orders are proposed for early 2005.

The case of the missing Member

The most unusual and complicated proceedings associated with a Bill's passage through the Council during 2004 concerned the Road Management Bill. In simple terms, the Bill failed to obtain an absolute majority on its third reading on 4 May despite the Government having 25 of the 44 Legislative Council seats. An absolute majority was required under Victoria's Constitution as parts of the Bill had implications under section 85 (see previous entry).

The Government's failure to obtain an absolute majority was due partly to

the extended, and anticipated, absence of a Member due to ill-health and, more particularly, to the unexpected 'disappearance' of another Member who could not be located in the building and was, apparently, unable to be contacted. That Member's absence was extended until the following day. Given that the President could not exercise a deliberative vote, the Government could raise only 22 Members in support of the third reading. Related events highlighted some interesting procedural issues:

- The ringing of the Council's bells on the Bill's third reading continued for approximately seven to eight minutes until it became obvious that the missing Member would not be attending the Chamber. In response to an Opposition Member who complained about the length of the delay, the President advised that there was no specific time limit for ringing the bells in these circumstances. This was unlike Divisions, or when the House required a quorum, where time limits are prescribed by the Standing Orders. In practice, however, it is unlikely that the bells would have continued for more than thirty minutes given that this is the longest delay permitted by the Standing Orders, due to lack of numbers, before the House is adjourned (this applies in the case of the lack of a quorum at the commencement of a sitting).
- The Government's inability to obtain an absolute majority would not have created difficulties on the second reading (although it did in fact obtain such a majority at this stage), thanks to an amendment to the Constitution incorporated in the *Constitution (Parliamentary Reform) Act 2003*. This Act removed the necessity for Bills with section 85 implications to be passed by an absolute majority of Members at the second reading as well as the third reading.
- After the Road Management Bill failed to obtain an absolute majority, the President stated, 'an absolute majority has not been obtained; therefore the question is lost'. This initial determination was on the basis that, as the Bill had section 85 implications, it had failed at the third reading due to the lack of an absolute majority. After further consideration, the President clarified the situation at the commencement of the next sitting day stating that, despite the lack of an absolute majority, the Bill had passed the third reading (i.e. an ordinary majority, 22 of the 41 Members present, had indicated their support for the question by rising in their places). In addition, the President noted that, in the case of Bills requiring an absolute majority, it was a requirement under the House's Sessional Orders for her to put separately the questions for the third

reading and 'That the Bill do pass'. As the latter question had not been put, the Bill remained before the House and on the Council's Notice Paper. The President also noted that, in somewhat similar circumstances in 1991, involving a Bill that had not obtained an absolute majority in the Legislative Assembly, the Bill had become law with the exception of the specific provisions requiring an absolute majority.

- The final contentious points concerned: a) whether the Road Management Bill could be passed given that some of its clauses were legally ineffective; and b) if it was passed, which sections of the Bill would be void. After consultations with the Chief Parliamentary Counsel, the relevant Minister made a statement advising that Parliamentary Counsel saw no legal impediment to the Bill's passage. In addition, the Government made a commitment to introduce legislation at a later point that would amend the *Road Management Act 2004* to ensure that the Act contained legally effective provisions corresponding to those that were presently void.

Organisational restructure

For many years the Department of the Legislative Council's organisational structure has remained largely unchanged. In early 2004, it was decided to undertake an extensive review to determine whether this structure was still the best means of meeting our requirements. At the outset, the following specific issues were identified as being worthy of examination:

- Departmental structure;
- Work/functional groupings for both Chamber and non-Chamber staff;
- Position documentation;
- Separation of core and non-core functions and responsibilities;
- Divesting non-core functions to our Department of Parliamentary Services;
- Servicing the Chamber;
- Staff recruitment;
- Succession planning; and
- Training and development, particularly in the area of parliamentary procedure.

To provide independent analysis of the issues, the Department hired a consultant who had recently assisted the Parliament with its own structural review and change management program (which resulted in the parliamentary

administration being reduced from five to three departments—see Legislative Assembly's contribution above).

The review, which took into account the organisational structures of other Upper Houses in Australia, was completed by the end of 2004 and identified a number of issues affecting the Department. Foremost amongst these was the drain on experience that the Department was likely to face over the next five years as key senior managers reached retirement. This was critical particularly in terms of the potential loss of procedural expertise. In addition, it was evident that greater separation of core and non-core functions was required to aide role specialisation and an effective pathway to the positions of Clerk and Deputy Clerk. The Department's senior managers needed reduced administrative roles to enable them to focus on procedural issues, committee support, policy development, staff management and general departmental development.

The review made several major recommendations which can be summarised as follows:

- The position of Deputy Clerk and Clerk of Committees should be split into two positions.
- Abolition of the positions of Usher of the Black Rod (as a position in its own right) and Manager, Procedure and Projects, with these being combined in one position as Assistant Clerk, Procedure and Usher of the Black Rod. This recognised that the Usher's traditional role had changed in recent years with far less emphasis being placed on ceremonial functions. The new position would remove many of the Usher's administrative responsibilities and provide far greater exposure to procedural work.
- Creation of a position of Assistant Clerk, Committees, which would have responsibility for the management of the Joint Committees serviced by the Legislative Council and any Council Select or Standing Committees which might be established. This position would be particularly important with the likely establishment of an Upper House committee system in the next Parliament.
- Creation of a position of Projects Officer within the Clerk's Office, which would have responsibility for departmental special projects and a number of administrative tasks previously undertaken by the Usher of the Black Rod's Office.
- A feature of the two new Assistant Clerk positions is that they will be classified and paid at the same level and be rotated every two years.

It is anticipated that the new structure will be implemented in the first half of 2005.

Western Australia Legislative Council

New Sessional Orders

During 2004 the Council operated under new Sessional Orders first put in place on 20 March 2003. The 2003 Sessional Orders arose from recommendations of the *Report of the Select Committee on Rules, Orders and Usages of the House*, tabled on 12 March 2003.[9]

The Sessional Orders radically altered the previous schedule of sittings and times allocated for specific business during sitting days. The traditional three-day weekly sitting pattern, which included two evening sittings on Tuesday and Wednesday nights, was altered to omit the Wednesday night sitting and to include Friday in a four-day sitting week. The number of sitting weeks was reduced from the usual 24-26 to 19. As far as possible a two-week sitting was followed by a two-week recess, longer in the case of school holiday periods which traditionally coincided with the winter (July) and summer (January/February) recesses. The objects of the Sessional Orders were to provide more time for Government business, to provide a clear delineation between Parliamentary work and electorate commitments, and to provide more 'family-friendly' hours whilst at the same time maintaining the previous total of hours of sitting during the Parliamentary year.[10]

The Sessional Orders allocated specified times for Government business (Orders of the Day), motions, non-official business (private members' business) and for the consideration of ministerial statements and committee reports. Members' Statements took the place of the traditional adjournment debate and the House ended each sitting day at a certain time unless the Sessional Orders were suspended by absolute majority to extend the sitting.

SO 234A(2)—State Administrative Tribunal Bills

The State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Bill 2003 was the largest bill ever to come before the Council, amounting to 686 pages of proposed legislation. The bill and the principal bill, the *State Administrative Tribunal Bill 2003*, provided another opportunity

[9] Tabled paper No 838. See also interim report – Tabled Paper No 793.

[10] For example in 1994, during the second session of the 34th Parliament (5/05/94-16/12/94) in which the Liberal-Coalition Government held a majority of seats in both Houses, the Council sat after midnight on 21 of the 47 sitting days of the session.

for the House to utilise Standing Order 234A. This Standing Order permits the House to incorporate amendments recommended by a Standing Committee into the bill by agreeing to a single question put by the Chairman or Deputy Chairman of Committees. Once the question is agreed to, debate on other clauses agreed to by the Standing Committee without amendment is not permitted (clause 1 excepted), unless amendments have been proposed by a member to that clause.

The Standing Committee on Legislation recommended 97 amendments to the Conferral of Jurisdiction Bill and 41 to the Tribunal Bill, which were incorporated into the bills via the use of SO234A. This then permitted debate on the 333 Government amendments to proceed. This significantly shortened debate on the bills, which had been referred to the Standing Committee by the House over 12 months previously.

Parliamentary Secretaries and SO 47 & 48

A ruling made during debate in a motion in which the Parliamentary Secretary, representing the Minister for Health, was speaking on behalf of the Minister highlighted the fact that Parliamentary Secretaries are not the equivalent of Ministers under the Standing Orders.[11]

The Deputy President (Hon Jon Ford): The opposition Whip has asked that the Parliamentary Secretary to the Minister for Health to identify the document from which she quoted. The Whip's request was in order. I ask the Parliamentary Secretary to identify the document from which she quoted. To assist the Parliamentary Secretary, I advise her that 'document' means any number of pages that are bundled or held together as a discrete item; it is not restricted solely to one or more pages from which actual quotes were made. Bearing that in mind, I ask the Parliamentary Secretary to identify the document from which she quoted.

Hon Sue Ellery: Mr Deputy President, I need to seek clarification from you about what you are asking me to do. At the time the original point of order was made I was referring to my notes. I referred to a list of numbers and some specific capital works expenditure. Is that the document you are asking me to identify?

The Deputy President: As I understand it, it was a file in the member's hand.

[11] This reflects their constitutional status under section 44A of the Co*nstitution Acts Amendment Act 1899* under which the office of Parliamentary Secretary is expressly excluded from the office of Principal Executive Officers (Ministers) under section 43.

Hon Sue Ellery: Are you asking me to identify the file in its entirety?
The Deputy President: Yes.
Hon Sue Ellery: I am not sure how you want me to identify it.
The Deputy President: The member can simply identify it as her notes.
Hon Sue Ellery: It was a file of a combination of my hand written notes and some material that I regard as confidential.
Debate interrupted, pursuant to Sessional Orders.

Regional Parliament, Kalgoorlie Boulder

The Council conducted its first regional sitting in the City of Kalgoorlie Boulder on 28-29 September 2004. the usual proclamation by the Governor following a prorogation or general election, summoning the Legislative Council and Legislative Assembly to meet at Parliament House, Perth, had to be varied by the Lieutenant Governor and administrator by proclamation, published in the *Gazette* on 13 July. This permitted the sittings to be held at the Kalgoorlie Town Hall.

The event proved a major logistical event for the Procedure Office. Thirty-four members and 24 staff and all necessary equipment (including full IT support) were transported 600 km by train to Kalgoorlie. Proceedings were streamed live on the Intranet live to Parliament House in Perth.

A modified Order of Business and a list of seven Bills was agreed to by the House to be dealt with during the sittings. During the sitting Hon Kevin Leahy was sworn in as a Member of the Legislative Counsel for the Mining and Pastoral Region to replace Hon Tom Stephens, who resigned to contest the seat of Kalgoorlie in the Federal Election. The timing of Hon Tom Stephens' resignation did not permit him to make a valedictory speech as is traditional for a resigning Member. The President made a statement at the commencement of the regional sitting in which he read a letter from Hon Tom Stephens. In the letter the former Member for the Mining and Pastoral Region expressed his 'deep appreciation for the companionship and indeed friendship that has been extended to me by Members from all sides of the House over the 22 years that I have served regional Western Australia in the State Parliament.'

CANADA

House of Commons

37th Parliament, 3rd Session

On 12 December 2003 Paul Martin, MP, having been elected leader of the governing Liberal Party while Parliament was prorogued, was sworn in as Prime Minister along with his new Cabinet.

The Session opened on 2 February 2004, with a Speech from the Throne outlining the legislative agenda of the Martin Government. Several bills from the previous Session were reintroduced, not having received Royal Assent before prorogation. The Liberal caucus, with a view to empowering Private Members, introduced a new 'three-line voting system' relaxing party discipline on votes not considered tests of the House's confidence in the Government.

The role of parliamentary secretaries in the new Cabinet was expanded to enhance their ability to provide support to their respective Ministers. The 27 parliamentary secretaries were sworn in as Privy Councilors to enable them to attend Cabinet committee meetings as appropriate, and the practice of periodic rotation of parliamentary secretaries from one Minister to another was suspended, to strengthen these important working relationships.

A report of the Auditor General of Canada, tabled in February of 2004, which alleged gross mismanagement of a federally-funded 'sponsorship program', led to challenges to the integrity of government Ministers, both past and present, and to a committee investigation which was the focus of much public attention.

At a joint session of Canada's Houses of Parliament on 9 March, MPs and Senators were addressed by the Secretary General of the United Nations, Mr Kofi Annan. The Secretary General spoke of challenges to international order and stability from environmental degradation, poverty and disease, and international terrorism.

During a statement in the House on 13 May, the Parliamentary Secretary to the Prime Minister remarked that an opposition Member had been charged with an offence, and that he should be presumed innocent until proven guilty. Following his remarks, the Deputy Speaker expressed concerns that the *sub judice* convention may have been violated. Later in the sitting he made a statement referring Members to a standard authority on parliamentary practice, and cautioning them to be judicious in their comments.

On 23 May the Sovereign, in the person of her representative, the

Governor General of Canada, and on the advice of her Ministers, dissolved the 37th Parliament, to permit the holding of a general election on 28 June 2004.

38th Parliament, 1st Session

The first session of Canada's 38th Parliament began with the election of Peter Milliken, MP as Speaker of the House of Commons. In an unprecedented scenario, there being no other candidates, the Presiding Officer (Bill Blaikie, MP) asked the House whether there was unanimous consent to dispense with the usual formalities and to declare Mr Milliken elected. There being no objection, Speaker Milliken immediately took the Chair. Mr Milliken had been Speaker of the House throughout the 37th Parliament.

For the first time in 25 years, Canadians had elected a minority parliament. The governing Liberal Party of Canada gained a greater number of the seats (135 of 308) in the House of Commons than any other party during the recent federal election, but fell significantly short of a majority.

The new Government committed itself to the ongoing process of modernising the rules of the House of Commons. Initial steps had been taken during the 37th Parliament, including provisional new procedures for Private Members' Business intended to guarantee every Member at least one opportunity during the course of a Parliament to have a bill or motion voted on by the House. The House ordered that these provisions continue in force, again provisionally, until the end of June 2005, at which time a decision will be taken as to whether or not they are to be made permanent.

The 38th Parliament also saw the election of Steven Fletcher from the Province of Manitoba (Charleswood–St James–Assiniboia), as the first quadriplegic Member of Parliament. Modifications to buildings and facilities within the parliamentary precinct were made in order to meet Mr. Fletcher's needs, and provisions were made for further such modifications as needed on an ongoing business. A new Standing Order was adopted which confers upon the Speaker the authority to adjust the application of any Standing Order or practice of the House to help ensure the full participation of any Member with a disability.

Parliament of Canada Act Amendments: Ethics

On 11 February 2004 the Government reinstated a bill (Bill C-34 in the last session) to create an independent Ethics Commissioner and Senate Ethics Officer as Bill C-4 (*An Act to amend the Parliament of Canada Act (Ethics Commissioner and Senate Ethics Officer) and other Acts in consequence).*

The intent of the bill was to establish the positions of the Senate Ethics Officer and the Ethics Commissioner. It also paved the way for the adoption by the House of a *Code of Conduct for Parliamentarians* intended for inclusion as an appendix to the *Standing Orders of the House of Commons*.

The Bill had been passed by the House of Commons when the 2nd Session of the 37th Parliament was prorogued in November 2003. On the basis of a motion adopted by the House, the Bill was reinstated as passed by the House of Commons and sent immediately to the Senate for consideration. It received Royal Assent on 31 March 2004, and most sections came into force on 17 May.

On 29 April the 25th Report of the Standing Committee on Procedure and House Affairs, setting forth a code of conduct, was concurred in.

Following the passage of Bill C-4, Bernard Shapiro was appointed as the House of Commons Ethics Commissioner, also on 29 April, for a five-year term.

Private Members' business—public bills—infringing on the financial initiative of the Crown

On 26 February 2004 the Parliamentary Secretary to the Leader of the Government in the House of Commons (Roger Gallaway) rose on a point of order with respect to a private Member's bill entitled *An Act to amend the Income Tax Act (deductibility of fines)*, standing in the name of the Honourable Member for Winnipeg Centre, Pat Martin.

He argued that the purpose of the bill was to remove deductions from the Income Tax Act thereby decreasing or eliminating an exemption from taxation and thereby increasing revenue to the Consolidated Revenue Fund. This would be a 'charge upon the people' and would therefore require a Ways and Means motion that the bill did not have. For this reason, he asked the Chair to rule the bill out of order. The Speaker (Mr Milliken) stated that he would take the matter under advisement.

On 11 March the Speaker informed the House that the bill would have tax implications and had not been preceded by a Ways and Means motion. Accordingly, he ruled that the bill was improperly before the House and declared the first reading proceedings null and void. The Order for second reading was discharged and the bill was dropped from the *Order Paper*.

There have also been several cases in which private Members' bills have been identified as requiring Royal Recommendations because of their financial implications. This has left the sponsors with the alternatives either of

abandoning the bill, of proposing amendments in committee, or of seeking to obtain the required Royal Recommendation by means of negotiation.

Previous Question

During the week of 3 May 2004 the previous question was used on several occasions to curtail debate on Government legislation.

Legislation proposed for the 38th Parliament, 1st Session

The Throne Speech opening the First Session of the 38th Parliament was delivered on 5 October 2004.

The Government introduced several bills during the first two weeks of the new Parliament, including legislation dealing with child pornography, DNA identification, infectious diseases, and protection for 'whistleblowers'. Six of the bills propose legislative measures originally introduced during the previous Parliament. Four of the six were referred to committee before second reading.

The *Protection of children and other vulnerable persons and the Canada Evidence Act (Bill C-2)* strengthens existing prohibitions on the exploitation and abuse of children. The current bill is the third version of the legislation to reach the House. Its predecessor was passed by the House but failed to receive Royal Assent in the Second Session of the 37th Parliament, and died on the Order Paper.

The *Public Servants Disclosure Protection Act (Bill C-11)*, or 'whistleblower' legislation, stood referred to the Standing Committee on Government Operations when the 37th Parliament was dissolved. A new version of the bill, introduced in the 38th Parliament, proposes significant revisions, such as delegating investigatory responsibility to the President of the Public Service Commission in order to increase the independence and objectivity of that function.

The *Civil Marriage Act (Bill C-38)* was eventually introduced on 1 February 2005, following a ruling of the Supreme Court of Canada on the constitutionality of existing legislation on the subject. This legislation would extend legal capacity for Civil Marriage to homosexual couples while respecting religious freedom.

Committees

The Standing Committee on Public Accounts conducted an inquiry into the federally-funded 'sponsorship program' in response to a report of Canada's Auditor General. Hearings began on 12 February 2004, and continued

through the winter and into the spring, with the Committee receiving testimony from various former Ministers and Government officials, as well as individuals from the advertising industry. The Committee did not present a report before Parliament was dissolved.

The *Standing Committee on Agriculture and Agri-Food* carried out a study on beef pricing, in the course of which three companies were requested to produce financial statements. In response to their failure to comply with the request, the Committee recommended to the House on 6 May that they be found in contempt and ordered to provide the required documents. A House order to this effect also being disregarded by the companies in question, the Committee presented a report to the House on 13 May, asking that the House impose a fine of $250,000 per day on the two companies who had still failed to produce the documents. The House declined to concur in the report.

In the new 38th Parliament, with a minority Government, a majority of the Members of each Standing Committee are from opposition parties. Changes to the Standing Orders resulted in the striking of two new committees on 7 October: the Access to Information, Privacy and Ethics Committee, and the Status of Women Committee. Despite new rules providing for the election of Chairs and Vice-Chairs by secret ballot, only two committees used this procedure at the beginning of the first session of the 38th Parliament.

British Columbia Legislative Assembly

Electoral Reform

The Citizens' Assembly on Electoral Reform completed its work on 10 December 2004 with the presentation of its report, *Making Every Vote Count: The Case for Electoral Reform in British Columbia*. The report contained the Assembly's key recommendation: that a referendum be held on 17 May 2005 asking if British Columbians want to adopt a single-transferable vote system called BC-STV.

The Citizens' Assembly on Electoral Reform was an independent body created through orders-in-council and symbolically approved by the House. As required by its terms of reference, the Citizens' Assembly assessed various electoral systems in order to recommend either retaining BC's current single-member plurality model or proposing a new model to be put to a public referendum. The Citizens' Assembly proposed the single-transferable vote as the system that it believed would best express the democratic values of British Columbians.

After extensive public consultation, the Assembly decided upon three necessary criteria for any system it was to propose: proportionality to ensure that the number of seats won accurately reflects the percentage of votes garnered by a party; effective geographic representation; and more opportunities for choice, in terms of both candidates and parties. These criteria reflect common themes raised by the 383 formal presentations made at 50 public hearings throughout the province and the 1,603 written submissions made to the Assembly.

With the completion of its final report, the Citizens' Assembly fulfilled its mandate and disbanded.

The next step is a provincial referendum to be held on 17 May. Under the *Electoral Reform Referendum Act*, which came into force 20 May 2004, any new electoral model proposed by the Citizens' Assembly must be voted on in a referendum held in conjunction with the May 2005 provincial general election. To pass, the Assembly's recommendation would have to be approved by 60 percent of all voters and by a simple majority of voters in 60 percent of the 79 electoral districts. If voters endorse the BC-STV system, the *Electoral Reform Referendum Act* also requires that the new electoral system be in place for the 2009 provincial election.

Internet Broadcasting of House Proceedings

With the success of its 2003 pilot project, Hansard Services moved forward in 2004 to make webcasting of House proceedings a regular service. Features of this new service include:

- Live and archived video streaming of House debates;
- Updating of live broadcasts every 10 minutes;
- Closed-captioning of video segments; and
- Hyperlinking between print and video versions of *Hansard*.

The Legislative Assembly Management Committee has also approved an expansion of the webstreaming initiative. In the next parliament, Committee A proceedings will be closed-captioned, televised and webstreamed. In addition, audio proceedings of select standing and special committees will be available by webcast.

Teachers' Institute

In April 2004 the Public Education and Outreach Branch held its first British Columbia Teachers' Institute on Parliamentary Democracy. The Teachers' Institute, based on programmes from the Canadian House of

Commons and the Saskatchewan Legislative Assembly, provided K-12 teachers an opportunity to spend a week at the Legislature learning about parliamentary democracy.

At this inaugural Teachers' Institute, participants heard presentations from senior parliamentary officials and other experts on a number of topics, including the history and tradition of parliamentary democracy, the roles of the Speaker and the Lieutenant-Governor, proceedings in the House, and the three branches of government. The teachers also attended an informal dinner with Members of the Legislative Assembly, met legislative staff from various branches, toured the legislative precinct, and attended a formal farewell banquet at Government House with the Honourable Iona Campagnolo, PC, CM, OBC, Lieutenant-Governor of British Columbia.

One important feature of the BC Teachers' Institute is its focus on educating teachers to become champions of civics education in their classrooms and their communities. Participants are expected to share their experience and knowledge by conducting workshops once they return to their schools. Also, as part of their training at the Institute, teachers worked together to develop lesson plans for classroom activities on parliamentary democracy that could be shared with other teachers throughout the province. The lesson plans participants developed at the 2004 Institute cover the electoral system, the purpose of the provincial government, the role of the media, and protocol.

The BC Teachers' Institute will be an annual professional development event for teachers interested in bringing civics education to their classrooms.

Electronic consultation (Finance)

In the fall of 2004 the Select Standing Committee on Finance and Government Services undertook its pre-budget consultation process, and, for the first time, supplemented its traditional consultation methods with an online submission option made available through the Committee's web-site. This medium provided direct access to an electronic questionnaire, consisting of four questions included in the Government's *Budget 2005 Consultation Paper*. The online consultation option was heavily used and generated more than 1,300 responses. That level of participation set an all-time record for public input to any legislative committee in British Columbia. Written and oral submissions to the Committee numbered 220 and 244 respectively.

Newfoundland and Labrador House of Assembly

During the First Session of the Forty-Fifth General Assembly we experienced the largest public service strike ever, lasting for nearly a month. By the third week thousands of striking workers who were assembling on the parking lots and near the doors to the Confederation Building were effectively preventing Members, their staff and the staff of the House of Assembly from entering and leaving the building. The difficulty arose in part because the Legislative chamber and associated offices are located in a government building which houses offices to which the general public normally have access.

The Speaker was eventually forced to apply for an injunction, which was granted, to prohibit the strikers from preventing Members, their staff and the staff of the House of Assembly from entering the building. The injunction designated the area which would be considered the parliamentary precinct for the purpose of the order which included an area adjacent to the exterior stairway leading to the building. This was a historic ruling in that the precinct of parliament, taking into account the fact that our building is not exclusively a parliamentary building, had never been defined. As a result of the events of April 2004 the House enacted an amendment to the *House of Assembly Act* to provide authority for the Speaker to create and define the parliamentary precinct within and around the east block of the Confederation Building Complex.

Québec National Assembly

On 15 December 2004 the Minister for the Reform of Democratic Institutions introduced a draft bill proposed in replacement of the *Election Act*.

To achieve a more faithful correspondence between the proportion of the popular vote that each party receives and the number of seats it occupies in the National Assembly, the bill proposes to create a new electoral formula combining the traditional first-past-the-post system and proportional representation. The current 125 electoral divisions, in each of which one Member is elected by the first-past-the-post system, would be replaced with 77 electoral divisions grouped in districts. The number of districts would vary from 24 to 27. Each electoral division would be represented by one division seat, while each district would be represented by from one to three district seats, for a total of 50 district seats across Québec and an overall total of 127 Members in the Assembly. The bill proposes a formula for calculating the

number of compensating district seats to be allotted as a function of the total number of votes received by any party within a given district and the number of candidates it elects to a division seat within that district.

The bill would also encourage parties to provide better representation of women and ethnic minorities in the National Assembly, by increasing the allowances of public funds to recognised political parties more than 30 percent of whose candidates in a general election are women, and to parties more than 10 percent of whose candidates in a general election are members of ethnic minorities.

Public consultations will be held on this draft bill by an itinerant parliamentary committee at a time yet to be determined.

INDIA

Rajya Sabha

Televising of proceedings

One most significant development in regard to parliamentary proceedings has been the launching of two dedicated channels on 14 December 2004 for the live televising of proceedings of both the Houses of Parliament, simultaneously though separately, from the start of business until the Houses are adjourned for the day.

Laying of papers by private members

The Honourable Chairman, Council of States (Rajya Sabha) has issued directions, detailing the procedure to be adopted when a private member wants to lay a paper on the Table of the House.

A private member may lay a paper on the Table of the House when he is permitted to do so by the Chairman. If a private member desires to lay a paper or document on the Table of the House, he shall give prior notice to the Chairman of his intention along with a copy of the document desired to be so laid, in order to enable the Chairman to decide whether permission should be given to lay the paper or document on the Table. If the Chairman permits the member to lay the paper or document on the Table, the member may at the appropriate time lay it on the Table.

If a private member, in the course of his speech, wishes to quote from a secret or confidential or classified Government document, paper or report, he shall supply a copy thereof in advance to the Chairman and also indicate the portions thereof which he wishes to quote in order to enable the

Chairman to decide whether permission should be granted. If the Chairman permits the member to quote from the document, the member may do so at the appropriate time. If the Chairman does not accord the necessary permission, the member shall not quote from the document nor refer to its contents.

A paper or document sought to be laid on the Table by a private member may be considered for laying on the Table only if the member has quoted from it. The member seeking to lay the same may hand it over at the Table but it shall not be deemed to have been laid on the Table unless the Chairman, after examination, accords the necessary permission. If the Chairman does not accord the necessary permission, the paper or document shall be returned to the member and the fact indicated in the printed Debates.

When a member seeks permission of the Chairman to lay a paper or document on the Table of the House under direction 2, he shall record thereon a certificate in one of the following forms, as the case may be:

- 'I certify from my personal knowledge that this is the original document which is authentic';
- 'I certify from my personal knowledge that this document is a true copy of the original which is authentic'; or
- I certify that the contents of this document are correct and based on authentic information'.

If the paper or document consists of more than one page, the member shall put his signature with date on every page thereof.

SOUTH AFRICA

National Assembly

Appointment of House Chairpersons

Section 52(5) of the Constitution provides for the National Assembly, according to its rules and orders, to elect members as presiding officers to assist the Speaker and Deputy Speaker. Since 1994 the House has for this purpose appointed a Chairperson of Committees and a Deputy Chairperson of Committees.

Soon after the establishment of the Third Parliament in April 2004, the newly elected Speaker, Ms Baleka Mbete, at a meeting with party representatives on 4 May, presented proposals to strengthen the Office of the Speaker. The meeting accordingly agreed that in the interim the House should only

appoint the Chairperson of Committees who would need to assist immediately with the co-ordination of committee activities in the new Parliament. The House duly appointed Mr G Q M Doidge as Chairperson of Committees on 6 May. Mr Doidge had held the same post in the Second Parliament.

Formal proposals were then developed for the creation of a panel of three House Chairpersons to be appointed by the House to assist the Speaker and Deputy Speaker. In presenting these proposals to the Rules Committee on 23 June, the Speaker indicated that over the past ten years it had become clear that the workload of the Office of the Speaker needed to be spread more widely in order to provide effective leadership in this vast and complex institution. This would enable her Office to be in touch with, and monitor, all aspects of the functioning of the institution and to provide guidance where necessary before problems developed. The Speaker and Deputy Speaker would at the same time be enabled to focus more on strategic responsibilities and tasks.

The Rules Committee agreed with the proposal in principle and on the next day, 24 June, the House adopted a motion establishing three positions of House Chairperson, these office-bearers to be appointed by the House. For this purpose, all provisions in the Rules relating to the Chairperson of Committees and the Deputy Chairperson of Committees were immediately suspended. The House Chairpersons would be required to preside at sittings of the House whenever requested to do so by the Speaker. They would further be allocated functions and responsibilities by the Speaker, including any functions previously assigned to the Chairperson and Deputy Chairperson of Committees. The allocation of such functions and responsibilities would be announced from time to time. In the event of the absence of both the Speaker and the Deputy Speaker, one of the House Chairpersons would be designated to act as Speaker. The Rules Committee was instructed to present appropriate Rule amendments to the House (see Assembly Minutes of 24 June).

The House immediately afterwards, on a motion by the Deputy Chief Whip of the Majority Party, unanimously appointed Mr N P Nhleko, Mr G Q M Doidge and Mrs C-S Botha as House Chairpersons. Mrs Botha is a member of the Democratic Alliance, the largest opposition party in the Assembly.

In an updated document on the role of the House Chairpersons, dated 7 July, which was distributed by the Office of the Speaker, the following operational areas, amongst others, were allocated to the individual House Chairpersons:

- Mrs Botha: Members' facilities; finalisation of policies on leave for members; artworks management; exhibitions and the library; monitoring of Household Services; chairing of quarterly meetings with caucus chairpersons/representatives.
- Mr Nhleko: taking charge of the investigation currently under way in regard to Parliament's functions to oversee executive action and hold the executive to account; labour relations; information, communication and technology; public education unit.
- Mr Doidge: implementation of policies and guidelines on the scheduling and co-ordination of committee meetings as well as the general management of all Assembly committees and subcommittees.

The document further emphasised that the role of the House Chairpersons would continue to evolve over time. In general terms, although they would be required to interact with the Parliamentary Administration, the intention was not that they would take over management responsibilities. They would provide an interface between political perspectives and administrative support measures and regularly report to the Speaker and an Assembly Presiding Officers' Forum.

As the posts of House Chairperson are new posts, the remuneration and benefits attached to these posts have still to be determined. For that purpose, representations have been made to the Independent Commission for the Remuneration of Public Office-Bearers with a request that it recommend an appropriate grading for these parliamentary office-bearers. The commission's recommendations had not been received by the close of the year.

Allegations of misuse of Members' travel vouchers

A system of travel vouchers for Members was introduced in Parliament some years ago to facilitate members' travel arrangements. When isolated instances of abuse of this system were detected, disciplinary steps had been taken against the Members concerned and administrative controls were tightened. In this process further irregularities were identified and Parliament initiated a probe which brought to light evidence of extensive corrupt practices by various travel agents in which some Members were also implicated.

In the course of 2003 Parliament commissioned a forensic audit and called in the commercial crimes unit of the SA Police Service to assist with the confiscation of relevant documents from a number of travel agents. In February 2004 the National Directorate of Public Prosecutions was

approached to assist with further investigations and court action was taken against some of the travel agents.

The previous Speaker had in the meantime informed party representatives of these events. The vouchers were valid for travel by air, train and road, and the documents confiscated from travel agents revealed that some Members had received benefits that appeared to have been wrongly paid for by Parliament. The Members concerned were then given an opportunity to shed light on transactions done in their name.

Amidst speculation in the media of the imminent arrest of some Members implicated in the travel scam, the Programme Committee agreed to a request by the DA to debate the abuse of travel vouchers in the House. The debate took place on 24 August and was introduced by the Speaker who gave an overview of developments since the probe was initially launched. Responding to demands that she release the draft forensic report she had received, the Speaker emphasised that she was not prepared to do so at that stage, as it had been given to her on a basis of strict confidentiality, as the investigation had not yet been concluded. Members expressed concern at the amount of time the investigations were taking and at the negative impact of the allegations on the integrity of Parliament. Assurances were given by party spokespersons that stern action would be taken against any Member who, when the law had taken its course, was found guilty of corrupt practices and defrauding Parliament.

An article then appeared in the press on 29 August alleging that the Speaker herself had misused travel vouchers and was one of the Members being investigated. The Speaker immediately in a press release refuted the allegations and clarified the travel arrangements referred to in the article. Shortly afterwards the National Directorate of Public Prosecutions issued a statement denying that the Speaker was under investigation, and the House on 8 September adopted the following motion without debate, the ID recording its dissent:

That the House—

(1) Notes—

(a) the allegations in the *Sunday Times* of 29 August 2004 to the effect that the Speaker of the National Assembly abused parliamentary travel facilities; and

(b) calls for the Speaker to recuse herself pending finalisation of the investigation into the alleged abuse of parliamentary travel facilities;

(2) further notes—
  (c) a statement by the Directorate of Special Operations of the National Directorate of Public Prosecutions on 2 September 2004 that: 'based on the information at our disposal, the DSO is not investigating the Speaker of Parliament. This we say because the impression is that we are and since the Office of the Speaker is the highest legislative authority in the country, we need to place things in perspective'; and
  (d) that Parliament initiated a forensic investigation into allegations of the alleged abuse of parliamentary travel facilities;
(3) believes that there is no basis for the Speaker of the National Assembly to recuse herself as she is not being investigated for any wrongdoing; and
(4) resolves to express its full confidence in the Speaker.

Sittings prior to state-of-the-nation address

At the beginning of a Parliament, after new Members have been sworn-in at a sitting convened for that purpose, the next sitting normally takes the form of a Joint Sitting of the two Houses of Parliament at which the President delivers his annual address (state-of-the-nation address). However, at the beginning of the Third Parliament, the state-of-the-nation address was preceded by two sittings of the Assembly and a Joint Sitting.

Apart from addresses by the President of the Republic, the Rules only, and specifically, provide for the Presiding Officers to invite a visiting Head of State when on a state visit, to address a Joint Sitting, or either House. In other circumstances, the House(s) may by resolution invite a non-member to address the House(s).

At its sitting on 6 May, the Assembly revived the Appropriation Bill which had lapsed at the end of the Second Parliament. It also adopted a motion inviting former President Nelson Mandela to address a Joint Sitting of the Houses on 10 May, the date of his inauguration as President 10 years earlier, in order to commemorate 10 years of a democratic parliament. The Joint Sitting was to be held at 11 o'clock on Monday 10 May. It was subsequently proposed that former President F W De Klerk also be invited to address the Joint Sitting. However, the Houses formally had to pass a resolution also to that effect prior to the Joint Sitting. In terms of the Rules, the hours of sitting from Monday to Thursday are 2 o'clock, or such later time as the Speaker determines, to adjournment. To enable the House to sit before the stipulated

time, a resolution is passed, normally at an earlier sitting, suspending the relevant Rule. Alternatively, if there is agreement among parties, the House could condone its early start at a future sitting.

On Sunday 9 May, the Speaker convened an urgent meeting of parties to discuss the invitation to Mr De Klerk to address the Joint Sitting. The meeting failed to secure an agreement by all parties on the issue. In view of the lack of agreement among parties, the Speaker then indicated that the Assembly would be convened on Monday 10 May at 10 o'clock to decide on the invitation to Mr De Klerk.

When the House met on the Monday morning, the Chief Whip of the Opposition rose on a point of order challenging the validity of the meeting at that time contrary to the Rules. In response, the Speaker outlined the circumstances that gave rise to the need for the meeting and ruled that the meeting should proceed. The House proceeded to adopt, after a division, the resolution inviting Mr De Kerk. Both former Presidents Mandela and De Klerk addressed the Joint Sitting as scheduled. A motion condoning the sitting at 10 o'clock on 10 May was adopted by the House on 3 June after a division.

Budget votes debated in Extended Public Committees

Extended Public Committees (EPCs) are mechanisms created by the Rules to enable the Assembly to conduct more than one public debate simultaneously in order to expedite the legislative or budgetary programme. EPCs are arranged by decision of the Programme Committee.

No decision may be taken by an EPC; it is a forum for debate only. Therefore no motion may be moved in this body, nor is it appropriate to give notice of a motion or make Members' statements. The rules of debate that apply in a plenary sitting of the Assembly also apply in an EPC. Business in an EPC is conducted in the same way as in a sitting of the Assembly, beginning with a procession and a moment of silent prayer or meditation. The Members of an EPC are the Members of the portfolio committee relevant to the subject matter before the EPC, and all other Members who attend its proceedings.

The Speaker appoints a presiding officer as Chairperson of the EPC, but does not preside him- or herself. The appointed Chairperson may request any Member of an EPC to relieve him or her. At the conclusion of a debate, no decision is taken, but the decision of the question (where applicable) will appear on the Order Paper for the next Assembly plenary. An EPC dissolves on conclusion of its business on the same day it is appointed. Except in the

Chamber of the National Assembly, Members speak from the benches they occupy and not from a podium.

In order to expedite the passage of the Appropriation Bill through Parliament after it had been revived by House resolution on 6 May, the Programme Committee decided at its meeting on 13 May that EPCs would be utilised for the purpose of conducting the Budget Vote debates. The Old Assembly Chamber and Committee Room E249, and not the main Chamber, were used for the EPCs. Only the debates on Parliament's Budget Vote and the The Presidency's Budget Vote were conducted in plenaries in the National Assembly Chamber.

The EPCs took place from 8 to 23 June and the Speaker appointed the Deputy Speaker and the Chairperson of Committees (now the House Chairperson responsible for committees) as chairpersons of the EPCs. By agreement in the Programme Committee each debate was allocated 150 minutes. Practice has been that parties are given a global time allocation for the Budget Votes and they then decide in which Budget Vote debates they want to participate and how much time they want to utilise in each of those debates. When the agreement was reached about the set time allocation of 150 minutes for each Budget Vote, opposition parties asked that the arrangement should not be regarded as a precedent for future Budget Vote debates.

The Votes and the Schedule to the Appropriation Bill were agreed to on 24 June during a plenary of the House and the bill was read a second time. The National Council of Provinces passed the Appropriation Bill on 30 June and the President assented to and signed it into law on 22 July.

Approval of international protocol with reservations

Section 231 of the Constitution, 1996, states that the negotiating and signing of international agreements are the responsibility of the executive. An international agreement binds the Republic only after it has been approved by resolution in both the National Assembly and the National Council of Provinces, unless it is an agreement of a technical, administrative or executive nature or an agreement which does not require either ratification or accession.

The Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa was tabled on 4 May and referred to the Portfolio Committee on Justice and Constitutional Development for consideration and report. In its consideration of the protocol, the portfolio committee noted that certain of its provisions were inconsistent with the South African legislative framework. The question that arose was whether Parliament could

approve an international agreement, as provided in section 231 of the Constitution, with reservations.

The opinion by the parliamentary legal advisers was, *inter alia*:

> The Constitution does not empower Parliament to approve a treaty if it has reservations not imposed by the executive. The power to negotiate treaties vests in the executive and Parliament would be traversing the separation of powers if it were to pass a treaty subject to its own reservations. Thus the executive may submit to Parliament for approval a treaty, with or without reservations. Parliament's power lies in refusing to approve a treaty (with or without reservations) if it has its own reservations regarding the treaty. On the other hand, if Parliament has reservations regarding a treaty but it does not view the reservations serious enough to warrant disapproving the treaty, it may approve the treaty and mention these reservations in the report it approves. Such noting of reservations in the report has no legal effect and serves only to express Parliament's view on a treaty it approved.

A further legal opinion was obtained from the Office of the Chief Law Adviser in the Department of Foreign Affairs. In the opinion was an extract from the Manual on Executive Acts of the President of the Republic of South Africa which reads as follows:

> It should be stressed that the committees of Parliament are not in a position to negotiate or re-negotiate the terms of international agreements, especially multilateral treaties, which are negotiated in multilateral international fora. They may, however, be able to insist on a reservation or to refer the agreement back to the executive. The filing and formulation of a reservation is the function of the executive.

The opinion went further, to note that it had been the practice for many years that Parliament has the inherent authority to identify such reservations as it may deem necessary to enable it to approve the international agreement. On the basis of this decision, the executive can draft the text of such a reservation, and file it with the relevant depository.

In its report, tabled on 11 November, the portfolio committee noted its reservations and interpretative declarations regarding the protocol and recommended that the protocol be approved subject to those reservations and interpretative declarations. When the report came before the House for consideration on 12 November, the chairperson of the portfolio committee, in her introductory speech, referred to legal questions and debates that had

taken place on whether Parliament had the inherent right to invoke such reservations or not. The legal opinions ranged from those in favour of invoking the reservations to those against. The portfolio committee opted for the former. She said that for Parliament to approve the protocol (without reservations) would have been potentially illegal. The reservations were therefore invoked in order to ensure that no adverse legal consequences could be visited against Parliament and the Executive, pertaining to the ratification of the protocol.

The Assembly adopted the report of the portfolio committee first and thereafter approved the protocol with the reservations contained in the committee's report as adopted. The National Council of Provinces followed a similar procedure on 17 November.

Introduction of new mace

On 25 June 2003 a model of a new mace had been placed on the floor of the Chamber for viewing and comment by members and the public. Following a public consultation process, the model was adjusted and a contract entered into with manufacturers to produce a new mace for the National Assembly.

On 14 September 2004, at the start of the plenary, the Speaker announced that the new mace had been handed over to the Secretary to Parliament by the manufacturer on Friday 10 September, and had been unveiled to Members that morning. She stated that the old mace would now form part of the heritage of Parliament and be on display.

The Speaker then suspended proceedings to allow for the removal of the old mace and the installation of the new mace as the symbol of authority of the House. A procession led by the Serjeant-at-Arms, carrying the old mace, and consisting of the Speaker, Deputy Speaker, House Chairpersons, Secretary to Parliament and Secretary to the National Assembly then proceeded to take the old mace out of the Chamber and place it in the exhibition.

The Table upon which the old mace was normally placed was removed from the Chamber. A bracket which would support the new mace was placed in the Chamber in front of the speakers' podium.

The bells were rung to indicate that proceedings of the House would resume. The Serjeant-at-Arms, carrying the new mace, entered the Chamber, followed by the Speaker, Deputy Speaker, House Chairpersons, Secretary to Parliament and Secretary to the National Assembly. The Speaker took the Chair as the Serjeant-at-Arms placed the new mace in its bracket. In a ceremonial debate, the Speaker and parties proceeded to comment on the historic event.

From the sixteenth century onwards the mace started being used in its current ceremonial form in the House of Commons in England. When the Serjeant-at-Arms carries the mace into the debating Chamber and announces the Speaker of Parliament, it signifies that the House is formally in session and that its proceedings are official.

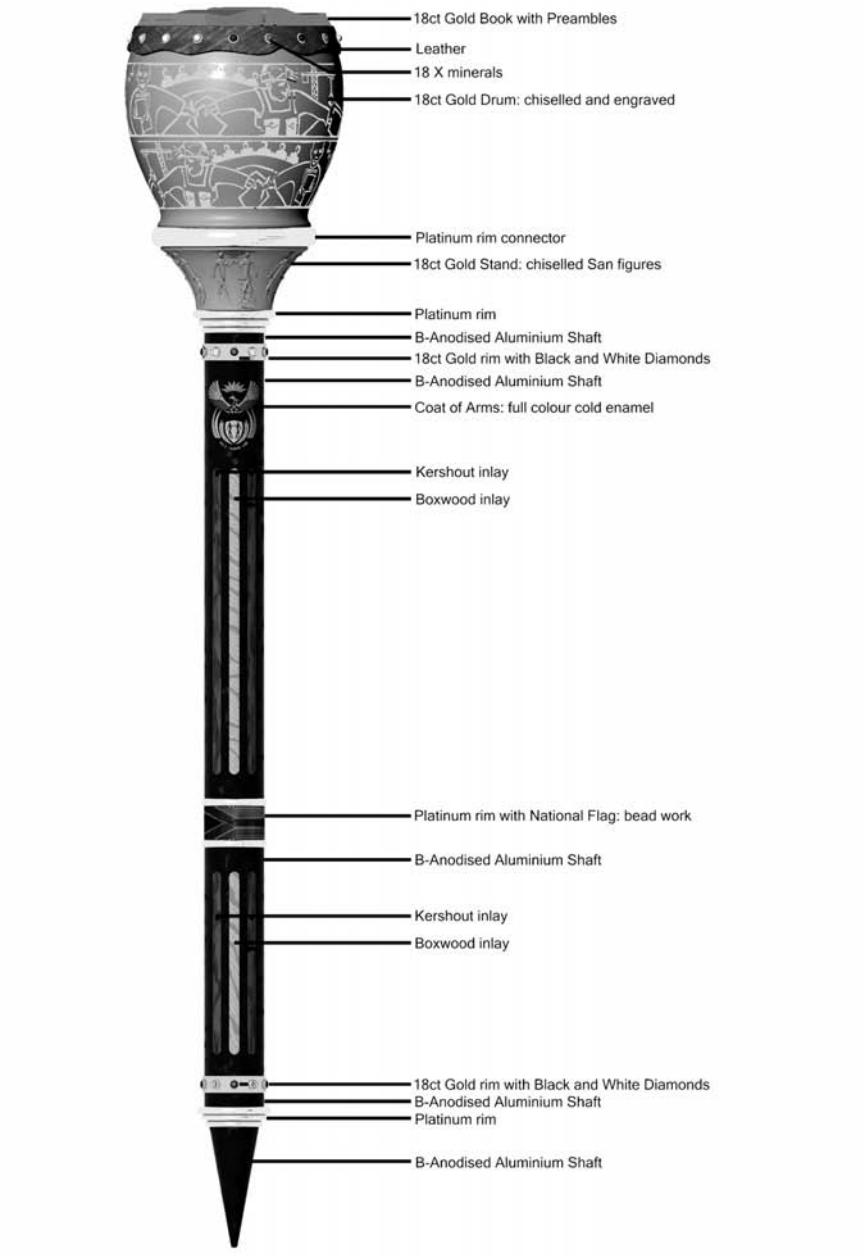
The first mace used in the South African Parliament was a gold-plated replica of the House of Commons' mace and was used in the House of Assembly of the Union of South Africa from 1910 to 1961. South Africa then became a republic and a stinkwood mace was used temporarily from 1961 to 1963. The mace used in Parliament until ten years into the new democratic Republic of South Africa was given to Parliament by the Gold Producers' Committee of the Transvaal and Orange Free State Chamber of Mines in 1963. It weighs 8.5 kg, is 1.3 metres long and made of gold.

The new mace is 1.196 metres long and weighs 9.86 kg. Though it appears to be a single unit, it was made and fitted in sections on an aluminium core. At the head of the mace is an 18-carat gold drum, covered with springbok skin which, in turn, is attached to the drum by 18 buttons made from South African minerals and gemstones. On top of the drum rests a book made from gold on which, in raised text, is an extract from the Preamble to the Constitution of the Republic of South Africa. The drum itself contains illustrations of South Africans going about their daily business, *inter alia* a miner, a saxophonist, a machinist, an architect, a builder, a soccer player, a fork-lift driver, a scientist, a teacher, a doctor, a domestic worker, a woman with a baby on her back and a hoe in her hand, a woman driving a tractor and children reading and working.

Starting off as a simple gold disk, the drum first had to be shaped before being decorated with these figures. Reflecting the typically African wood-cut form of illustration, the picture was copied onto the gold drum and chiselled by hand to create a three-dimensional texture. The picture was then engraved for shading, texture and finer detail. This is the first time this kind of art has been transposed onto gold.

Once completed, the drum was fitted onto a yellow-gold neck containing dancing San figures, reminiscent of the national coat of arms. Three platinum disks, in decreasing size, connect the shaft of the mace to its head. The shaft is made of anodised aluminium, inlaid with cherry wood and box wood. The top of the rod is encircled by an 18-carat gold rim with six black and six white half-carat diamonds set into it.

Beneath this is the South African coat of arms, rendered in full-colour enamel, in perfect detail. About two-thirds from the top of the mace, is a


18ct Gold Book with Preambles
Leather
18 X minerals
18ct Gold Drum: chiselled and engraved
Platinum rim connector
18ct Gold Stand: chiselled San figures
Platinum rim
B-Anodised Aluminium Shaft
18ct Gold rim with Black and White Diamonds
B-Anodised Aluminium Shaft
Coat of Arms: full colour cold enamel
Kershout inlay
Boxwood inlay
Platinum rim with National Flag: bead work
B-Anodised Aluminium Shaft
Kershout inlay
Boxwood inlay
18ct Gold rim with Black and White Diamonds
B-Anodised Aluminium Shaft
Platinum rim
B-Anodised Aluminium Shaft

beaded South African flag, containing 800 platinum or white-gold beads to represent the white on the flag, 70 yellow-gold beads representing the yellow, and red, green, blue and black glass beads. Just before the mace reaches its tapered end, there is another gold band containing six black and six white diamonds and another platinum connecting rim.

The new mace was designed to reflect the history, tradition, diversity, culture and languages of South Africa. Each element has been carefully chosen to reveal the different facets of African-ness and South African-ness. It also celebrates the country's natural beauty, its plant and animal life and its rich mineral resources.

The shape of the mace recalls the knobkierie, an African symbol of defence, authority and leadership.

The drum, which forms the head of the mace, expresses the African tradition of drums calling people to gather and speak, and is a reminder that South Africa's successful transition to democracy was achieved through dialogue, with Parliament remaining the place where myriad voices are allowed to be heard.

Gold is one of the core ingredients in the new mace. Archeological finds show that gold has been mined and used in African culture for centuries. Its use symbolises not only the country's natural wealth but also the indigenous knowledge of Africans and ancient African gold traditions.

The book of gold resting on the top of the drum makes manifest the Constitution of South Africa and the principles around which Parliament functions. The Constitution is the supreme law of the country—echoed in its position right at the top of the mace—and plays a central role in the unfolding of our new society. Each line, raised from the book, is the first line of the Preamble to the Constitution in one of the 11 official languages, plus one line from an extinct Khoisan language. The languages are presented alphabetically, starting with Afrikaans.

The platinum rings found at intervals in the shaft of the mace recall the rings worn by Ndebele women. Under the first set of platinum rings, at the base of the drum, is a picture taken from the Linton Stone, dating back at least 20,000 years, paying homage to the first inhabitants of our land. It shows social interaction, coherence and interdependence, elements that are needed for a country like South Africa to grow and prosper.

The use of the different materials and symbols are, in themselves, significant. The most advanced technology in the world lives harmoniously beside ancient traditional techniques. The result is a mace that recalls the past, mirrors the present and looks forward to the future.

TURKS AND CAICOS ISLANDS LEGISLATIVE COUNCIL

The Government in 2002 made a decision to construct a two-storey building which would accommodate the National Insurance Board (NIB) on the lower floor and the Legislative Council on the upper floor. A design concept for the building was undertaken by architects, but the top floor that was designed by the architects had very little semblance to a Parliament building. The Clerk was then directed by the Government to work with the architects on appropriately designing the inside, particularly the area which would accommodate Members' seating and amenities. After several design changes the architects came up with a design, which received Members' approval.

With a new Government in August 2003 the Chief Minister immediately changed the planned use of the building by negotiating with the Board of Directors of NIB that ministerial offices would occupy the lower floor. The design of that floor was altered to fit in with the top floor. The building, which cost approximately $4 million, now overlooks the Salinas (our historic past), and the waters of the Turks and Caicos channels, which separate the Turks Islands and the Caicos Islands.

The Chamber provides for equal seating on both sides of the House. Following established practice Ministers sit on the front bench and back-benches immediately behind. Sitting directly across the aisle from the Hon. Chief Minister is the Hon. Leader of the Opposition with all Opposition Members occupying the front Bench. The design provides for an expanded house should the Constitution provide for additional constituencies.

The public gallery comfortably seats 100 persons; there is a press gallery, in-house TV and PA Systems. Computer points have been installed at Members' seats, allowing them to use laptops, although neither the Internet nor intranet systems have been installed. There are library facilities which will provide library and research facilities for Members when completed.

The general public, and in particular voters, are proud of a magnificent, state-of-the-art building. Staff have been busy on a daily basis providing tours for the public and school children.

PARLIAMENT OF UGANDA

Referendum and Other Provisions Bill, 2003

This bill was passed in October 2004. It provides for holding of referendums in accordance with Articles 74 and 76 of the Constitution of Uganda. That in turn affects article 255, which states that Parliament may by law make provi-

sion for a referendum whether national or in any particular part of Uganda, on any issue; Article 259, wherein are listed articles that have to be amended by an Act of Parliament and in accordance with laid down procedure; and article 74, which sanctions the holding of a referendum for purposes of changing the political system.

White Paper on the Constitutional Review Commission Report

The Government produced a White Paper on the Constitutional Review Commission (CRC) report on September 2004. This Paper states the details of Government decisions on the Commission's proposals, findings and recommendations, and indicates those which were accepted or rejected by Government. It also charts the way that Government intends to handle the transition period from the Movement political system to the multiparty political system.

The White Paper was referred to the Committee on legal and Parliamentary Affairs, which considered it in detail and produced a report. Due to other outstanding business that had been lined up earlier by the Business Committee, Parliament was not able to discuss this matter by the end of 2004.

The White Paper was a culmination of a process that began on 9 February 2001, when the Minister of Justice and Constitutional Affairs, by legal Notice No. 1 of 2001, established a Constitutional Review Commission (CRC), chaired by Professor Fredrick Sempebwa. The CRC was to assess the inadequacies of the 1995 Constitution and address other related complaints from sections of the population, as well as exploring ways to enhance smooth operations between the arms of the Government and better administration of the country. Due diligence, in terms of consultations and discussions involving the entire spectrum of the population, was performed regarding desired changes in the Constitution. The Commission submitted its report, findings and recommendations to Government on 10 December 2003.

Live broadcast of parliamentary proceedings

On 16 November 2004 the proceedings of Parliament were, for the first time in the history of Uganda, broadcast live by a private television station. This broadcast was made possible by the station linking up to the facilities of Parliament through a modem. The Parliament of Uganda has operated a Closed Circuit Television System (CCTV) since 1989. It is hoped that in 2005 Uganda television and Radio Uganda, which cover almost the entire country, will be able to reach out to the wider audience.

It is worth noting that the Rules of Procedure, specifically Rule 198,

provide that parliamentary proceedings may be broadcast by electronic media, having due regard to the dignity of the House. Television coverage of the proceedings of the House is also regulated as set out in the Rules.

Restructuring of the Parliamentary Service

The Parliamentary Service was restructured, the implementation process starting in November 2004. The main features were:

- The creation of two Directorates, one for Legislative Services and the other for Administrative Services, each headed by a Deputy Clerk. Each directorate has five Departments;
- The establishment of two new departments in the Administrative Services Directorate namely, the Department of Human Resource, which was hived off from the Department of Finance and Administration, and the Department of Information and Communication Technology, which was hived off from the Department of Library, Research and Information Services;
- The creation of a Public Relations Office, which is operationally responsible to the Administrative Services Directorate but functionally under the direction of the Office of the Clerk to Parliament;
- The creation of a Planning and Development Coordination Office, which is operationally responsible to the Directorate of Administrative Services;
- The creation of an Office of Coordinator/ Parliamentary Capacity Development to support the Parliamentary Commission in its strategic planning function;
- Upgrading of the Library and Parliamentary Research Services to a department under the Legislative Services Directorate;
- The establishment of a Department of Clerks; and
- The establishment of an Office of the Clerk that is functionally separate from the Department of Clerks, to distinguish the Clerk to Parliament's role as the Chief Executive Officer of the Parliamentary Service from his or her role as Clerk to the House.

Overall the restructuring process would increase the establishment from 259 to 307.

Parliamentary Strategic Investment and Development Plan (PSIDP)

The Plan was launched by the Rt Hon Speaker Edward Kiwanuka Ssekandi on 14 December 2004.

The aim of the PSIDP is to provide the policy and development framework that will enhance the capacity of the Parliament of Uganda to deliver its Constitutional mandate and increase its contributions to national development.

The vision developed by the Parliament of Uganda is to be 'an effective and independent Parliament that protects democratic governance, accountability and sustainable development'. The attainment of this vision is integral to the centrality of Parliament in the achievement of national development strategies. The PSIDP will assist Parliament to implement this vision in collaboration with its stakeholders.

In order to implement the PSIDP effectively, Parliament will strengthen its partnerships with the Executive, the Judiciary, and other stakeholders. It will also improve its outreach to the public, while enhancing the responsiveness and quality of services provided by the institution and MPs to the nation and their respective constituencies. The PSIDP recognises the need for Parliament to observe a high standard of transparency and accountability to its stakeholders.

The PSIDP underscores the independence of Parliament and aims to ensure a collaborative relationship between the three autonomous arms of government while recognising their interdependence in achieving the aspirations of the citizens of Uganda. The PSIDP intends to create a partnership and working relationship with the Executive, the Judiciary and Local Government based on shared development objectives.

The PSIDP is structured to transcend the term of the current Parliament and to take into account future changes in Uganda's political system. It captures the role of Parliament as a national institution and articulates a strategy to strengthen the role of the current and future Parliaments in national development.

CPA Executive Committee meeting

The Commonwealth Parliamentary Association Mid-Year Executive Committee Meeting was held in Kampala, Uganda, from 18 to 24 April 2004.

The Uganda Branch of the CPA was delighted to extend a cordial welcome to all Executive Committee Members and to accompanying persons. Meeting sessions took place from 19 to 24 April. Two days were set aside for touring National Parks and other places of historic significance.

There were 34 members representing the 163 Parliaments and legislatures of the Commonwealth. Delegates came from Canada, India, United

Kingdom, South Africa, Botswana, Cameroon, Ghana, Sri Lanka, Bangladesh, Maldives, Australia, Anguilla, Samoa, Cook Islands, Selangor, Malaysia, New Zealand, Grenada, Tuvalu, Vanuatu and Mauritius.

WALES NATIONAL ASSEMBLY

Legislation is possible in parliamentary session 2005-6 to separate the 'parliamentary' and 'governmental' functions of the National Assembly, and to enhance its legislative powers. An account of this will be given in 2006.

ANNUAL COMPARATIVE STUDY: DELEGATED LEGISLATION

AUSTRALIA

House of Representatives

The *Legislative Instruments Act 2003* (LIA) came into effect on 1 January 2005. A bill had been introduced by the previous Government in 1994, and referred by the then Attorney-General to the House of Representatives Standing Committee on Legal and Constitutional Affairs, which made 38 recommendations. A revised version of the bill was introduced by the present Government in June 2003 and given Assent in November 2003.

The centrepiece of the new regime is the Federal Register of Legislative Instruments (FRLI), which is designed to be a comprehensive and authoritative repository of Commonwealth legislative instruments and associated explanatory statements made on or after 1 January 2005.

The Act requires that (unless specifically exempted) all legislative instruments be registered, and provides that no legislative instrument will be enforceable unless it is registered. It defines a legislative instrument as an instrument that is of legislative character, and that is made in the exercise of a power delegated by the Parliament. For the first time, the Act includes a statutory requirement that all legislative instruments must be accompanied by an explanatory statement. It encourages rule-makers to undertake appropriate consultation, and to report on that consultation in the explanatory statement

All legislative instruments made on or after 1 January 2005 must be tabled in the House within six sitting days of being registered on the FRLI rather than within 15 sitting days of being made, which was the previous requirement (see the response from the Senate, below). The LIA exempts some legislative instruments from disallowance but they must still be registered and tabled in Parliament. The disallowance period is 15 sitting days.

The Office of Legislative Drafting within the Attorney-General's Department is responsible for delivering all registered legislative instruments to each House for tabling within the required period of six sitting days. Individual agencies continue to be responsible for delivering copies of disallowable non-legislative instruments.

Specific provisions apply to certain disallowable instruments. For example, the *Criminal Code Amendment (Terrorist Organisations) Act 2003* provides that where the Parliamentary Joint Committee on ASIO, ASIS and DSD reviews a listing of a terrorist organisation and the committee reports on or after the eighth day of the fifteen day disallowance period, the disallowance period will be extended by one to eight days depending on which day the committee reports. Such an extension occurred in the House in February 2005.

Motions for disallowance are not common in the House. In the 40th Parliament only two motions for disallowance were moved. In November 2002 an Opposition Member moved disallowance of Standard 9 (Employment Conditions) of the Disability Services (Disability Employment and Rehabilitation Program) Standards 2002 made under the *Disability Services Amendment (Improved Quality Assurance) Act 2002*. The House divided and the motion was negatived.

Also in November 2002, an Opposition Member moved disallowance of certain civil aviation regulations under the *Civil Aviation Act 1988*. Following the presentation of a letter from the Deputy Prime Minister and Minister for Transport the motion was withdrawn.

The counting of the 15 sitting days during which disallowance may be moved is not affected by the calling of an election. Any days remaining in the disallowance period are counted from the first day of a new Parliament. However, if notice of motion for disallowance has been moved and an election intervenes, the disallowance period begins again from the first day of the new Parliament and any Member can move disallowance.

In addition, the Act establishes a procedure for including existing instruments (back-capturing) on the register, and introduces a regime for the staged repeal (or sun-setting) of redundant instruments after 10 years.

Senate

During 2004 delegated legislation was governed by the *Acts Interpretation Act 1901*. That Act imposes a series of obligations on the makers of delegated legislation (also referred to as legislative instruments). In general terms, delegated legislation:

- Must be notified in the Government *Gazette*;
- Must take effect from a specified date, and cannot take effect before the date of notification (i.e. retrospectively) if this would disadvantage any person (other than the federal Government);

- Must be tabled in each House of the Parliament within 15 sitting days after it is made;
- Must lie on the table for 15 sitting days, during which time any Member or Senator may move to disallow the instrument;
- Any such disallowance motion must be resolved within 15 sitting days after notice has been given—if the motion is not resolved, the instrument is deemed to have been disallowed;
- Where an instrument has been made, no instrument the same in substance may be made—
  - Until 7 days after the instrument has been tabled;
  - While the instrument is subject to a disallowance motion; or
  - Where an instrument is disallowed, until 6 months after the date of disallowance.

These provisions provide for parliamentary scrutiny of delegated legislation by each House of the Parliament.

The Senate has a Standing Committee on Regulations and Ordinances, which scrutinises each disallowable legislative instrument to ensure that:

- It is in accordance with statute;
- It does not trespass unduly on personal rights and liberties;
- It does not unduly make the rights and liberties of citizens dependent on administrative decisions which are not subject to merits review; and
- It does not contain matter more appropriate for parliamentary enactment.

The committee scrutinises approximately 1,800 instruments which are tabled each year and may recommend that the Senate disallow any instrument which infringes these principles. Normally, however, ministers or other rule-making bodies agree to amend instruments to which the committee takes exception. Any senator may move to disallow any instrument on other grounds.

From 1 January 2005 delegated legislation was governed by the provisions of the *Legislative Instruments Act 2003*, which makes some changes to these procedures. These changes are described above, in the contribution from the House of Representatives.

Australian Capital Territory

Procedures and volume

Delegated legislation is notified (in the case of the ACT, notified on the Legislation Register—see www.legislation.act.gov.au) and must be tabled in the Assembly within six sitting days. Any member of the Assembly can propose a motion to disallow an instrument within six sitting days of it being tabled. If such a motion is not dealt with by the Assembly within six sitting days the instrument is automatically disallowed and cannot be remade within six months.

A total of 383 pieces of subordinate legislation were tabled in 2004.

Parliamentary Scrutiny

The Standing Committee on Legal Affairs performs the duties of the Scrutiny of Bills and Subordinate Legislation Committee with the following terms of reference:

> Standing Committee on Legal Affairs to perform the duties of a scrutiny of bills and subordinate legislation committee and examine matters related to community and individual rights, consumer rights, courts, police and emergency services, corrections including a prison, governance and industrial relations, administrative law, civil liberties and human rights, censorship, company law, law and order, criminal law, consumer affairs and regulatory services.
>
> The Standing Committee on Legal Affairs when performing the duties of a scrutiny of bills and subordinate legislation committee shall:
>
> a) consider whether any instrument of a legislative nature made under an Act which is subject to disallowance and/or disapproval by the Assembly (including a regulation, rule or by-law):
>
> (i) is in accord with the general objects of the Act under which it is made;
>
> (ii) unduly trespasses on rights previously established by law;
>
> (iii) makes rights, liberties and/or obligations unduly dependent upon non-reviewable decisions; or
>
> (iv) contains matter which in the opinion of the Committee should properly be dealt with in an Act of the Legislative Assembly;
>
> b) consider whether any explanatory statement or explanatory memorandum associated with legislation and any regulatory impact statement meets the technical or stylistic standards expected by the Committee;

c) consider whether the clauses of bills introduced into the Assembly:
   (i) unduly trespass on personal rights and liberties;
   (ii) make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers;
   (iii) make rights, liberties and/or obligations unduly dependent upon non-reviewable decisions;
   (iv) inappropriately delegate legislative powers; or
   (v) insufficiently subject the exercise of legislative power to parliamentary scrutiny;
d) report to the Assembly on these or any related matter and if the Assembly is not sitting when the Committee is ready to report on bills and subordinate legislation, the Committee may send its report to the Speaker, or, in the absence of the Speaker, to the Deputy Speaker, who is authorised to give directions for its printing, publication and circulation.

In 2004 the committee prepared 16 scrutiny reports. A legal advisor is appointed to assist the committee in its deliberations.

New South Wales Legislative Assembly

Part 6 of the *Interpretation Act 1987* (see below) provides for the making and disallowance of statutory rules.

Statutory rules must be tabled in each House within 14 sitting days of being made. Either House of the Parliament may disallow the whole or a portion of a statutory rule. This is done by the House passing a resolution. Notice of a motion to disallow a statutory rule must be given within 15 sitting days of the statutory rule being tabled in the House. If a notice of motion to disallow a rule is given, the period during which the rule may be disallowed in that House extends until that notice of motion is disposed of one way or another. Each House tables a list of statutory rules currently subject to disallowance.

Legislative Council Standing Order 78 provides the following procedure for disallowance motions:

Motions for disallowance of statutory instruments

(1) A notice of motion to disallow:
   a) a statutory instrument under section 41 of the Interpretation Act 1987, or
   b) any other statutory instrument or document made under the

authority of any Act and which is subject to disallowance by either or both Houses of the Parliament,

is to be placed on the Notice Paper as business of the House.

(2) When the order for disallowance of a statutory instrument is called on, the House will first decide on a question proposed without amendment or debate—That the motion proceed as business of the House.

(3) If the question is agreed to, the House will then decide, on motion, when the matter will proceed.

(4) The debate on any motion moved under this order as business of the House is to be conducted as follows:

a) the member moving the motion and the Minister first speaking may speak for not more than 15 minutes,

b) any other member and the mover in reply may speak for not more than 10 minutes,

c) if the motion is not sooner disposed of, after a total time of one and a half hours debate, the President is to interrupt proceedings to allow the mover of the motion to speak in reply, and

d) the President will then put all the questions necessary to dispose of the motion and any amendments.

(5) When the House determines that a motion for disallowance will not proceed as business of the House, it will be set down as private members' business outside the order of precedence.

Legislative Assembly Standing Order 125 provides the following procedure for disallowance motions:

The procedure for a motion to disallow a statutory rule or instrument is as follows:

(1) The notice, if given within 15 sitting days after tabling, shall be set down on the Business Paper for the next sitting day with precedence.

(2) Such motions shall have priority in the order given.

(3) The Speaker may put the question when debate has exceeded 60 minutes.

(4) Members and the mover in reply may speak for up to 10 minutes.

Section 41 of the Interpretation Act 1987 provides that:

(1) Either House of Parliament may pass a resolution disallowing a statutory rule:

a) at any time before the relevant written notice is laid before the House, or
b) at any time after the relevant written notice is laid before the House, but only if notice of the resolution was given within 15 sitting days of the House after the relevant written notice was so laid.

(2) On the passing of a resolution disallowing a statutory rule, the rule shall cease to have effect.
(3) The disallowance of a statutory rule has the same effect as a repeal of the rule.
(4) If:
a) a statutory rule ceases to have effect by virtue of its disallowance, and
b) the rule amended or repealed some other Act or statutory rule that was in force immediately before the rule took effect,
the disallowance of the rule has the effect of restoring or reviving the other Act or statutory rule, as it was immediately before it was amended or repealed, as if the rule had not been made.
(5) The restoration or revival of an Act or statutory rule pursuant to subsection (4) takes effect on the day on which the statutory rule by which it was amended or repealed ceases to have effect.
(6) This section applies to a portion of a statutory rule in the same way as it applies to the whole of a statutory rule.
(7) Any provision of an Act that relates to the disallowance of statutory rules made under the Act is of no effect.
(8) This section does not apply to the Standing Rules and Orders of the Legislative Council and Legislative Assembly.
(9) This section does not limit any provision of an Act (for example, section 14A (6) of the *Constitution Act 1902*) that provides that a statutory rule shall not cease to have effect upon its disallowance by either House of Parliament unless it has previously been disallowed by the other House of Parliament.

On 1 January 2005 there were 374 statutory rules in force, comprising 7,531 pages. This has been significantly reduced since 1 July 1990, at which time there were 976 statutory rules, comprising 15,075 pages.

The *Legislation Review Act 1987* establishes the joint parliamentary Legislation Review Committee to consider all regulations subject to disallowance. The functions of the committee with respect to regulations are set

out in s 9 of the *Legislation Review Act 1987* which is given below.

The usual practice of the committee is to write to the responsible Minister whenever it has concerns with a regulation. The committee's letter, together with the Minister's reply, is published in the Committee's *Legislation Review Digest*. If the committee wishes to draw the special attention of Parliament to a regulation, it will also publish a report in its *Digest*.

Under the *Subordinate Legislation Act 1989*, before a principal statutory rule is made, a regulatory impact statement must be prepared and subject to consultation. That statement, together with submission made on the statement, must be forwarded to the Legislation Review Committee within 14 days of the regulation being made. The Premier has also adopted the practice of tabling these statements in Parliament.

The *Subordinate Legislation Act* also provides all statutory rules are automatically repealed after 5 years from the time they were made. Such repeal may be postponed for one year up to 5 times. If remaking the regulation, a regulatory impact statement must be prepared for the new regulation.

Legislation Review Act 1987, s 9 (Functions with respect to regulations)

(1) The functions of the Committee with respect to regulations are:
   a) to consider all regulations while they are subject to disallowance by resolution of either or both Houses of Parliament,
   b) to consider whether the special attention of Parliament should be drawn to any such regulation on any ground, including any of the following:
      (i) that the regulation trespasses unduly on personal rights and liberties,
      (ii) that the regulation may have an adverse impact on the business community,
      (iii) that the regulation may not have been within the general objects of the legislation under which it was made,
      (iv) that the regulation may not accord with the spirit of the legislation under which it was made, even though it may have been legally made,
      (v) that the objective of the regulation could have been achieved by alternative and more effective means,
      (vi) that the regulation duplicates, overlaps or conflicts with any other regulation or Act,
      (vii) that the form or intention of the regulation calls for elucidation, or

(viii) that any of the requirements of sections 4, 5 and 6 of the *Subordinate Legislation Act 1989*, or of the guidelines and requirements in Schedules 1 and 2 to that Act, appear not to have been complied with, to the extent that they were applicable in relation to the regulation, and

c) to make such reports and recommendations to each House of Parliament as it thinks desirable as a result of its consideration of any such regulations, including reports setting out its opinion that a regulation or portion of a regulation ought to be disallowed and the grounds on which it has formed that opinion.

(2) Further functions of the Committee with respect to regulations are:

a) to initiate a systematic review of regulations (whether or not still subject to disallowance by either or both Houses of Parliament), based on the staged repeal of regulations and to report to both Houses of Parliament in relation to the review from time to time, and

b) to inquire into, and report to both Houses of Parliament on, any question in connection with regulations (whether or not still subject to disallowance by either or both Houses of Parliament) that is referred to it by a Minister of the Crown.

(3) The functions of the Committee with respect to regulations do not include an examination of, inquiry into or report on a matter of Government policy, except in so far as such an examination may be necessary to ascertain whether any regulations implement Government policy or the matter has been specifically referred to the Committee under subsection (2) (b) by a Minister of the Crown.

New South Wales Legislative Council

Disallowance of statutory rules

Under the *Interpretation Act 1987* the term 'statutory rule' is defined as a regulation, by-law, rule or ordinance that is made by the Governor or by a person or body confirmed by the Governor. It can also be a rule of court. The term 'statutory instrument' is used together with the term 'statutory rule'. It has a wider meaning and describes all instruments made under the authority of an act of Parliament which includes: statutory rules; environmental planning instruments; proclamations; orders; guidelines; notices;

notifications; determinations; and certain other instruments made by Ministers or statutory bodies.[1]

Part 6 of the *Interpretation Act 1987* deals exclusively with statutory rules and instruments. All statutory rules must be published in the Government Gazette and they commence on the date of publication. A statutory rule, however, can specify that it take effect from a certain other date. It can also apply retrospectively if the act under which it is made states this is permissible.[2]

The power to review statutory rules in Parliament is provided by section 40 of the *Interpretation Act 1987*. Under the Act statutory rules must be laid before each House of Parliament within 14 sitting days after the date of publication. Accordingly, on Tuesday of each sitting week those statutory rules and instruments published in the Government Gazette of the previous week are tabled in the House.

Under section 41 a motion disallowing a statutory rule can be made either at any time before it is tabled or by giving notice within 15 sitting days of tabling. A statutory rule ceases to have effect if either House passes a resolution of disallowance.

A paper listing all statutory instruments subject to disallowance, their Government Gazette reference and the time period within which a motion for disallowance may be moved, is published by the Clerk of the Legislative Council on Tuesday of each sitting week and on the first Tuesday of each month when the House is not sitting.

It should be noted that there are other statutory instruments tabled in Parliament which are subject to disallowance under acts other than the *Interpretation Act 1987*. For example, the *National Parks and Wildlife Act 1974,* the *Crown Lands Act 1989,* and the *Poisons and Therapeutic Goods Act 1966* all have specific provisions for the disallowance of statutory instruments made under these Acts.

Under standing order 78 a notice of motion to disallow a statutory rule is placed on the business paper as business of the House and as such has precedence of other matters on the business paper for that day. When the matter is called on, the House first decides whether it is to proceed as business of the House. If the question is agreed to, the House then decides whether the matter should proceed forthwith or at another time. If the matter is not to proceed as business of the House, it is considered private members' business and is set down at the end of the business for that day.

[1] LIAC Newsletter, Vol. 3 November 1993, 'Delegated Legislation in New South Wales', Office of the Parliamentary Counsel, p 5.

[2] *Op. cit.*, p 6.

Once moved, the debate on the motion is subject to time limits, the mover speaking for not more than 15 minutes and other members and the mover in reply speaking for no more than 10 minutes. The motion is to be disposed of in a total of one and a half hours' debate, the President interrupting debate to allow the mover to speak in reply and for all questions to be put.

The volume of delegated legislation

Since the beginning of the current Parliament in April 2003:

- 943 statutory rules and instruments have been tabled in the Legislative Council;
- 13 notices of motion to disallow a statutory rule have beeen placed on the business paper (two of these were for one regulation);
- 8 motions to disallow have been moved;
- Of these, three motions have been agreed to and the regulations disallowed.

Parliamentary scrutiny

As well as the disallowance procedures described above, scrutiny of delegated legislation is undertaken by the Legislation Review Committee. The *Legislation Review Act 1987* (formerly the *Regulation Review Act 1987*[3]) established the joint parliamentary committee to 'consider all regulations while they are subject to disallowance by resolution of either or both Houses of Parliament'. Under the Act the committee reports to each House of Parliament and makes recommendation if, in its opinion, a regulation trespasses unduly on personal rights and liberties or other ground set out in the Act, whether the whole or portion of the regulation ought to be disallowed, and the grounds on which it has formed that opinion. The committee also reviews regulations based on the staged repeal of regulations and inquires into any question in connection with regulations that is referred to it by a Minister of the Crown.

The *Legislation Review Act 1987* limits the committee to the scrutiny of regulations defined as a statutory rule, proclamation or order subject to disallowance by either or both Houses of Parliament.

The committee consists of eight members of whom three are members for the Legislative Council and five are members of the Legislative Assembly. The committee must meet as a joint committee at all times.

[3] The *Legislation Review Amendment Act 2002* renamed the Act and the parliamentary committee to reflect to the additional function provided under the amending act of considering any bill introduced into Parliament and reporting to both Houses on the bill.

In July 2004 the committee tabled its report entitled *Legislation Review Committee: Operation, Issues and Future Directions—September 2003–June 2004*. With regard to regulations the committee states in chapter three of the report:

> 3.1 Since the formation of the present committee in May 2003, members have considered 480 regulations. Of these, 133 were subject to more detailed analysis by the committee, leading to follow-up action on 24 regulations.
> 3.2 To date, such action has taken the form of writing to the Minister seeking clarification, explanation or amendment. The correspondence was subsequently published in the *Legislation Review Digest* [in both Houses of Parliament].
> 3.3 On 3 May 2004, the committee brought the special attention of Parliament to two regulations:
> - the Occupational Health and Safety Amendment (Accreditation and Certification) Regulation 2003; and
> - the Environmental Planning and Assessment Amendment (Certifier Accreditation) Regulation 2003.
>
> With each of these regulations, the committee was concerned that the scope of administrative discretions was too broad.
> 3.4 In response to the committee's concerns regarding the *Environmental Planning and Assessment Amendment (Certifier Accreditation) Regulation 2003*, the Minister Assisting the Minister for Infrastructure and Planning indicated that the regulation would be amended. The committee acknowledged the Minister's positive response.

Staged repeal of statutory rules

The Legislation Review Committee also reviews regulations based on the staged repeal programme under section 10 of the *Subordinate Legislation Act 1989*. Under that Act statutory rules are repealed on the fifth anniversary of the date on which they were published. Under section 5 of the Act, before the regulation is remade, the responsible Minister must ensure that a regulatory impact statement is prepared and that consultation with consumers, the public, relevant interest groups, and any sector of industry or commerce likely to be affected by the proposed statutory rule is undertaken.[4]

The Minister must also ensure that a notice is published in the

[4] All new principle statutory rules are subject to section 5 of the *Subordinate Legislation Act 1989*.

Government Gazette, in a daily newspaper circulating throughout New South Wales, and in any relevant trade journal stating the objects of the proposed statutory rule, advising where a copy of the regulatory impact statement may be obtained or inspected, and inviting comments and submissions. Under the Act all the comments and submissions received are to be appropriately considered by the Minister before the statutory rule is made.

Within 14 days after the new statutory rule being published in the Government Gazette a copy of the regulatory impact statement and all written comments and submissions received by the Minister are forwarded to the Legislation Review Committee for its consideration.

The staged repeal process and the consequent remaking of statutory rules add another level of complexity to the process of scrutiny of statutory rules by the House. As a result of the late timing of the remaking of statutory rules, members of the House can be faced with a dilemma in determining whether or not to disallow a flawed statutory rule when this could result in an industry or activity being left effectively unregulated for a period of time. This occurred in relation go the Centre Based and Mobile Child Care Services Regulation disallows by the House on 23 October 1996.

South Australia

In accordance with the *Subordinate Legislation Act 1978*, all delegated legislation must be tabled in both Houses of Parliament within 6 sitting days of it being made and is subject to a Notice of Motion for Disallowance to be given within 14 sitting days of the legislation being tabled. Should either House resolve to disallow a regulation, the delegated legislation ceases to take effect from midnight of the previous day. In a 12-month period, on average, there are around 350 regulations, rules and local government by-laws made by Executive Council, Courts of Law and Statutory Bodies and subsequently tabled in Parliament. The Legislative Review Committee, a joint committee of the Parliament, meets regularly and must consider all delegated legislation and, if necessary, take appropriate evidence on matters before it and duly report to both Houses of Parliament. A representative of the committee in either House gives a Notice of Motion for Disallowance should the committee so resolve. Likewise, any private Member as well may give a Notice of Motion for Disallowance in either House on any delegated legislation.

Tasmania

Delegated legislation becomes law on date of Gazettal. The relevant Minister is required to table the instrument within five sitting days from Gazettal which brings it before the Parliament. Any Member can bring on a Notice of Motion for Disallowance but the usual procedure is to refer it to the Joint Parliamentary Standing Committee on Subordinate Legislation.

The committee examines all Regulations, rules and by-laws and other instruments referred to it by its principal act and reports to Parliament any problems it finds.

There are on average 200 regulations each year. This is slightly less than formerly as the effect of the 10-year sunset clause is now being felt.

Victoria

The *Subordinate Legislation Act 1994* states that statutory rules must be tabled in both the Council and the Assembly 'on or before the 6th sitting day after notice of the making of a statutory rule has been published in the Government Gazette' (section 15(1)).

Standing Order 151 allocates debating time to motions disallowing statutory rules which have been adversely reported on by the Scrutiny of Acts and Regulations Committee.

The number of statutory rules since 1996 is as follows:

2004 – 184
2003 – 157
2002 – 136
2001 – 176
2000 – 141
1999 – 150
1998 – 171
1997 – 175
1996 – 166

The Parliament has delegated the scrutiny of subordinate legislation to the Scrutiny of Acts and Regulations Committee (SARC). SARC has a permanent Regulation Review Subcommittee which is responsible for examining regulations to ensure that they do not exceed the power to make regulations conferred by an Act and do not unduly trespass on rights and freedoms.

SARC may:

- Report to each House of Parliament if it considers that any statutory rule does not comply with the procedures or the principles of the *Subordinate Legislation Act 1994*, and may recommend disallowance, part disallowance or amendments;
- Propose that the operation of the statutory rule be suspended if disallowance or part disallowance is recommended.

SARC makes a number of reports concerning subordinate legislation each year as follows:

- An annual report which reports on the statutory rules and SARC's related operations during the year;
- Information papers for members and the public;
- Individual reports relating to statutory rules offending any part of the review criteria in the *Subordinate Legislation Act 1994* in which it may recommend disallowance or suspension. More commonly, where it is considered that a defect in a statutory rule can be rectified by amendment, SARC approaches the responsible minister privately to seek and amendment, rather than reporting to Parliament.

Western Australia

The Joint Standing Committee on Delegated Legislation holds a standing referral from the Parliament to consider all instruments of subsidiary legislation, and to consider other instruments made under delegated legislative authority that are subject to parliamentary disallowance. However, due to the tight deadlines that are statutorily imposed on the committee and the limited resources available to it, the committee resolved shortly after its establishment in June 2001 to consider only those instruments that are subject to disallowance and any other instruments that were noted by individual members.

The procedures for subsidiary legislation are set out principally in Part VI of the *Interpretation Act 1984*. All subsidiary legislation must be published in the *Government Gazette*. The Act also requires the tabling of 'regulations' before each House of Parliament within six sitting days following publication in the *Government Gazette*. Failure to comply with these procedures will result in the subsidiary legislation being either void, as would be the case if there is a failure to publish, or ceasing to have effect, in the case of 'regulations' not being tabled.

Disallowance is most commonly dealt with under the general procedure

provided for in the *Interpretation Act 1984*. However, the Parliament has provided for specific procedures relating to the disallowance of certain instruments of subsidiary legislation such as metropolitan and regional town planning schemes.[5]

Section 42(2) of the *Interpretation Act 1984* allows any Member of the House of the Parliament, within 14 sitting days after tabling of a regulation, to give notice of motion to disallow the regulation. However, in practice it is unusual for regulations and other instruments to be disallowed in the Legislative Assembly because the Government of the day commands a majority of votes on the floor of that House. As a consequence, the vast majority of motions for disallow regulations are dealt with in the Legislative Council, which has introduced Standing Orders to ensure that such motions are debated and resolved.[6] The Standing Orders of the Legislative Council also avoid the prospect of a notice of motion not being moved or a motion for disallowance, once moved, not being brought on for debate by providing:

- Notices of motion to disallow to move automatically at the expiration of two sitting days after notice has been given;
- Disallowance motions to be given priority over all other motions (other than condolence motions and motions for leave of absence) from the time that they are move;
- If not brought on for debate and resolved earlier, the motion for disallowance must be debated and disposed of on the nest sitting day following the expiry of 10 sitting days after the motion was first moved; and
- In the event that Parliament is prorogued prior to the question being resolved, a motion for disallowance that has moved is deemed to have been resolved in the affirmative (thereby disallowing the instrument).

Only a suspension of the Standing Orders, which requires an absolute majority of 18 of the 34 members of the Council would prevent such a debate. The above procedures in the Legislative Council ensure accountability of executive action in the making of regulations because disallowance motions are required to be resolved within a specific period.

The volume of such legislation is as follows:[7]

[5] Section 33 of the *Metropolitan Town Planning Scheme Act 1959* read with section 18 of the *Western Australian Planning Commission Act 1985* and section 43 of the *Land Administration Act 1997*.

[6] Standing Orders 143, 152 and 153 of the Standing Orders of the Legislative Council.

[7] Western Australia, Legislative Council, Joint Standing Committee on Delegated Legislation, *Report 10: Overview of the Committee's Operations: Second Session of the Thirty –Sixth Parliament (August 2002 to November 2004)*, November 2004.

	Financial Year 2002 to 2003	Financial Year 2003 to 2004	01.07.2004 to 10.11.2004
Total number of instruments scrutinised	482	531	202
Total number of notices of motion for disallowance given	19	16	9
Total number of instruments disallowed on recommendation of the Committee	0	0	0

What these figures do not reveal is that many of the instruments considered by the committee are lengthy documents. Irrespective of their size, the instruments often involve complex issues that span a diverse range of subject matters. Nor do they illustrate the process by which the committee can, and does, obtain undertakings from the responsible Minister, department or local government to amend or repeal instruments about which the committee has raised a concern. When such undertakings are given, the committee often does not proceed with any motion to disallow that may have been tables. The committee only recommends the disallowance of an instrument as a last resort.

CANADA

House of Commons and Senate

Since 1971 the review of delegated federal legislation (also referred to as 'subordinate legislation' or 'statutory instruments') in Canada has been the mandate of a Standing Joint Committee of Canada's two Houses of Parliament. At present, the committee is titled 'the Standing Joint Committee for the Scrutiny of Regulations**'.** It consists of eleven MPs and eight Senators. The committee has two Joint Chairs, one from the House (Official Opposition), and the other from Senate.

The committee's mandate derives in part from an Act of Parliament (*Statutory Instruments Act*, S.C. 1970-71-72), and in part from terms of reference set out by the House itself (cf. Standing Order 108(4)(b)). Statutory instruments dealing with international affairs, federal-provincial relations, and national security are generally considered to fall outside the committee's mandate.

The body of delegated legislation which falls within the purview of the Standing Joint Committee is very large. The number of regulations, orders,

rules, by-laws and other instruments created by Ministers, departments, agencies, boards or other authorities authorised to do so by Act of Parliament, is continually growing. At the end of 2004, there were over 3,000 current instruments of delegated legislation. This represents an increase of more than 400 percent over the last two decades.

Illustrating the magnitude of the task assigned to the Standing Joint Committee are the minutes of its meeting of 6 May 2004, during which the committee considered and commented on 24 statutory instruments. It then considered a further 88 statutory instruments without commenting specifically on them. It also discussed measures related to two of its reports recently tabled in the House.

One of the challenges facing the Standing Joint Committee has been to avoid devoting too much of its time to regulatory minutiae. To do this is counter-productive and contrary to the philosophy behind the original delegation of legislative power. The committee's primary *raison d'être* is to ensure that the provisions of subordinate legislation do not exceed the powers approved by Parliament itself. It is, however, also responsible to ensure that all regulations conform to the Canadian Charter of Rights and Freedoms.

When the Standing Joint Committee tables a report recommending the revocation of a statutory instrument, the House must choose either to adopt or to reject the report. Such a recommendation to the House is usually the result of a study concluding that a particular instrument is not in keeping with the intentions of the Act from which it is supposedly derived. If the report is not brought on for debate and decision within fifteen sitting days, the recommendation of the committee is deemed to be made an order of the House that the Government revoke the instrument.

Such an order does not compel the Minister responsible for the instrument concerned to revoke it. Successive Canadian federal Governments have, however, reaffirmed a policy commitment, first made in 1986, to follow through with any revocations recommended by the committee.

Some Canadians complain that the delegation of legislative authority has effectively undermined the principle of parliamentary supremacy. They worry that the inevitable result of this is the determination of public policy by 'bureaucrats'.

This concern is addressed in part, by the requirement that all Government departments publish Regulatory Impact Analysis Statements (in the *Canada Gazette*) explaining the need for new regulations, relating them to specific policy objectives, outlining their content, and highlighting their effect on the

existing legal regime. The departments and regulatory agencies are also subject to a notice requirement for new regulatory initiatives; notice is given in the form of 'regulatory plans'.

Other critics of the effectiveness of the Standing Joint Committee point out that committee members belonging to the governing party may find themselves in a conflict of interest when regulatory problems appear to be the result of improper actions by the Government. The committee's record suggests that this has not proved unduly problematic, and demonstrates considerable success in motivating Ministers and departmental officials to modify, revoke, or replace defective delegated legislation.

When the committee deems it necessary to report to the House, as it did on eleven occasions during the life of the 37th Parliament, it is entitled to request that the Government table a comprehensive response in the House of Commons within 150 days. This public exposure of regulatory deficiencies has tended to result in prompt and effective efforts at remediation at the Ministerial and departmental levels.

British Columbia Legislative Assembly

In British Columbia delegated legislation includes orders and regulations. Orders mainly concern administrative matters, while regulations typically have the effect of directing actions, limiting rights and freedoms or setting fees.

Orders and regulations are governed by the *Interpretation Act*, the *Regulations Act* and the *Constitution Act*. The statutory definitions for both include regulations, orders, rules, forms, tariffs of costs or fees, proclamations, letters patent, commissions, warrants, bylaws or other instruments enacted through powers conferred under an Act or under the authority of the Lieutenant Governor in Council. However, these are only regulations where the empowering statute uses the terms 'regulation' or 'prescribe' in conferring the power. The person(s) or body to whom authority is delegated to make an order or regulation is specified in the empowering statute, most frequently the Lieutenant Governor in Council, a Minister, a Government official, a commission or board, or a professional body. Neither orders nor regulations include determinations made by a court or public officer, or adjudications made by an administrative tribunal.

Under the *Regulations Act*, for a regulation to be enacted it must be deposited with the Registrar of Regulations in the Ministry of Attorney General and published in the British Columbia Gazette. Orders that are not

regulations are not deposited and do not require publication unless their empowering statutes indicate otherwise.

There are no legislative mechanisms specifically designed to oversee delegated legislation. However, the regular system of parliamentary scrutiny indirectly measures the outcomes that result from orders and regulations. These oversight mechanisms include:

- Committee of the Whole debate in the passage of bills;
- Estimates debate;
- Question Period;
- The Select Standing Committee on Public Accounts;
- The Select Standing Committee on Crown Corporations; and
- Any special committee required by a statute to initially or periodically review its provisions.

In terms of regulatory policy, in 2001 the BC Government appointed a Minister of State for Deregulation and adopted a regulatory reform programme committed to reducing regulation by one-third within three years. The deregulation policy focused on increasing provincial economic competitiveness by reducing requirements that might create barriers to innovation, trade and investment. As the mandate of the policy was specific to reducing red tape, the Government adopted a broad definition of regulation, encompassing any directive requirements found in statutes, regulations, administrative policies and enforcement rules, both for public sector and private sector activities. In 2004 the Minister of State and his office reported meeting their objective, with a reduction of directive requirements from 382,139 in 2001 to 236,492 at the end of 2004. The Regulatory Reform Office, now the responsibility of the Minister of Small Business and Economic Development, is presently concentrating on its mandate to foster the adoption of results-based and smart regulation throughout Government.

Manitoba Legislative Assembly

Section 12 of the Regulations Act states that upon registration, a regulation stands permanently referred to the Standing Committee on Statutory Regulations and Orders. This is reinforced by Rule 70(1). The Standing Committee on Statutory Regulations has not met since 30 May 1972 to review the regulations.

Prince Edward Island Legislative Assembly

There are no specific procedures which apply to delegated legislation; however, committees of the Legislative Assembly of Prince Edward Island, by majority decision of their membership, may meet to examine and inquire into such matters and things as they deem appropriate.

Québec National Assembly

In Québec delegated legislation is governed by the *Regulations Act* (*Revised Statutes of Québec*, chapter R-18.1). Section 21 of this act provides as follows: 'The National Assembly may, in accordance with its standing orders, vote the disallowance of any regulation or any prescriptions of a regulation.' Section 22 states that when the Assembly has disallowed some prescription of a regulation, the Secretary General of the Assembly shall cause a notice of such disallowance to be published in the Québec Official Gazette. Finally, section 23 of the Act provides that the disallowance of a regulation takes effect either on the date on which the Assembly carries the motion to disallow it or on such other date as the motion itself may specify.

Standing committees of the National Assembly are empowered under Standing Order 120 to examine, on their own initiative, draft regulations and regulations that lie within their respective fields of competence. A few statutes also expressly ordain parliamentary oversight of certain classes of regulations.

The decision to initiate such an examination requires that a motion to that effect by a member of the committee be carried by a majority of the members within each parliamentary group represented on the committee (Standing Order 149). If the committee were thereafter to report to the Assembly that it recommended the disallowance of some regulation—such report being debatable in the Assembly, although the debate thereon would give rise to no decision—a motion for disallowance would subsequently need to be made in the Assembly, presumably by a member of the committee reporting. The ultimate decision on such a regulation would thus belong to the Assembly itself, not the committee that made the recommendation.

To our knowledge, the National Assembly has never exercised its power to disallow a regulation. However, committees of the National Assembly have on rare occasions examined draft regulations or regulations within their fields of competence. Our records show that from the beginning of the 35th Legislature (29 November 1994) to the present the following activity has taken place in the field:

- The Committee on the National Assembly has, as required by law, on three occasions examined regulations made by the Chief Electoral Officer concerning electoral matters (20 December 2000, 15 June 2001, and 31 March 2004);
- The Committee on Labour and the Economy has, as required by law, on two occasions examined draft regulations on the form and content of the report relating to a pay equity program (19 March 1998 and 24 November 2004);
- The Committee on Institutions has, on its own initiative, examined a draft regulation relating to the ethics and professional conduct of public administrators (22 and 28 May 1997). It has also examined a draft regulation on the provision of documents relating to marital status (28 November 2001).

We do not know how many regulations the Government of Québec has adopted over the years, but it is certain that the handful of regulations examined by our parliamentary committees represent but an infinitesimal proportion of the body of existing delegated legislation in Québec.

That the examination of delegated legislation is an important facet of parliamentary control would be undisputed at our Assembly; and it would probably be acknowledged as well that the level of review of such legislation here is woefully inadequate. We must add that although formal parliamentary review of delegated legislation is rare, Members of our Assembly do nevertheless intervene from time to time to resolve concrete problems that the electorate have brought to their attention in the application of a given regulation.

How this situation might be improved is unclear. Notwithstanding the powers of initiative that the Standing Orders grant them, parliamentary committees enjoy little real latitude in the arrangement of their own affairs. The number of committees that may meet at any one time is limited; and when they do meet, Government business, determined by the Government House Leader, always takes priority over a committee's own initiatives. Furthermore, a thorough-going, purposeful review of the great mass of delegated legislation presupposes substantial technical support of a kind that is not currently available to committees; although it might be obtained if committees insisted on having it, to date they have not done so. It is likely that only a major revamping of the resources available to committees, and possibly even of committee responsibilities, including the creation of a specialised committee to review delegated legislation, would ensure more adequate oversight of this area of public activity. Such a change is not, however, contemplated at this time.

Saskatchewan Legislative Assembly

All Regulations passed by the Government and all by-laws adopted by professional associations are required by law to be filed with the Legislative Assembly. These regulations that are recognised by an Act of the Legislative Assembly and by-laws are then referred to a policy field committee for review. Each of the policy field committees conducts a review of the regulations and by-laws associated with its particular portfolio.

The primary purpose of the regulations review process is to ensure that the regulations do not exceed the power granted in the parent Act. The Rules of the Assembly set out the criteria that guide the committee in its review process. The committee is directed to report back to the Assembly should its review find that any regulation or an amendment to a regulation contravenes any of the following grounds:

1. The regulation imposes a charge on the public revenue not specifically provided for by statute;
2. The regulation prescribes a payment to be made by any public authority that is not specifically provided for by an Act of the Legislative Assembly;
3. The regulation specifies that it may not be challenged in the courts;
4. The regulation makes unusual use of the authority provided for in the parent Act;
5. The regulation has an unexpected effect where the parent Act confers no express authority for that effect;
6. The regulation purports to have retrospective effect where the parent statute confers no express authority to have a retrospective effect;
7. The regulation has been insufficiently promulgated; is outside the scope of the parent Act; has not been enacted properly; or has been made without the necessary statutory authority;
8. The regulation is not clear in meaning; or
9. The regulation is in any way prejudicial to the public interest.

It is common in Saskatchewan for professional associations (such as doctors, nurses, teachers, engineers, etc.) to be established by an Act. These Acts delegate authority to the professional association to regulate its organisation, professional conduct, and professional activity through by-laws. The policy field committees have a mandate to review the by-laws to determine whether or not the regulations are properly drafted or in any way prejudicial to the public interest.

In the event a concern or issue is identified in a regulation or by-law, a committee is authorised to hold a public hearing. On the basis of these deliberations, a policy field committee could choose to draw the attention of the Assembly to the unresolved concern by including an observation or a recommendation in its report. The committee is required by the Rules to inform the government or professional association if a report is to be made. This notification affords the department or professional association a final opportunity to make changes or modifications to resolve the committee's concerns. The concurrence by the Assembly in the report will render the regulation or by-law null and void. The Government or professional association will then be directed to withdraw the offending regulation or by-law.

The volume of delegated legislation in Saskatchewan exceeds the number of Acts, with 512 Acts and 648 regulations currently in force. In 2004 157 regulations were passed, some of which amended existing regulations. Recent years have seen a rise in the number of regulations as increasingly more authority is delegated to Government departments and agencies to develop the details and mechanics of programs and activities. There have been periodic initiatives by the Government to review existing regulations to identify and revoke those that are no longer relevant. The most recent such initiative was in the mid 1990s.

Responsibility for ensuring that an adequate level of parliamentary scrutiny is maintained rests with those committees and legislative staff tasked with reviewing delegated legislation. This responsibility has been hampered by the paucity of resources made available by the Assembly. The review of delegated legislation does not have dedicated personnel. Pursuant to the Rules of the Legislative Assembly, the Legislative Counsel and Law Clerk is required to provide legal counsel to assist the committee and to carry out the primary review of all delegated legislation. These duties are in addition to his regular responsibilities. A clerk is available to provide procedural and administrative assistance to the committee, including the preparation of substantive reports outlining the reviews completed and any outstanding concerns. A further challenge to ensuring that an adequate and consistent level of scrutiny is maintained is the disinclination of elected officials to assign a priority to the task.

Yukon Legislative Assembly

Section 34 of the Interpretation Act states, 'A copy of every order, rule, or regulation made by the commissioner in executive Council pursuant to any

Act shall be laid before the Legislative Assembly as soon as conveniently may be after the making thereof.' This practice was followed for a number of years; however the last such report was tabled in the Legislative Assembly in January 1995. All members receive copies of the Yukon Gazette which publishes, among other things, all regulations and orders issued by the executive. So members are made aware of all delegated legislation. However, as mentioned, such information has not been laid before the Assembly for 10 years.

For the fiscal year April 2004 to March 2005 there were 219 Orders-in-Council and 17 Ministerial Orders. Following each general election the Assembly appoints a Standing Committee on Statutory Instruments that has the power to review such new regulations as it may decide upon and review such other existing or proposed regulations as are referred to it by the Assembly. However, this committee has been inactive for the last 20 years. Questions about regulations and other statutory instruments are rarely raised in the Assembly. The reality, therefore, is that there is almost no scrutiny of delegated legislation by the Yukon Legislative Assembly.

INDIA

Rajya Sabha

Both Houses of Indian Parliament have separate Committees on Subordinate Legislation. The Committee on Subordinate Legislation of Rajya Sabha was first constituted on 30 September 1964, with 15 Members. The committee is governed by Rule 204 of the Rules of Procedure and Conduct of Business in the Council of States, with the mandate to scrutinise and report to the Council whether the powers to make Rules, Regulations, By-Laws, or other statutory instruments conferred by the Constitution or delegated by the Parliament have been properly exercised. The committee scrutinises all 'Orders', whether laid on the Table of the Council or not, issued in exercise of powers delegated by Parliament, as also those framed in exercise of powers conferred by the Constitution.

In addition, the committee monitors that 'Orders', as contemplated under the Constitution of India or any Act of Parliament, are framed on time and after notification thereof in the Official Gazette, and that they are promptly laid on the Table of both Houses.

In practice, the committee scrutinises all 'Orders' made by the Government of India or by any other subordinate authority ultimately responsible to the Government and which are published in the Gazette of

India or laid on the Table. During 2004 a total of 1,733 notifications were laid on the Table of Rajya Sabha.

While all rules or regulations laid on the Table of Rajya Sabha receive general scrutiny on behalf of the committee, from the angle of their being in the proper format and on time, some of the rules or regulations are identified for detailed examination by the committee keeping in view their public importance and applicability. Clarifications etc. on the selected item are sought from the concerned Ministry/Department through a questionnaire. The matter is then placed before the committee, indicating the points referred to and the Ministry's comments thereon, in the form of a memorandum. It also gives details of the provisions objected to and the grounds of objection. If it is considered necessary, the committee hears the views or suggestions of individuals and organisations before finalising its recommendations.

The committee also examines and scrutinises representations presented by individuals, associations, institutions and private bodies having a bearing on the rules and regulations and other delegated legislation. The committee hears the petitioners, representatives of such associations and institutions and seeks clarifications on the points mentioned in the representation. It also seeks necessary clarifications from the Ministry/Department concerned before finalising its observations or recommendations.

The observations and recommendations of the committee are put in the form of a Report, which is presented to the Council after it has been adopted by the committee. The committee has its own procedure for pursuing its recommendations and ensuring implementation thereof. The committee also reports implementation status to the House from time to time.

The committee has so far presented 154 reports to the House. These reports include *inter alia* subjects on which the Government has already taken action on the committee's suggestions, given during deliberation, and/or the committee's recommendations to the Government which are yet to be accepted or implemented. In the latter case, the committee pursues the implementation of its recommendations with the concerned Ministries/Departments after the matters are reported. The committee has been able to make its presence felt to the Executive, and all Ministries/ Departments are very vigilant in observing their obligations to have in place appropriate and updated subordinate legislation.

Gujarat Legislative Assembly

In rule 270 of the GLA Rules provision has been made for computing the period for which rules, regulations, by-laws or notifications must be laid on the Assembly Table. Accordingly a rule etc. made by the State Government in exercise of the power conferred by the Constitution or delegated by Parliament or by the State Legislature is required to be laid before the House. The Minister concerned shall lay it on the Table of the House for the period specified in the Constitution or parent Act. In computing the said period no account shall be taken of any period during which the House is dissolved, prorogued or adjourned for more than four consecutive days.

In rules 206 and 208 provision has been made for the constitution of a Committee on Subordinate Legislation. The functions of the committee are as follows:

The committee scrutinises and reports to the House whether the powers to make rules etc. made by the State Government in exercise of the delegated legislative power conferred upon it have been properly exercised. The committee also considers whether the rules etc. are in accordance with the general objects of the Constitution or the parent Act. The committee also scrutinises whether the subordinate authority has exercised powers in conformity with the parent legislation and whether there is any delay in laying and publishing the rules.

Generally during the tenure of each Assembly of Gujarat 100-150 notifications, regulations, by-laws and orders made by the State Government are laid on the Table of the House. The Committee on Subordinate Legislation examines these notifications etc. and requires memoranda in explanation of any objections. If necessary, the committee examines witnesses from the Government to provide more justification. After obtaining such justification from the Government, the committee drafts a report, including recommendations if necessary, and presents it to the House. Generally all recommendations are accepted by the Government. In the tenth Gujarat Legislative Assembly two such reports have been presented to the House.

Nagaland Legislative Assembly

In the State of Nagaland all Acts are made by the Legislative Assembly. Legislative powers are delegated to the Government in cases where an Act of the Legislature may make provision empowering the Government to make rules for carrying out the purposes of the Act. When such legislation is introduced in the Assembly the delegated powers are explained in a memorandum

appended to the Bill. However, Nagaland is a small State, and the volume of activity is small in proportion.

The Committee on Subordinate Legislation exercises control over the way the Government uses delegated powers. Rules introduced under the various Acts are laid before the House. The committee examines these rules and scrutinises whether the rule-making powers have been exercised by the Government within the parameters set out in the Acts concerned. The committee presents reports to the House and thereafter reports are sent to the Government for 'Action Taken' replies.

Uttar Pradesh Legislative Assembly

During 2004 eleven items of subordinate legislation were laid on the Table of the House. These items stand automatically referred to the Delegated Legislation Committee, which considers them and gives its report to the House in due course.

STATES OF JERSEY

In Jersey delegated legislation takes the form of Orders, which are subordinate legislation made by Committees of the States. There are some 150 such Orders made each year. The Government of Jersey is currently organised around a system of committees with executive responsibilities, although the decision has been taken to move to a ministerial form of government in December 2005. Following the introduction of ministerial government, Orders will, of course, be made by Ministers.

There is no system of parliamentary pre-scrutiny of any nature before an Order is made. After an Order is made it must be tabled at the next meeting of the States and details of the title of the enactment, together with a short explanatory note of its effect, are included on the Order Paper for the sitting. Any member who wishes to obtain a copy of the Order can do so from the States Bookshop free of charge. After an Order has been made the Greffier of the States (Clerk of the Assembly) is also required to publish a notice in the Jersey Gazette, printed in the local evening newspaper, giving details of the enactment and its coming into force date.

There is no debate or scrutiny of the Order, which comes into force on the date specified in it, unless a member of the States initiates a debate to annul the Order. Under the provisions of the Subordinate Legislation (Jersey) Law 1960 there is no time limit on bringing such a proposition and it could in

theory be brought several months, or even years, after the enactment came into force. In practice debates on annulment are rare (less than one per year) and usually happen soon after the Order has been made. The proposition is restricted to one to annul the Order and it cannot seek to amend it or annul only part of it. If the States adopt the proposition the Order is annulled forthwith although without prejudice to anything previously done under it or to the passing of a new subordinate enactment.

The introduction of a ministerial system of government in December 2005 will be accompanied by the establishment of formal Scrutiny Panels and it is proposed that these Panels will have the ability to scrutinise Orders before or after they are made. Although many Orders relate to minor, routine, matters it is likely that some significant Orders will be subjected to formal scrutiny under the new system which will provide the opportunity for members to consider their provisions in a way that is not done at present.

Propositions to annul Orders are only brought infrequently as mentioned above and those that are brought are rarely adopted. The most recent such proposition related to the Medicines (Kava-Kava) (Prohibition) (Jersey) Order 2003 which was made by the Health and Social Services Committee and had the effect of outlawing the supply, sale or importation into Jersey of any medicinal product containing Kava-Kava. The member who presented the proposition to annul the Order expressed strong views during the debate about the merits and health-giving properties of Kava-Kava and referred to the use of the product in parts of the Pacific in support of his arguments. Unfortunately for the member concerned, the majority of his colleagues did not share his views and the annulment was rejected by 24 votes to 17.

NEW ZEALAND HOUSE OF REPRESENTATIVES

In New Zealand scrutiny of delegated legislation is conducted by a parliamentary select committee known as the Regulations Review Committee. The committee examines all regulations, investigates complaints about regulations and performs other functions so that regulations are subject to effective parliamentary scrutiny and control. It carries out technical scrutiny of regulations, on behalf of the House of Representatives, in accordance with grounds listed in the House's Standing Orders.

The grounds, set out in Standing Order 378(2) are, that the regulation—

a) is not in accordance with the general objects and intentions of the statute under which it is made;

b) trespasses unduly on personal rights and liberties;
c) appears to make some unusual or unexpected use of the powers conferred by the statute under which it is made;
d) unduly makes the rights and liberties of persons dependent upon administrative decisions which are not subject to review on their merits by a judicial or other independent tribunal;
e) excludes the jurisdiction of the courts without explicit authorisation in the enabling statute;
f) contains matter more appropriate for parliamentary enactment;
g) is retrospective where this is not expressly authorised by the empowering statute;
h) was not made in compliance with particular notice and consultation procedures prescribed by statute;
i) for any other reason concerning its form or purport, calls for elucidation.

The committee has a tradition of working in a non-partisan manner and, by convention, is chaired by an Opposition member. The committee is assisted in its work by a permanent staff, including a specialist legal adviser.

Examination of regulations

All regulations must be tabled in Parliament within 16 days of being made. It has been the practice of the committee to investigate all new regulations as soon as possible after they are promulgated. The committee scrutinises approximately 450 delegated instruments each year.

Following its initial examination of a regulation, the committee may resolve to seek further information from the Government department, or other body, responsible for administering the regulation. The committee can request that any person attend and give evidence, or produce papers and records relevant to its proceedings. If the committee is concerned that a regulation raises issues under any of the grounds listed in Standing Order 378(2), the committee can write to the relevant department or Minister noting its concerns, or make a report to the House, which may include recommendations to the Government.

Disallowance

Section 5 of the Regulations (Disallowance) Act 1989 gives the House the authority to pass a resolution disallowing regulations. In addition, section 6 of the Act contains a specific procedure for dealing with a disallowance

notice of motion lodged by a member of the Regulations Review Committee. Section 6 contains a mechanism for the automatic disallowance of regulations if the motion is not disposed of within 21 sitting days of the House. If a disallowance motion is moved in the House, voted on and defeated, disallowance will not occur.

Regulation-making powers in bills

Another significant area of the committee's work is in its examination of the regulation-making powers in bills. It makes recommendations to the subject committee considering the bill.

The committee examines bills to determine whether the delegation of Government's law-making power is appropriate and clearly defined. In undertaking such an examination, the committee is not confined to the scrutiny of grounds under the Standing Orders. The committee looks at whether the regulation-making power infringes well-established principles, including:

- Matters of policy and substance being delegated to regulations;
- The amendment of Acts by regulations;
- The delegation of lawmaking powers without providing for adequate scrutiny and control of the instrument.

SOUTH AFRICA PARLIAMENT

The South African Parliament does not have a mechanism for the scrutiny of delegated legislation at present. An interim report containing proposals for a scrutiny mechanism is currently before the Joint Rules Committee for consideration.

TURKS AND CAICOS LEGISLATIVE COUNCIL

There are no formal procedures for dealing with delegated legislation in the House. However, all delegated legislation is listed on the Order Paper for each sitting. In cases where delegated legislation is to be scrutinised and approved or negated by a positive or negative resolution these are placed on the Order Paper in the form of a Resolution.

UGANDA PARLIAMENT

The Parliament of Uganda does not have a committee specifically assigned to handle only delegated legislation. However, the Committee on Legal and

Parliamentary Affairs, under its mandate in Rule 123, is *inter alia* required to consider Statutory Instruments, which are required by law to be approved by Parliament. In 2004, no such instruments were available for the committee to consider.

UNITED KINGDOM HOUSE OF LORDS

See the separate article by Christine Salmon, 'Scrutiny of delegated legislation in the House of Lords', in this volume.

WALES

The National Assembly for Wales has no powers to pass primary legislation. Essentially, its legislative competence is in respect of areas covered by delegated legislation elsewhere. But because delegated legislation is the only legislation that the Assembly considers, its procedures for the consideration of this legislation are more complex than is the case, for example, at Westminster. Similarly, the attention in committee and in plenary to such legislation is of a higher order than seen elsewhere. If the Assembly were to have additional legislative powers, it remains to be seen whether this level of attention to secondary legislation would be maintained.

Section 64 of the Government of Wales Act 1998 requires the Assembly's standing orders to provide procedures for the preparation, making, confirmation and approval of orders, regulations, rules and other subordinate legislation. These are as follows:

a) Assembly general subordinate legislation (Standing Order 24);
b) Subordinate legislation subject to relevant Parliamentary Procedural provision or which is made with or is subject to approval by a Minister of the Crown or Government Department, Scottish Executive or Northern Ireland Executive (Standing Order 25);
c) Orders in Council or subordinate legislation submitted by a Minister of the Crown (Standing Order 26);
d) Subordinate legislation otherwise subject to Special Parliamentary Procedure (Standing Order 27);
e) Local Statutory Instruments (Standing Order 28);
f) Subordinate legislation not required to be made by statutory instrument (Standing Order 29);
g) Certain subordinate legislation submitted to the Assembly by statutory

bodies or local authorities for confirmation or approval by the Assembly (Standing Order 30);

h) Proposals made by Assembly Members for subordinate legislation (Standing Order 31);

General Subordinate Legislation

The most common form of Assembly delegated legislation is Assembly general subordinate legislation. This is defined by section 58 of the Government of Wales Act 1998 as Assembly legislation which is required to be made by statutory instrument, is not subject to Parliamentary procedures and is not local in nature. Such legislation is produced in draft by the appropriate Minister, and Members are invited to make representations as to whether the Order merits consideration by a Subject Committee. A regulatory appraisal is also normally carried out at this stage.

The draft Order, a memorandum of its intended effect and the regulatory appraisal are then submitted to the Assembly Business Committee by the Minister, where the Deputy Presiding Officer determines, having regard to the advice of that committee, whether the draft Order should be remitted to the relevant subject committee for its consideration. The Business Committee also decides on the procedure a particular Order should follow in plenary i.e. the accelerated procedure (without debate as part of a composite motion) or the standard procedure (with debate).

The next stage is for the Minister to lay the draft Order before the Assembly and submit it to the Legislation Committee. That committee will then scrutinise the draft and report to the Assembly as to whether the Assembly should pay it special attention.

In plenary the Assembly will, in the case of a draft Order subject to the standard procedure, consider the principle of the draft Order and vote upon it. If agreed, the Assembly will then consider any amendments to the draft Order and vote on the amendments. If any are passed, the Minister will revise the draft. Otherwise the Assembly will vote on the draft Order which, if passed, will be made by being signed by the Presiding Officer or other persons specified in section 66 of the Government of Wales Act 1998. All orders subject to the accelerated procedure will be approved together with one vote.

A distinct procedure, known as the 'Executive Procedure', can be invoked where the Assembly Cabinet determines that it is not reasonably practicable for the Minister to comply with various procedural requirements such as those relating to the Business or Legislation Committees, or the requirement that a draft Order be approved by resolution of the Assembly.

Where legislation is made using the Executive Procedure, the relevant Minister must submit the Order to the Legislation Committee as soon as possible after it has been made for its consideration by the committee and report to the Assembly.

Where legislation is made without approval by resolution of the Assembly, the Cabinet must inform the Assembly of the Order by the end of the next working day following its making. Members then have 40 working days within which to table a motion that the Order be revoked.

Subordinate legislation subject to relevant Parliamentary procedure etc.

Subordinate legislation made by the Assembly alone is subject to relevant Parliamentary procedure. Legislation subject to this procedure is prepared in draft by an Assembly Minister and sent to the Secretary of State for Wales to lay before Parliament for annulment, approval or confirmation. The subordinate legislation will then be made according to the Assembly standing orders when the Assembly has been notified by the Secretary of State that the relevant Parliamentary procedure has been complied with.

The procedure for subordinate legislation subject to the consent of a Minister of the Crown or UK Government Department applies to subordinate legislation made by the Assembly alone, which can only come into force with the consent of a Minister of the Crown or UK Government Department. Legislation subject to this procedure is prepared in draft by an Assembly Minister, who then takes the steps necessary to obtain the required consent from the UK Minister or Government Department.

A separate procedure applies to subordinate legislation, which is not Assembly general subordinate legislation, made together with a Minister of the Crown or Government Department, Scottish Executive or Northern Ireland Executive. Legislation subject to this procedure must be laid in draft before the Assembly by the Assembly Minister. If the draft legislation is approved, the Minister will notify the relevant Minister of the Crown, Department or Executive of the Assembly's decision and the Order will be made on behalf of the Assembly. If the draft is not approved, the Assembly Minister will notify the above bodies of the Assembly's decision.

Orders in Council or subordinate legislation submitted by a Minister of the Crown

This procedure applies where the Assembly is given power under section 22(4)(b) of the Government of Wales Act 1998 to approve a draft of an Order in Council varying or revoking a previous Order which transfers

Ministerial functions to the Assembly. It also applies where the Assembly is given power by or under an Act of Parliament to confirm, approve or give consent to legislation submitted by a Minister of the Crown. An Order subject to this procedure which is received by the Assembly Minister will be laid before the Assembly for approval.

Subordinate legislation otherwise subject to Special Parliamentary Procedure

This procedure relates to the Assembly's powers to make or confirm subordinate legislation which, but for the powers of the Government of Wales Act 1998, would be subject to Special Parliamentary Procedure. The standing order provisions substitute an alternative petitioning procedure in place of the Special Parliamentary Procedure.

Local Statutory Instruments

A local statutory instrument relates to a specific locality. A Minister proposing to make a local statutory instrument should give the Assembly ten working days' notice of the intention to do so. Subordinate legislation of this kind is made by being signed by or on behalf of the Minister who proposed it, but where, within five working days of its proposal, at least 10 Members table a motion of dissatisfaction with the instrument, and if the Assembly then so resolves, the local statutory instrument shall be subject to further Assembly procedure.

Subordinate legislation not required to be made by Statutory Instrument

Where a Minister proposes that subordinate legislation be made not by statutory instrument, he or she prepares that instrument in draft, and decides whether it is appropriate for it to be considered by a subject committee, the Legislation Committee, the Assembly in plenary, or none of the above.

Draft subordinate legislation prepared in this way is made by being signed by or on behalf of the Minister, having given the Assembly ten working days notice of his or her intention to make it. Again, if ten Members table a motion of dissatisfaction within five working days, the legislation shall be subject to further Assembly procedure.

Certain subordinate legislation submitted to the Assembly by statutory bodies or local authorities for confirmation or approval by the Assembly

This procedure applies where the Assembly is given powers to confirm or approve subordinate legislation, other than such legislation made by Order in Council or by Ministers of the Crown which contain provisions relating to

the Assembly, submitted to the Assembly by other statutory bodies or local authorities. Members must be given ten working days notice of the Minister's intention to confirm or approve such legislation. But if within five working days of such notice having been given, at least ten Members table a motion of dissatisfaction the relevant Minister shall table a motion proposing that the Assembly confirm or approve the legislation.

Proposals made by Assembly Members for subordinate legislation

This procedure provides an opportunity for Members (other than Ministers) to bring forward proposals for subordinate legislation. A Member who wins a ballot can bring forward a motion to approve the principle of his or her legislation. If the initial motion is approved the relevant Minister must produce a report on the feasibility of the proposals. There is then a debate on a second motion on whether legislation should be brought forward. If passed the Minister must bring forward legislation within six months. There must be at least 24 ballots during a four-year Assembly.

The volume of subordinate legislation

The following figures represent the numbers of statutory instruments produced by the Assembly since 1999 (figures include general and local SIs):

Year	No of SIs	Year	No of SIs
1999	58	2002	314
2000	229	2003	321
2001	332	2004	297

Legislation committee

Section 58 of the Government of Wales Act 1998 provides for there to be a 'subordinate legislation scrutiny committee'. The committee's responsibilities, as provided for in standing orders, are to consider any proposed Assembly Order laid before the Assembly and report to the Assembly whether it should pay special attention to it on any of the grounds provided for in standing orders.

Subject Committees

These committees are established under section 57 of the Government of Wales Act 1998 and they have responsibilities in the fields in which the Assembly has functions. Standing Orders provide that, amongst other

things, such committees shall advise on secondary legislation. Subject committees have developed protocols for dealing with legislation and each subject committee receives a regular report from the Minister setting out forthcoming secondary legislation. Legislation included in such a report can be any of the types referred to above.

PRIVILEGE CASES

AUSTRALIA

Senate

Search warrants

A memorandum of understanding and Australian Federal Police Guidelines, agreed to by the President of the Senate, the Speaker of the House of Representatives, the Attorney-General and the Minister for Justice and Customs, and governing the execution of search warrants in the premises of Senators and Members, were tabled in the Senate and debated in March 2005. The documents provide that any executions of search warrants in the premises of Senators and Members are to be carried out in such a way as to allow claims to be made that documents are immune from seizure by virtue of parliamentary privilege and to allow such claims to be determined by the House concerned. The agreement underlying these documents is the result of several years of consideration by the Senate, successive Presidents and the Privileges Committee, arising from the committee's consideration of various cases (see *Odgers' Australian Senate Practice,* 11th ed, pp 46-47).

Telephone troubles: misleading evidence

The Privileges Committee presented in August 2004 its report on whether executives of Telstra (the Government majority-owned telecommunications corporation) had given misleading evidence before a Senate committee in relation to faults in the Telstra network. They had made seemingly conflicting statements on the matter. The committee found that no contempt had been committed because there was no evidence of an intention to mislead, but noted that attention had previously been drawn to officers of Telstra in the context of allegations of false or misleading evidence. The committee referred to the difficulty of establishing that a witness intended to mislead in giving apparently inaccurate evidence. The committee recommended that Telstra be required to report to the Senate on measures taken to ensure that its senior officers are appropriately trained in their obligations to Parliament. The Senate adopted the report. Public servants were already enjoined by previous Senate resolutions to undertake such training. Telstra subsequently reported on its training measures.

Unauthorised disclosures

The Privileges Committee reported in March 2005 on the unauthorised disclosure of the unpresented report of the Select Committee on the free trade agreement between Australia and the United States. Contents of the report were disclosed by the Labor Party members of the committee at a press conference before the report was presented. The Labor Senators had circulated at their press conference a document supposedly summarising their views on the free trade agreement but clearly referring to the contents of the impending report. The Privileges Committee found that the Senators had been 'stampeded' into holding the press conference by earlier leaks of the deliberations of the committee by persons unknown. The committee recommended that contempt not be found in the circumstances, and the Senate accepted this finding.

The Privileges Committee received another reference on a case of unauthorised disclosure of a draft committee report in unusual circumstances in May 2004, after the President had determined that a motion to refer the matter should have precedence. The committee concerned had investigated the unauthorised disclosure, under a resolution of the Senate which requires such a preliminary investigation, had determined that the disclosure had not substantially harmed its proceedings, and had therefore decided not to raise the matter in the Senate. Two members of the committee, however, dissented from this conclusion and raised the matter separately, as they are entitled to do under standing orders. The President determined that in these circumstances he was not precluded from giving the matter precedence under the criteria he is required to consider, which basically go to the seriousness of the matter, but he indicated that it was for the Senate to determine whether the reference to the Privileges Committee should be made. The reference was then passed without debate.

In reporting on this case, the Privileges Committee found that it was unable to discover the source of the leaks, but stated that members of the committee were the most likely culprits. Arising from this report, the Senate accepted a reference to the committee for it to conduct a general inquiry into how unauthorised disclosures should be treated.

Australian Capital Territory

On 10 February 2004 a Select Committee on Privileges was established to inquire into and report on whether the actions of the Chair of the Standing Committee on Planning and Environment, with regard to the distribution of

a flyer in her name, constituted improper interference in the work of that committee, and therefore a contempt of the Assembly. The Privileges Committee, in its report of 19 March 2004, found that the Chair was in contempt of the Assembly, but recommended that no further action be taken.

On 1 April the Minister moved a motion of censure against the Chair of the Standing Committee for Planning and Environment for her contempt. On amendment, the censure was downgraded to 'grave concern', and the motion was agreed to. The Member subsequently stood down as Chair.

New South Wales Legislative Assembly

Whilst no significant cases of breaches of privilege or contempt were established in the Legislative Assembly of New South Wales in 2004, a number of privilege issues were raised, and the following are worthy of note.

On 26 February a Member rose on a matter of privilege, claiming that the standing orders had been applied to members of the Opposition and members of the Government unequally and accordingly that his privileges had been subjugated. The Member went on to ask the Speaker to ensure that equality is applied to all Members, including the Premier, who was no more or less elected than any other Member. The Speaker ruled that it was not a matter of privilege and warned the Member that he should know better than to reflect on the Chair in the way that he had. The Speaker also pointed out that as Chair he had given all Members a considerable degree of latitude in question time. The Speaker went on to note that although the Chamber was a robust one, business should be conducted in accordance with the standing orders. He noted that he was always willing to listen to advice, particularly from Members with substantial experience in the Chamber.

On 17 March a Member rose on a matter of privilege, claiming that there had been a discrepancy between the video and the Hansard record of an answer given by the Minister for Tourism and Sport and Recreation and Minister for Women to a question without notice the previous day. The Speaker reserved his ruling until later in the sitting, and then stated that he had examined the video and the Hansard report, and directed that, on this occasion, the Hansard report should reflect the video record.

At the conclusion of questions without notice on 31 August, the Leader of the Opposition sought to raise a matter of privilege under Standing Order 101, stating that the Premier had claimed that Opposition members of the Legislative Council committee inquiring into the Orange Grove facility had

voted against a motion requiring the proprietors to produce leases, when there had been no vote. The Leader of the House rose on a point of order, to argue that the Leader of the Opposition's privilege as a Member of the Legislative Assembly was not affected by a vote by members of a Legislative Council committee.

The Speaker agreed, and advised that the Standing Orders provide for Members who believe they have been misrepresented in some way to take a point of privilege at the time the matter to which the objection is taken is raised. He also informed the House that should Members wish to take issue with the actions of other Members, there were other ways under the Standing Orders to do it. The Speaker also noted that under the revised procedures relating to privilege under Standing Order 101, the matter raised by the Member must be then before the House.

New South Wales Legislative Council

Seizure of a Member's documents under search warrant: update

The 2004 *Table* included an account of a recent case in the NSW Legislative Council, in which a Member's documents were seized under search warrant during an anti-corruption investigation. The account outlined events up to the end of 2003, including the adoption by the House of a particular procedure which allowed the issues of parliamentary privilege arising in relation to the seized material to be assessed, while preserving the integrity of the evidence required in the external investigation. The current entry summarises subsequent events in the case. In particular, it notes the development by the House's Privileges Committee of a specific test for determining whether documents fall within the scope of 'proceedings in Parliament', and are therefore immune from seizure.

A condensed summary of the events referred to in the earlier article is provided initially, before proceeding to the more recent material.

Summary of events up to the end of 2003. The search warrant was executed at the Parliament House office of the Member, by officers of the Independent Commission Against Corruption (ICAC),[1] in the course of an investigation concerning the Member's use of his parliamentary entitlements. Following the incident, the House referred an inquiry to its Privileges

[1] The ICAC was established by and operates under the *Independent Commission Against Corruption Act 1988* (NSW). Its chief functions include investigating and reporting to Parliament in relation to possible corrupt conduct of public officials, including members of Parliament.

Committee in relation to the matter. The Committee found that the seizure of at least some of the material involved a breach of Article 9 of the *Bill of Rights 1689*. It also recommended that the House adopt a particular procedure which would enable the issues of privilege arising in relation to the seized material to be assessed, while protecting the integrity of the evidence required by the ICAC.

The recommended procedure involved the return of the seized material to the House, and its inspection by the Member, together with the Clerk of the House, and representatives of the ICAC. After inspection, documents claimed to be privileged were to be identified, while the remaining documents were to be released to the ICAC. The ICAC was to have the right to dispute any claim of privilege made, while the Member was to have the right to provide reasons in support of any disputed claim. In the event of such a dispute, the question was to be determined by the House.

The recommended procedure was adopted by the House (with some modification). The ICAC Commissioner indicated that she was prepared to place the seized material in the possession of the President, as required by the procedure.

Implementation of procedure. The initial stages of the procedure adopted by the House were duly implemented, up to and including the identification of documents claimed to be privileged. At that point, the ICAC exercised its right to dispute a claim of privilege which had been made over some of the documents: the contents of a suspension file, and various electronic documents, relating to a motor vehicle accident compensation claim. The Member provided written reasons in support of the privilege claim relating to those documents, in which he asserted that he had used the documents in connection with various contributions he had made as a Member to proceedings in the House and to the work of a committee.

On 25 February 2004 the House referred an inquiry to its Privileges Committee, requiring the committee to recommend to the House which of the disputed material fell within the scope of 'proceedings in Parliament'.

Second Privileges Committee report. The committee reported on 31 March.[2] The report indicated that, in approaching the task referred by the House, the committee sought to identify appropriate tests to apply to the documents in dispute, to determine whether or not they fell within the scope of 'proceedings in Parliament'. In developing such tests, the committee drew on a range of relevant judicial and parliamentary authorities.

[2] Standing Committee on Parliamentary Privilege and Ethics, *Parliamentary privilege and seizure of documents by ICAC No. 2*, Report 28, March 2004, Legislative Council, Parliament of NSW (available at *www.parliament.nsw.gov.au*).

The committee noted that the relevant authorities indicate that the overarching requirement for material to fall within the scope of 'proceedings in Parliament' is for there to be a clear link established between the relevant matter and the transaction of parliamentary business. The clearest link arises where documents have been brought into existence for the purposes of the transaction of parliamentary business. However, the committee accepted that a relevant link may also be established where documents have been used or retained for the purposes of or incidentally to the transaction of parliamentary business, even where they were not created for such a purpose.

In adopting such a view, the committee rejected an argument which had been advanced by the ICAC that the use of material created for a purpose other than the transaction of parliamentary business is immaterial to the issue of whether the material falls within 'proceedings in Parliament'.[3] The committee relied instead on the authority of *O'Chee v Rowley* (1997) 150 ALR 209, where it was decided that the retention of a document was 'an act done … for the purposes of or incidental to the transacting of [parliamentary business]'. The committee noted, in particular, that the reasoning of the court in that case involved both an objective assessment of the cogency of the claim that the documents in question were retained for 'proceedings in Parliament', and reliance on the evidence of the Senator as to his subjective intention in retaining the documents.

In view of such authorities, the committee adopted the following tests to determine whether the documents in dispute this case were within 'proceedings in Parliament':

1) Were the documents *brought into existence* for the purposes of[4] or incidental to the transacting of business in a House or a committee?
   - YES falls within 'proceedings in Parliament'.[5]
   - NO move to question 2.
2) Have the documents been *subsequently used* for the purposes of or incidental to the transacting of business in a House or a committee?

[3] This argument had been based on a passage from *Erskine May* (21st edition, at pp 132-133) and the decision in *R v Grassby* (1991) 55 A Crim R, but the Committee did not accept the ICAC's interpretation of those authorities: *ibid*, paragraph 4.5.

[4] The Committee specified that the expression 'for the purposes of' was to be understood as including 'or predominantly for the purposes of': *ibid*, p. 8, footnote 32.

[5] The Committee specified that this conclusion applies because the *creation* of the document is 'an act done … for the purposes of or incidental to the transacting of the business of the House or of a committee': *ibid*, p. 8, footnote 33.

- YES falls within 'proceedings in Parliament'.[6]
- NO move to question 3.

3) Have the documents been *retained* for the purposes of or incidental to the transacting of business in a House or a committee?
   - YES falls within 'proceedings in Parliament'.
   - NO does not fall within 'proceedings in Parliament'.[7]

Applying those tests to the documents in question in the circumstances of this case, the committee concluded that: (1) none of the documents had been brought into existence for the purposes of transacting parliamentary business; (2) some of the documents appeared to have been used for the purposes of proceedings in the House or a committee; but (3) all of the documents, i.e. the suspension file and the documents held electronically, had been retained by Mr Breen for such purposes. Significantly, in relation to test (3), the committee pointed out that:

> It is … the act of retention which is critical to this test, rather than the nature of the documents themselves, and the documents need to be considered in the context in which they have been retained rather than being separated and dealt with individually.[8]

The committee also referred to a statement by Mr Breen that: 'Only the totality of the file, that is, all the documents viewed together, could be said to influence my thinking in anticipation of debate on' relevant legislation.[9] The committee further specified that it was satisfied that Mr Breen had established both an objective basis for his claim that the documents had been retained for the purposes of the transaction of parliamentary business, and that it was his subjective intention to retain the documents for such purpose.

In view of these conclusions, the committee found that: (1) the documents contained in the suspension file and the documents held electronically had been retained by Mr Breen for purposes of or incidental to the transacting of parliamentary business; and (2) having been retained for such purposes, the documents fell within the scope of 'proceedings in Parliament' within the meaning of Article 9. The committee also recommended that the House uphold the claim of privilege by the Member.

[6] The Committee specified that this conclusion applies because the *use* of the document is 'an act done in the course of, or for the purposes of or incidental to the transacting of the business of the House or of a committee': *ibid*, p. 8, footnote 34.

[7] *Ibid*, paragraph 4.7.

[8] *Ibid*, paragraph 5.7.

[9] *Ibid*, p. 9, footnote 40.

Subsequent events. Following the tabling of the committee's report, the House passed a resolution adopting the committee's findings and recommendation, and upholding the claim of privilege by the Member. The resolution expressly affirmed that the House is the appropriate forum for resolution of issues of parliamentary privilege, including issues concerning material seized by search warrant from the member's parliamentary office in this case.

In July 2004 the ICAC held public hearings during which various aspects of the Member's use of his entitlements were explored. However, no reference was made to any matter relating to the documents previously in dispute.

On 17 December the ICAC reported on its investigation into the conduct of the Hon Peter Breen MLC. The investigation focussed on two issues: Mr Breen's 'principal place of residence', as claimed by him for the purposes of obtaining certain parliamentary allowances; and whether Mr Breen used his parliamentary office staff and resources for purposes not connected with his parliamentary duties. In relation to the first issue, the ICAC found that of the various places at which Mr Breen stayed, the Lismore address was probably his primary or principal place of residence, as he had claimed, and accepted that in nominating the Lismore address, Mr Breen had not engaged in corrupt conduct. In relation to the second issue, the ICAC found that Mr Breen was not entitled to use parliamentary staff and resources to prepare an edition of his publication *The Book of Letters* and a computer programme, as this work was not part of his parliamentary duties. Assistant Commissioner Peter Hastings QC described these actions in his report as 'inappropriate and ill-advised', but did not consider they amounted to corrupt conduct.

The ICAC report identified a number of deficiencies in the system of Members' entitlements and made ten recommendations for reform, including: that the Parliamentary Remuneration Tribunal review and define the term 'principal place of residence'; that Members of Parliament be given sufficient guidance about the meaning of 'parliamentary duties' in relation to their use of additional entitlements, to provide more certainty for Members regarding their compliance with the conditions; and induction programmes for Members and their staff be enhanced.

CANADA

House of Commons

The Speaker found four *prima facie* cases of privilege in the Canadian House of Commons in 2004. The first arose from two rulings made in 2003, previously referred to as 'Exemption of Members from Attending Court' (see the 2004 *Table*, pp 166-168). The second case was the result of the publication of the details of a closed caucus meeting and will be discussed under the heading 'Confidentiality'. The third involved improper use of the title 'Member of Parliament', and the fourth concerned Members' right of unrestricted access to the parliamentary precinct.

Also worthy of note, although no corresponding question of privilege was raised in the House, is a report, concurred in by the House, which affirmed the privileged character of committee evidence in reaction to a formal request for the use of such evidence by a commission of inquiry established by Order in Council.

Exemption of Members from Attending Court

On Friday 6 February a Member of the official Opposition (Gary Breitkreuz) raised a question of privilege concerning two earlier questions of privilege, raised in the previous session by the former Government House Leader (Mr Boudria) on 12 and 16 May 2003 (*Debates,* 6089-93*,* 6377), about the privilege of exempting Members from appearing as witnesses in court during a session of Parliament.

On 26 May 2003 the Speaker had ruled both matters *prima facie* questions of privilege (Debates, 6411-4), and they had been referred to the Standing Committee on Procedure and House Affairs. Mr Breitkreuz noted that the committee had not finished its work, and as a result of prorogation the order of reference to the Committee had lapsed. He asked that the Speaker rule this to be a *prima facie* question of privilege and allow him to move a motion to refer the matter back to the committee.

The Speaker (Mr Milliken) ruled that this was indeed a *prima facie* question of privilege and invited the Member to move his motion. Mr Breitkreuz moved that the matter of the questions of privilege raised on 12 and 16 May 2003 and 5 February 2004 be referred to the Standing Committee on Procedure and House Affairs. The motion was agreed to (Journals, 25; Debates, 243-4).

The committee's report, presented in the House on 8 March, affirmed that it was for Parliament to review or modify its privileges, not the courts. It

noted that in a recent Ontario Court of Appeal decision, Mr Justice Macpherson stated, with respect to the question of whether a privilege as defined is necessary to the proper functioning of Parliament: 'This is a question for Parliament, not the courts. Once a court has determined that a parliamentary privilege exists and has ascertained its definition or scope its role ends.' The committee expressed concern regarding 'the lack of awareness and appreciation of the nature of parliamentary privilege among most judges and lawyers'.

Confidentiality

On 11 March a Member of the governing party (Mr John O'Reilly) raised a question of privilege concerning the disclosure to the media of a tape made by the broadcasting service of a meeting of the Ontario Regional Liberal Caucus. The Member claimed that his right to privacy in the precinct of Parliament had been violated. The Speaker stated that he had ordered an inquiry into the leak of the proceedings and was still looking into the matter.

On 25 February the Speaker advised the House that, even though there was a human error, the decision to publish information leaked from a caucus meeting was an example of a cavalier and contemptuous attitude to the privacy of all Members and that privacy was something upon which Members depended to do their work. He ruled that there was a *prima facie* breach of privilege and asked Mr O'Reilly to move his motion. Mr. O'Reilly moved that the matter of the question of privilege raised on Thursday 11 March 2004 be referred to the Standing Committee on Procedure and House Affairs. The motion was agreed to (Journals, 216; Debates, 1712).

The committee's report, presented in the House on 26 April 2004, indicated that the committee, having heard from the Clerk of the House of Commons (Mr William Corbett), had concluded that although it was unlikely that it would ever be determined precisely what happened, or how, there was no evidence that anyone had deliberately planted a listening device. The report noted corrective measures that had been taken by the House Administration, and concluded that these initiatives would minimize the chances of a similar leak occurring in the future. It further noted that it would be up to individual members to pursue the matter of any alleged breaches of the Criminal Code.

Impersonation of a Member

On 22 November Mr Guimond (Montmorency–Charlevoix–Haute-Côte-Nord), raised a question of privilege in relation to the improper use of the

title 'Member of Parliament' by a former Member of Parliament, Mr Serge Marcil. The Speaker subsequently found that the matter constituted a *prima facie* case of privilege. On motion of Mr Guimond, it was referred to the Standing Committee on Procedure and House Affairs, and was still under consideration by the committee when the House adjourned until January of 2005.

Members' Access to the Parliamentary Precinct

On 1 December Mr Guimond raised a question of privilege regarding interference with the free movement of Members of Parliament within the Parliamentary Precinct during the visit on 30 November of President George W Bush. After interventions by other Members, the Speaker ruled this a *prima facie* case of privilege. On motion of Mr Guimond, the matter was referred without debate to the Standing Committee on Procedure and House Affairs. The committee had not completed its consideration of the matter when the House adjourned until January 2005.

Committee Evidence

On 19 February an Order in Council was issued defining the terms of reference for a Commission of Inquiry into the possible mismanagement of a Federal Government Sponsorship Program and related advertising activities. Mr Justice John H Gomery was named Commissioner under Part I of the *Inquiries Act* (hence the Commission is often referred to as the 'Gomery Commission').

The activities of the Gomery Commission raised concerns on the part of Members of the Standing Committee on Public Accounts when Justice Gomery requested that transcripts of the committee's proceedings be received in evidence in cases in which the sworn testimony of a witness before the Commission appeared inconsistent with statements made by the same witness before the committee.

The committee, having first heard from counsel for all interested parties, presented its Third Report to the House on 5 November. The report recommended 'that the House of Commons reaffirm all of its privileges and immunities and that the proceedings and all evidence, submissions and testimony by all persons participating in the proceedings of the Standing Committee on Public Accounts continue to be protected by all the privileges and immunities of this House.'

The Report further recommended that any further or other consideration of these privileges as they applied to the Commission of Inquiry, or generally,

be referred to the Standing Committee on Procedure and House Affairs, with the following order of reference:

> That the Standing Committee on Procedure and House Affairs consider the question of whether or not and in what circumstances it may be possible for the House of Commons to waive its privileges under Article 9 of the *Bill of Rights 1689*, including review of:
>
> - The circumstances which led to this reference;
> - The views of the Standing Committee on Public Accounts;
> - The position in Canada;
> - The position in the Commonwealth; and
> - Such other considerations as it deems appropriate.

On 15 November the House concurred in the Third Report of the Standing Committee on Public Accounts, and referred the matter to the Standing Committee on Procedure and House Affairs.

In its 14th Report to the House, presented and adopted on 18 November, the latter committee noted that its members were 'mindful of the fact that parliamentary privilege is part of the Constitution of Canada, and that it goes to the very essence of parliamentary government. Current Members of the House of Commons are custodians of privilege for those who have come before and will come after us. Assuming that a waiver of privilege is permissible, it should not be given lightly, or without due consideration of all the circumstances and interests.'

The report noted that 'some witnesses who appeared before the Standing Committee on Public Accounts were given written or oral assurances and others could assume that their testimony would be protected by parliamentary privilege.' It concluded that, 'to withdraw such protection after the fact would be unfair to them as individuals. Moreover, as a matter of principle, it would be contrary to the best interests of Parliament and parliamentary rights. Members of Parliament and other persons participating in parliamentary proceedings must be assured that there is complete freedom of speech, so that they are able to be as open and forthright as possible.' The report also noted that the House had available to it effective means of dealing with situations in which misrepresentation by witnesses before its committees could be demonstrated.

The recommendations of the committee were as follows:

> That the House of Commons reaffirm [its] privileges and immunities … and that the proceedings, and all evidence, submissions and testimony by

all persons participating in the proceedings of the Standing Committee on Public Accounts continue to be protected by all the privileges and immunities of this House; and

That the Speaker of the House of Commons be authorized to take such steps as he deems appropriate to defend the privileges of the House of Commons as they may be at issue before the Commission of Inquiry, or in such court reviewing any decision or anticipating decision of the Commission of Inquiry relating to the privileges of the House of Commons, its Members or witnesses.

British Columbia Legislative Assembly

In 2004 two noteworthy decisions were rendered regarding parliamentary privilege.

The Speaker's decision of 23 March 2004 was in response to a matter of privilege raised by the Leader of the Opposition on the afternoon of 10 February at the opening of the 5th Session. The Leader of the Opposition charged that the Minister of Finance had been in contempt of the House when he announced and implemented a change to the rate of tobacco tax prior to introducing enabling legislation. The rate change was announced and took effect in December 2003 during a period of adjournment. The Minister of Finance raised a procedural objection, to the effect that the Leader of the Opposition had not brought the matter of privilege at the earliest opportunity, which he suggested would have been the morning of 10 February, just prior to prorogation of the 4th Session.

In his decision, the Speaker of the House, Claude Richmond, responded to both the procedural objection and the matter of privilege. First, he concluded that while the rule is to bring matters of privilege forward at the first opportunity, precedents show that 'Prorogation and Opening day are *pro forma* sittings', dealing primarily with the formalities of the Royal prerogative to summon the House. As such, these days represent 'an exception to the application of the rule', and the matter was allowed.

With respect to the matter of privilege, the Speaker referred to and recommended to the House a 1990 decision that clarifies that 'an announcement outside the House of pending legislation does not amount to a breach of privilege but may, according to the nature of the announcement, involve a contempt of the House.' To avoid contempt, any such announcement must acknowledge that proposed legislation will require the approval of the House; to suggest that a proposed change is a *fait accompli* would 'derogate from the

role of Parliament'. The Speaker determined that the matter at hand did not constitute a breach of privilege or contempt of the House because the announcement of the rate change indicated that legislation would have to be introduced to effect the proposed change and make it retroactive.

The Speaker's decision of 28 April 2004 concerned an application for the use of Standing Order 81 to advance a bill through all three stages in one day. The Minister of Finance had moved that Bill 37 proceed under the accelerated advancement provisions of Standing Order 81. He advised that the bill, which proposed to both order health care workers back to work and to impose a new contract on the workers, was an urgent response to a province-wide labour dispute that posed immediate risks to the health and safety of patients. The Speaker agreed that the situation giving rise to the bill was sufficiently urgent and extraordinary to meet the requirements of Standing Order 81. However, he emphasised that his decision was complicated by the form of the bill. Because it contained two distinct provisions, the Speaker was required to consider whether the scope of the proposed legislation exceeded measures to address the 'urgent and extraordinary occasions' anticipated under the Standing Orders. Having assessed the seriousness of the health services interruption, the Speaker granted the application, but his decision remarks that 'a bill drafted in such a way as to cast too wide a net may not qualify under Standing Order 81.'

Manitoba Legislative Assembly

Statements made outside the House

On 9 March 2004 the Member for Springfield rose on a matter of privilege regarding comments allegedly made outside the Legislative Chamber by the Minister of Labour and Immigration. The Member for Springfield asserted that the Minister of Labour had told reporters that the call by the Member for Springfield for the Minister's resignation earlier in the sitting day was a 'bullying tactic' and amounted to 'sexism'. The Member for Springfield requested that the matter be referred to the Standing Committee on Privileges and Elections and be reported back to the House.

On 14 April Mr Speaker Hickes ruled that statements made outside the Assembly Chamber cannot form the basis for a *prima facie* case of privilege.

Answers given by Minister

On 19 April the Member for Steinbach rose on a matter of privilege concerning answers provided in the House on the previous day by the

Minister of Labour and Immigration. The Member contended that the answers were incorrect and moved that the matter be referred to the Committee on Legislative Affairs and reported back to the House.

On 24 April Mr Speaker Hickes ruled that there was no *prima facie* case of privilege. He advised the House that it is not the Speaker's role to adjudicate on matters of fact, as this is something that the House can form an opinion on during debate. He further informed the House that disputes over matters of fact do not fulfil the criteria for a *prima facie* case of privilege.

Tabling of legal opinions

On 27 April the Member for Turtle Mountain rose on a matter of privilege regarding comments made by the Minister of Finance that allegedly besmirched employees at the Manitoba Lotteries Corporation. In addition, the Member for Turtle Mountain contended that the Minister had quoted from a legal opinion but had refused to table it. He moved that the matter be referred to the Standing Committee on Legislative Affairs and that the Minister be found in contempt and directed to apologise.

On 10 May Mr Speaker Hickes ruled that there was no *prima facie* case of Privilege. He noted that the Minister of Finance had not quoted from the document in question nor was the document a private letter which would have required the item to be tabled. The Speaker reminded the House that he had ruled on 4 July 2003 that Members can request that legal opinions be tabled, however it was up to Ministers to decide to table legal opinions. In addition, it was not in order to ask a Minister to state his or her opinion of the legal opinion.

Matters arising in a Standing Committee

On 18 May 18 the Member for Inkster rose on a matter of privilege based on answers to questions put to the Minister of Labour and Immigration during committee consideration of a bill. The Member for Inkster contended that the Minister of Labour and Immigration already had names of persons to appoint to the Immigration Council prior to the bill completing consideration in the House. He concluded his remarks by moving that this issue be addressed by the Standing Committee on the Rules of the House.

On 31 May Mr Speaker Hickes ruled that there was no matter of privilege. He stated that the opinion of the Speaker cannot be sought in the House about matters arising in committee, and that it is not competent for the Speaker to exercise procedural control over committees. He further advised that the proper course of action was for the issue to be raised in the appropriate standing committee.

Motions on notice

On 7 June the Member for River Heights rose on a matter of privilege regarding a Government motion that had been placed on the Notice Paper. The Member asserted that the motion proposed a form of closure to occur on the present legislative session and on next year's legislative session. He then moved that the matter be referred to the Committee on Legislative Affairs and then be reported to the House.

On 8 June Mr Speaker Hickes ruled that there was no *prima facie* case of Privilege. He noted that a breach of the Standing Orders or failure to follow an established practice would invoke a point of order rather than a question of privilege. He went on to state that the placement of the motion on the Notice and Order papers is not a *prima facie* case of privilege and that it would be up to the House to debate and ultimately decide the disposition of the Government motion.

Distribution of information to committee Members

On 25 November the Member for Ste. Rose raised a matter of privilege concerning information that was released to members of the Public Accounts Committee but was not released to the House. He stated that his privileges as a Member had been seriously breached and referred the matter to the Standing Committee on Legislative Affairs.

Mr Speaker Hickes, on 7 December, ruled that although the Member might not agree with the method in which the information was released, it did not form the basis for a matter of privilege. He did suggest that the Government might wish to reflect on the complaint that was raised, and in order to avoid creating similar complaints in the future, Government Members might wish to consider the advisability of also tabling the information in the House in the future, so that all Members might have access to the material being requested.

SOUTH AFRICA NATIONAL ASSEMBLY

Process for serving summons on Members and officials

The new Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act, No 4 of 2004, came into operation on 7 June 2004, replacing the previous Act of 1963.

The Act provides, in section 5, that a summons, subpoena or other process issued by a court may not be served within the precincts of Parliament

without the express permission of the presiding officers, or other than in accordance with their directives. Concerning the giving of evidence of proceedings, the Act further provides, in section 10, that 'no member or staff member may give evidence in any court or place outside Parliament regarding the contents of the journals or the evidence given before, or any document submitted to, Parliament or a House or committee, without first having obtained the leave of the Houses or the House concerned'. In a recess such leave can be given by a presiding officer.

Appropriate processes for the application of such provisions (similar provisions having been contained in the 1963 Act) have been under consideration for some years. In 2002 the then Speaker had reported to the NA Programme Committee that a Member had been subpoenaed to testify in criminal proceedings in court arising from that Member's parliamentary responsibilities. On that occasion she indicated that the principle on which Parliament had to operate was that Parliament had to be seen to be co-operating with any investigation while at the same time it could not be said that documents that had been given to Parliament in confidence would be handed over. In essence, the genuine rights of Parliament had to be protected, but it was not above the law. A balance therefore had to be achieved (NA Programme Committee Minutes of 30 May 2002).

In the second half of 2004, the appropriate application of the relevant provisions arose on two occasions.

On 3 October reports appeared in the press of a list of witnesses who would be called to testify in the criminal trial against Mr Schabir Shaik—a trial relating to alleged corruption in the State's acquisition of armaments. The published list of witnesses included two Members, Dr G G Woods and Mrs P de Lille. The Speaker thereupon wrote to the Acting National Director of Public Prosecutions, bringing to his attention that in terms of the Powers and Privileges Act Parliament would have to grant permission for the two Members to testify if the evidence concerned parliamentary proceedings, failing which they would be in contravention of the Act and guilty of contempt of Parliament. The Speaker's letter was copied to the Members concerned. Both Members then wrote to the Speaker confirming that they had been subpoenaed and requesting the necessary permission to testify in terms of section 10 of the Act. As Parliament was in recess at the time, the Speaker, after obtaining legal advice, granted them written permission on 14 October.

In the second case, on 21 October the National Prosecuting Authority (NPA), through the Directorate of Special Operations, Western Cape,

attempted to serve a summons in Parliament on the Registrar of Members' Interests to appear before the Directorate on 1 November for questioning and to produce certain documents held in the confidential part of the Members' Register. This summons also related to the trial against Mr Shaik.

Having obtained legal advice, the Speaker on 28 October after due consideration responded in a letter addressed to the Minister of Justice and Constitutional Development, informing her that contrary to section 5 of the Powers and Privileges Act the express permission of the presiding officers had not been sought or obtained to serve a summons within the parliamentary precincts. The Speaker therefore regarded the summons as invalid.

The Speaker went on to express a more general concern at the manner in which the NPA had been approaching the exercise of its powers under the National Prosecuting Authority Act, 1998, in relation to Parliament. In this regard she noted that the serving of the summons had been assigned to a junior official of the NPA and that no account had been taken of the special standing of Parliament constitutionally, nor of the specific powers, privileges and immunities that necessarily apply to Parliament. She also referred to the disregard shown for appropriate levels of communication with Parliament in regard to the subpoenas issued previously to two members which she had learnt of through press reports.

Whilst affirming that Parliament in principle was always willing to co-operate with public entities in the exercising of governance and was indeed committed to doing so, she emphasised that the presiding officers had a duty under the authority of Parliament to protect Members' rights and the institution's privileges and immunities. She accordingly urged that, in the interests of co-operative government at the national level, appropriate channels of communication should be followed. If the NPA required information or documentation from Parliament, this should therefore be dealt with at the most senior level and the presiding officers should be informed of the NPA's intention to approach Parliament in this regard. Due consideration would then be given to any such request in accordance with the Powers and Privileges Act.

Parliament was subsequently informed that compliance with the summons served on the Registrar had been 'suspended until further notice'. The Acting National Director of Public Prosecutions also wrote to the Speaker attaching a memorandum he had previously submitted to the Minister in which he had responded in detail to the Speaker's letter. In the memorandum he conveyed his regret at any inconvenience or discomfort that may have been caused as well as an assurance that there had been no intention to

undermine or show disrespect to either Parliament or the Speaker. He conceded that the execution of the summons, procedurally, was void. He also indicated that he agreed that in future the NPA would act through the Minister's office when assistance was to be sought from the Office of the Speaker.

Shortly afterwards, in a letter dated 24 November, the request was renewed through the proper channels for direct access by the NPA to certain specified documents. The matter had however not been finalised by the end of the year.

AMENDMENTS TO STANDING ORDERS

AUSTRALIA

House of Representatives

The Standing Orders of the House were rewritten and reorganised during 2004. The object of the redraft was to make the Standing Orders easier to understand for Members, parliamentary staff and the public. The House adopted the revised Standing Orders on 24 June 2004, with effect from the first day of sitting of the 41st Parliament (16 November 2004).

While some archaic standing orders were omitted, the object was to retain the meaning and operation of the orders at the same time as making them more accessible.

Senate

Miscellaneous procedural changes

The Senate adopted in May 2004 the following procedural changes recommended in two reports of the Procedure Committee:

- The Senate endorsed the committee's view that the Senate should not participate by way of a formal meeting of the Senate in any future parliamentary addresses by foreign heads of state (see the 2004 *Table*, pp 5-13); and that if the Government persisted with this practice such occasions should be held by the House of Representatives with Senators invited to attend if they chose to do so.
- The annual Tax Expenditures Statement was referred to the standing committees for consideration during future estimates hearings. This statement details revenue lost to Government through tax concessions.
- Government documents tabled on any day of the week are to be carried over for consideration each day until they appear on the list for consideration under General Business on Thursday.
- The time after which divisions may not occur on Thursdays was brought back from 6 pm to 4.30 pm (a temporary order). If a division is called after the specified time it is put off to the next day of sitting.
- If formality was refused to a notice of motion (i.e. Senators present did not unanimously consent to the motion being put immediately without

debate), a motion to suspend Standing Orders to bring on the substantive motion would not be entertained unless the mover had the support of four other Senators (also a temporary order). This order reflected the frustration of Senators with motions to suspend Standing Orders being regularly moved when formality was refused. The order was not renewed, however, in 2005.

Australian Capital Territory

The Standing Committee on Administration and Procedure undertook a review of the Standing Orders. There was little support for a wholesale revision, and the Committee provided the Assembly with a discussion paper outlining some problematic standing orders that had been identified. Given that the paper was tabled close to the election, it was agreed that the new Assembly would revisit the matter early in 2005.

New South Wales Legislative Council

As previously reported in the 2004 *Table* (pp 188-192), on 14 October 2003 the House suspended all existing Standing Orders, under which the Legislative Council had operated, with only minor amendment, since 1895. The proposed new Standing Orders were adopted as Sessional Orders in order to allow a trial period of various new procedures and to reveal any errors or omissions.

Following minor revision by the Standing Orders Committee, the new Standing Orders were adopted by the House on 5 May 2004 and received the Governor's approval on 31 May. As a consequence, a number of machinery amendments to various Sessional Orders, committee and other resolutions were made to ensure conformity with the new Standing Orders.

Following the adoption of new Standing Orders, all previous Sessional Orders were rescinded and six new Sessional Orders adopted on 1 June. These Sessional Orders related to sitting days, precedence of business, time for questions without notice, motion for the adjournment, cut-off date for Government bills and debate on committee reports. On 22 June an additional Sessional Order was adopted relating to debate on budget estimates.

South Australia House of Assembly

Sessional Orders providing for an additional sitting day (Monday) each sitting week where reinstated in the current session, and Sessional Orders

providing for a 'shelf life' for Private Members' Notices of Motion were introduced, in a bid to clear the Notice Paper of 'unmoved' business.

Tasmania Legislative Council

The changes to the Legislative Council's Standing Orders agreed to by the House on 20 October 2004 were the most significant since April 1857, when, following the introduction of the State's bicameral Parliament, the Standing Orders for the Legislative Council, in its newly acquired role as a house of review, were first approved.

This latest review of Standing Orders has seen the addition of forty-three new orders, the deletion and/or amalgamation of seventy three obsolete orders with some forty-one significant amendments and a further ninety-eight minor amendments.

The terms of reference were not dissimilar to those of several other Australian State Houses whose Standing Orders Committees have recently undertaken reviews and included**:**

- The adequacy of the Standing Orders in meeting the House's present and future procedural needs;
- The deletion of those Standing Orders which were obsolete and the addition of new Orders where contemporary practice demonstrated the need;
- The inclusion in the Standing Orders of those Sessional Orders which had been satisfactorily trialled; and
- The adoption of plain English and gender neutral language across all Orders.

His Excellency the Governor granted approval for the implementation of the new Standing Orders, in accordance with Section 17(2) of the *Constitution Act 1934*, on 6 January 2005.

The most significant changes are described below.

Part 1: Introductory. The old practice of looking to the House of Commons of the United Kingdom in cases not provided for has now been expanded to include precedent and practice from any Westminster-style Parliament.

Part 2: Opening of Parliament. Various minor changes have been made to accommodate the now regular occurrence of the Commissioners' Opening, and an additional Standing Order to provide for the 'Premier's Address' in lieu of the Address-in-Reply.

Part 7: Order and Conduct of Business. Questions without Notice and Question Time have been included for the first time in the Order of Business along with Special Interest Matters and Ministerial Statements.

Part 8: Petitions. There is no longer a requirement for a Prayer to be a key part of a Petition to be presented.

Part 11: Motions. The withdrawal of any Motion is now by simple majority—there is no longer a requirement 'for leave to be granted without dissentient voice'.

Part 14: Amendments to Questions from the Chair. The Chair of Committees now has the discretion to simplify amendments by putting the question 'that the Amendment be agreed to' rather than 'word proposed to be left out' and so on.

Previous Question. The Standing Orders relating to the moving of the Previous Question have been deleted. The procedure has not been used for some four decades, and was seen as obsolete.

Part 15: Conduct of Members and Rules of Debate. New Standing Order 98 sees the introduction of the *sub judice* convention. From 1856 until now the Standing Orders of the Council have been silent on this matter. The convention was considered to be of sufficient importance to be included in Standing Orders.

Pecuniary interest provisions have also been clarified. On those occasions when the pecuniary interest of Members has been at issue in the Council, confusion has arisen over how and who should move the motion to allow or disallow a Member's vote, and if a Member remains silent, whether another is able to bring it to the chamber's attention (the House has never had anything but a majority of Independent Members). In the past Members have shown a reluctance to move that they be permitted to vote and Leaders have, likewise, not seen it as their responsibility. The changes mean that the President will automatically put the question once the Member, or another, has stated his or her case.

The revised Standing Order also gives the President the power to determine whether failure to declare should be referred to Privileges Committee.

Part 19: Select Committees. The maximum number of Members provision has been set at five, in line with the reduction in numbers (both Houses of the Tasmanian Parliament were reduced by 20 per cent in November 1998).

Where a Member consistently fails to attend meetings provision has been made for the discharging of a Member from a committee and appointment of a replacement.

The Standing Orders governing the conduct of meetings have been

amended to provide amongst other things, for the mover of a committee to fix the time for the first meeting and establish a procedure for subsequent meetings. They now also provide for committees to meet using electronic communication.

Part 21: Estimates Committees. This part includes for the first time the satisfactorily trialled and proven, estimates committees procedures.

Part 27: Classification of Bills. This part was deleted with all bills now being treated as public bills.

Part 28: Bills. 'Bills initiated': the procedure for the introduction of bills into the Council has been simplified with leave to bring in a bill no longer being necessary.

'Second reading on future day': this Standing Order, besides providing for the second reading to be listed for a future day, enables the second reading presentation speech to be given immediately after the first reading.

'With the Committal of a Bill': provision was made for the first time, for the 'in-committee" stage to be bypassed where bills are cognate.

'Bill may be written on vellum': This standing order was obsolete. No bill need ever again be handwritten.

Part 29: Special Provisions Relating to Bills which the Council may not amend. Provision has been made for the parallel Budget Debate across both Houses which has hitherto been provided for by resolution of the House.

Part 33: Election of Senators. There is now provision for the initial arrangements and framework for a Joint Sitting of both Houses to fill a Senate Casual Vacancy in the Australian Senate.

Sessional Orders now incorporated in Standing Orders. The Sessional Orders which had trialled satisfactorily, and which are now incorporated in Standing Orders, are those providing for the recording of pairs in a division, the on-forwarding of Petitions to Executive Government, Special Interest Matters, Citizens' Right of Reply, Grievance Debate through the Premier's Address, and the Televising and Radio Broadcasting of Proceedings.

The new Standing Orders may be accessed online at http://www.parliament.tas.gov.au

Victoria Legislative Assembly

In early 2004 the Legislative Assembly adopted new Standing Orders, and these came into operation on 29 March. All previous Standing Orders were repealed from that date. The new Standing Orders came about following a report tabled by the Standing Orders Committee in November 2003.

The new Standing Orders use plain English and gender-neutral language and are intended to allow Parliament to operate more efficiently, to make its processes more easily understood by the general public, and to make Parliament more open and accountable.

The main changes include:

Consideration in detail. Previously a bill could be considered in the Committee of the Whole, which was an artificial process and was confusing, both as a procedure and in terminology. This procedure has been replaced with a 'consideration in detail' stage. From a practical point of view, amendments are still circulated and moved in the same way, and the same rights to speak exist. However, the procedure is simplified as it takes place in the House, without any requirement to commit the bill, or report afterwards. The Deputy Speaker normally chairs the consideration in detail stage and, for convenience in liaising with the Deputy Clerk over complicated amendments, he or she will continue to sit at the table, rather than in the Speaker's chair. This simplified procedure is much more understandable, particularly to anyone from outside Parliament, and streamlines the process for considering bills.

Opening day. The procedures for the opening day of a new Parliament or session are now set out in full in the Standing Orders. Previously the procedures were contained in the rules of practice and had not been updated since 1857. They were difficult to follow and were not comprehensive. The Standing Orders now specify the order of business for an opening day as being separate from the business described for other sitting days. The practical effect, therefore, is that if an opening day takes place on a Wednesday, then business specified for sitting Wednesdays (such as a 'Matter of Public Importance' debate) does not apply to the opening day. This approach recognises the important formalities and ceremonies which must be followed on an opening day and ensures that the business scheduled is practical. In addition, condolences will not take place on an opening day but provision has been made for them, at the Government's discretion, to take place on any other day during the first sitting week of a new Parliament or session.

Reference to other jurisdictions. The Standing Orders have been broadened to allow the Speaker to determine an issue by reference to the practices of any parliaments operating under the Westminster system, in addition to the practice of the House of Commons, if no provision is made for a particular procedure in the Assembly. In particular, this provides the ability to look formally at practices in other Australian jurisdictions.

Disallowance of statutory rules. The Standing Orders now allow for a formal process for consideration of a disallowance motion where there has

been an adverse report from the Scrutiny of Acts and Regulations Committee.

Adjournment debate. Standing Orders now enable the Chair simply to adjourn the House following the adjournment debate without having to put the question 'that the House now adjourns'. Previously this was permitted only when an adjournment debate took place after a 10 pm interruption under Sessional Orders.

Removal of need for questions to be put. To streamline procedures in the House, in several instances the standing orders now provide for steps automatically to take place after a specific decision of the House. For example, when a bill has been passed, it will be automatically sent to the Council for agreement, without the question being put for the House to agree to. Similarly, on the introduction of a bill, the standing order provides for it to be printed, without the need for the Chair to put a question.

Electronic delivery Changes have been made to the Standing Orders which relate to the delivery to the Clerk of notices of motion, questions on notice and amendments. The requirement for these to be 'fairly written' has been removed, enabling electronic delivery.

Seconding. The practice of seconding motions has previously been confusing as not all motions require seconding. To simplify procedures the new Standing Orders only require seconding in relation to motions for the address-in-reply and nominations for the Speaker or Deputy Speaker.

Select committees. Changes have been made to relevant standing orders to bring the procedures for select committees into line with those laid down under the *Parliamentary Committees Act 2003* for joint investigatory committees, for example by allowing sub-committees and minority reports. In addition, select committees are able to meet at any time other when the House is actually sitting. However, in line with the usual resolution agreed to in each Parliament, an exception is made for the Standing Orders and Privileges Committees to meet within the Parliament building when the House is actually sitting.

Petitions. The new Standing Orders now simply include the requirement to 'state the action or remedy sought'. Previously the term 'prayer', which often perplexed members of the public, had to be included as it was specifically referred to in Standing Orders.

Notices. The new standing orders include a provision to allow a Member to move another Member's motion. In addition, in an effort to regulate the number of notices accumulating over many months on the notice paper, a new Standing Order exists providing for a notice to be removed if it has

remained on the notice paper for more than 30 sitting days without being moved. An announcement is made by the Speaker the day before this period expires and a Member can notify the Clerk if he or she wishes it to remain.

Introducing a bill. The new Standing Orders no longer require that more than one Member is needed to obtain leave to introduce a bill. The procedure now allows introduction by one Member. In addition, ministers were previously permitted to introduce bills without having given previous notice; the new Standing Orders have extended this to bills being introduced by any Member.

Other business during 'Matter of Public Importance' time. Under the new Standing Orders any Member, by prior agreement with all parties, may propose that any item or items of business on the notice paper should be called on in total or partial substitution of a matter of public importance.

Questions superseded. Complications have arisen in the past when a procedural question such as 'the House now adjourns' has been negatived. It could not be moved again unless certain intermediate proceedings have occurred, such as the Clerk reading all the orders of the day. Rather than have an artificial procedure requiring the question to be superseded, the new Standing Orders provide a streamlined and clearer process of restricting, for 15 minutes, the moving of specified motions again.

Western Australia Legislative Council

See entry under 'Miscellaneous Notes'.

CANADA

House of Commons

The following amendments to the Standing Orders of the Canadian House of Commons were among those adopted in 2004:

- Provisional Standing Order 94(4)(a) governing Private Members' Business was amended with a view to making it less difficult to appeal a decision to declare an item of Private Members' Business non-votable (16 February).
- Provisional Standing Order 36(8)(b), introducing a procedure for committee review of the failure of the Government to respond to petitions within 45 days, was extended (26 April) and then made permanent (29 October).

- Standing Orders 21 and 22 were deleted, Standing Order 108(3)(a) was amended, and Standing Order 111.1(1) was replaced, and the Clerk of the House was authorised to make any necessary editorial changes consequential to these amendments, pursuant to the adoption by the House of the 25th Report of the Standing Committee on Procedure and House Affairs. This report was further to the passage of *An Act to amend the Parliament of Canada Act (Ethics Commissioner and Senate Ethics Officer) and other Acts in consequence*. A Code of Ethics was appended to the Standing Orders (29 April).
- Standing Orders 7, 8, 104, and 106 were amended, and Standing Order 1.1 was adopted requiring the Speaker to nominate deputy Chair occupants in consultation with and with the confirmation of the House, and to ensure the full accommodation of members with disabilities (22 October).

British Columbia Legislative Assembly

Since the start of the 37th Parliament in 2001, a number of administrative and procedural changes have been adopted through Sessional Orders. On 10 February 2004 these changes were incorporated into the Standing Orders by amendment as follows.

Standing Order 2 (Daily Sittings) was amended to make minor changes to the daily sitting schedule, to schedule adjournments for statutory holidays falling within legislative sessions as well as Spring Vacation as provided in the *School Act*, and to require publication of an annual calendar based on the Standing Orders.

Standing Order 25 (Routine Business) was amended to move Private Members' Statements from Friday to Monday morning sittings, and to prohibit divisions on Orders of the Day to be taken during Private Members' Time. Instead, when a division is requested during Private Members' Time, the division will be deferred until thirty minutes prior to adjournment of the House on the same Monday, unless otherwise ordered.

Standing Order 25A (Private Members' Statements) was amended to make consequential changes resulting from the amendment to Standing Order 2, and to provide for four Private Members' Statements on Monday mornings. Standing Order 25B (Statements) was adopted to permit three two-minute Statements to be made by Private Members prior to Oral Question Period each day.

Standing Order 81.1 (Time Allocation) was adopted to enable a Minister,

with or without agreement among representatives of all parties, to make application to allot a specified number of days or hours to the proceedings at one or more stages of any public bill.

Manitoba Legislative Assembly

Sessional Orders

In an effort to expedite the final days of the session as well as map out sitting dates for the coming year, on 8 June 2004 the Government House Leader (Gord Mackintosh) moved a motion outlining a range of Sessional Orders, including the following measures:

- Provisions for a timeline to conclude the budget process.
- Extended sitting times for the remainder of the current session.
- Authorisation for the committee of supply and standing committees to sit concurrently with the House, as well as a prohibition on quorum counts for those committees meeting concurrently with the House.
- Provisions for reinstatement of bills not given royal assent by the end of the current session.
- Subject to the emergency recall rule, the third session of the 38th legislature to begin with the throne speech on 22 November 2004 and rise on 9 December.

While both the Government and the official Opposition agreed to the principle of this motion, the two independent Liberals, Jon Gerrard (River Heights) and Kevin Lamoureux (Inkster), strongly opposed the motion. In an extended debate featuring a number of procedural twists and turns, the independent Liberals argued that the motion placed unacceptable limits on the ability of the House to conduct its business appropriately. The Speaker ruled against the points of order raised, advising that the House was within its rights to establish such procedures and Sessional Orders. Ultimately the motion passed and the Sessional Orders were adopted.

Québec National Assembly

No changes were made to the Standing Orders of the National Assembly of Québec in 2004. However, in June the Speaker of the National Assembly and the Government House Leader each tabled a comprehensive set of procedural reform proposals.

Notwithstanding the many differences between these two sets of propos-

als, they share a preoccupation with four major themes: increasing participation by citizens in parliamentary life; enhancing the role of the Members; modernising the organisation and proceedings of the Assembly; and redefining the relationship between the Executive and the Assembly.

Both proposals have been referred to the Standing Subcommittee on Parliamentary Reform, which is expected to report its recommendations in 2005.

Saskatchewan Legislative Assembly

The 2004 Spring Session saw the implementation of the changes to the Standing Orders adopted during the previous year (see the 2004 *Table*, pp 196-199). No additional changes were adopted during 2004.

INDIA

Rajya Sabha

Rules 286 to 303, pertaining to the Committee on Ethics of Rajya Sabha, were incorporated in the corpus of the Rules of Procedure and Conduct of Business. The Committee on Rules presented its ninth report containing these rules to the House on 20 July 2004, and the report was adopted on the same day. The membership of the House Committee was also enhanced from seven to ten by amending rule 212(Q).

The Committee on Rules also presented its tenth report to the House on 20 July, and this too was adopted the same day. With the adoption of the tenth report, two new Department-related Parliamentary Standing Committees, the Committee on Health and Family Welfare and the Committee on Personnel, Public Grievances, Law and Justice, were created. The total membership of the Department-related Parliamentary Standing Committees was also reduced from 45 Members to 31, out of which 10 Members would be from the Council of States (Rajya Sabha) and 21 from the House of the People (Lok Sabha). For this purpose, rule 269(1) of the Rules of Procedure and Conduct of Business was, accordingly, amended.

Ethics

The Members of Rajya Sabha (Declaration of Assets and Liabilities) Rules 2004, framed by the Chairman, Council of States, under sub-section (3) of Section 75A of the Representation of the People (Third Amendment) Act 2002, came into effect on 5 August 2004.

Under Rule 3 of the Rules, every elected Member of the Council is required to furnish in a prescribed form the following information to the Chairman within 90 days from the date of his taking the oath or affirmation:

a) The movable and immovable property of which he, his spouse and his dependent children are jointly or severally owners or beneficiaries;
b) His liabilities to any public financial institution; and
c) His liabilities to the Central Government or to State Governments.

According to Rule 4, the Secretary-General shall maintain a register to be called the 'Register of Declaration of Assets and Liabilities of Members'. Failure on the part of a Member to furnish this information may invite sanctions, as prescribed by the rules. Information contained in the Register can be made available on request to anybody, with permission from the Chairman, Rajya Sabha. Detailed rules are available on the official website of the Council of States (http.//rajyasabha.nic.in).

Instances of contravention of the rules shall be brought forward in the form of a complaint in writing to the Chairman of the Council, by any other Member or a citizen of India. The complaint shall be supported by documentary evidence, if any. The complainant will submit an affidavit to ensure that the complaint is not false, frivolous or vexatious, and that it is made in good faith. The complaint will not be entertained if it is not made as per the requirement of the rules. If the complaint complies with the requirements as laid down in the rules, it will be sent to the Member against whom complaint has been received for his comments. After considering his comments, the Chairman may either reject the complaint or forward it to the Committee of Privileges for inquiry and report. If the Committee of Privileges does not find any wilful contravention of these rules, the matter may be closed. Otherwise, the findings of the committee are laid before the House in the form of a report for a decision on the recommendations contained therein.

In addition, the Committee on Ethics is constituted by the Chairman, Rajya Sabha, with a mandate to oversee the moral and ethical conduct of Members and to examine cases referred to it with reference to ethical and other misconduct by Members. Members of the committee including its Chairman are nominated by the Chairman, Rajya Sabha, and its term continues till a new committee is appointed. Under Rule 290 of the Rules of Procedure and Conduct of Business in the Council of States, the committee has the following functions: to oversee the moral and ethical conduct of members; to prepare a Code of Conduct for members and to suggest amendments or additions to the Code from time to time in the form of

reports to the Council; to examine cases concerning the alleged breach of the Code of Conduct by Members, as also cases concerning allegations of any other ethical misconduct of Members; and to tender advice to Members from time to time on questions involving ethical standards either *suo motu* or in response to specific requests.

STATES OF JERSEY

A major review of Standing Orders of the States of Jersey is being undertaken as a result of the decision of the States to implement major changes to the machinery of government in the Island. The redrafted Standing Orders are expected to be debated in the spring of 2005 and will come into force at the end of 2005 when the States are reconstituted after elections in the autumn. As well as making changes that are consequential on the changes to a new system of government the opportunity has been taken to update the Standing Orders more generally and introduce matters such as gender neutral drafting.

SOUTH AFRICA NATIONAL ASSEMBLY

There were no changes to the Rules of the National Assembly or Joint Rules in 2004. Changes are pending in view of the coming into operation of the new Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act, No 4 of 2004, and the approval of a new directing authority for Parliament. These changes will be covered in the 2005 questionnaire.

TURKS AND CAICOS LEGISLATIVE COUNCIL

The House reviewed its outdated and antiquated procedures relating to questions. There was no limit on the number of questions each Member could ask, and there was no specific notice requirement for Members to submit questions—although in 1991 the House did attempt to fix notice period by way of a Resolution.

The Standing Orders Committee convened, and considered representations made by Members of the Opposition in respect of the difficulties they encountered. It further considered the representations made by Ministers relating to notice requirement. The committee reported to the House, which subsequently approved amendments to the Standing Orders to provide for notice to be sent or left at the Office of the Clerk during office hours, and for

not more than fifteen Questions requiring an oral answer to appear on the Order Paper in the name of the same Member for the same sitting. Notice of questions must now be given by a Member in writing not less than five clear days before the hour of the sitting.

PARLIAMENT OF UGANDA

On 21 December 2004 Hon. Nyombi Thembo (MP Kassanda South) moved a motion in accordance with Rules 37 and 50, seeking to amend certain rules of procedure of Parliament. The motion was referred for consideration to the Committee on Rules, Privileges and Discipline.

The proposed amendments were to amend Rules 12 and 75. The mover proposed that Rule 12(2) be amended to read as follows: 'the House shall, subject to the direction of the Speaker sit on Mondays, Tuesdays, Wednesdays, Thursdays and Fridays'. The rationale for this amendment was to increase the number of sitting days of Parliament because normally Parliament sits from Tuesday to Thursday, unless the Speaker directs otherwise.

The mover also proposed that Rule 75 should read: 'all Constitutional amendments shall be voted on either by show of hands or division as the Speaker may determine'. This entailed the consequential deletion of sub rules (a) and (f) of Rule 75. The rule currently provides that voting on constitutional amendments will be conducted secretly.

The House broke off for the Christmas recess until February 2005 and therefore the committee was not able to consider the amendments by the end of the year.

UNITED KINGDOM HOUSE OF COMMONS

On 29 January a House of Commons Members Estimate Committee was set up, with the same membership as the House of Commons Commission, to review and make minor modifications to the rules for allowances payable under that Estimate (the Commission administers the House of Commons Administration Estimate, to which staff pay and administrative expenditure are charged).

On 7 June the role of the Committee of Selection in proposing members of select committees related to Government departments and of domestic committees was extended to proposing members of nearly all select committees. All proposals remain subject to approval or otherwise by the House. At the same time an experimental power was given (for the remainder of the

Parliament) for the Welsh Affairs Committee to meet jointly with committees of the National Assembly for Wales (see below, under Wales).

On 26 October temporary Standing Orders relating to programming of legislation, deferred divisions and carry-over of bills from one session to the next were converted into permanent standing orders, some with minor amendments. At the same time the term 'strangers' was replaced by 'members of the public' throughout the Standing Orders. In addition, an experimental power was given for the Speaker to set aside a time during a debate when speeches would be limited to a specified length not less than three minutes (the normal rule for short speeches allows a limit not less than eight minutes).

At the close of the year the Select Committee on Modernisation of the House of Commons was reviewing the sitting hours introduced experimentally from January 2003 to the end of the current Parliament. The report was published in January 2005, and in a debate later that month the House agreed that sitting times from the beginning of the next Parliament (i.e. from May 2005) would continue to be at the experimental times, except that Tuesdays would revert to the Monday times (sitting at 2.30 pm, with business interrupted at 10.00 pm) and that Thursdays would start an hour earlier (at 10.30 am).

WALES NATIONAL ASSEMBLY

Early in 2004 officials from the Assembly Parliamentary Service conducted a review of the Assembly's Standing Orders. The review arose because it was felt that the end of the First Assembly was an appropriate time to consolidate the numerous changes made to Standing Orders in the first four years. It would also provide an opportunity to eliminate the inconsistencies and idiosyncrasies which had accumulated.

The scope of the review was deliberately restricted to:

- Typographical or grammatical errors, or minor drafting errors;
- Removing inconsistencies between the English and Welsh texts.

Some potentially contentious and more wide-ranging proposals were also considered:

- *Questions to the House Committee*. Standing Orders originally prevented urgent questions to the House Committee (the principal administrative body, with broadly equivalent powers to the House of Commons Commission). This provision was included because it was not envisaged

that the committee would have responsibility for matters of 'urgent public importance'. However, additional powers were subsequently delegated to the committee and it was felt that the committee should be able to answer urgent questions.

- *European and External Affairs Committee*. Minor changes to the Standing Order relating to this committee were recommended, to clarify that the committee's remit included keeping an overview of the Assembly's arrangements for the consideration of legislation; to clarify that the committee was responsible for keeping the relationship with other EU Member states and involvement in EU and international organisations under review; and to introduce the subsidiarity infringement monitoring role of the committee.
- *Publication of Subordinate Legislation*. Standing Orders originally required the Presiding Officer to publish subordinate legislation made or confirmed by the Assembly (other than Statutory Instruments). The Assembly agreed that this duty be transferred to the Assembly.
- *Assembly Parliamentary Service*. Amendments were proposed to reflect the new name of the Presiding Office, the Assembly Parliamentary Service.

The review of Standing Orders was considered and approved by the Assembly in March 2004.

Other significant amendments

On 11 May the House of Commons Procedure Committee published a Report on Joint Working with the Assembly. The following is an extract from the report:

> We wish to give further consideration to the general desirability of formal joint meetings, but believe that the expected arrival of a draft bill applying to Wales indicates a suitable limited experiment.

The Assembly's Business Committee welcomed the Report and the proposal for joint pre-legislative scrutiny of the draft Transport (Wales) Bill by the Welsh Affairs Committee and the Assembly's Economic Development and Transport Committee. On 7 June the House of Commons approved a motion to revise its Standing Orders to allow members of Assembly subject committees to be invited to attend and participate in meetings of the Welsh Affairs Committee. On 15 June the Assembly approved amendments to its Standing Orders to allow members of the House of Commons Welsh Affairs Committee to be invited to participate in meetings of the Assembly's subject committees.

SITTING TIMES

Lines in Roman show figures for 2004; lines in Italic show a previous year. An asterisk indicates that sittings have been interrupted by an election in the course of the year.

In addition, there are some inconsistencies in the criteria applied in returns—for

	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 ACT*	0	3	8	1	5	5	1	9	0	0	1	3	36
Aus N Terr	*0*	*6*	*0*	*3*	*3*	*7*	*0*	*6*	*0*	*6*	*3*	*0*	*34*
Aus NSW LA	0	7	9	3	8	8	0	1	9	6	8	4	63
Aus NSW LC	0	3	8	1	6	8	0	1	8	6	6	3	50
Aus Queens LA	*0*	*3*	*6*	*5*	*7*	*4*	*0*	*3*	*3*	*9*	*6*	*0*	*46*
Aus H Reps*	0	7	15	1	8	12	0	8	0	0	5	6	62
Aus S Aus HA	0	8	7	1	9	7	5	0	7	8	8	4	64
Aus S Aus LC	0	8	7	1	9	6	5	0	7	8	8	4	63
Aus Sen*	0	8	15	1	8	11	0	8	0	0	5	6	62
Aus Tasm HA	0	0	0	7	8	6	0	3	6	5	6	0	41
Aus Tasm LC	0	0	0	0	8	10	0	2	2	8	8	0	38
Aus Vict LA	0	0	5	4	9	3	0	3	3	6	9	5	47
Aus Vict LC	*0*	*3*	*7*	*5*	*8*	*5*	*0*	*0*	*3*	*8*	*8*	*3*	*50*
Aus W Aus LA	*0*	*3*	*9*	*6*	*9*	*10*	*0*	*6*	*9*	*6*	*9*	*3*	*70*
Aus W Aus LC	0	0	10	6	8	10	1	8	8	8	13	1	73
Bangladesh	*1*	*15*	*8*	*0*	*4*	*16*	*9*	*0*	*6*	*0*	*4*	*0*	*63*
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 Alb	*0*	*3*	*12*	*14*	*8*	*0*	*0*	*0*	*0*	*0*	*7*	*3*	*47*
Canada BC	0	11	15	9	12	0	0	0	0	10	0	0	57
Canada HC	0	20	13	12	10	0	0	0	0	18	17	10	100
Canada Man	0	0	8	11	16	7	0	0	0	0	7	6	55
Canada N Bruns	*8*	*15*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*5*	*12*	*40*
Canada Newf	0	0	8	17	13	5	0	0	0	0	6	10	59
Canada NWT	*0*	*0*	*7*	*11*	*4*	*0*	*5*	*0*	*4*	*0*	*0*	*0*	*31*
*Canada Ontario**	*0*	*0*	*0*	*1*	*16*	*16*	*0*	*0*	*0*	*0*	*6*	*12*	*51*
Canada PEI	0	0	2	16	11	0	0	0	0	0	7	10	46
Canada Québec	0	0	11	10	13	11	0	0	0	6	14	12	77
Canada Sask	0	0	10	19	17	13	0	0	0	0	12	0	71
Canada Sen	*0*	*9*	*6*	*5*	*10*	*12*	*0*	*0*	*7*	*13*	*5*	*0*	*67*
Canada Yukon	0	0	4	16	10	0	0	0	0	5	17	8	60
Cayman Islands	*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 Gujarat	0	8	0	0	9	12	0	1	0	0	0	0	30
India Haryana	*2*	*8*	*0*	*0*	*0*	*1*	*3*	*0*	*0*	*0*	*2*	*0*	*16*

instance, over the inclusion of joint sittings, estimates days, and so on. The editor will seek to address such inconsistencies in future questionnaires.

India Him Pr	*0*	*6*	*15*	*0*	*0*	*0*	*3*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*24*
*India Kerala**	*0*	*1*	*12*	*0*	*2*	*0*	*12*	*0*	*19*	*0*	*0*	*7*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*53*
India LS	*0*	*10*	*9*	*12*	*6*	*0*	*9*	*12*	*0*	*0*	*0*	*0*	*0*	*16*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*74*
India Maharash																								*33*
India Nagaland	*0*	*0*	*4*	*0*	*0*	*5*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*1*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	10
India Orissa	*0*	*0*	*12*	*0*	*0*	*0*	*12*	*3*	*0*	*0*	*0*	*0*	*0*	*7*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*34*
India Punjab	*0*	*0*	*13*	*0*	*0*	*0*	*0*	*0*	*2*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*15*
India Rajasthan	*0*	*5*	*19*	*6*	*0*	*0*	*0*	*0*	*10*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*40*
India RS*	*1*	*3*	*0*	*0*	*0*	*5*	*15*	*9*	*0*	*0*	*0*	*0*	*0*	*17*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	50
India Sikkim																								9
India Tamil Nadu	*5*	*0*	*7*	*16*	*6*	*0*	*0*	*0*	*0*	*0*	*0*	*5*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*39*
India Uttar P	*0*	*10*	*0*	*0*	*0*	*0*	*7*	*5*	*0*	*0*	*0*	*6*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	28
IoM Keys	*1*	*3*	*4*	*1*	*3*	*2*	*0*	*0*	*0*	*1*	*0*	*5*	*1*	*1*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*21*
IoM LC	*1*	*3*	*4*	*1*	*1*	*2*	*0*	*0*	*0*	*1*	*0*	*5*	*1*	*1*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*19*
IoM Tynwald	*1*	*3*	*1*	*2*	*1*	*1*	*3*	*0*	*0*	*2*	*0*	*1*	*1*	*1*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*16*
Jersey	*2*	*3*	*4*	*2*	*6*	*6*	*5*	*0*	*3*	*3*	*0*	*8*	*6*	*6*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	48
Kenya	*0*	*0*	*6*	*12*	*5*	*12*	*13*	*7*	*0*	*13*	*13*	*13*	*5*	*5*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*86*
Lesotho	*0*	*0*	*16*	*0*	*1*	*18*	*3*	*1*	*16*	*17*	*9*	*9*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*81*
Malawi																								
Malaysia Reps	*0*	*0*	*12*	*6*	*0*	*8*	*0*	*0*	*14*	*19*	*5*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*64*
Malaysia Sab	*0*	*0*	*0*	*0*	*2*	*0*	*0*	*0*	*0*	*7*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*9*
Malaysia Sara	*0*	*0*	*0*	*7*	*0*	*0*	*0*	*0*	*0*	*0*	*1*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*14*
Malaysia Sen	*0*	*0*	*0*	*11*	*0*	*0*	*6*	*0*	*0*	*0*	*12*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*29*
Montserrat	*0*	*0*	*0*	*2*	*0*	*0*	*1*	*0*	*1*	*1*	*1*	*1*	*1*	*1*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*7*
Namibia	*0*	*12*	*16*	*16*	*0*	*16*	*8*	*0*	*8*	*16*	*16*	*16*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*108*
NZ H Reps	*0*	*9*	*11*	*4*	*14*	*8*	*4*	*10*	*8*	*9*	*11*	*9*	*9*	*9*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	97
Nigeria Borno	*20*	*19*	*24*	*10*	*10*	*20*	*25*	*18*	*28*	*20*	*6*	*6*	*2*	*2*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*202*
Pak MWFP	*0*	*5*	*0*	*0*	*0*	*25*	*3*	*0*	*10*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*43*
Pak Pun	*15*	*0*	*0*	*11*	*0*	*12*	*0*	*11*	*10*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*59*
St Lucia	*0*	*1*	*1*	*3*	*1*	*0*	*1*	*1*	*1*	*0*	*0*	*1*	*1*	*1*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*11*
St V & G	*1*	*0*	*0*	*1*	*1*	*1*	*0*	*2*	*0*	*0*	*0*	*0*	*4*	*4*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*10*
Samoa	*10*	*0*	*0*	*4*	*1*	*12*	*0*	*0*	*0*	*1*	*0*	*0*	*2*	*2*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*30*
Scotland	*8*	*6*	*8*	*5*	*9*	*6*	*0*	*0*	*8*	*6*	*8*	*8*	*6*	*6*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*70*
*Singapore**	*0*	*0*	*1*	*5*	*12*	*0*	*5*	*2*	*0*	*3*	*3*	*3*	*1*	*1*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*32*
S Africa NA*	*0*	*11*	*0*	*1*	*5*	*7*	*0*	*5*	*5*	*5*	*8*	*8*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	49
S Africa NCOP	*0*	*3*	*9*	*3*	*6*	*10*	*0*	*2*	*7*	*2*	*7*	*7*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*49*
S Africa NW PL	*0*	*3*	*3*	*5*	*1*	*2*	*0*	*4*	*5*	*0*	*2*	*2*	*4*	*4*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*29*
*Sri Lanka**	*1*	*8*	*1*	*5*	*3*	*6*	*8*	*8*	*8*	*8*	*4*	*4*	*2*	*2*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*62*
T&T HR	*4*	*2*	*4*	*2*	*4*	*3*	*4*	*0*	*4*	*8*	*7*	*2*	*2*	*2*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*38*
T&T Sen	*2*	*4*	*3*	*5*	*4*	*4*	*4*	*0*	*3*	*4*	*4*	*4*	*3*	*3*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*40*
Turks & Caic LC	*2*	*0*	*0*	*0*	*4*	*1*	*0*	*2*	*2*	*1*	*0*	*0*	*1*	*1*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	13
Uganda																								101
UK Commons	*17*	*14*	*22*	*11*	*17*	*16*	*14*	*0*	*7*	*13*	*17*	*12*	*12*	*12*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	160
UK Lords	*17*	*12*	*21*	*12*	*16*	*16*	*15*	*0*	*8*	*12*	*19*	*19*	*12*	*12*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	160
Wales	*6*	*6*	*10*	*2*	*8*	*8*	*4*	*0*	*4*	*6*	*10*	*4*	*4*	*4*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	68
W Samoa	*0*	*0*	*4*	*0*	*1*	*13*	*14*	*0*	*0*	*1*	*15*	*2*	*2*	*2*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*50*
Zambia	*9*	*16*	*14*	*0*	*0*	*0*	*3*	*11*	*0*	*0*	*16*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*69*

UNPARLIAMENTARY EXPRESSIONS IN 2004

Straightforward accusations of dishonesty or falsehood have been omitted, as they are universally unacceptable, as have simple expletives or terms of abuse. The editor has also omitted expressions whose offensive implications depend wholly upon context. Expressions in languages other than English have been given with translation, but the editor regrets that where expressions have been submitted without translation it has not been possible to include them.

ANTIGUA AND BARBUDA

"Mad … crazy"	8 December
"Dunce"	17 December

AUSTRALIA

Australian Capital Territory

"Hot air from the chief windbag"	3 March
"Arse about"	22 June
"Has she been honest?"	23 June
"Did you employ any coercion, or bullying or similarly persuasive tactics?"	23 June
"Dangerous woman"	19 August
"Nobbled clinicians"	24 August
"Bloody, suppurating boil"	24 August

NSW Legislative Assembly

"Pissed"	10 March
"Lackey Labor Independents"	19 November

NSW Legislative Council

"Minister Monsanto"	4 April
"Thug boy"	11 May
"His Greek generals' fascist connections"	3 June
"Nong" (i.e. idiot)	21 October
"Duplicitous Labor lapdog"	18 November

Victoria Legislative Assembly

"Obnoxious little twerp"	3 March
"Maybe the Honourable Phil Davis wanted that $2 million spent somewhere else, may be on his dining room account"	3 March
"Quite clearly he should have tattooed on his head 'Scoresby liar' and on his butt 'the man who tried to rig the by-election in Nunawading'!"	5 October
"The Deputy Leader of the Opposition condones deliberately deceptive raffles"	6 October
"A deal done between a minister and the Acting Speaker"	1 December

Victoria Legislative Council

"Improper dealing"	12 May
"He was guilty last time and he is guilty this time"	12 May
"Get the Minister to intervene and corrupt the planning processes of this State"	12 May
"This Minister got caught with his hands in the till. He got caught red–handed"	13 May
"Knock your head off "	2 June
"Are you another lying copper?"	2 June
"It certainly seems a clear example of snouts in the trough, with the Minister for Local Government using her position to fund her re-election campaign"	10 June
"I will give the Premier one point for coming clean … and telling them he had lied"	15 September
"Cockroaches"	12 October
"I therefore ask the Minister to cease using his political position to harass, threaten and bully his constituents"	14 October
"Mr Baxter … probably breached parliamentary privilege"	11 November
"If you want to get ahead in the wind industry … go overseas with the Minister"	17 November
"Sneak in like a mangy dog"	2 December
"It is a great regret to me to see you sitting in the Chair and yawning while I am speaking"	7 December
"One of the problems with Mr Mitchell is there is a village short of an idiot"	14 December

CANADA

House of Commons

"Chicken"	6 May
"Stooge"	7 May
"Imbecile … imbecility"	13 May
"Thieves"	13 May
"La famiglia liberale" (referring to Liberal Members of Italian origin)	29 October
"Shut up and sit down"	24 November

British Columbia Legislative Assembly

"Shoves it up the butt"	4 March
"Very slippery and slimy [words]"	30 March
The minister's word, in my view, is oftentimes questionable"	30 March
"The minister sounds like a fool—an absolute fool."	31 March
"Illegal tax grab"	27 April
"The Finance minister bully boy and the AG bully boy"	18 May
"I saw the Attorney General's staff shaking her head"	25 October

Manitoba Legislative Assembly

"Chicken little"	20 April
"If the shoe fits, wear it"	1 December
"Jellyfish"	26 November

Prince Edward Island Legislative Assembly

"Liberal nose-picking welfare crud"	15 April

Québec National Assembly

"Fin finaud" (Wily bird)	10 March
"Tromper la population" (Deceive the population)	10 March
"Omettre sciemment de dire la vérité" (Knowingly omit to speak the truth)	24 March
"Homme de paille" (Man of straw)	13 May
"Appuyer ses amis" (Support his buddies)	9 June
"Dégueulasse" (Disgusting)	9 June
"Malhonnêteté intellectuelle" (Intellectual dishonesty)	15 June
"[les] Petits amis du Parti libéral empochent" ([the] Pals of the Liberal Party cash in)	24 November
"Si le ridicule tuait, le depute ... ne serait pas très en vie en ce moment" (If ridicule could kill, the Member … would be at death's door right now")	2 December
"Faire le fanfaron" (Go about bragging)	2 December
"Camoufler cette affaire" (Camouflage this business)	9 December

Saskatchewan Legislative Assembly

"Tommy the commie set our province back"	[No date]
"Goddamn"	[No date]

Yukon Legislative Assembly

"Relentless tirade of partisan drivel"	31 March
"[The Member] needs help, maybe some professional help"	12 April
"The Members opposite are focused on the downstream end of a flushing toilet instead of the future of the Yukon economy"	18 May
"The Ayatollah Complaini"	15 November
"The NDP put the Yukon economy in the toilet, the Yukon Liberal Party came along and they flushed it"	29 November
"I'm not a medical person, but it sounds like we have a migration of trans fats to brain cells"	2 December

INDIA

Rajya Sabha

"Vishwasghat" (Betrayal of trust)	3 February
"Hatiyare" (Murderers)	3 February
"Nautanki" (Farcical drama)	13 July
"Fascist"	14 July
"Dakoo" (Dacoit)	16 August
"Tamaasha" (Drama)	26 August
"Gundagardi" (Hooliganism)	15 December
"Badmash" (Rascal)	15 December
"Chamchagiri" (Flatterer)	15 December

Gujarat Legislature

"Bogus"	20 February
"[The] Chief Minister is holding out a lollypop, false promises"	23 February
"Simpleton"	23 February
"Taking undue credit"	23 February
"Drama"	27 May
"Don't count others' faults when you yourself are full of them"	28 May
"You are Hitler, there are Goebbels around you, you are a killer"	28 May

"Stop making uproar"	1 June
"A witch looks beautiful from the front, but when she shows her back …"	7 June
Nagaland Legislative Assembly	
"Mockery and misleading"	25 March
"Bogus"	27 June
Uttar Pradesh Legislative Assembly	
"Devil's child"	11 February
"Fit of madness"	11 February
"That Italian brain"	13 February
"Government of mafias"	23 July

NEW ZEALAND HOUSE OF REPRESENTATIVES

"Back fella"	10 February
"Smart-arse"	11 February
"Hysterical"	17 February
"Whinging women"	18 February
"Burn her bra"	25 February
"Bugger's muddle"	2 March
"Born-again Horis"	8 March
"Did not have the courage"	24 March
"Lawbreaker"	7 April
"Her Madness"	7 April
"Pulling the strings"	19 May
"Dirty, dishonest, and divisive tactics"	19 May
"Redundant leftovers, the dogsbodies"	20 May
"Lacks honour"	26 May
"Mean-spirited and naughty"	26 May
"Lapdogs"	10 August
"Lackeys"	26 August
"Shag spiders"	2 September
"Stuck pigs"	7 September
"Pinko pacifist"	16 September
"Rope-head"	6 October
"Sleaze around the Chamber"	4 November
"The absolute scum in the chair"	4 November
"Bloody outrageous"	4 November
"Forked tongue"	16 November
"Rednecked racists"	16 November
"Hallucinating"	16 November
"Quisling"	1 December
"Bigot"	14 December

BOOKS AND VIDEOS ON PARLIAMENT

AUSTRALIA

Biographical Dictionary of the Australian Senate, vol. 2 1929-1962, edited by Ann Millar, Melbourne University Press, ISBN 0 522 85090 1

Business of the Senate for the Third Parliament: 12 December 1906-19 February 1910, Department of the Senate, ISBN 0642714428

Can responsible government survive in Australia? (2nd edition), by David Hamer, Department of the Senate, ISBN 0642714339

Conversations with the Constitution: not just a piece of paper, by Greg Craven, University of New South Wales Press, ISBN 086840439X

Dark victory (2nd edition), by David Marr and Marian Wilkinson, Allen & Unwin, ISBN 1741144477

Five things to know about the Constitution, by Helen Irving, Cambridge University Press, ISBN 0521603706

Government and democracy in Australia, by Ian Cook, Oxford University Press, ISBN 019551450X

Media tarts: how the Australian press frames female politicians, by Julia Baird, Scribe, ISBN 1920769234

Odgers' Australian Senate Practice, (11th edition), edited by Harry Evans, Department of the Senate, ISBN 0 642 71457 6

Powerscape: contemporary Australian political practice, by Ariadne Vromen and Katharine Gelber, Allen & Unwin, ISBN 1865089214

Rebels with a cause: independents in Australian politics, by Brian Costar and Jennifer Curtin, University of New South Wales Press, ISBN 0868406953

Restructuring Australia: regionalism, republicanism and reform of the nation-state, by Wayne Hudson, A J Brown and Chris Hurford, Federation Press, ISBN 1862874921

So monstrous a travesty: Chris Watson and the world's first national labour government, by Ross McMullin, Scribe Publications, ISBN 1920769137

Speaking for Australia: parliamentary speeches that shaped our nation, edited by Rod Kemp and Marion Stanton, Allen & Unwin, ISBN 1741144302

New South Wales Legislative Council, 1824–1856; Abstracts of Votes and Proceedings, with an index: Part 1, 1824–1843, by R F Doust, Sydney, NSW Parliamentary Library, ISBN 0 7313 17560

Principles, Personalities, Politics: Parliamentary Privilege Cases in New South

Wales, by Gareth Griffith, Sydney, NSW Parliamentary Library Background Paper: 1/04, ISBN 0 7313 17564; ISSN 1325 – 5142
This paper presents a survey of the main parliamentary privilege cases in NSW. In addition to dealing with the legal principles for which these cases stand, the paper also looks at the personalities and issues involved. Consideration of past cases in relation to privilege is important for New South Wales as there is no legislation comprehensively defining the powers and privileges of its Houses of Parliament. Rather recourse is made to the common law.

The Constitution of New South Wales, by Anne Twomey, Federation Press, Annandale, NSW, ISBN 1 86287 5162
This book provides detailed information on the Constitution of New South Wales. It addresses such matters as 'manner and form' provisions, limitations on state legislative power and the status and power of the States within a Federal Commonwealth. It also considers parliamentary procedure and privilege including resolving deadlocks between the Houses, the power of the Houses in respect to money bills and the power to assent to laws. The book covers other aspects related to constitutional law such as electoral law and the disqualification and expulsion of members of Parliament. The theory is given practical meaning by including parliamentary precedents and the practice of the Executive and the exercise of intergovernmental relations.

House to House, by Philip Pendal and David Black, Parliament of Western Australia, A$60 (hard cover), ISBN 1 920830 34 0, or A$40 (soft cover), ISBN 1 920830 35 0

Speakers and Presidents of the Parliament of Western Australia, by Harry C J Phillips, Western Australia Parliamentary History Project Publications, A$50, ISBN 1 920830 41 3

A Citizen's Guide to the Western Australian Parliament, by Harry C J Phillips, Western Australia Parliamentary History Project Publications, A$5, ISBN 1 920830 22 7

CANADA

Executive Styles in Canada: Cabinet Structures and Leadership Practices in Canadian Government, by Luc Bernier, Keith Brownsey and Michael Howlett, University of Toronto Press, ISBN 0802037852

Droit constitutionnel: principes fondamentaux, by Nicole Duplé, Wilson and Lafleur, ISBN 2891276590

L'État québécois au XXIe siècle, under the direction of Robert Bernier, Sainte-Foy, Presses de l'Université du Québec, $65C, ISBN 2760512606. A chapter of this work treats parliamentary control, accountability, and administrative transparency.

La politique c'est aussi une affaire de femmes!, Montréal, Collectif féminisme et démocratie, 3 vols, free of charge, ISBN none

Histoire du livre et de l'imprimé au Canada : volume 1 : des débuts à 1840, by Gilles Gallichan, Montréal, Presses de l'Université de Montréal, $75C or $68, ISBN 2760617688. A chapter of this work treats the evolution of parliamentary institutions as evidenced in their official publications.

Guide du pouvoir au Québec: édition 2005, Québec, Publications Mass-média, $39.95C, ISBN 2922218 090

Connaissance et perception des citoyens à l'égard de l'Assemblée nationale et des députés: rapport d'étude, Québec, Léger Marketing, ISBN none. Available via Internet at: http://www.assnat.qc.ca/fra/sondage/.

Le point sur la réforme électorale dans les provinces canadiennes: où se situe le Québec?, by Henry Milner, Montréal, Institut de recherche en politiques publiques, ISSN 1492 7012. Discusses electoral reform in the Canadian provinces. Available via Internet at: http://www.irpp.org/fr/pm/index.htm.

INDIA

Cabinet Responsibility to Legislature—Motions of Confidence and No-confidence in Lok Sabha and State Legislatures, Metropolitan Book Co. Pvt. Ltd., Delhi, Rs. 1,650/-, ISBN 81 200 0400 0

Handbook on the working of the Ministry of Parliamentary Affairs, by V K Agnihotri, Concept Publishing, New Delhi, Rs. 1,000/-, ISBN 81 8069 194 2

Unparliamentary Expressions, Lok Sabha Sachivalaya, Delhi, Rs. 850/-

The following books were brought out by the Rajya Sabha Secretariat on the occasion of the 200th Session of the Council of States (Rajya Sabha) held in December 2003:

Humour in the House: a Glimpse into the Enlivening Moods of Rajya Sabha, Rajya Sabha Secretariat, New Delhi, Rs. 270/-

Socio-economic profile of members of Rajya Sabha (1952-2002), Rajya Sabha Secretariat, New Delhi, Rs. 185/-

Women Members of Rajya Sabha, Rajya Sabha Secretariat, New Delhi, Rs. 185/-

Private Members' Legislation, Rajya Sabha Secretariat, New Delhi, Rs. 150/-

NEW ZEALAND

Bridled Power: New Zealand's Constitution and Government, by Geoffrey and Matthew Palmer, Oxford University Press, 4th edition, NZ$54.99, ISBN 0 19 558463 5

Politics in New Zealand, by Richard Mulgan, updated by Peter Aimer, Auckland University Press, 3rd edition, NZ$44.99, ISBN 1 86940 318 5

Speakers' Rulings 1867 to 2003 inclusive, compiled by D G McGee, House of Representatives, Wellington, New Zealand, NZ$16.99

Standing Orders of the House of Representatives, brought into force 20 February 1996, amended [most recently] 16 December 2003 (with effect on 10 February 2004), House of Representatives, Wellington, New Zealand, NZ$16.99

The House: New Zealand's House of Representatives 1854-2004, by John E. Martin, Dunmore Press in association with Parliamentary Service and Office of the Clerk, NZ$59.99, ISBN 0 86469 463 6

The Politics and Government of New Zealand: robust, innovative and challenged, by G A Wood and Chris Rudd, Otago University Press, NZ$49.99, ISBN 1 877276 46 4

The Statute: Making and Meaning, edited by Rick Bigwood, LexisNexis (Papers from the New Zealand Legal Method Seminar held by the Legal Research Foundation, 16 May 2003), NZ$139.99, ISBN 0 408 71718 1

Voters' Veto: The 2002 Election in New Zealand and the Consolidation of Minority Government, edited by Jack Vowles, Peter Aimer, Susan Banducci, Jeffrey Karp and Raymond Miller, Auckland University Press, NZ$49.99, ISBN 1 86940 309 6

SOUTH AFRICA

National Assembly Guide to Procedure 2004

With the advent of the new democratic Parliament in 1994, the majority of the Members sworn in had never set foot in the South African Parliament and had little if any knowledge of the procedures that enabled the institution to function. Thus the parliamentary officials conducted intense induction workshops to orientate Members around the then rules and procedures. With the rapid development and transformation of the institution subsequently, including the adoption and implementation of the new Constitution in 1996, there was not enough time for Table Staff to prepare anything more than brief guides for Members in dealing with legislation and other parliamentary processes.

It was therefore with pride and a real sense of achievement that the first comprehensive Guide to Procedure was published in March 2004. The *National Assembly Guide to Procedure 2004* is an attempt to provide a structured and detailed overview of the constitutional and other statutory provisions, the Assembly and Joint Rules, and established practices and conventions which, collectively, provide the framework within which the Members exercise their powers and functions. The *Guide* consists of 17 chapters which cover a wide range of topics such as the National Assembly and its constitutional role; the Presiding Officers and other office-bearers; sources of Assembly procedure; sessions and sittings; parliamentary committees; and the legislative procedure.

The *Guide* reflects the proceedings and procedures that were in place up to February 2004, i.e. at the close of the Second Parliament. The process of transformation is however ongoing, the fundamental issues currently under review including Parliament's oversight role; the scrutiny of delegated legislation; the financial administration of Parliament; the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act of 2004; and the restructuring of the Office of the Speaker. In addition to the above transformation issues, there are rules and provisions that have not yet been subjected to practical application and in respect of which no precedents have been set or practices developed. Regular updating of the *Guide* will therefore be imperative because further substantive changes to the manner in which the Assembly functions can be expected in due course.

Under the guidance of the Secretary to the National Assembly, a former Undersecretary to the National Assembly, Peter Lilienfeld, was responsible for writing up the *Guide*, using records and resources maintained by Table staff. The *Guide* was distributed to all Members and several national and international organisations, including African and other parliaments, NGOs, tertiary institutions, provincial legislatures and international parliamentary organisations.

UGANDA

The search for a national consensus—the making of the 1995 Uganda constitution, by B J Odoki, Fountain Publishers, ISBN 9970 – 02-491-4

UNITED KINGDOM

Dod's Parliamentary Companion 2005, Dod's Political Publishing, £175.00, ISBN 0905702514

Dod's Handbook of House of Commons Procedure, by P Evans, Dod's Political Publishing, £47.00, ISBN 0905702492

Building the UK's New Supreme Court, edited by A Le Seur, Oxford University Press, £50.00, ISBN 0199264627

Big Ben: The Bell, the Clock and the Tower, by P Macdonald, Sutton Publishing, £12.99, ISBN 0750938277

Erskine May Parliamentary Practice, 23rd edition, edited by W Mckay, Butterworths Tolley, £170.00, ISBN 0406970947

Chief Whip: People, Power and Patronage in Westminster, by T Renton, Politico's Publishing, £9.99, ISBN 1842750984

Dod's Handbook of House of Lords Procedure, by M Robertson, Dod's Political Publishing, £40.00, ISBN 0905702506

How Parliament Works, by R Rogers and R Walters, Longman, £19.99, ISBN 058243744X

Who Runs this Place? The Anatomy of Britain in the 21st Century, by A Sampson, John Murray Publishers, £20.00, ISBN 0719565642

CONSOLIDATED INDEX TO VOLUMES 69 (2001) – 73 (2005)

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), lists of members of the Society (other than those specially noted), 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.*

Questionnaires

Reviews