Issue No 25 - February 2011

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Parliament Matters

PARLIAMENT MATTERS is a half-yearly bulletin published for the Australia and New Zealand Association of Clerks-at-the-Table.

One of the purposes of *Parliament Matters* is to inform our members and other staff of parliaments in Australia and New Zealand of new and continuing procedural and administrative developments that may have some practical application in their jurisdiction.

It also acts as a forum for the sharing of professional experiences, consultation and collaboration among our members and other parliamentary staff.

Please e-mail contributions to: robyn.smith@nt.gov.au. Telephone 08-8946 1501, mobile 0419 803891.

In Issue 25 - February 2011

Australian Capital Territory

by Max Kiermaier, Deputy Clerk

Bill reconsidered at conclusion of detail stage

PURSUANT TO SO 187, a clause of a bill was reconsidered at the conclusion of the consideration in detail stage. The procedure had become necessary to negative an amendment which had been agreed to inadvertently on the voices earlier on, and which was inconsistent with a subsequent amendment. (*26 October 2010*)

Version control — Incorrect version of amendments circulated

DURING DEBATE ON A motion, a Minister moved a series of amendments to the original motion, in the terms that had been circulated in the Chamber. Debate ensued, and other amendments were moved to the proposed amendments. It then became apparent that the amendments which the Minister had circulated were an earlier version of his intended amendments. By leave of the Assembly, the Minister moved a revised (and later) version of his amendments, in substitution for the amendments moved earlier. (*27 October 2010*)

Perceived conflict of interest by Chair of committee during inquiry

THE CHAIR OF THE PUBLIC Accounts Committee made a statement to the Assembly concerning the perception of a conflict of interest she may have in relation to the Committee's inquiry into a bill concerning ethical investment and the shareholdings she had in a company active in this field. She stated that the committee had considered the issue and determined that no conflict of interest – real or perceived – existed. However, the Chair indicated that she would step down as chair during that inquiry, and the Deputy Chair would chair the inquiry. (*28 October 2010*)

Statutory majority not achieved — motion negatived

STANDING ORDERS HAVING been suspended, a Minister moved a motion (similar to one which had been negatived on 22 June) to appoint an Independent Reviewer of ACT Government Campaign Advertising (and an Alternate). As the legislation requires that the appointments be approved by a two-thirds majority of Members (ie, at least 12 Members), the Speaker directed that a vote be taken. Although the vote achieved nine Members voting in the affirmative and five against, the question was negatived. (*28 October 2010*)

Document quoted from by Member — order to table

IN HER ANSWER TO A question on notice, a minister referred to a document from which she was basing her answer. In accordance with SO 213, an opposition member moved that the Minister table the document. The motion was agreed to, after debate, and the minister tabled a single page.

Points of order were taken concerning whether the minister had tabled the complete document. The Speaker indicated that he would consider the matter and report back to the Assembly. Later that afternoon, the Speaker stated to the Assembly that based on a review of the Hansard transcript and the document tabled, in his opinion the full document had not been tabled, and invited the minister to provide the rest of the document. The Minister complied and tabled a second page - a graph.

In doing so, another minister referred to the propriety of ministers being required to table their briefing material and the effect this may have in future on the nature of material they may bring into the Chamber and the impact this may have on their ability to provide informed answers to questions. (*28 October 2010*)

Subsequently, the Speaker stated to the Assembly that while he agreed with the minister's concerns and that documents sought to be ta-

bled should be official or public in nature, rather than private speech notes and briefing papers, it was nevertheless open to the Assembly to insist that a document be tabled. During any debate invoking SO 213, the member or minister concerned should state the nature of the document being sought and reasons why it should not be tabled, including past precedents with similar documents. The Speaker also stated that in the event that a member is ordered to table a document being quoted from a laptop, the member should print off that document and present it to the Assembly as soon as possible. (*16 November 2010*)

Motion to disallow fees determination

UNDER THE *LEGISLATION ACT*, a member may move for the disallowance of certain subordinate instruments within six days of their tabling in the Assembly. The motion usually consists of a single sentence calling for the disallowance of the named instrument.

A member moved for the disallowance of fees to be imposed under new liquor licensing laws. However, besides the disallowance terms, the member also included a paragraph calling on the Attorney-General to take certain factors into account when making a new determination. Although it is not desirable to include such advice in disallowance motions, the existence of House of Representative and Senate precedents leads to a conclusion that the motion is in order.

In the end, the motion was amended to call on the fees determination to be reviewed, rather than disallowed. (*18 November 2010*)

Motion to amend subordinate legislation

SIMILAR TO THE DISALLOWANCE provisions, a member may move for the amendment of certain subordinate legislation within six days of their tabling in the Assembly.

A member moved for the amendment of a regulation made under the *Liquor Act*. The amendment took the form of a schedule consisting of 12 proposed amendments. After debate, eight of the amendments were agreed to. To effect the amendment to the regulation, the Speaker wrote to the Parliamentary Counsel requiring her to amend the regulation as per an attached schedule of amendments passed by the Assembly. (*18 November 2010*)

Matter of public importance — proposer not present

AT THE TIME FOR THE Discussion of a Matter of Public Importance and the Speaker having announced the terms of the discussion, the proposer was not present in the Chamber, due to illness. As the proposer is required to open the discussion, the matter was not proceeded with. (*18 November 2010*)

House of Representatives

by Bernard Wright, Clerk

Hung parliament

THE FEDERAL ELECTION ON 21 August 2010 resulted in a hung parliament – the Labor Party won 72 seats, the Liberal-National Coalition 73, one Greens member was elected and four Independents. The 'Feds' thus finally experienced the situation that had been seen in various Australian states and territory parliaments since 1989, as well as New Zealand.

The Australian Greens member, Mr Bandt, and one of the independents, Mr Wilkie, announced their support for the ALP, but it was not until 7 September that the three other independent members, Messrs Katter, Oakeshott and Windsor, announced their decisions. Mr Katter's preference was for the Coalition but Mr Oakeshott and Mr Windsor said that they would support the continuation of an ALP government. They committed to supporting the government on supply and to not supporting want of confidence motions other than in special circumstances, and reserved their position on other matters, as had Messrs Bandt and Wilkie. This meant that on agreed matters the ALP could count on 76 votes, the smallest possible margin in the 150 seat House.

Parliament opens

THE NEW PARLIAMENT WAS opened on 28 September. Mr Harry Jenkins was re-elected unopposed as the Speaker and, contrary to the usual pattern, an Opposition member, Mr Peter Slipper, was nominated by a government member for the position of Deputy Speaker and won the position in a ballot contested by another Coalition member, Mr Scott, who had been supported by his own colleagues.

Reform proposals had featured prominently in the discussions after the election, and key points were spelt out in agreements reached between the major parties and Messrs Katter, Oakeshott and Windsor. In addition, the government had made separate agreements with the Australian Greens and with Mr Wilkie. Many of the reform proposals concerned the standing orders and practices of the House, but some were of a wider nature.

Private members' business

THE EXISTING STANDING orders had provided a very considerable amount of time for private members' business but the reform proposals increased this significantly, with a total of almost 8.5 hours being provided for private members' and committee and delegation business each sitting Monday. A weakness in the past had been the habit of debates running up to time, so that when time expired, instead of a matter being voted on, it was adjourned. The new arrangements include a commitment for private members' business to be voted on regularly. This commitment has been honoured, but there has been unhappiness about the time before some votes were taken. The Selection Committee recommends matters to be voted on, but the votes have been held on Thursdays during government time, not on Mondays.

Parliamentary committees

AS PART OF THE PARLIAMENTARY reform agreement, a number of changes have been made in regard to committees. The number of House general purpose standing committees has been reduced from 12 to nine, and membership of each also reduced to seven - four government and three non-government. Where a non-aligned member wishes to be a member the membership is increased to a total of eight, i.e. 4:3:1. Given that the chair has only a casting vote and that most chairs are government members, this means that on those committees the government is in a minority.

The revised committees also include the establishment of a Regional Australia committee, with provision for this to be chaired by a non-government member (Mr Tony Windsor MP). The number of supplementary members able to be appointed to a committee for a particular inquiry has increased from two to four; and there are increased opportunities for debate of com-

mittee reports and inquiry related matters in both the House and Main Committee. It is also envisaged that more bills will be referred to committees for examination, with the revived Selection Committee now given the task of considering all bills and deciding whether such a reference is required. To date four bills have been referred to committees. While this is a comparatively modest beginning, we expect the numbers of bills referred to committees to increase. The other significant change is that the Joint Committee on Public Accounts is now chaired by a non-government member (Mr Rob Oakeshott MP - an independent).

The reform proposals also dealt with the long-running concern about delays in government responses to committee reports. It is now provided, by resolution, that if a response is not received within six months the minister must provide a statement of the reasons for the delay to the committee, and be available to appear to answer questions about the delay.

Select committees

WHILE THE NUMBER OF joint standing committees has remained unchanged, there has been an increased use of joint select committees: the Joint Select Committee on Cyber Safety was re-established as it had not concluded its work at the time of the election being called; and a Joint Select Committee on Gambling Reform and a Joint Select Committee on the Parliamentary Budget Office, both commitments given as part of the parliamentary reform agenda, have been established. There are a number of other proposals for other joint select committees and we anticipate this trend may continue.

Selection Committee

THE SELECTION COMMITTEE, which had existed before 2008, was re-established. It had always had responsibility for selecting and prioritising private members' business and committee and delegation business, with authority to allocate times for individual items, as well as times for individual speeches. A very significant additional role now has been that the committee looks at all bills introduced and has the power to refer bills directly to House committees. In fact this power can be exercised by an individual member of the committee.

The committee consists of 11 members and is chaired by the Speaker. The upside of the Speaker's involvement has been that he has had considerable authority at a time of great uncertainty. One non-aligned member serves on the committee, together with the Whips and other members. Neither the Leader of the House nor the Manager of Opposition Business is a member. It meets twice each week – the first meeting looks at private members' and committee business, the second looks at bills. It is supported by the Clerk Assistant (Table).

Appropriations and Administration Committee

THE HOUSE HAS ESTABLISHED an Appropriations and Administration Committee. It is not called an 'appropriations and staffing' committee, to reflect the fact that since the *Parliamentary Service Act 1999* the Clerk has responsibility for staffing matters. The Speaker chairs this committee, and it is hoped that the process may help in the process of securing sufficient funds for the department.

Question Time reforms

QUESTION TIME IS THE MOST high profile part of proceedings and long subject to criticism. Time limits have been introduced – 45 seconds for questions and four minutes for answers. In addition a requirement that answers be directly relevant has been introduced and a limit of one point of order on relevance per answer has been set by standing order. One supplementary question is allowed per Question Time – the Speaker has issued guidelines – for example, a supplementary must refer explicitly to the answer just given, it may be asked by the Leader of the Opposition or a member acting with the Leader's authority, and need not be asked by the member who had asked the original question. The Leader/representative is not permitted to ask a supplementary question following an answer to a question by a government member. These changes, together with the overall limit of 90 minutes (which is widely welcomed), have led to the period moving along in a more business-like manner. It remains difficult for the

Speaker, but Mr Jenkins has been able to use the new authority given by the requirement for "direct relevance" to advantage. That remains a matter of judgment, but Mr Jenkins has used the new rules, and he is well aware of the criticism often made of Question Time.

Code of Conduct for Members

THE VARIOUS AGREEMENTS for parliamentary reform arrived at following the election provided for the implementation of a Code of Conduct for Members of the Australian Parliament and the appointment of a Parliamentary Integrity Commissioner to, among other things, uphold the code of conduct.

The Committee of Privileges and Members' Interests has now received a reference from the House of Representatives to develop a draft Code of Conduct for Members of Parliament and to report back to the House by the end of the Autumn 2011 sittings. Specifically, the committee has been asked to look at:

- the operation of codes of conduct in other parliaments;
- who could make a complaint in relation to breaches of a code and how those complaints might be considered;
- the role of the Parliamentary Integrity Commissioner in upholding a code; and
- how a code might be enforced and what sanctions could be available to the Parliament.

The committee has been asked to consult with its equivalent committee in the Senate with the aim of developing uniform processes for implementation for members and senators.

Publication of Statement of Members' Interests online

FOLLOWING THE AGREEMENT of the Committee of Privileges and Members' Interests that the statements of Members' Interests would be published on the Parliament House website in the 43rd Parliament, the initial statements for the 43rd Parliament were published online on 25 October 2010. Alterations to the statements are published as they are received. The alterations are consolidated with the original return so that each member's full return can be accessed easily.

Interestingly, since the posting of the returns to the Internet, only five inspections of the hard copy register have occurred (there had been around 100 inspections annually prior to electronic publishing).

The register can be accessed at: http://www.aph.gov.au/house/committee/pmi/registermeminterests.htm.

TV coverage of parliament increased

A NEW TELEVISION PROGRAM providing highlights of the sitting fortnight in federal parliament has been launched on the Australian Public Affairs Channel (A-PAC) as part of the parliament's community outreach initiatives. *MPI* (Matters of Public Importance) looks at legislation presented during a sitting fortnight, parliamentary committee activities, speeches by members and senators, parliamentary delegation visits and events at Parliament House. It is being produced by the media team in the parliament's International and Community Relations Office, working with the parliament's Broadcasting Section. It is also available from the House of Representatives news website at www.aph.gov.au/ath (look under the House Highlights tab of the video player on that website). For more information on the program contact the Director of the International and Community Relations Office, Andres Lomp on (02) 6277 4339 or email news@aph.gov.au

Pacific Parliamentary Partnerships

A PARLIAMENTARY DEVELOPMENT program for the parliaments of Kiribati, Tonga and Tuvalu has received AusAID funding under the Pacific Public Sector Linkages Program. The program was developed jointly by the Australian Region secretariat of the Commonwealth Parliamentary Association and the UNDP, working closely with the three Pacific Parliaments and their twinned parliaments in the ACT, South Australia and Victoria. The three year program (2011-13) will include a range of development and capacity building activities and projects that have been identified in legislative needs assessments conducted for the three Pacific Parliaments. The funding bid follows the NSW Parliament's success in securing AusAID funds for a parliamentary development program for the Parliaments of the Solomon Islands and Bougainville. Funds from the UNDP and the CPA Education Trust will also be used for the Kiribati, Tonga and Tuvalu pro-

grams. The first activities being supported are an induction program for the new Tongan Parliament, a study visit to Australia by the new Speaker and Deputy Speaker of the Tongan Parliament, and training for Clerks of the Tongan Parliament (all to be held in February 2011). More information on the Pacific Parliamentary Partnerships program can be obtained from the CPA Australian Regional Secretary, Andres Lomp on (02) 6277 4339 or email andres.lomp.reps@aph.gov.au

Other standing order reforms

THE STANDING ORDERS NOW provide for an acknowledgement of country, which is specified in the standing orders, to be read before the traditional prayer. 90 second statements are now made on Mondays, Wednesdays and Thursdays in the 15 minutes before Question Time at 2.00 pm. The House has also reduced the general time limit on second reading speeches from 20 minutes to 15.

Wider reforms

THE REFORM AGREEMENTS provide for the establishment of a Parliamentary Budget Office, and a joint select committee is presently considering the detail of this matter.

Australian Senate

THIS SECTION DOES NOT repeat material contained in the Senate Department's *Procedural Information Bulletin*, published after each period of sittings or estimates hearings and available at http://www.aph.gov.au/Senate/pubs/proc_bul/index.htm.

Selected topics covered in *Procedural Information Bulletin* Nos. 244 to 246 (September to November 2010) include:

- the opening of Parliament; activities of Senate committees during the period of prorogation; voting by Presiding Officers; inclusion in the parliamentary reform agenda of a commitment to resolve the disagreement between the Senate and the Government on the issue of "ordinary annual services of the government"; the growth in the number of joint committees (No. 244)
- supplementary budget estimates hearings; amendment of standing orders to include an acknowledgement of country after prayers each day; orders for production of documents; dividing a question; access to records of committees from the previous parliament (No. 245)
- procedural pressures applied to encourage the release of documents sought by the Senate on the National Broadband Network; questions raised over the constitutionality of a private senators' bill in relation to independent youth allowance; new procedures for consideration of private senators' bills agreed to; protracted proceedings on the Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Bill 2010; response of the Information Commissioner declining to comply with Senate orders for him to report on reasons provided by the government for refusing to produce documents.

General election and opening of Parliament

A GENERAL ELECTION FOR the House of Representatives and half the Senate took place on 29 August 2010 and it was some time before Australians knew who would form their next federal government.

Following protracted negotiations and various agreements on parliamentary reform, Prime Minister Gillard was able to form a minority government with the support of several cross bench members.

The new Parliament was summoned to meet on 28 September 2010 and sat for only 16 days before the end of 2010.

Although the reform agreements included a commitment for more sitting days, the 54 days earmarked for the Senate for 2011, while higher than the 2010 total, is still far below the long term average.

The usual traditional procedures were followed for the opening of Parliament with an Indigenous Welcome to Country ceremony being the only innovation adopted since Federation.

Senators elected at the August 2010 election will not begin their terms until 1 July 2011 and will have endured a wait only one week short of the record wait endured by senators elected at the 21 August 1943 election.

Whereas senators elected in 1943 had to wait until 17 July 1944 to be sworn in, those elected in August last year will be sworn in on 4 July 2011.

Elections for the offices of President and Deputy President will also be held at that time.

It is now very unusual for the Senate to sit in July so 2011 will be an exception to the usual practice (which is no doubt attributable to the severity of Canberra winters for those from softer climes).

- Rosemary Laing, Clerk

Parliamentary reform

SOME FEATURES OF THE parliamentary reform agenda influenced Senate procedures following the election but many were adapted from practices and procedures already followed in the Senate.

The latter included time limits on questions without notice and answers, mechanisms for allocating business (including the referral of bills to committees) and allocation of some committee chairs to non-government members (although not on the same systematic basis as in the Senate).

The Senate agreed to allocate time exclusively for the consideration of private senators' bills, in addition to the time already available for general business.

The arrangements provide for private senators' bills to be considered for the first two hours and 20 minutes on Thursdays and for the Senate to meet at 10am on Mondays (instead of 12.30 pm) to make up the time.

All the standing orders that would otherwise apply to the consideration of legislation continue to apply and any time limits or other modifications in respect of particular bills will have to be applied by means of separate resolutions.

Given the composition of the two Houses, it is likely that more private members' and senators' bills will pass into law than at any time since Federation.

One private senators' bill heading for controversy is a bill to extend eligibility for independent youth allowance to categories of rural and regional students.

The bill does not appropriate money, the required funds having already been appropriated by way of a standing appropriation in the parent act.

The categorisation of the bill as a bill that does not appropriate money (and therefore able to be initiated in the Senate) is consistent with Senate practice in relation to private senators' bills and government bills alike but the bill is likely to run up against the contrary view in the House.

The two Houses have been engaged in constructive dialogue about the powers of the Senate under section 53 of the Constitution since 1901. The Constitution makes it clear that these are matters for the Houses to resolve as they are not justiciable.

Another feature of the parliamentary reform agenda was a proposal for the newly created Australian Information Commissioner to act as arbitrator in access disputes involving the Houses and the government.

Unfortunately, the Information Commissioner did not share this view.

When ordered by the Senate to produce a report on reasons provided by the government for refusing to produce documents relating to the proposed mining tax and the then new (but now superseded) health funding agreements with the States, he responded by indicating his belief that his enabling statute did not encompass this function and he was therefore unable to comply with the orders.

On the Senate's resolving to point out that his view was incorrect, the Commissioner provided a more detailed response maintaining his earlier position. There will no doubt be further developments on this issue.

- Rosemary Laing, Clerk

ANZACATT CASE LAW DATABASE

Now up and running, this database features a selection of cases from Australia, Canada, New Zealand, the UK, the USA and other jurisdictions. Cases are listed alpabetically by jurisdiction. Headnotes have been specifically written for parliamentary environments. The database is searchable by case name or key words (eg 'parliamentary privilege').

ANZACATT members can access the database by signing on to the site as usual. Officers who are not members of ANZACATT should approach their Clerk for passwords to log on to the *Case Law Sign-in* on the home page.

http://www.anzacatt.org.au

Senate committees celebrate 40 years

THE SENATE CELEBRATED the 40th anniversary of its committee system last year by hosting a free public conference on 11 and 12 November.

Former and current senators, senior officers from the Senate department, academics and representatives of community organisations reflected on the standing committee system's first 40 years and offered suggestions about how committees might do their work in the future.

The first day's proceedings at Parliament House began with a welcome and opening address by the President of the Senate, Senator Hogg, and accounts of the origins and development of the Senate committee system by the Clerk of the Senate, Dr Rosemary Laing, and ANU academic Professor John Uhr.

Short presentations and panel discussions followed on the role and function of Senate committees over the past 40 years.

Topics included Senate estimates, committees and legislation, including the work of the legislative scrutiny committees, the work of select committees and the privileges committee and minor party perspectives.

The conference reconvened the following morning in the Members' Dining Room at Old Parliament House to consider how the lessons from the past might be used to improve the committee system.

Government, Opposition and minor party senators examined the system in the period from 2005 to 2008, when the Senate experienced a government majority for the first time since 1981, and the difficulties of objectively assessing and measuring committee performance.

The conference concluded with honest assessments of the many challenges and opportunities facing Senate committees in to the future.

The full conference proceedings are published in *Papers on Parliament* (Number 54, December 2010) which can be viewed on the Senate's website at: http://www.aph.gov.au/Senate/pubs/pops/pop54/index.htm.

Hard copies are available at no cost from the Senate Research Section: phone (02) 6277 3078 or email research.sen@aph.gov.au. The audio (MP3) and video (WMV) files of proceedings are also available on the Senate's website at: http://www.aph.gov.au/senate/conferences/ctte-40th-anniversary/transcripts/index.htm

- David Sullivan, *Director of Research*

Learning and development

THE MAIN RESPONSIBILITY of the Senate department is the effective and efficient provision of advisory and administrative support services to enable the Senate and senators to fulfil their representative and legislative duties.

Our success in achieving this outcome hinges on our ability to professionally and knowledgeably advise and support senators in their work in the Senate and its committees.

In this, our experience no doubt reflects that of parliamentary departments and secretariats in other jurisdictions.

In 2010, we undertook a structural review of the department to determine optimal arrangements for supporting senators.

The review confirmed that the current program structure of the department is well-suited to its tasks, but made some recommendations to enhance our operations in a number of areas, principally relating to the governance responsibilities of the Deputy Clerk and the management of the Senate's public information resources.

One additional, key recommendation was that the department:

> *establish an enhanced professional development regime to meet the needs of all employees and provide appropriate procedural training to support the operation of the Senate and its committees.*

This recommendation very much originated with the staff themselves.

The initial focus of the review was on identifying and training staff to undertake duties as clerks at the table.

Submissions from across the department pro-

posed instead a more structured approach to training across the board.

After the review reported in September, we developed a curriculum-based framework to underpin a coordinated approach to the delivery of learning and development activities.

This framework aims to align learning and development activities with corporate aims and obligations, with the Enterprise Agreement covering the employment of our staff and with the department's ongoing Performance Communication Scheme (PCS).

Under the new framework, learning and development activities will focus on two areas: 'parliament-specific training' and 'skills for the workplace'.

Parliament-specific training includes the department's long-standing Parliamentary Executive Professional Upgrade Program (PEP-UP).

PEP-UP

PEP-UP sessions are presented by senior employees of the department or by guest presenters including senators, officers of other parliamentary departments or executive departments and leading academics.

The program covers topics such as the constitutional position, role and powers of the Senate; the role and function of the committee system; supporting meetings of the Senate; and keeping track of Senate business.

PEP-UP will now be supplemented by more detailed and advanced activities designed to promote proficiency in our work supporting the Senate and its committees.

Skills for the workplace activities include sessions designed to help staff operate in the working environment of the Parliament and training modules to help them develop practical skills in a number of areas.

All of this is to be underpinned by a well-structured induction process, enhancing our existing program of activities for new starters.

The framework aims to cater for different learning styles. Learning and development activities can include:

- structured induction programs;
- courses, seminars, conferences;
- in-house programs in different areas of parliamentary and committee support;
- coaching, mentoring, on the job training and job rotation;
- professional reading and online learning;
- inter-office, inter-departmental and inter-parliamentary projects, exchanges and secondments;
- acquisition of relevant formal qualifications, supported by the department's Studybank program.

The learning and development framework will be supported by a rolling six-monthly training calendar.

The calendar will outline a wide range of in-house training activities, as well as learning and development opportunities offered by external providers, including the other parliamentary departments.

We are also opening up many of these training opportunities to staff of those departments. All of these activities are designed to improve the capabilities of all employees, including not only their technical skills and knowledge, but also their attributes, attitudes and behaviours.

The mechanism driving the selection of activities for individual staff will be the PCS, which provides a framework for formal and informal performance feedback between supervisors and their staff, enabling them to tailor learning and development objectives.

The training calendar provides information about the range of activities available to help staff meet their objectives. It is by actively developing and pursuing individual objectives that staff will get the most out of the regime.

Finally, the framework puts in place a structure for recording the activities undertaken and identifying future development requirements.

This evaluation process will help us ensure that our learning and development program is closely aligned to the department's staffing profile.

The framework facilitates a structured investment in learning and development, enabling the department to build the capabilities of employees; deliver the right employee with the right skills at the right time to support a flexible and high-performing department; and align the department's resources with current and future strategic objectives and operational requirements.

- Richard Pye
Deputy Clerk

NSW - Joint House reports

The Joint Select Committee on Parliamentary Procedure

FOLLOWING THE AUGUST 2010 Federal election, various proposals for reform of the Commonwealth House of Representatives were adopted in a document entitled *Agreement for a Better Parliament: Parliamentary Reform*.

In September 2010, the Houses of the New South Wales Parliament referred the *Agreement for a Better Parliament* to a Joint Select Committee on Parliamentary Procedure for inquiry and report, to allow the Parliament to consider whether any of the reforms adopted in the House of Representatives could usefully be adopted by either or both of the Houses of the New South Wales Parliament. As initially drafted, the terms of reference only had three members of the Council on the Committee, and the Speaker of the Assembly as sole Chair of the Committee. However, the terms of reference were amended in the Council to ensure equal representation of Council members on the Committee and for the Speaker to jointly chair the committee with the President of the Legislative Council.

In approaching the inquiry, the Committee was cognisant of the fact that section 3 of the *Constitution Act 1902* constitutes the Legislative Council and Legislative Assembly as separate and sovereign Houses of the New South Wales Parliament, each with its own different membership, electoral arrangements, practices, procedures and standing orders. For this reason, the Committee divided into two working groups of Council and Assembly members, each responsible for considering the application of the reforms proposed in the *Agreement for a Better Parliament* to their particular House.

The Committee reported in October 2010. In its report, the Committee found that both the Council and the Assembly had already implemented some of the reforms contained in the *Agreement for a Better Parliament*. For example, the Council had already introduced time limits for questions and answers and supplementary answers in Question Time, and the Assembly already had in place procedures to enable members to raise constituency issues. In other areas, there were broad areas of commonality between both sub-committees, with both Houses having already introduced a Code of Conduct for Members and an Acknowledgement of Country at the commencement of sittings, support from both working groups for placing the funding and staffing arrangements of the Parliament on a more secure and independent footing, and support from both working groups for the introduction of a Parliamentary Integrity Commissioner to be considered by the Privileges Committees of both Houses in the new Parliament.

However, the working groups also adopted certain proposals for reform specific to their Houses:

- the Council working group supported further examination of the merits of a Selection of Business Committee, especially as it may relate to the management of private members' business and debate of committee reports in the Council. The working group also advocated further examination of the merits of reform to the committee system, and the merits of defining the meaning of appropriation bills 'for the ordinary annual services of the Government'. Given the complexity of these issues, the Council working group recommended that the Council Procedure Committee review these and other matters in the new Parliament
- the Assembly working group supported further examination by the Standing Orders and Procedure Committee of a number of issues including: providing for two Assistant Speakers, one a Government member and one a non-Government member; providing for the Speaker to nominate four Temporary Speakers, two Government members and two non-

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Government members; requiring the Chair of the Public Accounts Committee to be a non-Government member; requiring ministers to provide an explanation to the House for a late response to a committee report or a late response to a petition signed by 500 or more persons; requiring the list of unproclaimed legislation tabled by the Speaker 90 days after assent to include the reasons why the legislation remains unproclaimed; and placing a five-minute limit on answers to questions asked in the House. The Standing Orders were subsequently amended in November 2010 to provide that an answer to a question asked in the House must be limited to 5 minutes. (See Legislative Assembly entry below for further information).

Constitution amendment - recognition of Aboriginal people

ON 8 SEPTEMBER 2010, THE Constitution Amendment (Recognition of Aboriginal People) Bill 2010 was introduced in the Legislative Assembly, the object of which was to amend the *Constitution Act 1902* to provide for the recognition of the Aboriginal people of New South Wales. More specifically, the bill amended the Constitution Act to declare that the Parliament, on behalf of the people of New South Wales:

a) Acknowledges and honours the Aboriginal people as the State's first people and nations; and

b) Recognises that Aboriginal people, as the traditional custodians and occupants of the land in New South Wales, have a spiritual, social, cultural and economic relationship with their traditional lands and waters, and have made and continue to make a unique and lasting contribution to the identity of the State.

The bill passed both Houses without amendment on 19 October 2010 and was assented to by Her Excellency the Governor on 25 October 2010.

A new Parliamentary Budget Office

IN OCTOBER 2010, THE NEW South Wales Parliament passed the *Parliamentary Budget Officer Act 2010*. This Act established a Parliamentary Budget Officer as an independent officer of the Parliament to provide costings of election promises in the period prior to a State election, and also at any time to prepare costings of proposed policies of members of Parliament, and analysis and advice for members of Parliament on financial matters.

The legislation does not allow a party to request costings of another party's election promises during an election period, and precludes the provision of advice to committees.

It is believed that the Parliamentary Budget Officer in New South Wales is the first independent Parliamentary Budget Officer in Australia.

To ensure the independence of the Parliamentary Budget Officer, the Presiding Officers are to appoint the Parliamentary Budget Officer from a list of at least two persons recommended by a panel comprising the Ombudsman, the Information Commissioner and the Chairperson of the Independent Pricing and Regulatory Tribunal. If the Presiding Officers are from the same political party, such an appointment may only be taken jointly with a deputy Presiding officer from a different registered party.

It is envisaged that the Office will require approximately 12 to 16 economists, accountants and financial analysts and requisite support staff.

The initial recruitment action to fill the position of Parliamentary Budget Officer was unsuccessful.

The former NSW Auditor General, Tony Harris, has been temporarily appointed to the position while further recruitment action is undertaken.

Members serving as jurors

SECTION 6 AND SCHEDULE 2 of the *Jury Act 1977* (NSW) provide that members of the Legislative Council and Legislative Assembly are ineligible for jury duty.

In June 2010, the Attorney-General referred to the Legislative Council Standing Committee on Law and Justice an inquiry into the eligibility of members of Parliament who do not hold ministerial portfolios to serve on juries, including whether the existing statutory exemption under the *Jury Act 1977* should be repealed. The reference followed a 2007 report of the New South Wales Law Reform Commission entitled *Jury Selection*, which contained a number of recommendations intended to broaden the pool of potential jurors.

It is noted that the UK Parliament withdrew the statutory immunity of members of Parliament from jury duty in 2003.

The Committee received submissions from a number of people and organisations including the President and Speaker of the NSW Parliament, current and former members of the NSW Parliament, the Clerk of the Parliaments, the Clerk of the Legislative Assembly, Clerks of other Parliaments, the Office of the Director of Public Prosecutions, the Public Defenders Office, the Chief Magistrate of the Local Court of NSW and others.

The Committee reported on 24 November 2010. The report made one recommendation upholding the exemption of members from jury service. In support, the Committee cited in particular the doctrine of the separation of powers, acknowledging that while the doctrine is not formally expressed in statute in New South Wales, it is nonetheless fundamental to the State's system of government, and that allowing individuals who make laws to then adjudicate on those laws would be a fundamental breach of the doctrine. The Committee also accepted the long-standing principle, developed over centuries, that the Houses have the first right to the service of their members.

The statutory ineligibility of members of the Legislative Council and Legislative Assembly from jury duty remains in place.

Electoral funding reform

In November 2010, the Parliament passed the *Election Funding and Disclosures Amendment Act 2010.* The Act amended the *Election Funding and Disclosures Act 1981* to make major reforms to the NSW electoral funding scheme. Of note, the Act introduced caps on political donations and election spending for State elections, including caps on third party spending. Donations to political parties and groups are capped at $5,000 per annum. Donations to elected members, candidates and third party campaigners (i.e. an entity that is not a registered party, elected member, group or candidate who incurs electoral expenditure in excess of $2,000) are capped at $2,000 per annum. To compensate parties and candidates for the reduction in political donations, the bill increased public funding for election campaigns.

In introducing the Election Funding and Disclosures Amendment Bill 2010 in the Legislative Assembly, the Premier indicated that NSW would be the first Australian jurisdiction to introduce caps on political donations and election spending. However, the Opposition opposed the bill in both Houses on the grounds that it introduced limited, flawed reforms to the electoral finance regime, and because it would not achieve a level playing field for parties and candidates.

Ultimately the Bill passed the Parliament largely unchanged, despite a series of amendments moved in both Houses.

Search warrrant protocol with Commissioner of Police

IN NOVEMBER 2010, THE PRESIDENT, Speaker and Commissioner of Police entered into a *Memorandum of Understanding on the Execution of Search Warrants on the Premises of Members of the New South Wales Parliament*.

The finalisation of this protocol follows the adoption in December 2009 of a *Memorandum of Understanding on the Execution of Search Warrants in the Parliament House Office of Members of the New South Wales Parliament* between the President, Speaker and Commissioner of the Independent Commission Against Corruption (ICAC).

Together, these two protocols establish formal arrangements for the execution of search warrants by the two agencies most likely to seek to execute a search warrant on the premises of members of the NSW Parliament. Their finalisation is the culmination of a series of inquiries and events dating back to 2003, when the ICAC executed a search warrant on the offices of the Hon Peter Breen MLC. At the time, there were no protocols for regulating the execution of such search warrants.

The protocol with the Commissioner of Police was developed by the Legislative Council Privileges Committee based on the 2009 Memorandum with the ICAC and the 2005 Memorandum between the Commonwealth Government and the Presiding Officers of the Commonwealth Parliament concerning the execution of search warrants on premises occupied by senators and members. Significantly, it differed from the 2009 ICAC Memorandum in that it covered all premises occupied by members, including the Parliament House office of a member, but also the ministerial office of a member (if applicable), the electorate office of a member and the residence of a member. It also differed from the 2005 Commonwealth Memorandum in certain respects in relation to the processes for resolving a claim of privilege over a document in the possession of a member.

The Committee did not recommend a similar memorandum with the heads of any other agencies at this time. This approach was endorsed by the Legislative Assembly Privileges and Ethics Committee.

The Legislative Council formally resolved to request the Presiding Officers to enter into the memorandum of understanding with the Commissioner of Police on 19 October 2010 and the Legislative Assembly considered and agreed with the Council's message on 12 November 2010. The memorandum was formally signed and came into effect on 29 November 2010.

Internet filtering at Parliament House

IN EARLY SEPTEMBER 2010, there was considerable media coverage in NSW of a leaked internal report into internet usage at Parliament House which indicated that certain users had been accessing gaming and adult content. The coverage led to the resignation of a minister.

Subsequently, the Parliament engaged Ernst and Young to review the Parliament's internet filtering system and to examine the veracity of the data that had been produced in the internal report concerning internet usage.

On 2 December 2010, the President and the Speaker tabled the report of Ernst and Young and advised that the report found a number of potential limitations associated with the internet filtering application being used by the Parliament. Some of the websites analysed appeared to have been incorrectly classified by the software application as they did not contain adult content, however legal advice was being sought in relation to nine websites identified as containing sexually explicit images of young people. The President and the Speaker further advised that findings in relation to the software application in use for internet filtering would be addressed as a matter of priority.

Parliamentary staff and members' staff continue to be subject to internet filtering whilst Members are able to "opt in" upon request.

On 16 December 2010, following receipt of legal advice, the Presiding Officers issued a media statement regarding the nine websites which stated that there was no legal obligation to refer the information in the report to the NSW Police Force.

Review of the Code of Conduct for Members and the pecuniary interest disclosure regime

IN 2010, THE LEGISLATIVE Council Privileges Committee and the Legislative Assembly Standing Committee on Parliamentary Privilege and Ethics conducted separate inquiries into the Code of Conduct for Members.

Under sections 72C(5) and 72E(5) of the *Independent Commission Against Corruption Act 1988*, the Committees are required to review the Code of Conduct for Members every four years.

The inquiries also considered aspects of the pecuniary interest disclosure regime for members under the *Constitution (Disclosures by Members) Regulation 1983*.

In December 2010, both committees tabled their reports.

In its report, the Legislative Council Privileges Committee made a number of recommendations for reform of the system regulating the ethical conduct of members of Parliament:

- The Committee recommended that a system of 'exception reporting' be introduced to replace the current system of primary, ordinary, supplementary ordinary and discretionary returns for the disclosure of members' interests. This would allow members to lodge a single primary/ordinary return at the commencement of each Parliament, and to report changes against that return if and when they occur, similar to the arrangements in place in most other Australian Parliaments.
- The Committee recommended that, following any changes necessary to adequately protect the privacy of individuals, the 'Register of Disclosures by Members of the Legislative Council' should be published on the Parliament's website, in the interests of public transparency and accountability. The Committee noted that most other Australian parliaments have already taken this step, and that such a reform would improve the transparency, openness and accountability of members' conduct.
- The Committee recommended that an inquiry be undertaken into the best mechanism for members to disclose the interests of their spouses/partners and dependent children, with a view to implementing third party disclosures if an appropriate mechanism could be found.

Assembly Committee report

The Legislative Assembly Standing Committee on Parliamentary Privilege and Ethics considered that the current provisions of the Code of Conduct remain appropriate.

However, the Committee made a number of recommendations about ethical training for members and improving the transparency of members' disclosures as follows:

- The Committee recommended additional annual training for Members, possibly on-line, on the Code of Conduct, the registration of interests requirements, and the relevant conflict of interests provisions in the Standing Orders of the Legislative Assembly.
- In relation to the disclosure of interests by members, the Committee also recommended that the *Constitution (Disclosures by Members) Regulation 1983* be amended to enable the Register of Members' Interests to be placed on the Parliament's website, subject to addressing a number of privacy issues and safeguards.

Application of the NSW Lobbyist Code of Conduct to Government backbenchers

IN 2009, THE NSW GOVERNMENT introduced the NSW Government Lobbyist Code of Conduct.

As of 1 February 2009, lobbyists (as defined in the Code) who act on behalf of third party clients are required to be registered with the Department of Premier and Cabinet on the NSW Lobbyist Register.

The Code provides that a Government representative is not to permit lobbying by a lobbyist not on the Register.

The NSW Government Lobbyist Code of Conduct defines Government representatives to include ministers and parliamentary secretaries, but does not otherwise include members of Parliament.

However, Premier's Memorandum M2009-03 Lobbyist Code of Conduct and Register, issued by the former Premier Nathan Rees, specifies that the Code of Conduct also applies to 'Government Members of Parliament and their staff'.

In May 2010, the ICAC initiated an inquiry into the nature and management of lobbying in NSW.

In a joint submission to the inquiry, the Clerks argued that the purported extension of the NSW Government Lobbyist Code of Conduct to Government backbenchers is inconsistent with the principle of the separation of powers, under which the Executive Government should not seek to regulate how, and with whom, non-executive members of Parliament communicate when conducting their parliamentary business.

Non-executive members, as elected representatives of the people, have a right to communicate with whomever they choose, just as they have the right to determine the sources of their information and the matters they choose to bring before Parliament.

The Clerks also argued that it is not clear how the extension of the NSW Government Lobbyist Code of Conduct to Government backbenchers could be enforced.

The ICAC released its report entitled *Investigation into corruption risks involved in lobbying* in November 2010.

The report recommended the adoption of a new lobbying regulatory scheme for NSW that would require greater transparency of lobbying activity through new legal requirements for lobbyists to be registered, and for the occurrence of meetings and other communications between lobbyists and government representatives to be recorded and made publicly available.

The report also accepted the submission by the Clerks that there is doubt whether the extension of the Code of Conduct to Government backbenchers could validly be made, and even if valid, how it could be enforced.

Macquarie Room

IN THE SECOND HALF OF 2010, after funding became available, the Presiding Officers gave their approval to proceed with the conversion of the former Staff Dining Room into a new committee hearing room, the Macquarie Room.

The work was largely undertaken over the summer break. It involved the replacement of the walls, new carpet, wheelchair accessible new doors, enhanced lighting, a store room and AV cupboard, and the installation of a motorised projector screen, as well as new ergonomic furniture. As this room is adjacent to the kitchen and catering areas the room has also been appropriately sound proofed.

It is expected that the room will be completed and ready for use by late February 2011.

Due to the shortage in the availability of meeting rooms, when completed, the Macquarie Room will be reserved for priority use by parliamentary committees, primarily as a hearing venue. On sitting nights it will also be available for functions.

The Macquarie Room was so named to mark 2010 being two hundred years since the swearing in of Lachlan Macquarie as Governor of the colony of NSW and his role in the building of what is now Parliament House.

Twinning activities in NSW

THE NEW SOUTH WALES Parliament is twinned with the Autonomous Region of Bougainville's House of Representatives and the National Parliament of Solomon Islands under the auspices of the Commonwealth Parliamentary Association.

The previous edition of *Parliament Matters* described in detail the NSW Parliament Twinning project, which receives funding from AusAID's Pacific Public Sector Linkages Program to support twinning activities between the parliaments. The project commenced in April 2010.

The focus of the Twinning project is to strengthen parliamentary democracy by building the capacity of the parliamentary administration. Project activities include training programs, staff secondments and placements, the establishment of a formal mentoring program, and compilation of procedure, committee and administration manuals and guides.

Recent activities include two long-term secondments to the NSW Parliament of parliamentary officers from Bougainville and Solomon Islands.

Edwin Kenehata, Education Officer with the Bougainville House of Representatives, was seconded for a period of 10 weeks from September to November 2010, during which time he worked in the Education and Community Relations section of the NSW Parliament and the Legislative Assembly Procedure Office.

Like many small parliaments, the Bougainville House of Representatives staff must cover a number of roles – Edwin is not only the Education Officer but also supports sittings of the House.

His time with the LA Procedure Office exposed him to the systems and practices used here and gave him an opportunity to reflect on what improvements could be implemented in Bougainville.

Together with senior staff of the Legislative Assembly and Legislative Council Procedure Offices, Edwin developed a proposal to more clearly define procedural roles within the Office of the Clerk – effectively establishing a Procedure Office.

Edwin's time with the Education and Community Relations section coincided with the annual Parliamentary Educators Conference, this year hosted by the NSW Parliament.

Edwin's participation in the conference gave his counterparts in Australian parliaments a unique insight into the challenges associated with delivering information on the purpose and function of a parliament in the context of a post-conflict society with an imminent referendum on independence. Edwin's use of weekly *Inside Parliament* radio broadcasts illustrates the creative thinking needed to reach sections of the Bougainville population that are not able to easily access the physical parliament.

Edwin was also involved in an Australian National University-sponsored workshop reviewing the 2010 elections in Bougainville and Solomon Islands, and delivered a number of information sessions to NSW Parliament members and staff.

One information session, hosted by Commonwealth Women Parliamentarians (NSW) and the Asia Pacific Friendship Group, covered efforts made in the lead-up to the 2010 election to encourage more women candidates to run – the under-representation of women is a common problem in Pacific parliaments.

The other secondee in 2010 was David Kusilifu, Director-Committees with the National Parliament of Solomon Islands.

David spent four weeks in October-November with the Legislative Council's Procedure Office, and gained a great deal of exposure to sittings of the House.

David's secondment was focussed on developing a structure and functions for the Solomon Islands Procedure Office, for implementation on his return. The timing of his secondment allowed him to compare notes and collaborate with Edwin Kenehata, thus building the professional relationship between the two neighbouring parliaments.

It is one of the twinning project's aims that secondments are well-structured and targeted at the needs of the parliament from which the secondee comes.

David Kusilifu's secondment was preceded by a one-week placement of two experienced Procedure Office staff (Susan Want, Director-Procedure with the Legislative Council; and Jeff

Page, Parliamentary Officer –Table with the Legislative Assembly) with the National Parliament of Solomon Islands, during which the staff members reviewed the existing procedural support systems and discussed a secondment program with the Clerk, Taeasi Sanga, and the secondee.

A follow-up placement of an experienced Procedure Office staff member is planned for March/April 2011, to assist in the implementation of the proposed changes to the Procedure Office. The aim of the follow-up is to reinforce and review the lessons learnt during secondments and to maintain the momentum for change.

Bougainville PAC

Current activities emphasise committee work. For Bougainville, the Public Accounts Committee has a difficult role – there is no Bougainville Auditor General and it therefore has no Audit Reports to review.

The challenge for the parliament is to find a way in which the Public Accounts Committee can meet community expectations of transparency and accountability in the absence of the kind of professional support and advice that other parliaments can rely on.

A delegation from Bougainville will participate in Deakin University's Public Accounts Committee Summer Residency Program, to be held in Beechworth.

The delegation includes the Chair, the Hon Cosmas Sohia, and two secretariat staff. The Summer Residency Program also has delegations from Papua New Guinea and Solomon Islands, which will provide a valuable opportunity to form professional associations between secretariats and Members.

The Centre for Democratic Institutions, in collaboration with the NSW Parliament, is running its annual Effective Parliamentary Committee Inquiries course, which will provide another opportunity for committee staff from Bougainville and Solomon Islands to meet each other and their NSW Parliament counterparts to develop a better understanding of the challenges and practicalities of their respective roles.

In March, a placement of NSW Parliament staff with the Bougainville House of Representatives will be timed with a sitting of the House and will have multiple objectives – following up on the procedural system changes proposed by Edwin Kenehata during his secondment; providing assistance to the Public Accounts Committee secretariat; and reviewing Information Technology needs.

Interested observers of the Twinning project are invited to visit the NSW Parliament website and follow the links to learn more about current and proposed activities.

Recognition of Aboriginal people and the unveiling of the Australian Aboriginal flag in the Chamber

ON 8 SEPTEMBER 2010 the *Constitution Amendment (Recognition of Aboriginal People) Bill 2010* was introduced in the Legislative Assembly to provide for the recognition in the *Constitution Act 1902* of the Aboriginal people of New South Wales (see entry on the Bill for more details).

The previous day standing orders were suspended to interrupt the business of the House at 11.25 am on 8 September for the introduction and agreement in principle speech on the Bill by the Premier; for the Leader of the Opposition, the Leader of The Nationals and the Minister for Community Services to speak to the Bill immediately following the Premier's speech; and for the debate on the Bill to be automatically adjourned and set down as an order of the day for a future day.

The motion also made provision for the Chairperson of the New South Wales Aboriginal Land Council, Councillor Bev Manton, and a Gadigal Elder, Uncle Charles 'Chicka' Madden, preceded by ceremonial dancers, to be seated on the floor of the House during proceedings on the Bill and for Councillor Manton to address the House following the adjournment of the debate on the Bill.

The next day, following a welcome to country and a smoking ceremony which took place in the Forecourt of Parliament House, the Speaker made a statement in relation to the Bill and the Parliament's ongoing contribution to Aboriginal reconciliation and, in accordance with the resolution of the House, the proceedings on the Bill took place with Councillor Manton and Uncle Charles Madden in attendance on the floor of the House.

The debate was adjourned and set down as an order of the day for a future day, after which Councillor Manton addressed the House and then withdrew along with Uncle Charles Madden.

The Bill was passed by the Legislative Assembly on 22 September 2010 without amendment and then by the Legislative Council on 19 October 2010, also without amendment. The Bill was subsequently assented to by Her Excellency the Governor on 25 October 2010.

On 26 October 2010, immediately after the Speaker had reported the message from the Governor assenting to the Bill, the Minister for Aboriginal Affairs moved a motion, by leave, authorising the Speaker to arrange for the placement of the Australian Aboriginal flag in the Legislative Assembly Chamber '…as a permanent symbol of the recognition of the Aboriginal people as the State's first people and nations and the traditional custodians and occupants of the land in New South Wales.'

After a short debate with contributions from the Leader of the Opposition and the Leader of The Nationals, the motion was carried and the Speaker left the Chair to unveil the Australian Aboriginal flag to the immediate right of the New South Wales flag in the Chamber.

Draft Parliamentary Privilege Bill

ON 2 DECEMBER 2010, Speaker Torbay, speaking from the Chair, tabled an Exposure Draft Parliamentary Privilege Bill for the information of members.

While NSW has a *Parliamentary Precincts Act*, and there are other protections and statutory powers in the *Defamation Act*, the *Parliamentary Evidence Act* and *Parliamentary Papers Act,* there is nothing equivalent to the Commonwealth *Parliamentary Privileges Act*.

The Commonwealth *Parliamentary Privileges Act* enacts precise legal language to codify freedom of speech.

The Exposure Draft Bill tabled by Speaker Torbay, while adopting many similar provisions to the Commonwealth Act, is not identical. The bill was drafted to acknowledge the NSW environment, and the need for powers to augment those established by the New South Wales Constitution, and the Standing Orders of each House.

In particular, the Exposure Draft attempts to address two current matters that have arisen in recent times, which impede a member from freely exercising their role and function as a member. In each case the test is still one of necessity, of what is required in contemporary times for the Parliament to be able to properly fulfil its role.

One matter addressed by the bill is the problem of 'effective repetition' of an allegedly defamatory statement outside of Parliament, which has redrawn the boundary between privileged and unprotected speech to the detriment of Parliament.

A second issue is the need to protect certain confidential communications contained in the records and correspondence of members from disclosure in response to pre-trial discovery, or subpoena.

Not only members, but also citizens, should know where they stand in relation to privilege, freedom of political communication, and the right balance between the roles of the Parliament, and the role of the courts.

The Draft Exposure bill is not intended to cover the minutiae of procedures and administrative activities required to give purpose to the provisions.

There is a regulation making power within the bill, and acknowledging the different practices and Standing Orders of our two distinct Houses in New South Wales, the bill's provisions are intended to sit within a framework of Standing Orders, procedural resolutions and guidelines issued by the Presiding Officers.

By tabling the Exposure Draft at the end of the 54th Parliament, Speaker Torbay hoped that the bill could be circulated and discussed, so that during the life of the next Parliament it can be taken up by a Joint Committee.

This would provide an opportunity for both the public and members to fully review what powers, and sanctions, are necessary and warranted to enable Parliament to properly fulfil its function in our society.

Draft Members' Staff Bill

ON THURSDAY 2 DECEMBER 2010, Speaker Torbay tabled the Exposure Draft *Parliamentary Member's Staff Bill*. Upon tabling the Bill, the Speaker said that the Bill will enable Members of Parliament to make the decision to employ and dismiss their own staff. The Bill covers both Legislative Council and Legislative Assembly Members and, in Schedule 1, parliamentary office holders who employ staff to assist them in those roles.

By way of background, Speaker Torbay said that the current instrument of delegation to the Speaker and the President to employ staff of the Parliament is an order in Council issued in 1956. Members of Parliament did not have staff allocated to them in 1956 and the delegation did not envisage the employment of members' staff. This, the Speaker said, led him to the conclusion that under the present arrangements there is a misalignment of the decision to employ or dismiss made by individual members and the power or authority to employ and dismiss of the presiding officer.

The Bill provides for members' staff to be Crown employees, for electorate officers to continue to have their conditions of employment determined by an industrial instrument and for the presiding officers to be the employer for other industrial purposes, including making determinations on matters not included in the award or contract of employment.

The Speaker said that he looked forward to extensive consultation on the bill with all parties over the Parliamentary recess.

Question Time – time limit for answers

ON 11 NOVEMBER 2010 standing order 131 in relation to Question Time was amended to provide that answers to questions must not exceed five minutes.

The amendment to the standing order was put in place to encourage Ministers to ensure that their answers are relevant to the questions asked.

The amendment also made provision for additional information to be sought from Ministers, with the Speaker's discretion, and for the Speaker to have discretion to order the timing on the clock to be paused. This was included to enable the Speaker to stop the clock if successive points of order were being called during a Minister's response so that the time taken for these points of order would not erode into the five minutes allowed for an answer.

To date there have been six Question Times in the Legislative Assembly since the amended standing order came into effect and the Speaker has paused the clock during an answer on one occasion.

This reform was considered by the Select Committee on Parliamentary Procedure, which was established by both Houses in September 2010 to inquire and report on a range of parliamentary reforms stemming from proposals for reform of the Commonwealth House of Representatives following the 2010 Federal Election.

It was considered by the Legislative Assembly members of the Select Committee that there was no need to introduce time limits for questions given that the standing orders already require questions to be concise.

Standing order 131 in relation to Question Time, as amended, is as follows:

(1) Questions are asked orally and may be read and are subject to the same rules as written questions but shall not be recorded in the Questions and Answers Paper.

(2) An answer to a question must not exceed five minutes.

(3) At the conclusion of the Minister's answer to a question, the member who asked the question may, at the discretion of the Speaker, seek additional information from the Minister. The Minister's response on the additional information must not exceed two minutes.

(4) The Speaker has discretion at any time during a Minister's answer to order that the timing on the clock be paused.

(5) No question shall be asked after 45 minutes from the Speaker calling on questions or the answering of 10 questions whichever is the later.

(6) One supplementary question per Question Time, may be asked immediately by the Member asking the original question. The answer shall count as one of the 10 answers.

(7) The Leader of the Opposition is entitled to be called first by the Speaker at the commencement of Question Time.

(8) Ministers seeking to provide additional information to questions already answered at the current or a previous sitting shall do so at the conclusion of Question Time.

NSW Legislative Council

The impact of prorogation on standing committees

IN LATE DECEMBER 2010 and early 2011, the Government's reforms to the power industry in New South Wales precipitated a re-examination of the capacity of standing committees of the Legislative Council to meet and transact business after the Parliament has been prorogued.

By way of background, in 1982, to facilitate the establishment of joint standing committees of the NSW Parliament, standing order 257C [now standing order 206(1)] was inserted into the standing orders to provide that such committees had the power to meet and transact business during the life of the Parliament.

Council standing committees were subsequently established in 1988.

Between 1988 and 1993 these standing committees, unlike select and sessional committees, were not included in enabling legislation routinely passed by the Parliament to enable committees to sit after prorogation, as it was not considered necessary.

However, in 1994, the Crown Solicitor provided written advice to the Clerk of the Legislative Assembly arguing that the former Assembly standing order 374A and the equivalent Council standing order 257C, to the extent to which they may have purported to authorise committees to sit after prorogation, were invalid.

As expressed in *New South Wales Legislative Council Practice*, the Clerks of the Council have always taken the view that the Crown Solicitor's position represented an extremely narrow interpretation of the powers of the Council.

Both views were put to the test during the events of late December 2010 and early 2011.

On 15 December 2010, the Government announced the sale of State electricity assets under a gentrader model. S

ubsequently, on 22 December 2010, the Parliament was prorogued by the Governor on the advice of the Executive Council several months before the election of 26 March 2011.

At the time, the Government was accused in the media of using prorogation to attempt to avoid an inquiry by General Purpose Standing Committee No. 1 (GPSC 1) of the Council into the transaction.

Despite the prorogation of Parliament, the following day, 23 December 2010, GPSC 1 self-referred terms of reference for an inquiry into the gentrader transactions, following advice from the Clerk that it had the power to do so.

The Government subsequently sought updated legal advice from the Crown Solicitor on the matter.

In his advice dated 2 January 2011, the Crown Solicitor reiterated his 1994 advice that standing committees cannot function while the Council is prorogued unless they have legislative authority to do so.

In the process, the Crown Solicitor again argued that standing order 206(1) of the Council, to the extent to which it may purport to authorise committees to sit after prorogation, is invalid, and that the committee would have no power to compel the attendance of witnesses or require them to answer questions.

The Crown Solicitor also indicated that there is a risk that statements made and documents provided to the Committee would not be protected by parliamentary privilege.

Further advice from the Crown Solicitor dated 11 January 2011 indicated that should GPSC 1 nevertheless seek to compel witnesses to attend and give evidence under the *Parliamentary Evidence Act 1901*, neither the President nor the Legislative Council would be vicariously liable for any torts for defamation.

By contrast, in a separate advice to the President dated 11 January 2011, the Clerk advised that there is no restriction on the capacity of standing committees to meet and transact business during periods of prorogation.

The position adopted by the Clerk was as follows:

- It is common ground that the life of the New South Wales Parliament does not come to an end on prorogation. There is no statutory or judicial warrant for treating prorogation as effectively ending the life of a parliament. Rather,

under section 22F of the *Constitution Act 1902*, it is only in the event that the Assembly is dissolved that the standing committees must cease to meet and dispatch business.

- While historically it has generally been held according to practice that the Council cannot permit a committee to sit after prorogation, on a more modern reading of the system of responsible government in New South Wales, this traditional understanding has arguably given way to the paramount role of the Council in scrutinising the actions of the executive government and holding it to account, a role explicitly acknowledged by the High Court in *Egan v Willis* in 1998. Under this contemporary system of responsible government, standing committees must have the power to conduct inquiries after prorogation as a matter of 'reasonable necessity'. The traditional interpretations of the impact of prorogation on the Council and its committees inherited from the British Parliament are of little or no relevance, and are not suitable for application, in modern times.
- In relation to the legality of standing order 206, the standing orders may regulate the powers of the Council, including the power to conduct inquiries.

The position adopted by the Clerk was subsequently supported by Mr Bret Walker SC in a legal opinion dated 21 January 2011.

In relation to the legality of standing order 206, Mr Walker cited section 15 of the *Constitution Act 1902* which provides that the Legislative Council may adopt 'as there may be occasion' standing rules and orders 'regulating...the orderly conduct of such Council...'.

Mr Walker argued that it is not in question that the standing orders may regulate some aspects of prorogation, such as the revival of bills in a new session of parliament, and that such matters legitimately fall within the 'orderly conduct' of proceedings.

By extension, there is no reason why the standing orders should not be held to regulate other aspects of prorogation, such as allowing a committee to sit during the 'life of a Parliament' (including any period of prorogation) and to report in the next session. In relation to the system of responsible government, Mr Walker observed:

> It is clear from the reasoning of all justices in the High Court in *Egan v Willis*, various as their approaches were, that questions of parliamentary power depend not only on statutory wording but also their broad, beneficial and purposive reading of provisions for such a central institution. And at the heart of that functional approach, in my opinion, lies a paramount regard for responsible government in the sense of an Executive being answerable to the people's elected representatives. It is not possible, in my view, to read any of the historical and especially English accounts and explanations of prorogation without noting the radical shift from a King against Parliament to Ministers responsible to democratically elected representatives of the people. What possible justification could there be, in modern terms, for permitting the Executive to evade parliamentary scrutiny by taking care to time controversial or reprehensible actions just before advising the Governor to prorogue the chambers?

Despite these differing legal opinions, the Premier, Treasurer and Leader of the Opposition all appeared voluntarily before the Committee and gave evidence.

However, seven former directors of Delta Electricity and Eraring Energy refused to appear before the Committee, even after having been issued with a summons under the *Parliamentary Evidence Act 190*1, citing concerns as to whether their evidence would be protected by parliamentary privilege.

The Committee subsequently wrote to the President requesting that the President seek a warrant from a judge of the Supreme Court for the apprehension of the seven former directors under the provisions of the section 7 of the *Parliamentary Evidence Act 190*1, with a view to compelling them to appear.

However the President declined this request, indicating her view that the refusal of the witnesses to attend was, in the circumstances, with 'just cause or reasonable excuse' under section 7, given that the witnesses had no guarantee that they would be protected by privilege should they appear and give evidence.

Unable to take evidence from these key witnesses, the issue of whether the Committee's proceedings were properly constituted and had the protection of parliamentary privilege remained unresolved. However, given this precedent, it seems likely that Council standing committees will continue to sit and transact business after prorogation in the future.

Death of a member & new members of the House

ON 31 AUGUST 2010, the first sitting day after the winter adjournment, the President informed the House of the death on 31 July 2010 of the Hon Roy Anthony Smith, a member of the Shooters and Fishers Party and a member of the Legislative Council since 2007.

During debate on a condolence motion moved by the Attorney General, the Hon John Hatzistergos, members expressed their sadness and sense of loss at the death of Mr Smith.

The question on the motion was agreed to unanimously, members standing in their places to indicate their support.

On 7 September 2010, a joint sitting was convened for the purpose of electing four members to fill casual vacancies in the Legislative Council caused by the death of the Hon Roy Smith and the resignations of the Hon John Della Bosca (ALP), Ms Lee Rhiannon (Greens) and Ms Sylvia Hale (Greens).

The following members were elected to fill the vacancies respectively: Mr Robert Borsak (Shooters and Fishers Party), Ms Sophie Cotsis (ALP), Ms Cate Faehrmann (Greens) and Mr David Shoebridge (Greens).

President crosses floor

ON 19 OCTOBER 2010, during consideration of the Classification (Publications, Films and Computer Games) Enforcement Amendment Bill 2010 in committee of the whole, the President, the Hon Amanda Fazio, a member of the Australian Labor Party, voted in division with the four Greens members on an amendment proposed by the Greens.

The amendment was negatived 5 ayes to 28 noes.

Although the media soon reported that the President, having crossed the floor, had been suspended from the Australian Labor Party, the matter was not the subject of debate or proceedings in the House prior to the adjournment for the pre-election summer recess.

Improving access to committee proceedings for people with a disability

DURING THE REPORTING period two inquiries dealt with issues affecting people with a disability: an inquiry by General Purpose Standing Committee No. 2 into the provision of education to students with a disability or special needs, and an inquiry by the Standing Committee on Social Issues into the Department of Ageing, Disability and Home Care.

During the inquiries the committees trialled a number of initiatives intended to improve access to committee processes by people with a disability.

These included the use of AUSLAN interpreters during committee hearings, the use of software which converted committee documents from text to audio for those with reading disabilities and software which converted committee documents into Braille, and the production of a summary of the Social Issues Committee report in a format suitable for readers with an intellectual disability.

Canterbury earthquake

ON 4 SEPTEMBER 2010, Canterbury was struck by a magnitude 7.1 earthquake, which has been followed by many significant aftershocks. The quake caused great damage; fortunately there was no loss of life.

In an unusual move, the parties agreed not to hold question time when the House met the following Tuesday—the Speaker called for questions but none had been lodged.

The House gave leave for the Prime Minister's ministerial statement about the earthquake, and the responses to the statement made on behalf of other parties, to be longer than usual.

The House agreed by leave for the 15 members of Parliament with offices in the Canterbury area to be regarded as present for the purpose of casting party votes, so that they could assist constituents and deal with their own homes and offices.

A team from the Parliamentary Service was sent to Christchurch to assist members and 35 out-of-Parliament staff in the worst-affected areas.

In response to the earthquake, the Government introduced the Canterbury Earthquake Response and Recovery Bill. The bill contained unusually wide powers to grant exemptions from, or modify, or extend the provisions of primary legislation by Order in Council, as required to further the purposes of the Act. The bill provided that a Minister's recommendation for an Order in Council may not be challenged, reviewed, quashed, or called into question in any court. The bill passed through all stages and received the Royal assent on 14 September 2010.

While the scale of the Canterbury earthquake needed an urgent legislative response, some concern was expressed in the media, and in academic and legal circles, about the powers and protections conferred by the *Canterbury Earthquake Response and Recovery Act* 2010.

A number of Orders in Council have been made under the Act, and parliamentary scrutiny of them is provided by the Regulations Review Committee.

The committee has made an interim report on the orders, in which it stated that it was satisfied with the responses received about these orders from the responsible Government agencies.

The committee intends to make a final report in 2011 on these matters, and is also contemplating its role in considering how emergency response powers could best be framed for future events.

Pike River Mine tragedy

AN EXPLOSION IN THE PIKE RIVER coal mine, on New Zealand's West Coast, on Friday 19 November trapped 29 miners underground.

A second explosion on Wednesday 24 November extinguished hope for their survival.

Leave was granted on the Thursday for the House, following prayers, to consider a Government motion without notice relating to the Pike River coal mine tragedy, and for the House to adjourn immediately thereafter.

A *waiata* (Mâori song) was led by members (generally *waiata* are initiated by the public in the Gallery with the Speaker's agreement). T

his was regarded as part of the debate, and so the Clerk did not stand and participate.

The Speaker then invited the House to observe a minute's silence as a mark of respect.

Civil List Act review

IN NEW ZEALAND, AS IN other jurisdictions, public sector spending has attracted considerable scrutiny and there has been recent public debate on parliamentary and ministerial spending.

The Law Commission has been considering the *Civil List Act* 1979, which provides the legal authority for payments made to members of Parliament and Ministers for their salaries, allowances and expenses.

This review was commenced some time ago following a reference from the Government, but recent events have strengthened the impetus for reform.

Legitimate expenditure

Public concern about the legitimacy of expenditure has resulted from increased transparency around credit card spending by Ministers, as well as revelations about the use by a member's spouse of parliamentary travel entitlements for business purposes.

Following an inquiry into expenditure incurred by a Minister's office, Auditor-General Lyn Provost launched a wider inquiry into ministerial expenditure.

The aim of this inquiry was to assess whether the Ministerial Services system for managing spending that could give personal benefit to Ministers operates coherently and effectively. The Auditor-General found that:

> ...taken as a whole, the current Ministerial Services system for managing spending is an unsatisfactory basis for providing support to Ministers. There is an obvious risk that Ministers will be held to account for failures in the underlying system, which would unnecessarily damage public trust in our political leaders.

The Auditor-General recommended that the legal basis for the Ministerial Services system be revisited from first principles.

She stressed the need for a new system to be a transparent one, under which the rules, policies, and financial management processes are all clear and accessible and can easily be understood.

In December 2010, the Law Commission recommended that the *Civil List Act* 1979 be repealed, and a new statute enacted.

It further recommended an independent enhanced Remuneration Authority be established to determine the travel, accommodation, attendance and communications services for members of Parliament and Ministers, and entitlements to funding and services to support parties' and members' parliamentary operations.

The Prime Minister has stated that the Government accepts the broad thrust of the recommendations and will consult with the Speaker and political parties with the intention to enact legislative reform in this area before the end of the year.

Deduction from member's salary under *Civil List Act* 1979

IN AUGUST 2010, THE HON Chris Carter became an independent member of Parliament, following his expulsion from the Labour Party.

The member had been absent from the House for more than 14 sitting days and consequently, under the *Civil List Act* 1979, the Speaker made deductions from the member's salary as the absence was not caused by illness or by any other cause certified by the Speaker of the House to be unavoidable.

The amount of deduction, presently set at $10 for every sitting day (exclusive of those 14 sitting days), attracted attention in the media and was criticised as insufficient (although the Act provides that a member also forfeits any allowances that would be payable in respect of the period for which the member is penalised).

In its review of the *Civil List Act* 1979, the Law Commission recommended that, if a member is absent for more than nine sitting days during any calendar year, there should be a deduction from the payments to be made to that member of 0.2% of the annual salary of an ordinary member of Parliament for each day of absence (exclusive of those nine sitting days).

Proposed application of the *Official Information Act* to parliamentary agencies

AS PART OF ITS REVIEW of the *Civil List Act* 1979, the Law Commission also considered whether the *Official Information Act* 1982 should apply to information held by the Speaker in his role with ministerial responsibilities for the Parliamentary Service and the Office of the Clerk; the Parliamentary Service; the Parliamentary Service Commission; and the Office of the Clerk in its departmental holdings.

While the Commission made initial recommendations to this effect, it continues to review this matter.

The recommendations arise in the context of the Commission's proposals to shift responsibility for the setting of members funding entitlements for parliamentary purposes to an independent agency.

The Commission considers that there is a legitimate and significant public interest weighing in favour of availability of information held by the parliamentary administration, in particular relating to the expenditure of public money.

The Law Commission envisages that the *Official Information Act* would apply only to 'departmental holdings' of the Office of the Clerk and would not apply to:

- parliamentary proceedings, including internal papers directly relating to parliamentary proceedings;
- information held by the Clerk of the House as agent for the House of Representatives;
- information held by members in their capacity as members;
- information relating to the development of parliamentary party policies, including information held by the or on behalf of caucus committees; and
- party organisational material, including media advice and polling.

The Office of the Clerk is in consultation with the Law Commission on the recommendations, and the form they will take feeding into the Commission's broader review of the *Official Information Act* 1982 underway this year.

Electoral legislation passed

THE ELECTORAL (FINANCE REFORM and Advance Voting) Amendment Bill, Parliamentary Service Amendment Bill and Electoral Referendum Bill were passed by the House on 15 December 2010. The Electoral (Finance Reform and Advance Voting) Amendment Bill amended the Electoral Act 1993 particularly in relation to promoters of election advertisements, electoral advertising, the regulated campaign period, campaign expenditure limits and donations. The bill also amended the advance voting rules. This legislation excludes the broadcast of the proceedings of the House of Representatives from electoral advertising restrictions.

The bill was read with the Parliamentary Service Amendment Bill, the aim of which was to amend the Parliamentary Service Act 2000 to provide a permanent meaning of the term "funding entitlements for parliamentary purposes". The Minister in charge, Hon Simon Power, explained that the two bills were part of a package of legislative measures giving effect to the Government's electoral reform commitments. The Parliamentary Service Amendment Bill provides that parliamentary funding cannot be used for election advertising or certain referenda advertising.

The Government also gave a pre-election commitment to hold a referendum on the Mixed-Member Proportional Representation electoral system (MMP). The Electoral Referendum Bill makes provision for an indicative referendum to be held in conjunction with the next general election, in order to "provide electors with the opportunity to express an opinion on the preferred system of voting for election to the House of Representatives in New Zealand". The bill set out two questions that would form the referendum voting paper. Part A (the first question) asks voters if they wish to keep the current MMP voting system, or change to another voting system. Part B (the second question) asks voters, regardless of their answer in Part A, which voting system they would prefer if there were a change to another system. The options for voters will include the following alternative systems: First Past the Post (FPP), Preferential Voting (PV), Single Transferable Vote (STV), and Supplementary Member (SM). If the result from Part A indicates a majority in favour of changing to another voting system, another referendum will be held to enable the public to choose between MMP and the most popular option selected in Part B. The Government has indicated that this second referendum, if it occurs, would be held in conjunction with the 2014 general election.

Parliamentary privilege and comity with courts—breach of suppression order

IN A PERSONAL EXPLANATION, a member disclosed a conviction despite being subject to permanent name suppression.

This immediately raised issues for the Office of the Clerk and other broadcasters, given the nature of the information and that the member had volunteered the information about himself rather than another person.

The Office of the Clerk, as broadcaster, applied the principle of comity with the courts to replays of Parliament TV coverage. As the member made the statement before question time, the question time replay was able to be broadcast without this item and without editing the replay.

Normally the replay would start with the prayer. The contractor who supplies video-on-demand services also left this statement out until the suppression order was lifted a few days later.

Despite the contents of the statement being subject to a suppression order, broadcasters used this material in their news broadcasts.

Some broadcasters may have been under the mistaken impression that because it was said in Parliament they were free to report it.

In fact there is no such legal immunity in New Zealand when it comes to court orders.

Trespass and parliamentary precincts

UNDER SECTION 26 of the *Parliamentary Service Act* 2000 the Speaker exercises all the powers of an occupier under the *Trespass Act* 1980 in respect of the parliamentary precincts.

The trespasser who is required to leave under section 3 may return at any time without penalty, whereas under section 4 the trespasser is not able to go to Parliament grounds for 2 years.

The Speaker is exercising a public function when using the powers of an occupier under the *Trespass Act* and therefore his actions and those of his delegates are subject to the test of reasonableness under the New Zealand Bill of Rights Act 1990.

Consequently, those actions are subject to the scrutiny of the courts.

On 5 August 2010, a member of the public, Mr Rongonui, was given a trespass notice requiring him to stay off Parliament buildings and grounds for two years.

On 6 and 10 August Mr Rongonui returned to Parliament. Each time he was arrested, and he was convicted of three charges under section 4(4) of the *Trespass Act*.

In a recent judgment in the case *Rongonui* v *Police,* Justice Ronald Young found that the evidence called by the Police fell well short of establishing a reasonable basis for issuing a section 4 notice in the circumstances.

The seriousness of trespass under section 4 is that Mr Rongonui could not see any of his representatives at Parliament nor enjoy the parliamentary debates in person.

Consequently Young J held that the reaction in giving Mr Rongonui a section 4 notice was disproportionate to the circumstances and not reasonable.

It is appropriate for security officers at Parliament to keep in mind that the consequences of the section 4 notice is potentially much more restrictive of the citizen's rights than a section 3 warning.

Court of Appeal rejects appeal of former member convicted of bribery and corruption

THE COURT OF APPEAL rejected the appeal of former member and Associate Minister, Taito Phillip Hans Field, from conviction and sentence of six years imprisonment for bribery and corruption as a member of Parliament and perverting the course of justice.

In his trial, Mr Field was found to have accepted free or low-cost labour on certain of his properties from various people to whom he was providing immigration assistance.

At its heart this was an unlawful reward case. The essence of the wrong alleged was that Mr Field received a benefit for something that he was elected and paid to do as a member of Parliament, and thus the reward had been accepted 'corruptly'.

This was the first prosecution of its kind in New Zealand, and before it could proceed leave was first required from a Judge of the High Court.

During the hearing the Court raised a concern as to whether the issues relating to the conduct of Mr Field might have given rise to questions relating to parliamentary privilege.

The court noted that its duty was to ensure that it did not interfere in matters of privilege and in fulfilling that duty the courts must determine the scope of privilege and ask whether it applies in the particular case.

The Court also noted that the Speaker of the House (following the ministerial inquiry by Dr Ingram QC) had ruled that Mr Field's conduct could not be in contempt of the House because it was not linked to the parliamentary process. Therefore no question of privilege rose.

On appeal Mr Field argued four grounds but the principal ground was that the wrong legal test was adopted for 'bribery and corruption' at both the leave to prosecute stage and the trial stages.

The central issue before the Court was the meaning of 'corruptly'.

After examination of the overseas authorities the Court held that 'corruption is conduct conducive to a breach of duty; that may or may not involve dishonesty or fraud". In the Court's view, "as a matter of general principle, the sounder basis on which to put the offence relating to a Member of Parliament is to recognise that it catches the corrupt acceptance of a 'bribe' in connection with the performance of that member's duties as a parliamentarian.'

On 17 January 2011, Mr Field made an application to the Supreme Court for leave to appeal against the decision of the Court of Appeal.

He has until 15 February to file written submissions and the Crown has 15 working days to reply.

Foreign Affairs, Defence and Trade Committee report on relations with Pacific

THE FOREIGN AFFAIRS, DEFENCE AND Trade Committee reported to the House in December 2010 on its inquiry into New Zealand's relationships with South Pacific countries. Included in the committee's recommendations was a proposal that the House establish an annual programme for Pacific parliamentarians to discuss issues of democracy, governance, and collective interest. The proposed initiative would be funded under the aegis of the aid programme to promote leadership development, and particularly promote linkages and relationships amongst emerging leaders across the region.

In particular, the committee concluded that New Zealand's special constitutional relationships with Tokelau, Niue and the Cook Islands warranted special attention and different handling from normal aid relationships. The committee proposed a fundamental re-think of New Zealand's assistance strategy, aimed at improving standards and delivery of basic services—such as education, health, policing and justice—for communities in Tokelau, the Cook Islands, and Niue, so as to bring them into line with New Zealand standards over time.

Sessional order—changes to rules for declaring pecuniary interests

A PREVIOUS ISSUE OF *Parliament Matters* described how the Privileges Committee found a member in contempt of the House for knowingly providing false or misleading information in a return of pecuniary interests (see Issue No.21, February 2009, pp.28–9).

The committee also recommended that a review be conducted of the Standing Orders relating to pecuniary interests of members of Parliament.

This review was referred by the House to the Standing Orders Committee in September 2009.

The Standing Orders Committee's report on the review was presented on 13 December 2010.

In its report, the committee affirmed that the purpose of the register is to strengthen public trust and confidence in the parliamentary process by improving transparency, openness and accountability.

The committee's recommendations sought to incorporate these principles more fully in the House's rules, and the House adopted them by way of a sessional order, with effect for the round of annual returns due in February 2011.

Some new requirements have been imposed. For example, members are now required to declare an interest in trusts of which they are trustees without having a beneficial interest.

Members must also declare a beneficial interest in a trust regardless of whether it is a fixed or discretionary interest.

Requirements for the declaration of real property and paid activities have also been clarified.

Since some additional areas of interest must be declared that are not strictly of pecuniary or financial benefit to members, the name of the register has been amended to 'Register of Pecuniary and Other Specified Interests'.

A significant new development is the introduction of a procedure for members to request that the Registrar conduct an inquiry into a member's compliance with the obligations to make returns.

On receiving a request, the Registrar will then consider whether to conduct such an inquiry. This means that the Speaker will no longer be involved in the consideration of such matters.

After conducting an inquiry, the Registrar will have the ability to report to the House that a question of privilege is involved, but that outcome would result only from the most serious situations.

In many cases matters may be resolved through the correction of returns, which is a course not currently available to the Speaker when considering matters of privilege.

The Registrar's new inquiry role replaces that previously accorded to the Auditor-General.

The Auditor-General never exercised this function, as there were doubts about whether there was sufficient statutory power to do so.

However, the Auditor-General will support the Registrar where required.

Adjournment and statistics for 2010

THE HOUSE ADJOURNED for the summer break on Wednesday 15 December. Prior to the adjournment, the Speaker gave the traditional summary of business statistics as part of his final address. During 2010, the House sat for 595 hours and 58 minutes—30 hours more than the previous year. The Speaker announced that a total of 127 bills received the Royal assent, double the previous year's total of 66. The Speaker also noted 39,817 questions for written answer had been lodged—a substantial increase on 2009 during which 19,822 questions were received. There were 1091 questions for oral answer lodged. Before rising, the House adopted its programme for 2011, which comprises 81 sitting days over 27 weeks of sittings. The Prime Minister, Rt Hon John Key, has announced that the next general election will be held on Saturday, 26 November 2011.

Legislative Assembly of the Northern Territory

Araluen By-Election

A BY-ELECTION WAS HELD in the urban Alice Springs seat of Araluen on 9 October 2010. The by-election arose following the resignation of the former Member for Araluen, Jodeen Carney, during the August sitting of the Assembly owing to ill-health. Robyn Lambley was the comfortable winner of the seat, which has been held by the Country Liberal Party since its creation in 1983.

Lambley was sworn at the next sitting of the Assembly on Tuesday 19 October, the same day she was given the Shadow portfolios of Child Protection and Children and Families. It was also the same day as the Chief Minister tabled the *Growing them strong, together* report of the Board of Inquiry into the Child Protection System in the Northern Territory, also known as the Bath Report.

The by-election result retained the *status quo* in the Assembly, with Chief Minister Henderson leading a Minority Government of 11 (not including the Speaker) supported by the Independent Member for Nelson, Gerry Wood, and the Opposition having 11 members and (generally) the support of the Independent Member for MacDonnell, Alison Anderson.

Child Protection

WHILST THIS SUBJECT is receiving a great deal of attention in several states, the *Growing them strong, together* report and resulting *Four Corners* program on ABC TV on 8 November gave rise to several vigorous debates in the Assembly towards the end of 2010.

The Opposition unsuccessfully sought to censure the government over the matter on Tuesday 23 November, and used several Question Times to attack the government over the 'crisis' identified in the report.

Opposition portfolio responsibilities

FOLLOWING A FAILED leadership coup against Opposition Leader Terry Mills on 27 August 2010, the Country Liberal Member for Fong Lim, Dave Tollner, was stripped of all Shadow responsibilities.

During the February 2011 sitting, Tollner was discharged from the Public Accounts Committee and replaced by his colleague Shadow Treasurer Willem Weestra van Holthe.

Major milestone for Hibberd

ONE OF THE ASSEMBLY'S longest serving officers, Maintenance Officer Tony Hibberd, recently celebrated his 60th birthday in considerable style - in Bali.

Members, former Members, colleagues, friends and family joined Tony to celebrate his big event in Kuta on 8 February.

One individual, who shall remain nameless (but whose initials are Ian McNeill), has prided himself on the fact that he has lived in the Top End since 1985 and has managed to avoid a trip to Bali - until now. He has had to shed that badge of honour and is reported to have enjoyed himself, notwithstanding a few glitches which included an electricity outage whilst the party was in full swing (nothing a generator couldn't fix).

Hibberd joined the Assembly in May 1983.

Bali has become his second home and, whilst there has been no big announcement in respect of the R-word, is understood to be the place to which he will retire.

The marvels of modern technology and the 'f' word

DURING A PARTICULARLY FIERY Question Time on Tuesday 12 August, Opposition Members for Fong Lim and Port Darwin were ejected from the Chamber for an hour. In the ensuing commotion, a Member of the Opposition said: 'I reckon we should all just f*** off out of here.' The Speaker did not hear the comment, but it was picked up by the parliamentary sound system (which is webcast) and run in all its glory on the Channel 9 television news that evening.

The following day, the Speaker made this statement:

> I am very concerned our parliament is being brought into disrepute because of poor behaviour. I urge all members to remember they are representing the people of the Northern Territory, and they certainly deserve better.
>
> I remind you standing orders are, in fact, for all members.
>
> I was also very concerned, when listening to the Channel 9 coverage of yesterday's Question Time, it was reported an opposition member was recorded using profane language, and the member's voice was heard with a bleep over the profanity used. I am not certain who the member concerned was, however, I ask whoever the member was to withdraw the comment and apologise to the House. I remind all members profane language is never parliamentary and will result in immediate withdrawal from the Chamber.
>
> It is very disappointing no member will admit to having said that.

Later in the day, the Member for Braitling confessed that the utterance fell from his lips:

> **Mr GILES (Braitling):** Madam Speaker, yesterday in the House I made an unparliamentarily comment off camera which was picked up by the Chamber recording system. I would like to withdraw that comment and apologise.

Council of Territory Co-operation

THE COUNCIL OF TERRITORY Co-operation (a Sessional Committee) was the lynchpin of the Independent Member for Nelson's 'parliamentary agreement' with the Chief Minister arising from the Opposition's attempted Motion of No Confidence on 14 August 2009.

The Council has been working for a little over 12 months and has tabled three progress reports and an Annual Report in the Legislative Assembly.

Established on 14 October 2009, the Council reported expenditure of $295,038 to 30 June 2010. The Council sat for 102 hours from its inception until 30 June, which was well above any other Committee, the nearest being the Estimates Committee, which sat for 50 hours.

Opposition members of the Council twice submitted to the Remuneration Tribunal that the additional workload associated with the Council should be appropriately remunerated. In Remuneration Tribunal Determination 1 of 2010, the Tribunal determined that members of the CTC who were not already receiving an additional salary of office should receive an additional $20,000 per annum. That determination was tabled by the Chief Minister on Tuesday 19 October.

It was interesting then that Opposition members resigned from the Council of Territory Co-operation on 2 November, claiming that the Council was ineffective and objecting to the fact that they could not interrogate Ministers. This was followed by the resignation of the Independent Member for MacDonnell, whose discharge from the Council was moved on 30 November. These resignations left the Council with a Membership of three: the Chair (Independent Member for Nelson) and two Government Members.

Moving the motion to establish the Council on 14 October 2009, the Chief Minister said that the purpose of the Committee was to:

> …facilitate:
> (a) greater levels of collaboration in the governance of the Northern Territory;
> (b) enhance parliamentary democracy by providing a strong role for members of the Legis-

lative Assembly who are not members of the executive government, particularly on matters of common concern;
(c) expand involvement in important Northern Territory initiatives and projects;
(d) provide new avenues for Territorians to have input through the Legislative Assembly into the government of the Northern Territory; and
(e) provide a road map for tackling some specific issues currently facing the Territory.

The Committee was to consist of up to six Members, including two Government, two Opposition and at least one Independent, being the Chair, Mr Wood.

Without the Opposition Members, the Council cannot be said to be representative of the Assembly.

On that basis, the future of the Council is uncertain and its lynchpin status within the 'parliamentary agreement' may mean that the agreement will have to be renegotiated, although the CTC has conducted several hearings already this year.

Its reports continue to be debated and the Government was expected to table its response to a 2010 report dealing with child protection during the February sitting.

Inclement weather

THE FEBRUARY SITTING OF the Legislative Assembly, the first of the year, was disrupted by Cyclone Carlos.

On Tuesday 15 February, two systems developed rapidly over the course of the day: one was the low pressure system that became Carlos; the other was a separate, fast-moving thunderstorm. Parliament was adjourned at 7pm and, the following morning, Madam Speaker issued a cancellation of that day's sitting.

Later in the day, cancellation of the Thursday sitting followed, with advice that, at that time, Carlos was expected to be bearing down on the city.

Darwin was buffeted by very strong winds with significant damage to homes, roads and trees. It could be said that Parliament House experienced its first 'honest' leaks: minor water damage through window seals caused by relentless driving rain.

One day has been added to existing sitting weeks in, respectively, August and November, which will see the Assembly sit from Monday to Thursday of each of those weeks.

Standing Orders - changes

THE STANDING ORDERS Committee tabled its fifth report of the Eleventh Assembly on Thursday 21 October in which changes were recommended to the Estimates Committee process. The Committee's brief was specifically to consider:

1. Extending the 2011 Estimates Committee to run over two weeks.
2. The hours of operation of the Estimates Committee, including Government Owned Corporations be set.
3. The number of sitting days be reduced to reflect any additional hours provided to Estimates Committee.
4. The option for generic questions to be included in the Estimates Committee review process.

The Committee recommended that the global time limit for Estimates Committee hearings (including Government-Owned Corporations Scrutiny Committee) be increased from 50 to 60 hours and held over two weeks on Tuesday, Wednesday and Thursday of those weeks rather than being held over four days. The number of sitting days would be reduced according to the number of increased days for Estimates hearings.

In respect of the Government-Owned Corporations Scrutiny Committee, the Standing Orders Committee recommended that the Portfolio and Shareholding Ministers appear together with the Chairman of the Board and Chief Executive Officer of the Power and Water Corporation, which has not been the case in the past.

Opposition Members tabled a dissenting report which objected to the number of sitting days being reduced by the increased number of Estimates days and urged that the global time limit for Estimates hearings be extended to 70 hours.

For the first time in the history of the Legislative Assembly, provision has been made for a citizen's right of reply in a limited set of circumstances.

Federal Candidate and Leader of the Opposition

DURING THE 2010 Federal Election, the Country Liberal candidate for the seat of Lingiari was Leo Abbott, a man who became the subject of extended criticism in the Legislative Assembly on the basis of alleged domestic violence. In a series of particularly ugly Question Times during the August sitting of the Assembly, the ALP's sitting Member for Solomon, Damien Hale, was also alleged to have committed domestic violence order breaches.

The parliamentary wing of the Country Liberals became embroiled in a dispute with the administrative wing of the party over whether or not the candidate should have been disendorsed.

Both Leo Abbott and Damien Hale – neither of whom could defend themselves in the Legislative Assembly - lost the elections in their respective seats.

The ALP sought to continue its campaign against Leo Abbott by accusing the Leader of the Opposition, Terry Mills, of trying to talk Mr Abbott out of running in Lingiari – exactly what the Government was trying to achieve during the August sitting – and in the course of so doing, allegedly breaching the *Electoral Act* by allegedly promising him (Abbott) a job. The Australian Electoral Commission responded to a complaint made by the Northern Territory Treasurer, Delia Lawrie, saying it would take no action.

Internal party paperwork appeared during the November sitting of the Assembly and various documents which it was claimed were the 'minutes' of the meeting involving Mills, Abbott and others became public via the media, including a transcript of a private telephone conversation between the two men.

The issue was the subject of many questions from both sides of the House during the November sitting and was the subject of an attempted Opposition censure of the government for 'its dishonest attack on the Leader of the Opposition, using unfounded allegations of crime [and] recklessly peddling third-party slander'.

Statehood - the next phase

ON 2 DECEMBER 2010, the Legislative Assembly resolved, pursuant to a recommendation of the Committee itself and a recommendation in similar terms from the Legal and Constitutional Affairs Committee, to dissolve the Statehood Steering Committee with effect from 6 December.

The Statehood Steering Committee was a community-based committee established in 2003 to extensively canvas the views of residents of the Northern Territory in respect of Statehood. During 2010, the Committee ran 50 community-based forums throughout the Northern Territory.

The Assembly resolved to amend a 2008 Reference to the Legal and Constitutional Affairs Committee to include:

> 6. the committee shall appoint a Northern Territory Constitutional Convention Committee (NTCCC) to report to the Standing Committee from time to time to assist with the implementation of the Statehood Program as determined by the Standing Committee leading up to and including a Constitutional Convention.
> 7. the membership, chairs, functions, and procedures of the NTCCC shall be as determined by the Standing Committee from time to time.
> 8. the sitting fees of members of the NTCCC shall be as determined by the Speaker.

It is anticipated that a Constitutional Convention, with elected delegates, will be held at the Darwin Convention Centre in November of this year.

2011 is a significant year in the Northern Territory's consititutional history: it marks the 100th anniversary of South Australia surrendering the Territory to the Commonwealth.

There are a number of interesting aspects to this, most notable of which is that South Australia insisted - and the Commonwealth agreed - on construction of a transcontinental railway to the north commencing immediately. It took almost 100 years for that to happen.

Numerous public exhibitions are planned throughout the year and facsimiles of relevant legislative instruments have been acquired from both South Australian and Commonwealth archievs.

Clerk Assistant - Committees appointed

FOLLOWING A NUMBER of staff movements and an organisational review, the position of Clerk Assistant - Committees was created and Russell Keith was appointed.

Russell commenced duties with the Assembly in November last year and has most recently come from Committees in the New South Wales Legislative Assembly.

He has previously worked with committees and procedural support in the New South Wales Legislative Council, the United Kingdom's National Assembly for Wales and the Australian Capital Territory's Legislative Assembly.

In the northern climes of the country, Russell is responsible for the Committees Office, which provides secretariat support to the Public Accounts Committee, Legal and Constitutional Affairs Committee (under which the issue of Statehood falls), the Subordinate Legislation and Publications Committee, the Sessional Committee on Environment and Sustainable Development, and the Estimates Committee.

He is also responsible for the Office of Statehood, which provides support to the NT Constitutional Convention Committee and planning for Constitutional Conventions.

Russell has a number of other duties, including service on a range of internal agency committees and Clerking duties during sittings of the Assembly.

For those of you interested in Russell's welfare, he was joined by wife Liz and two sons (who are now well ensconced in school) in January, and they comfortably survived the anxiety and trepidation associated with their first cyclone experience in February.

Integrity, Ethics and Parliamentary Privileges Committee

Alleged contempt — improper interference with the free performance by a Member of the Member's duties

ON 11 JUNE 2010 the Speaker referred an allegation to the committee that the Leader of the Opposition improperly interfered with the performance of a member's duties through recommending the member's discharge from a parliamentary committee, allegedly as a disciplinary measure.

The member was a Liberal National Party (LNP) member at the time.

According to the member, he had compiled an email outlining the direction needed for the party and sent the document to all LNP parliamentary members, the LNP president, the state director, the Leader of the Opposition's chief of staff and the LNP's media adviser. The email was later aired in the media. Various internal party matters followed as did media attention.

The matter came to a head when the Leader of the Opposition wrote to the member stating:

> I wish to advise you that in view of the events of the week, I have advised the Speaker that I have replaced you as the LNP representative on the Law, Justice and Safety Committee of the Queensland Parliament.

The Speaker, when referring the matter to the committee stated that in relation to committee appointments, the *Parliament of Queensland Act* 2001 gives the power of nomination to the Leader of the House and the Leader of the Opposition but does not confer ownership of the committee position to them as the Assembly as a whole determines such matters.

Further, the Leader of the Opposition has no right to remove or replace members on a committee, simply a right to move that members be removed or replaced.

The Speaker indicated that while the majority of the matter related to internal political party machinations, the actions in disciplining a member for party political reasons had touched upon or involved the member's duties and responsibilities as a member of a parliamentary committee. Accordingly, Mr Speaker referred the matter to the ethics committee.

The committee considered whether the following three elements were established as to whether the allegation, on the face of it, gave rise to contempt:

- whether the Leader of the Oppositions' actions in nominating the discharge of the member from his role as a member of the parliamentary committee interfered with the free exercise by the committee of its authority or functions, or the member's performance of his duties;
- (if yes) whether this interference was improper;
- (if yes) whether the leader of the Opposition intended to interfere with the free exercise by the committee of its authority or functions, or the member's performance of his duties.

The committee concluded that the actions of the Leader of the Opposition amounted to interference with the free performance of the member's duties as a member of the relevant committee.

On the issue of whether the interference was improper the committee considered the principles in the *Code of Ethical Standards for Members*.

The code states that members are to strive at all times to conduct themselves in a manner which will tend to maintain and strengthen the public's trust and confidence in the integrity of parliament and avoid any action which may diminish its standing authority or dignity.

In addition, members are elected to act in the public interest and to make decisions solely in terms of the public interest.

The committee found that the Leader of the Opposition's action of nominating that the member be discharged from the committee was made on the basis of party matters that occurred in the previous week and that:

> ...the way a member conducts himself or herself in party matters is an entirely appropriate and relevant consideration in influencing the party leader's decision on whether to recommend the discharge from performance of the duties of such an important parliamentary office as a member of a committee.

The committee further noted that:

> ...there is no direct evidence to indicate the Leader of the Opposition's actions failed to strengthen the public trust or confidence in the integrity of the parliamentary process or that the actions were in some way contrary to the public interest.

Accordingly, the committee found that the Leader of the Opposition's actions were not improper and concluded that there was no breach of privilege or contempt.

The committee's report is available online at: http://www.parliament.qld.gov.au/view/committees/documents/MEPPC/reports/Report%20110.pdf

Review of Code of Ethical Standards

THE COMMITTEE HAS a statutory responsibility to publish and review a code of ethical conduct for members including procedures for complaints about a member not complying with the code (Members in their capacity as ministers are excluded).

The last Code of Ethical Standards was adopted by the House in 2004.

The current Code had evolved over time and is now a complex document of 65 pages.

While it is a comprehensive document, the Committee considered the current format may make it difficult for a new member to quickly come to terms with their responsibilities and obligations under the Code.

Accordingly, the Committee prepared a draft simplified version for the purposes of discussion.

This committee's draft Code focuses on the fundamental principles of ethical behaviour applying to members and the key obligations arising out of these principles.

The draft recognises that it is not possible to detail all possible ethical situations or dilemmas that a member may face.

Rather the draft Code serves to remind members of their obligations and to guide member's decision making in relation to ethics.

The draft differs from the current Code by merging the principles of Primacy of the Public Interest and Transparency and Scrutiny.

The draft also inserts a new principle of Respect for Persons to bring it in line with other codes for public sector officers and to cover-off additional provisions found in other jurisdictions such as provisions relating to conduct towards Assembly staff in the ACT Code and a Code of Race Ethics in the Tasmanian Code.

The committee tabled its report on the draft Code on 28 October 2010.

The Premier's interim response noted that:

> the version of the Code of Ethical Standards, included in the report, has been superseded given the amendments to Schedule 2 of Standing Orders agreed to by the Legislative Assembly on 28 October 2010.

Legal advice sought

ON 31 AUGUST 2010, Mr Speaker advised the House that he had engaged senior counsel to advise and settle correspondence in relation to a matter of parliamentary privilege.

Mr Speaker further advised 'that the matter arises from an apparent attempt to force a member to reveal information or documents the member has acquired and used in the course of, or for the purposes of or incidental to, transacting business of the Legislative Assembly'.

As the matter was *sub judice* no further details could be provided, however Mr Speaker advised that it was appropriate that he advise the House when acting as the guardian of the privileges of the House, its committees and its members.

Registration of Interests: mid-term review

THE COMMITTEE HAS A statutory responsibility to examine the arrangements for compiling, keeping and allowing inspection of a register of the interests of members and a register of the interests of persons related to members.

The last major review of this area was reported on by the committee in 2005. Schedule 2 of the Standing Orders provides for the administrative arrangements for the registers and the particulars of interests that must be disclosed.

The committee examined the registration requirements in other Australian jurisdictions and noted that the requirements to disclose interests in Queensland benchmarked highly when compared to other systems in operation. In this context, the committee took the view that a major review of the registers was not warranted but instead resolved to follow the precedent of previous ethics committees to conduct a mid-term review of the arrangements for compiling, keeping and allowing inspection of the registers.

The following is a summary of the Committee recommendations:

1. Maintaining the current arrangement that members update the register of interests within one month of becoming aware of a change of interest.
2. Including a definition of 'jointly or in common' to mean where both the names of the member and the related person's name appear on the relevant instrument of title.
3. Including in the electorate officer training material to guide member's personal assistants in the process of completion of the registration forms.
4. Including a statement in the registration requirements that an interest may be required to be disclosed under more than one category and if required to be declared under any category should be declared despite being exempt under another.
5. Expanding the definitions of sponsored hospitality, gifts and memberships of organisations/groups.
6. Clarifying the use of blind trusts by ministers and parliamentary secretaries and how this reconciles with the Parliament's ethics regime.
7. Amending the *Parliament of Queensland Act 2001* to provide that any written waivers by members to rewards of holding a public appointment be lodged with the Registrar and kept with the Registrar of Members Interests.

The Premier's response to the committee's recommendations was tabled on 29 November and supported five of the seven recommendations. The principle in recommendation 5 was supported however the Premier advised that a revised draft Standing Order would be submitted to ensure that all members':

> interpretation of the declaration requirements is the same and that any possible ambiguity about matters to be declared is removed.

In relation to blind trusts, the government considered:

> that the current arrangements regarding shareholdings in the Ministers' Code of Ethics and the Standing Orders are sufficiently clear and are operating in a satisfactory and accountable way.

The committee's report is available online at: http://www.parliament.qld.gov.au/view/committees/documents/MEPPC/reports/Report%20109.pdf

Questions - criticism of the judiciary

DURING QUESTION TIME ON 5 October 2010, the Opposition put a series of questions to ministers regarding child sex offenders and sentencing. The Opposition further elaborated on the issue during matters of public interest. The crux of the matter was a 10 year sentence handed down to a paedophile. The following day the Speaker drew the House's attention to the longstanding rule that reflections must not be cast in debate upon the conduct of various offices including judges of superior courts unless the debate is based upon a substantive motion. The Speaker advised that he had reflected on the comments made the day before and considered that some went beyond examining decisions by a court but rather amounted to criticism of the character or conduct of a judicial officer in the exercise of their judicial functions. The Speaker called on all members to respect the rule.

Parliamentary Privilege

Deliberate misleading of the House by the Premier — editing the Record of Proceedings

ON 7 OCTOBER 2010, the Leader of the Opposition raised a matter of privilege in the House regarding a ministerial statement the Premier made the previous day concerning a possible breach of advertising rules by a minister.

The Opposition leader alleged that the Premier's words had been altered in the Record of Proceedings. The Premier had stated:

> I am advised by the minister that she did not approve the material herself. Nevertheless, in my view it is unacceptable. I am further advised that there are no more of these —. Nevertheless, in my view it is unacceptable…

A check of the relevant *Hansard* revealed that the Premier's words had been altered. Specifically, the words 'I am further advised that there are no more of these' had been removed.

Later that day, the Speaker advised the House that because the matter involved the work product of *Hansard* and the application of internal editorial policies, he had decided to take the unusual step of making a statement before receiving correspondence from the Opposition leader on the matter (under Standing Order 269, a member seeking referral of a complaint to the Integrity, Ethics and Parliamentary Privileges Committee should write to the Speaker at the earliest opportunity stating the matter and requesting that the matter be referred to the ethics committee).

The Speaker advised the House that both the Clerk and the Chief Hansard Reporter had listened to the tapes and the Hansard proof had been viewed. The Speaker advised that the words 'I am further advised that there are no more of these …' were said by the Premier but were not included in the record as they were considered to be a false start to the sentence which was subsequently restated by the Premier. As such, they were a redundancy and, therefore, under the parliament's editing policy were not included in the record. The words were removed by *Hansard*, were not included in the proof sent to the Premier's office and no correction was made to the proof by the Premier or her office.

The Assembly's editorial policy is in keeping with longstanding principles within Westminster parliaments and is based on the overarching principle that the *Record of Proceedings* is a report of the proceedings of parliament and is not a *verbatim* record.

Questions - deletion of personal details

ON 16 SEPTEMBER 2010, the Speaker reminded members that once a document had been tabled it could not be altered or otherwise interfered with unless the House otherwise ordered. On occasions, members, seeking to protect the identity or private details of constituents or others who provide them information, seek to delete private details by using black texta to block out names, addresses or other identifying features. The Speaker noted that while there is no difficulty with this from a procedural perspective, members who wished to protect the identity of constituents or others needed to be very careful to ensure that their efforts to redact information were actually effective. Simply using a black texta to block out an identifying feature may be insufficient to ensure that the original words could not be viewed in a copy or electronic version.

Questions - *sub judice*

ON 31 AUGUST 2010, during debate on the Child Protection and Other Acts Amendment Bill, a member referred (by way of illustration of a point) to four child safety issues, one of which the member knew was *sub judice* (the member stated at the time that one of the matters to which he would refer had 'just recently become *sub judice*'). The Deputy Speaker twice called on the member during his speech to cease referring to the matter that was *sub judice*. On the third occasion, the Deputy Speaker indicated to the member that the member would be seated if he again contravened the *sub judice* rule.

Questions ruled out of order

ON 19 AUGUST 2010, an Independent member's question without notice to a minister was ruled out of order by the Speaker on the grounds that it breached standing orders because it contained hypothetical matters.

The question sought an assurance from the minister that 'any future legal action' against a particular person was not politically motivated payback for public embarrassment caused to the minister, the minister's department and the government.

On 31 August 2010, an Opposition member's question without notice to a minister was also ruled out of order by the Speaker on the grounds that the matter was not within the minister's portfolio responsibilities.

Following conflicting claims in the media, attributed to the Premier and a parliamentary secretary, the member had asked the minister whether or not the leadership issue had been raised at the previous day's caucus meeting.

In ruling the question out of order, the Speaker reminded members that standing order 113 provides that questions to ministers must relate to (a) public affairs with which the minister is officially connected or to any matter of administration for which the minister is responsible; or (b) proceedings pending in the Legislative Assembly for which the minister is responsible (but discussion must not be anticipated).

In at least three questions without notice on 7 October 2010, members made imputations by use of the word 'rort'. On 26 October 2010, after reviewing the *Record of Proceedings*, the Speaker drew members' attention to standing order 115 concerning the rules relating to questions—in particular, that questions should not contain imputations.

The Speaker advised all members to consider the rules relating to questions.

Answers to questions

ON 1 OCTOBER 2010, a member wrote to the Speaker regarding a ministerial answer to a question on notice.

According to the member, the minister in his written response had attacked the member on a false premise.

The member believed that the answer was unparliamentary and if the answer had been made in the House the member would have had a remedy.

The Speaker reviewed the answer and advised the House on 26 October 2010 that he was not convinced that, if the answer had been given in the House, the member would have had an immediate remedy as there was no personal reflection.

The Speaker warned all ministers that answers to questions, on notice or without notice, are required to adhere to the normal rules of the House as regards personal reflections and parliamentary language.

On 25 November 2010, in a further statement dealing with ministerial answers to questions on notice, the Speaker noted that it is not the role of ministers in their answers to in effect impersonate the role of the Speaker by pronouncing that questions are in breach of standing orders. If a minister believed that a question did not conform to standing orders, they should raise the matter with the Speaker or the Speaker's delegates and not take it upon themselves to make a ruling which has no authority and is of no effect.

The Speaker made it clear that he would feel at liberty to rule out of order answers that contain personal reflections and unparliamentary language or that attempt to usurp the role of the Speaker.

Written answers would be returned to the minister concerned for them to submit a new answer.

Legislation - same question rule

ON 10 MARCH 2010, a Private Members' Bill, the Seniors Recognition (Grandparents Providing Care) Bill (the PMB) was introduced.

On 8 June 2010, the Minister for Disability Services and Multicultural Affairs introduced the Carers (Recognition) Amendment Bill (the Government Bill).

The Government Bill had nearly identical wording to the PMB and both Bills sought to achieve the same objective — recognise grandparents as carers through a charter.

The Bills were made cognate by motion of the House on 6 October 2010.

In speaking to the cognate motion it was noted by the Opposition Leader of Business that the PMB would be considered in a cognate debate:

> with a Bill that was subsequently introduced by the government because it could not find any grounds on which to oppose the bill that was introduced by the Member for Burdekin.

The cognate second reading debate concluded on 27 October 2010.

Immediately following the House's decision on the second reading question for the Government Bill, the Deputy Speaker ruled that the same question rule under Standing Order 87 was enlivened and the PMB could not proceed and the bill was discharged from the Notice Paper.

Statutory recognition of the Register of Members' Interests and the Register of Related Persons' Interests

PART 9 OF THE INTEGRITY Reform (Miscellaneous Amendments) Bill amended the *Parliament of Queensland Act 2001* by setting up a statutory basis for the two registers. The Standing Orders were amended on 28 October 2010 to harmonise the new statutory regime and Schedule 2 of the Standing Orders. (The amendments came into effect upon the commencement of the Act on 29 October 2010).

Debate of committee reports

MOTIONS TO DEBATE committee reports are very rare with only 45 minutes spent debating non-estimates committee reports in the past decade. Five committee reports on inquiries into matters referred by the House were tabled during the year. None of these were debated. The only committee report debated was the Economic Development Committee's report into the road safety benefits of fixed speed cameras. The debate was not extensive, only two members spoke and it was over in 4 minutes.

Governor's recommendation required for appropriation

SECTION 68 OF THE *Constitution of Queensland 2001* provides that the Assembly must not originate or pass a vote, resolution or Bill for the appropriation of an amount from or required to be paid to the consolidated fund that has not been recommended to by a message of the Governor.

The Standing Orders also provide that such message be presented to the Speaker and read to the House immediately prior to the question for the first reading of the Bill.

On 6 October 2010, the Treasurer introduced the Occupational Licensing National Law (Queensland) Bill 2010.

The Treasurer delivered his second reading speech and the debate was adjourned.

On 28 October 2010, prior to the order of the day being read for the resumption of the second reading debate on the Bill, the Treasurer sought leave to present a Governor's message for the Bill.

No explanation for this unusual practice was provided.

Amendments to Standing Orders

IN MARCH 2010 the Speaker informed the House that he would refer a number of issues to the Standing Orders Committee including: the use of computers and other communication devices in the chamber; the ability for petitions to be tabled by the Clerk without a sponsoring member; dress standards in the chamber; speaking time available for second reading speeches; opportunities for members to speak about matters affecting their electorate; the requirement for seconders to motions; and the deregulation of aspects of question time and the consideration by the committee of supplementary questions.

On 15 September 2010, the Standing Orders were amended to reflect the following changes:

- unless otherwise provided by the Standing Orders a motion need not be seconded
- an amendment in the House or in consideration in detail of a Bill need not be seconded
- petitions can now be lodged by a principal petitioner directly with the Clerk (paper petition) or sponsored by the Clerk on behalf of a principal petitioner (e-petition).

The amendment in relation to the lodgement or sponsoring of petitions was in response to an issue raised by a member with the Speaker.

The Speaker advised the House on 29 October 2009 that the

> member is concerned that, … the media and members of the public did not always understand that a member, in presenting or sponsoring a petition, is fulfilling a representative role and does not necessarily support or endorse the substance of the petition.

Further amendments were passed by the House on 28 October 2010 to harmonise Schedule 2 of the Standing Orders – Register of Interests with Part 2A of the *Parliament of Queensland Act 2001* (the *Parliament of Queensland Act* was amended to provide a statutory basis for the declaration and registering of interests, previously provided for under the Standing Orders).

Parliamentary Committees - review

THE COMMITTEE SYSTEM Review Committee tabled its report on the committee system on 15 December 2010.

The committee was established to inquire into and report on how the parliamentary oversight of legislation could be enhanced and how the existing parliamentary committee system could be strengthened to enhance accountability.

The committee's recommendations included:

- Establishment of nine portfolio-based committees which would examine policy and legislation in their dedicated policy areas. Each committee to have the ability to report on all aspects of government activities, including investigating and reporting on events, incidents and operational matters of the government. All new bills to be referred to a committee for consideration before proceeding through the House. Each portfolio committee to examine the Budget estimates for their portfolio.
- Bipartisan support of a committee would be required before the government could make any appointment to a range of sensitive public offices, including the Ombudsman, the Information Commissioner and the Auditor-General.
- The current Parliamentary Crime and Misconduct Committee would continue and in a first for Queensland, would be chaired by a non-government member. In addition, a review of the committee membership with a view to including non-members of Parliament – that is 'lay members'.
- Establishment of a Committee of the Legislative Assembly which would coordinate the business of the parliament as well as taking on the functions of the Standing Orders Committee and the Integrity, Ethics and Parliamentary Privileges Committee without the oversight function of the Integrity Commissioner. Membership of this committee would comprise the Leader of the House, the Premier (or nominee), Deputy Premier (or nominee), Leader of Opposition Business, Leader of the Opposition (or nominee) and Deputy Leader of the Opposition (or nominee).

The committee's report is available online at: http://www.parliament.qld.gov.au/view/committees/documents/CSRC/CSRCReport.pdf

While no formal response to the report has yet been tabled, the Government has indicated its intention to implement a new committee system early in 2011.

Parliamentary Committees (Membership of Committees) Amendment Bill 2010

NINE STANDING COMMITTEES of the Parliament of South Australia are established pursuant to the *Parliamentary Committees Act 1991*. For each of the Standing Committees established, their functions, composition of members and meeting procedures are set out in the Act.

One of the first tasks of a new Parliament following a general election is to appoint members from the respective Houses of Parliament to Standing Committees. Following the general election held on 22 March 2010, there was considerable indecision particularly on the part of the House of Assembly to appoint its members to Standing Committees. In reality this indecision was caused by the two major parties seeking to maximise their representation on Standing Committees. The initial position held by the major parties left little or no opportunity for the independent members of parliament to be appointed to Standing Committees and therefore add to a diverse committee membership.

To address the issue of a diverse committee membership and to accommodate the interests of independent members, the Parliamentary Committees (Membership of Committees) Amendment Bill was introduced into the Legislative Council on 25 May 2010 by the Minister for Mineral Resources Development and rapidly passed both Houses without amendment on 27 May 2010.

The purpose of the Bill was to increase the number of members on each of the Natural Resources Committee and Social Development Committee. The Natural Resources Committee was to increase its membership from seven to nine members with the addition of two further House of Assembly members. The Social Development Committee was to increase its membership from six to eight with one additional member from each House of Parliament.

Other changes impacting on Standing Committees as a result of this Bill included a quorum requirement of five members for committees consisting of eight or nine members. As a consequence of these amendments, the four additional members appointed to Standing Committees were all independent members. Interestingly, the increase in membership of these two committees was limited to the life of the current parliament. At the commencement of the next parliament, committee membership for both the Natural Resources Committee and Social Development Committee will return to their original size and composition.

It should also be noted that pursuant to the *Parliamentary Remuneration Act* 1990, membership of the Natural Resources Committee and Social Development Committee both carry with it additional remuneration. In this instance, those members appointed to the Natural Resources and Social Development Committees will receive an additional 10 per cent of their basic salary.

- Rick Crump, Deputy Clerk

The Hon Graham McDonald Gunn

THE HON GRAHAM McDONALD Gunn was first elected to the House of Assembly as the Liberal Member for Eyre on 30th May 1970. He was the Member until 1997 when his electorate was renamed Stuart following an electoral redistribution. He continued as the Member for Stuart until his retirement on election night on 20th March 2010.

His unbroken service lasted 39 years nine months and 21 days, the second longest serving Member of the House of Assembly. His record is only bettered by Sir Robert Dove Nicholls, a Speaker of the House during the Playford years. Sir Robert was a member from 27 March 1915 to 2 March 1956, serving for 40 years and 11 months[1], just one year and one month longer than Mr Gunn. Graham's is a remarkable record given the modern nature and pitfalls of his occupation.

He was the Deputy Speaker and Chairman of Committees from 1979 to 1982 and Speaker during the 48th Parliament 1994-1997. As Speaker, Graham maintained his straight talking no-nonsense, commonsense style which won both support and criticism. However his knowledge of parliamentary procedure and longevity in the House ensured he was respected and supported during the period.

Throughout his career he was highly critical of over officious public servants, often referring to them as 'little Hitlers' or, more famously, 'Sir Humphreys'. Graham Gunn constantly argued that the public service was created to serve the people; not to act as a *quasi* police force interfering in good, honest people's lives. He was meticulous in his reading of proposed Government legislation, checking the powers provided to the executive. He sought to amend any legislation in which he considered the powers provided to be too generous to the Executive or too onerous for the public. Affectionately known as the 'Gunn' amendment, these amendments constantly sought to restrict access by public service officers to private land and personal information without lawful authority. There is no doubt that these amendments struck a chord with not only his colleagues in the House but very strongly with his country electorate.

During his career in the Parliament, Graham Gunn served in 12 Parliaments, worked with 10 Premiers, saw the appointment of nine Governors, participated in 45 Addresses in Reply, sat in Parliament for 2129 days and saw the introduction of 4456 Bills.

It is interesting to reflect that when Graham was first elected to the South Australian Parliament, there were no computers or mobile phones, the Australian population was 12,446,027, the Prime Minister was Hon John Gorton, the Captain of the Australian cricket team was Ian Chappell and the median price for a house in South Australia was $11 900.

- David Pegram, Parliamentary Officer and Shane Hilton, PA to the Clerk

Footnotes

[1] There are longer serving Members of the Parliament of South Australia but these Members either served as Members of the Legislative Council or as Members of both Houses.

Legislative Council - South Australia

Budget and Finance Committee goes from strength to strength

THE BUDGET AND FINANCE Committee continues to be an integral part of the State Parliament's scrutiny of the Budget and State finances. The Committee is a product of the South Australian political dynamics with the ultimate goal being to improve the accountability of the executive arm of Government to the Parliament.

The Budget and Finance Committee was originally appointed pursuant to a Resolution of the Legislative Council on 28 March 2007. The re-established Committee was appointed on 26 May 2010. The Committee's terms of reference are broad enabling the Committee to initiate inquiries relating to any aspect of the financial administration of the State. This includes inquiries into any matter relating to past, current, proposed and future expenditure by the public sector.

Recent changes to the Committee membership has resulted in the membership being strengthened by the inclusion of the former Leader of the Government in the Upper House who joins the current Leader of the Opposition in the Legislative Council as well as the former State Treasurer under the Liberal Government and a former senior Public Servant, now an independent Member of the Upper House.

Identifying perceived weaknesses in the Assembly's Estimates Committees' process, the establishment of the Budget and Finance Committee not only provides an opportunity for Upper House Members to examine the Budget and Departmental programs, but also a means by which the Parliament is able to maintain a year-round examination of the Budget programs, as opposed to the half dozen days currently allocated by the House of Assembly's Estimates Committee hearings.

The Committee's unique terms of reference -

> "III. That Members of the Council who are not Members of the Committee may, at the discretion of the Chairperson, participate in proceedings of the Committee but may not vote, move any motions or be counted for the purposes of a quorum."

enables other Members of the Council to attend hearings in which they have specific interest. This results in all portfolio areas coming under wide scrutiny as any Member of the Legislative Council may ask questions of any Department Chief Executive who is appearing before the Committee without preclusion, which has been identified as a weakness of the House of Assembly's Estimates Committees.

Since its inception, the Committee has maintained its scrutiny of all Government Departments and Agencies including the Treasury and Finance Department, Health, Education and Children's Services, Department of Justice, Premier and Cabinet, as well as taking on specific issues of immediate public concern such as the Adelaide Oval Redevelopment. In fact, it is considered to be the Parliament's most active Committee!

Tasmania - House of Assembly

Samoa-Tasmania CPA partnership

THE TWINNING ARRANGEMENT or branch partnership between the Parliaments of Tasmania and Samoa continues to go from strength to strength. Formed officially in February 2007, it is one of the earliest such partnerships in the Commonwealth. During 2010 more equipment was supplied by Tasmania and three Parliamentary Officers from Samoa undertook attachments in Hobart. This brings to six the number of staff who have been attached through the CPA Regional Trust Funds. In August 2010 a delegation of Tasmanian MPs visited Samoa for one week. The busy programme included a visit to the Fono during its sittings; a meeting with the Prime Minister; dinner with the Samoan judiciary; two dinners for Members of both Parliaments; a thanksgiving service to acknowledge the efforts of the emergency services during the earthquake and tsunami of September 2009 and to remember the victims and their families. The service was arranged by the Australian High Commission as was a visit to the South Coast of Upolu to view reconstruction projects. The visit was an excellent opportunity to promote further goodwill through Member to Member contact which underpins the various staff exchanges. In January 2011 the new High Commissioner to Samoa, Dr Stephen Henningham travelled to Hobart for meetings prior to his posting to Apia.

Size of parliament

THE SIZE OF THE Tasmanian parliament is still on the political agenda. Legislation is anticipated shortly to increase the size of the House from its current size of 25 Members to 35 (the number before the reduction in 1998).

Interestingly, the Legislative Council passed a resolution in 2010 by an appreciable margin indicating that it is content remain at 15 MLCs. It will be recalled that until 1998, the Council consisted of 19 members.

Integrity Commission

THE INTEGRITY COMMISSION, a Tasmanian version of an 'anti-corruption watchdog' commenced operations in October 2010. The Board of the Commission consists of: Hon Murray Kellam AO (Chief Commissioner), Mike Blake (Auditor-General), Simon Allston (Ombudsman), Iain Frawley (State Service Commissioner), David Hudson, Elizabeth Gillam and Luppo Prins APM. The CEO is Mrs Barbara Etter APM.

Under the *Integrity Commission Act* of 2009 a Joint Parliamentary Standing Committee has been established to monitor the activities of the Commission and liaise with it. The Committee's role is set out more fully in section 24 of the Act. Three Members have been appointed from each House of Parliament to form the Committee.

A Parliamentary Standards Commissioner has been appointed. He is Hon Fr Michael Tate AO.

Changes to Standing Orders

Quorums and Divisions

AS A RESULT OF THE MOVE of a number of Members from the Parliamentary Annexe (which is to be demolished) to more distant temporary accommodation in the adjacent 10 Murray Street office building, the House approved changes to Standing Orders to allow the division bells to be rung for up to five minutes instead of the old two minute limit. This applies to the formation of a quorum at any time during the sittings and to divisions. In the case of the latter the new rule is further clarified to provide that if the Whips are satisfied that all Members are present they may ask the Speaker to switch of the bells before the five minutes have elapsed. The new arrangement seems to be working satisfactorily.

Committees

THE MINORITY SITUATION of the Government in Tasmania (Labor rules in a power sharing arrangement with the Tasmanian Greens) has led to some interesting manoeuvring in the Chamber.

One result has been the referral of a number of controversial matters to House of Assembly Select Committees. For a number of years there were virtually no Select Committees in the Assembly. The small numbers in the House may have been a factor. Since June 2010 there have been five Select Committees established. They are: Child Protection; Costs of Housing, Building and Construction in Tasmania; Gaming Control Amendment Bill; Scottsdale Sawmills; and Water and Sewerage.

With such a significant number of Committees being established, strain has been placed on staff resources.

As a result of the foundation of a new statutory Joint Committee on Integrity the administrative responsibility for the statutory Committees has been re-arranged between the Houses. The House of Assembly now has responsibility for Public Works and Integrity and the Legislative Council has Subordinate Legislation and Public Accounts. Hitherto, Public Accounts was the responsibility of the House.

Question Time

FOLLOWING THE GENERAL election in the middle of 2010 the rules for Question Time have been adjusted slightly to take into account the changed party situation. The daily minimum allocation for Questions without Notice is now Opposition 7, Greens 3, and Government backbenchers 3. Question Time concludes after one hour has elapsed or until such time as the quota has been filled.

Minister ejected

AFTER A ROWDY FIRST part of the last sitting day in 2010 (18 November), the Speaker ejected the Minister for Education (Hon Lin Thorp MLC) from the Chamber for 10 minutes. It will be recalled that LC Ministers have appeared in the House of Assembly Question Time for the last couple of years. It was the first time that a both Minister and an MLC had been ordered to leave.

Second Greens Minister

FOLLOWING THE RESIGNATION from the Ministry of long serving Treasurer, Hon Michael Aird MLC during December 2010 the Tasmanian Greens acquired their second Cabinet position when Secretary to Cabinet, Ms Cassy O'Connor MP was elevated into the Ministry. She joins Greens Leader, Hon Nick McKim MP in the power sharing Government.

Change of Premier

ON 24 JANUARY 2011 the Premier David Bartlett MP resigned as Premier citing the need to spend more time with his young family. He will now become the Attorney-General and Minister for Justice. The Deputy Premier and Treasurer, Hon Lara Giddings MP has become the new Premier. She is the first female Premier of Tasmania and will retain the Treasury portfolio.

- Peter Bennison

Victoria - Legislative Assembly

Bushfires Royal Commission Report — publication, release, debate

THE FINAL REPORT OF the 2009 Victorian Bushfires Royal Commission was tabled and released to the public on Saturday 31 July 2010. The report was first presented to the Governor of Victoria by the Commissioners on the morning of 31 July 2010. The Governor then presented it to the Premier, who passed the report onto the Clerk of the Legislative Assembly and the Clerk of the Legislative Council and the report was deemed to be tabled that day pursuant to the provisions of the *Bushfires Royal Commission (Report) Act* 2009.

Having been tabled, the report was made available to members of parliament and the public. Parliament House was specially opened on that Sunday to enable Members of Parliament and the public to collect copies of the report.

The Minister for Housing moved a motion to enable the Report to be debated in the House after Question Time on 10 August 2010. The Minister's motion also fixed that debate on the motion be limited to a lead government and non-government speaker for no more than 20 minutes, a second government and non-government speaker for no more than 15 minutes, a further six government and six non-government speakers for no more than 10 minutes, and seven government and eight non-government speakers to each speak for no more than five minutes; with the Chair to put the question on the motion following the final speaker. Debate on the report took place after question time on 10 August 2010, nine days after the report was tabled in the House.

– Adam Smith, Parliamentary Officer

November 2010 election

THE VICTORIAN STATE election was held on Saturday, 27 November 2010.

The incumbent Labor Government narrowly missed being elected for a fourth term, after losing 12 seats to the Liberal Party. The Nationals gained the seat of Gippsland East, previously held by Independent member, Craig Ingram.

In the 88-seat Legislative Assembly, the Labor Party won 43 seats (previously 55), the Liberal Party won 35 seats (previously 23) and the National Party won 10 seats (previously 9).

The new government was formed by the Liberal Nationals coalition, led by Premier Ted Baillieu. The Honourable Daniel Andrews is the new leader for the Opposition.

The 57th Parliament was opened on Tuesday 21 December 2010, and sat for one day only.

The Honourable Ken Smith was elected Speaker and Ms Christine Fyffe was elected Deputy Speaker, both unopposed.

The Honourable John Brumby, former Premier, announced his resignation as the Member for Broadmeadows on 21 December 2010.

The Broadmeadows by-election, held on 19 February, was won comfortably by the ALP's Frank McGuire, the Coalition not fielding a candidate.

– Skye Thomas,
Assistant Chamber Officer

Ivanhoe by-election — issue of writ of *supersedeas*

ON 25 AUGUST 2010, the Member for the Electoral District of Ivanhoe, Craig Langdon, resigned his seat under politically contentious circumstances.

Mr Langdon was a member of the ALP Brumby Government and party whip in the Lower House; he had been a serving member of Parliament since 1996.

The resignation came four days after the federal election and three months out from the state election, due to be held on 27 November 2010.

Section 61(2) of the *Electoral Act* 2002 (Vic) requires that the Speaker must issue a writ for a by-election within one month after the occurrence of the vacancy.

There is no facility or provision to take into account the situation of a vacancy occurring so close to the expiration of parliament.

A by-election at this point in time, aside from being a significant public expense, would, in all probability, lack any utility. Even on the shortest possible timeline allowed for under the Act, a result would be unlikely in time for the successful candidate to be sworn-in and take a seat in the House; and if the by-election was set for a date after the expiration of parliament, its entire conduct would be a nonsense. The table below indicates the possible timeline for each stage and key dates for a by-election.

Stage	Provision	Key dates
Issue of writ *resignation 25/8/10*	Speaker must issue a writ for a by-election within one month of the vacancy occurring. *Electoral Act* 2002 - s 61(2)	Earliest: 25 August 2010 Latest: 27 September 2010 *Interpration of Legislation Act* 1984, s 44(1) and (6)(b)
Close of Roll	Must be seven days after the date of the writ. *Electoral Act* 2002 - s 63(3)	Earliest: 1 September 2010 Latest: 4 October 2010
Final nom day	Must be a day within the period beginning 10 days after the date of the writ and ending 28 days after the date of the writ. *Electoral Act* 2002 - s 63(8)	Earliest: 4 September 2010 Latest: 25 October 2010
Election day	Must be a Saturday within the period that starts 15 days after the final nomination day and ends 30 days after the final nom day. *Electoral Act* 2002 - s 63(10)	Earliest: 25 September 2010 Latest: 20 November 2010 Other possible dates: 2, 9, 16, 23, 30 Oct; 6, 13 Nov.
AFL Grand Final Day - 25 September 2010 Final sitting week before expiry - 5, 6 and 7 October 2010 Parliament expires - 2 November 2010 State election - 27 November 2010		
Return of writ	Must be returned within 21 days after the day of the election. *Electoral Act* 2002 - s 61(4)(c)	

continued overleaf

This unusual set of circumstances raised a number of considerations:

- if a by-election date was set after 2 November it begs the question: how can someone be elected to an expired parliament?
- how the writ for a pending by-election interacts with the writ for a general election. Would the general election writ automatically cancel-out the by-election writ?
- if a by-election were conducted:
    - any result delivered before 2 November sees a successful candidate hold the seat for no more than a few weeks before the expiry, and most likely not in time for them to be sworn-in;
    - any result delivered after 2 November would be overridden by the result of the general election.

A comparable situation from 1996 leant some guidance on these issues. In this case two pending by-elections for the Electoral Districts of Niddrie and Pascoe Vale were cancelled upon the dissolution of parliament. The vacancies occurred early in the year when two members resigned their seats in order to contest the 1996 federal election. At this point the date of the state election was unknown. By-election writs were issued on 16 February 1996 setting an election date of 30 March. A general election was called in the intervening period and when parliament was dissolved on 5 March, the conduct of the two pending by-elections was ceased by the Victorian Election Commission (VEC) on the basis that no unexpired portions remained of the terms of the previous Members for Niddrie and Pascoe Vale hence, there was no point in continuing with the conduct of the by-elections. The total cost of the two by-elections was reported at $6,401 comprising payment of electoral staff, administrative costs and advertising.

The 1996 example highlights that the expiry of parliament in November would effectively halt the conduct of a pending by-election. This would mean that even with the issue of the by-election writ, the Speaker could set the election date after 2 November, at which point it would be cancelled upon the issue of the writ for a general election. This course of action would allow the significant expense of conducting a by-election lacking any real utility to be avoided. Unfortunately it would not avoid incurring at least some expense in the lead up to a by-election.

Section 64(b) of the *Electoral Act* 2002 imposes a duty on the VEC, on the receipt of a writ for any election, to publicly advertise receipt of the writ, the final nomination day and election day named in the writ and the office of the appropriate election manager. Even if the VEC did nothing else with regards to organising a by-election, money would still have to be spent on the required advertising.

The ideal solution would be not having to issue a writ at all. As this was not legally permissible, the Speaker explored a number of other options open to her. Several authorities formed a basis for action:

- the inherited privileges, immunities and powers of the House of Commons provided to the Legislative Assembly by virtue of section 19 of the *Constitution Act 1975* (Vic);
- precedents in the House of Representatives where by-election writs had been withdrawn in advance of a general election
- section 41A of the *Interpretation of Legislation Act* 1984 (Vic), which states that a power to make, issue or grant an instrument under an Act is construed as including a power to repeal, revoke, rescind, amend, alter or vary that instrument

Section 19(1) of *Constitution Act* 1975 (Vic) conveys to Parliament the inherited privileges, immunities and powers enjoyed by the House of Commons as at 21 July 1855. Among these includes an instrument called '*supersedeas* to writs', which is used as a means by which a writ for a by-election that has been issued for reasons shown to be incorrect or no longer applicable may be cancelled by a further writ of *supersedeas* (from Latin meaning 'you shall desist'). Its most recent use was in 1880 when an unexpected delay in the transfer of a member from the Commons to the Lords resulted in the writ for by-election having been issued prematurely. A *supersedeas* to the writ was ordered to allow the member in question to maintain his seat in the House.

A *supersedeas* to a writ, as a practice of the House of Commons, clearly falls under section 19 as an inherited power. While this provision can be overridden by local law, in this case there is no prevailing legislation to counter its function, indeed, electoral and constitutional legislation is completely silent on the issue. Also,

Ivanhoe by-election — issue of writ of *supersedeas*

given the instrument had existed in the Commons prior to 1855, and had been used since, it could not be argued that this is a power that has fallen into disuse.

Precedents in the House of Representatives in 1931 and 1934 are also applicable to the Victorian situation. In both cases, writs for by-election were issued for vacancies as a result of the death of the sitting member. Subsequent to the issue of the writs, dates for the dissolution and general election of the House were announced and, consequently, the Speaker withdrew the writs in both cases.

The contention that the Speaker could withdraw or revoke a by-election writ is further supported by section 41A of the *Interpretation of Legislation Act* 1984 (Vic) that a power to do includes the power to undo. Specifically: if an Act (eg. *Electoral Act* 2002) confers power to make an instrument (eg. issue a writ for by-election), the power shall be construed as including a power, exercisable in the same manner (eg. issue of a further writ), to revoke an instrument made in the exercise of that power.

Having formed a basis of authority, the Speaker took the following approach.

On 31 August 2010 (the first available sitting day) the Speaker announced the resignation of the Member for Ivanhoe to the Assembly. On September 13 a writ for a by-election for Ivanhoe District to be held on 6 November was issued and on September 14 the Speaker issued a writ of *supersedeas* directing that the conduct of the by-election cease and revoking the by-election writ.

The issue of a writ of *supersedeas*, while a particularly strong exercise of power in comparison to simply withdrawing the writ, as was done in House of Representatives, comprehensively addressed several issues including the lack of existing precedent within Victoria, the political nature of the resignation and the specific intention to avoid incurring any public costs.

The by-election writ was delivered close to close of business on 13 September and the writ of *supersedeas* was delivered between 9am and 10am on 14 September. The timing was critical to prevent any chance of advertisements being lodged and to shield the VEC from criticism that it had failed to meet its statutory obligation to advertise.

The conduct (or lack thereof) of an Ivanhoe by-election was successfully and legally avoided without unnecessary public expense. In the announcement to the House on 14 September, the Speaker made the point that she had used the powers available to her to issue a writ of *supersedeas*, but suggested that consideration be given to amending the *Electoral Act* 2002 (Vic) in the next parliament to give clarification should similar circumstances occur in future.

– Vivienne Bannan,
Senior Parliamentary Officer

Speedy passage of suspended sentencing bills — Opposition tactics

ONE OF THE MAIN THEMES of the 2010 Victorian election was law and order, with each party arguing that they were 'tough on crime'. It is not surprising, then, that the Sentencing Amendment Bill 2010 got caught up in the politics. The bill abolished suspended sentences for serious offences, a reform promised by the Labor Government earlier in the year.

In the last sitting week before the election (with fixed four year terms, we knew well in advance that it would be the last sitting week) the Labor Government introduced two bills. One was the Sentencing Amendment Bill 2010. When the bill was introduced it seemed that the Labor Government wanted to get the bill and second reading speech on the record but had no plans to pass it before the election.

However, the Liberal/Nationals Coalition had other ideas. Their policy was to abolish suspended sentences for all crimes and this was an opportunity to make the Labor Government look soft on crime. They accused the Labor Government of refusing to pass the bill before the last sitting day and challenged them to pass it and bring it into operation immediately instead of waiting until next year.

The Liberal/Nationals Coalition called for the bill to be read a second time immediately but the Labor Government insisted on waiting until the next day, which is more common. So the next day the Coalition continued debate immediately after the Attorney-General had made the second reading speech instead of adjourning debate for the usual two weeks.

The Assembly passed the bill the day after it was introduced. Things progressed so quickly that, at one stage, debate had to be adjourned so the message from the Governor recommending an appropriation for the bill could be presented (actually the message had to be quickly obtained and it was signed by the Administrator; the Governor and Lieutenant-Governor were both away). The Council passed the bill the following day. This was yet another example of just how quickly a bill can pass if the circumstances are right.

In an interesting post script, the Liberal/Nationals Coalition won government in the election and on the first sitting day introduced the Sentencing Further Amendment Bill 2010. The bill abolishes suspended sentences for a range of additional serious crimes. The Coalition Government had planned to simply introduce the bill and leave the second reading until 2011, but this time it was the Labor Opposition that threw a spanner in the works. They moved an amendment to the question 'that the bill be read a second time tomorrow' and as a result the Attorney-General made the second reading speech immediately. We await 2011 with interest.

– Kate Murray,
Manager, Procedure Office

Amendments to Standing Orders — Opening of Parliament

THE STANDING ORDERS Committee tabled a report in December 2009 in which it recommended improvements to certain aspects of the Opening of Parliament procedures.

Change to opening day arrangements

Under the previous arrangements, Commissioners appointed by the Governor to open Parliament and swear in members would proceed to the Council Chamber while Assembly members waited for the Usher of the Black Rod to deliver an invitation to attend the Council Chamber to hear the opening Commission read.

After the reading of the Commission Members of the Assembly return to their Chamber to be sworn in by one of the Commissioners.

The Standing Orders Committee recommended the following changes to this process.

That Standing Order 2 be amended so far as is necessary to allow:

- the Commissioner appointed to swear in Assembly Members to proceed directly to the Assembly Chamber, rather than to the Council Chamber;
- the Clerk of the Legislative Assembly to read the Commission convening Parliament to Assembly Members.

Abolition of need for Privilege Bill

Traditionally the Assembly introduces a bill on the Opening Day of a new Parliament, prior to dealing with the Governor's Speech, to assert the rights and privileges of the house to transact its own business before the business of the Crown.

The Standing Orders Committee recommended that Standing Orders be amended so that the introduction of a privilege bill on the opening day of a new Parliament or session is no longer required. Rather, the House should assert its right to conduct its own business by conducting formal business before the Governor's speech is reported.

Motion to amend Standing Orders in the Assembly

In the last sitting week of the 56th Parliament, the Government moved a motion to amend Standing Orders to reflect the Committee's recommendations. The Legislative Council had also changed their Standing Orders to reflect the new arrangements and consequently the Assembly needed to ensure their procedures were aligned with those of the Council. These changes were considered to be technical and minor in nature and not take way from the historical importance of the Opening Day ceremony.

The motion was supported by the Opposition but with a proposed amendment to the Privilege aspect which would retain some of the original wording to ensure the House's right to transact any formal business including the introduction of a bill.

The amendment was circulated prior to the motion being moved which allowed debate on both the motion and amendment.

The Government agreed with the Opposition's amendment and the House agreed to the amended motion.

– Charlene Kenny, Parliamentary Officer

Dealing with Dispute Resolutions — third time's a surprise

THE WAY THE LEGISLATIVE Assembly and its procedural staff deal with Dispute Resolution Committee (DRC) Resolutions was tested again in July 2010 (see Issue 23 pp 55–56 and Issue 24 p 63 for previous Dispute Resolution articles).

The DRC reached a Resolution on the Transport Legislation Amendment (Ports Integration) Bill 2010. This was tabled in both Houses on 27 July 2010. The resolution recommended the Legislative Council pass the Bill as it was first sent by the Assembly.

The Resolution was tabled separately from other documents during formal business. This would allow the Leader of the House to move what procedural staff thought would be a motion to take the Resolution into consideration later that day. However, the Leader of the House moved, by leave, that the House take note of the Resolution immediately.

This caused a problem for other members, as there were no copies of the Resolution or the Bill in the Chamber. Members took points of order, saying they needed both documents to debate the take note motion. Procedural staff quickly prepared more copies of the Resolution, and rushed both these and copies of the Bill into the Chamber.

Once members had access to the Resolution and Bill they debated the take note motion, the Assembly eventually agreeing to it.

The Assembly did not need to pass the bill, having already done so. However, the bill had been rejected by the Council before being referred to the DRC, so was in the Assembly's hands. The Leader of the House moved, by leave, to return the bill to the Council for agreement, and send a message advising them accordingly. The Assembly agreed without debate.

The events after the Resolution was tabled show that, although this is the third bill to be referred to the DRC, the procedure for dealing with Resolutions is still a challenge to both members and procedural staff. The *Constitution Act* places time restrictions on the process which heightens tension for all involved, and creates a sense of urgency that leads to rapid action by the Assembly, as we've seen in this case.

This also highlights the unpredictable nature of the Assembly, and the need for procedural staff to always be prepared for unlikely circumstances.

– Joel Hallinan,
Customer Service Officer

Valedictory statements

A RESOLUTION OF THE HOUSE allowing valedictory statements from retiring members with a time limit of 10 minutes each was agreed to on Wednesday 15 September 2010.

Provision was also made for the Premier to make a statement on behalf of the Member for Ballarat West who was ill and unable to attend parliament.

On Thursday 7 October 2010, after the completion of the Government business program, retiring Members made their valedictory statements.

There were eight statements made including two ministers who announced their retirements on that day: former Speaker Judy Maddigan, the Member for Keilor who had served as a Member of Parliament for 28 years; and the Member for Murray Valley, affectionately known as the Father of the House, who had served for 34 years. The Member for Murray Valley was allowed an extra five minutes for his contribution.

Members' contributions reflected on their time as a Member of Parliament and also allowed them to thank their family, staff and supporters.

All members listened intently to the memorable, funny and sad recollections of their colleagues.

The Member for Coburg summed up his light hearted contribution with:

> I close by wishing you all *au revoir*, *arriverderci* and *adios*.

- Anne Sargent,
Assistant Clerk Procedure &
Serjeant at Arms

Victoria - Legislative Council

July to November 2010: a few facts and figures

THE 56th PARLIAMENT WAS dissolved by the Governor on 2 November 2010. The final sitting week of the session occurred from 5-7 October, concluding proceedings for the year earlier than is otherwise usual.

During the July to October period, the Legislative Council sat for 18 days. The average sitting day was ten hours and forty two minutes, the highest sitting day average for the 56th Parliament. Three of the sitting weeks were extended to include a sitting on the Friday. This typically occurs more often towards the end of the year, however occurring on three occasions is uncommon. Despite only sitting for five weeks between July and October, the total number of sitting hours was comparable to that of a regular six month period.

During this period the House dealt with 41 Bills, all of which were passed. One of these was a Private Member's Bill dealing with political advertising. It gained enough support to pass the Legislative Council, but was defeated in the Legislative Assembly. Another four Bills were Government Bills introduced in the Council, all of which were subsequently passed in the Assembly. 34 of the 41 Bills were considered in the Committee of the whole, over three quarters of all Bills considered, which is a very high proportion. 14 of these were amended.

At the conclusion of the 56th Parliament five Government Bills had not been dealt with, and subsequently lapsed. Some of these had been on the *Notice Paper* for many months, and one dated back to 2008.

- Annalies Engwerda,
Senior Client Services Officer,
Table Office

The 56th Parliament: a few facts and figures

A TALLY OF FIGURES reveals that during the 56th session of Parliament, the Legislative Council sat a total of 195 days, amounting to just over 1897 hours. 2008 was the busiest year, during which the Council sat 52 days and for over 508 hours, and of course 2006 the quietest as the current session of Parliament began in December that year.

351 Bills were dealt with – 340 of which were passed by the Council, nine were defeated and two were withdrawn. As mentioned earlier, five Government Bills were not dealt with by the end of the session, and subsequently lapsed. Three Bills that were defeated in the Legislative Council were later reintroduced, two in a slightly amended form, after being considered by the Dispute Resolution Committee, a process that has received prior commentary in *Parliament Matters*. All three were eventually agreed to by both Chambers and received Royal Assent.

151 Bills were considered in the Committee of the whole, of which 49 were passed with amendment/s. The greatest proportion of amendments agreed to were moved by the Government whereas, despite moving by far the largest number of amendments, only a small number of those moved by the Greens were agreed to.

With the introduction of a Sessional Order at the beginning of the Parliament giving increased precedence to General Business on Wednesdays, the time spent dealing with General Business has increased. By the end of the session, almost one third of the total sitting time had been devoted to General Business. Just under half was spent on Government Business, the remaining time spent dealing with Formal Business, Question Time and the like.

An unprecedented number of Questions on Notice were submitted this Parliament, with 12,458 questions asked since 2006. Of these, 11,447 received answers.

- Annalies Engwerda,
Senior Client Services Officer,
Table Office

Suspension of Leader of the Government – non-compliance with order for the production of documents

THE LEGISLATIVE COUNCIL has been witness to a number of motions calling for the Government to produce various documents since the Sessional Orders enabling orders for the production of documents were introduced on 14 March 2007. These orders for the production of documents have produced a wide variety of responses from the Government. They have included claims that the Council did not possess the power to order documents to be produced, the refusal to produce any documents on the grounds of Executive privilege, on some occasions the provision of most documents excepting those with a claim of Executive privilege, and on other occasions the production of documents in full compliance with the Order. It is also worth noting that on every occasion the Government has made a claim of Executive privilege it has failed to comply with the Sessional Order's requirement that the documents be lodged in the first instance so that such a claim may ultimately be determined by an independent legal arbiter.

Previously mentioned in the February 2008 edition of *Parliament Matters*, the Council suspended the Leader of the Government on 22 November 2007, from 4.00 pm until the end of the sitting at 10.48 pm that day, for not having complied with a resolution of the Council on 21 November 2007 to produce a number of documents by the required date and time.

More recently, in response to the Government's refusal to produce various documents sought, the Leader of the Opposition, Mr David Davis, moved a motion on 5 May 2010 noting the failure of the Government to provide all of these documents and demanded that the Leader of the Government, Mr John Lenders, as the representative of the Government in the Council, lodge with the Clerk by 25 May 2010 all the outstanding documents referred to for examination by an independent legal arbiter. The resolution was agreed to with the support of 20 non-Government Members, with 18 Government Members voting against the motion. In accordance with Sessional Order 21, the Clerk communicated the request to the Secretary of the Department of Premier and Cabinet.

The Clerk received two letters from the Attorney-General, the Hon. Rob Hulls, in response to this request. The first letter was received on 14 May 2010 and stated that the Government was considering its response to the order. The second letter was later received on 1 June 2010, which confirmed claims of Executive privilege for certain documents and stated that the Government was still preparing its response in relation to the other various orders.

Following the Attorney-General's letters, the Council passed a further resolution on 15 September 2010. It resolved to suspend the Leader of the Government from the service of the Council if he failed to comply fully with this order and lodge with the Clerk all the documents contained for arbitration by an independent legal arbiter by 4.00 pm on 22 September 2010.

The Leader of the Government did not produce the documents by the required date and time, and as a result, was suspended from 2.00 pm on 5 October 2010 until 12 noon the following day, 6 October 2010. Mr Lenders was not in the Chamber at the time the suspension took effect, but the President did interrupt proceedings and announce the suspension. It is unlikely any further action will be taken in relation to this matter given that the suspension took place in the final sitting week of the 56th Parliament and there has been a change of Government in the 2010 State Election.

- Anthony Woodley,
Client Services Officer, Table Office

Assembly defeats Council Bill on first reading — Government (Political) Advertising Bill 2010

The Government (Political) Advertising Bill 2010 was introduced into the Legislative Council on 3 February 2010 by the Leader of the Opposition, Mr David Davis.

The Bill aimed to create guidelines for Government spending on political advertising and information campaigns by Government departments and authorities, especially during election periods. Specifically, it set out the criteria for conducting a Government advertising campaign in the form of guiding principles, in that it should be accurate and truthful, not Party political and not directly or indirectly affecting public opinion during an election period.

Furthermore, Government advertising campaigns would also require a Notice of Compliance from an Independent Advertising Campaign Review Panel that would be established, unless issued with an exemption certificate by a Minister.

The second reading of the Bill was moved on 1 September 2010 and at the conclusion of the second reading speech by Mr Davis, a Government party Member, Ms Candy Broad proceeded to immediately debate the Bill. This was unusual as it is normal practice for the speaker following the lead speaker to adjourn debate for one week in order for Members to further acquaint themselves with the content of the Bill. Ms Broad explained that with so few sitting days left before the election she presumed that the Opposition would expect debate to continue immediately following the second reading speech. At the conclusion of Ms Broad's contribution, Ms Sue Pennicuik moved that debate be adjourned for one week, claiming that no one in her party, the Australian Greens, nor Mr Peter Kavanagh, from the Democratic Labor Party, had had the opportunity to scrutinise the Bill. The House divided on the motion and it was agreed to by 19 'ayes' and 17 'noes', and so debate on the Bill was adjourned for one week.

The second reading of the Bill was passed unopposed in the Council on 15 September 2010. The Bill proceeded into Committee of the whole, as some Members wished to ask detailed questions about the operation of the legislation. Following a reasonably lengthy Committee stage, during which the Government posed a series of 'scenarios' to Mr Davis that could be faced if this legislation were to be passed, the Bill was read a third time and passed, again unopposed by the Government. The Bill was then sent to the Assembly with a Message requesting their agreement. On receipt of the message in the Assembly, Mr Andrew McIntosh moved that the Bill be read a first time. The House divided on the motion, and the question was negatived by 33 'ayes' and 43 'noes'. The Bill was returned to the Council the following day advising that the Assembly had rejected the Bill.

On 16 September 2010, Mr Davis moved that the Council take note of the Message received from the Assembly rejecting the Bill. In his remarks, Mr Davis argued that the Assembly's rejection of the Bill without it being first read was undemocratic and reasoned that at the very least the Assembly could have received the Bill which would have provided the opportunity to amend it in later stages, especially when one considers that the Bill had been passed in the Council without a Division.

- Anthony Woodley,
Client Services Officer, Table Office

Bills not dealt with at the conclusion of the 56th Parliament

AT THE CONCLUSION OF THE 56th Parliament five Bills remaining on the Council *Notice Paper* which had been received from the Assembly lapsed as they had not been dealt with by the Council. Three of those five Bills were of particular interest.

Members of Parliament (Standards) Bill 2010

The Members of Parliament (Standards) Bill 2010 arose from the findings of a Law Reform Committee report, which recommended the *Members of Parliament (Register of Interests) Act* 1978 be updated and expanded to include a statement of values for Members, as well as a Members' Code of Conduct. Despite the Committee recommending that the 'Government release an exposure draft of the recommended changes to the Act and consult further with members of parliament and the community before finalising the amendments to the Act', the Bill was introduced in the Assembly in March 2010, shortly after the Committee tabled its final report in December 2009.

When debated in the Assembly, the Opposition opposed the Bill, as in their view there was, a 'complete absence of any effective mechanism for investigation and enforcement of the code of conduct and disclosure standards created by the Bill, or any other laws and standards that on paper should prevent Government misuse of office'. The Opposition circulated amendments in the Assembly to expand the provisions of the Bill to allow the Ombudsman to investigate claims of wilful contravention of the Code of Conduct, or failing to disclose registrable interests. These amendments were not supported by the Government.

Despite being introduced into the Council in April 2010, the Bill was never debated, presumably because it became clear to the Government that it would not get the required support from non-Government Members. Interestingly, following the conclusion of parliamentary sittings in October, the Government released an exposure draft of legislation to establish a Parliamentary Integrity Commissioner (PIC), who would provide advice and investigate complaints relating to breaches of codes of conducts for Members, Ministers, parliamentary advisers, ministerial officers and electorate officers. The new PIC would also advise Members about registrable interests under the *Members of Parliament (Standards) Act*. However, following the defeat of the Labor Government at the November 2010 election, it is not clear whether the new Government will proceed with this legislation.

Judicial Commission of Victoria Bill 2010

The Judicial Commission of Victoria Bill 2010 aimed to establish a new Judicial Commission of Victoria, which would replace the Judicial College of Victoria. Whilst there was disagreement between the parties about the policy behind the legislation, the reason it was of particular interest from a procedural point of view was that the Bill directly amended Victoria's *Constitution Act* 1975 to replace the process for investigating judicial misconduct in the Constitution with a similar process set out under the new Bill. However, as the existing provisions were in Part IIIAA of the Constitution relating to the judiciary, which is an entrenched Part of the Constitution, the third reading of the Bill had to be passed with a special majority (3/5ths of the whole number of Members) of each House.

As the Government had a special majority in its own right in the Assembly, the required special majority was obtained in that House. However, this was not as easily achieved in the Council as the Liberal/National Opposition held 17 of the 40 seats, meaning even if all other parties supported the Bill, the required 24 votes for a special majority would not be obtained.

When the Bill was considered by the Council, the second reading was passed on Division, the Bill was amended in Committee of the whole, and then the President put the question, That the Bill be now read a third time. As a Division was required, the President advised the House that the result of the Division would also determine whether a special majority was obtained.

However, following the ringing of the bells for the Division, the Manager of Government Busi-

ness took a point of order that it was inappropriate for the Division to be held at that time as the Leader of the Government was currently suspended by the House (he had earlier that week been suspended for 24 hours due to the failure of the Government to provide certain documents ordered by the House) which meant he could not be counted towards the special majority. Although the presence or otherwise of the Leader of the Government would not have made a difference to the outcome, the House passed a motion suspending so much of the Standing Orders so as to permit the President to direct that the Bill be re-listed on the *Notice Paper* and for the third reading question to be put again on the next day of meeting. Ultimately, the Bill was not called on again, and the Bill lapsed.

Despite it not eventuating, consideration was given to what the effect would be of passing the third reading of the Bill without a special majority, as this has not happened since the constitutional provisions were entrenched in 2006. It is clear from the Constitution that the Bill could not be presented to the Governor for Royal Assent, so in effect the Bill would proceed no further. However it was unclear procedurally whether, once a third reading is carried but a special majority has not been obtained, the President should still put the final question, "That the Bill do pass" and whether the Bill, if so passed, should be returned to the Assembly. Though it did not eventuate, it was likely the final question would have been put and if carried, the Bill would have been returned with a Message stating the Bill has been passed, but a special majority had not been obtained, and it would then be up to the Assembly to decide whether further action could be taken.

Public Finance and Accountability Bill 2009

The Public Finance and Accountability Bill 2009 sought to replace the *Financial Management Act 1994* with an updated framework for financial reporting by Government agencies. The Bill would have also changed reporting requirements to Parliament, with all Government agencies able to table annual reports when Parliament is not sitting.

The Opposition expressed a number of concerns about the Bill, particularly about the obligations placed on Government entities to support the achievement of Government outcomes, and the negative impacts on the independence of officers of the Parliament including the Auditor-General. When the Bill came before the Council in July 2010, against the wishes of the Government, the Bill was referred to the Public Accounts and Estimates Committee (PAEC). When speaking to the referral motion, the Leader of the Opposition in the Council stated this was to allow the Committee to examine why the Bill failed to take up the Committee's recommendations in a previous inquiry into Victoria's Public Finance Practices and Legislation and to examine concerns raised by the Auditor-General about the potential for the Bill to undermine his independence.

When it considered the Bill, PAEC, a Government dominated Committee, resolved not to call the Auditor-General to give evidence, but instead only took briefings from the Department of Treasury and Finance. The Committee reported back to the House two weeks after it was referred recommending the Bill proceed. This approach by the Committee was condemned by Opposition members of the Committee in their minority report, who labelled the report a "whitewash". Consequently, when the Bill was next before the Council, the House again referred the Bill to PAEC, this time specifically requiring the Committee to invite the Auditor-General to give evidence to the Committee on the contents of the Bill.

The Auditor-General was subsequently called before the Committee and a second report tabled. The Government then circulated amendments which aimed to address some of the concerns raised by the Opposition regarding the independence of the Auditor-General. The Opposition also circulated further amendments to the Bill. Ultimately, the Bill was not further debated before the end of the sitting period and the Bill lapsed.

An aspect of the Bill that was of less interest to the House, but of great interest to Parliament staff, concerned the provisions in the Bill that extended the ability of Government agencies to table reports when Parliament is not sitting. Currently, out of sitting tabling is restricted to certain agencies and reports, such as reports of the Auditor-General and Ombudsman, parliamentary committee reports, and Government quarterly financial reports. The provisions in the

Bill would have allowed agencies to lodge reports with the Clerk on any non sitting day, provided they gave one clear day's notice of their intention to do so. The Clerk would then be required to give a copy of the report to each Member. Currently, the Clerk sends electronic copies of reports received when Parliament is not sitting to Members by e-mail, but this only occurs a few times each year. However, given the possible flood of reports at the end of a financial year, adopting the same practice for potentially hundreds of Government agency annual reports is not considered practical.

As a result, the Legislative Council is working with the Legislative Assembly and Parliamentary Library to put in place a Tabled Documents database, from which Members, and potentially the public, can access electronic copies of tabled documents, therefore removing the need for the Clerk to e-mail copies of reports to each Member. Instead the Clerk would only e-mail Members a list of reports and advise them they are available in the database. Given the Bill has now lapsed, the urgency of establishing the database has now eased, however further work on a database is being planned should the Bill be resurrected in the new Parliament.

- Robert McDonald,
Manager – Chamber Support, Table Office

Joint Investigatory Committees

DURING 2010, THE VICTORIAN PARLIAMENT'S joint investigatory committees tabled an unusually high number of reports – 53 in total, including 28 reports in the second half of the year – prior to the expiration of the 56th Parliament and the State election. Most of these reports were substantial and were the product of lengthy committee inquiries. Amongst the joint committees overseen by the Legislative Council, some of these reports included: Powers of Attorney (Law Reform Committee); Manufacturing in Victoria (Economic Development and Infrastructure Committee); Soil Carbon Sequestration in Victoria (Environment and Natural Resources Committee); and Farmers' Markets (Outer Suburban/Interface Services and Development Committee).

The year also saw a number of new inquiries referred to the joint investigatory committees (in some cases in mid-2010 or later). Given that the 56th Parliament's final sitting week was in early October 2010, with its expiration on 2 November, this presented some committees with considerable challenges to report within the required time. In some cases, the nature of the inquiries, which involved detailed investigations and consultation with stakeholders, meant that an interim report was all that was possible. In addition, and in the context of an election year, some new references from the Legislative Council were of a more politically contentious nature than usual for joint committee inquiries.

- Stephen Redenbach,
Assistant Clerk – Committees

Dispute Resolution Committee — Transport Legislation Amendment (Ports Integration) Bill 2010

IN APRIL 2007, A Dispute Resolution Committee was appointed under the new constitutional mechanism to resolve disputes between the two Houses involving Bills. This was as a result of the *Constitution (Parliamentary Reform) Act* 2003, which inserted into the *Constitution Act* 1975 section 65C which allows the Committee up to 30 days after the disputed Bill is referred to the Committee to reach a resolution on a disputed Bill. Bills may be referred to the Committee by the Assembly only. Debate continues between the parties as to whether or not Bills that are defeated by the Council are 'dead bills' and should not appear before the Parliament until 6 months has lapsed, as is normal process. Despite all this the Committee was used on three occasions throughout the 56th Parliament, in each case to consider Bills defeated by the Council.

On 22 June 2010 the Legislative Council rejected the Transport Legislation Amendment (Ports Integration) Bill 2010 on the second reading, which saw the Bill returned to the Legislative Assembly. The Assembly referred the Bill to the Dispute Resolution Committee on the motion of the Minister for Police and Emergency Services on 24 June 2010 and the Legislative Council was informed accordingly.

The first time the Committee considered a Bill referred to it, the Committee recommended a new Bill incorporating significant changes be introduced and passed. The second time the Committee took a different approach and recommended the Bill be passed with numerous amendments recommended by the Committee. The third Bill considered by the Committee produced a different result again.

On 27 July 2010 the Clerk of the Legislative Council laid on the Table a copy of the Dispute Resolution agreed to by the Dispute Resolution Committee on the Transport Legislation Amendment (Ports Integration) Bill 2010. The Resolution of the Committee simply stated that the Legislative Council should pass the Bill without amendment. This was a result of the Opposition changing its position on the Bill following discussions with the Government.

The main difficulty that arose from this Resolution was how the Council would implement the Committee's recommendation, given the Bill had been defeated and was no longer listed on the *Notice Paper*. The Assembly subsequently agreed to a Resolution to retransmit the Bill to the Council, and the Government then moved a motion to rescind the order of the Council negativing the second reading and suspending so much of Standing Orders as to permit the second reading question to be put again. This was agreed to on Division, with the Greens and DLP opposing the motion.

Later that day, the Legislative Council passed the Bill without amendment despite the opposition of the Greens Party Members, who are of the opinion that the process of the Dispute Resolution Committee is undemocratic as Bills that have been rejected by the Council should be considered dead bills and unable to appear before the House for another six months as per normal procedure.

- Sean Marshall,
Acting Manager –
Chamber Support, Table Office

Council Committees

THE SECOND HALF OF 2010 saw the completion of various Legislative Council committee inquiries prior to the dissolution of Parliament for the November State election. The Legislative Council has agreed to establish a new standing committee structure in the next Parliament.

The work of the Standing Committee on Finance and Public Administration that warrants special mention in this bulletin is in relation to its inquiry into Victorian Government decision making, consultation and approval processes which was established by a Committee resolution in March 2010. The main purpose of the inquiry was to investigate the Windsor Hotel redevelopment planning process and a related media strategy which was inadvertently released to the ABC news by a ministerial adviser.

The Committee conducted four days of hearings in relation to the Windsor Hotel issue and tabled interim reports on 13 April 2010 and 11 August 2010. Certain ministerial staff were first invited, then summoned, to give evidence at public hearings but were directed by the Attorney-General not to appear before the Committee. The Attorney-General claimed there was a long-standing convention that ministerial advisers should not appear before a parliamentary committee (referred to as the McMullan Principle). The Attorney-General further claimed that evidence by the advisors would be subject to executive privilege. The Committee rejected these claims.

As a consequence of the limitations to its investigations, in June 2010 the Committee referred the Windsor Hotel redevelopment planning probity and the associated media strategy probity on to the Victorian Ombudsman for investigation and report. This is only the second instance in recent memory that a parliamentary committee has referred matters to the Ombudsman.

In August 2010, the Committee tabled an interim report in the Legislative Council that recommended the House resolve to order certain witnesses to appear before the Standing Committee. This recommendation was not subsequently acted upon by the House. The Committee's report contained two minority reports including one from Greens MP Mr Greg Barber who noted 'there is no convention that grants ministerial staff immunity from the Council's legal powers to compulsorily summons witnesses and that the only way to definitively resolve the dispute between the privileges of the Legislative Council and the executive is through adjudication in the Supreme Court of Victoria.'

No further action on these matters was undertaken by the Standing Committee or the Legislative Council prior to the end of the 2010 sittings and prorogation of Parliament.

- Richard Willis, Secretary,
Council Committees Office

New Standing Orders Committee

AS OUTLINED PREVIOUSLY IN *Parliament Matters*, in September 2008 the House provided the Standing Orders Committee with a reference to inquire into and report on the establishment of new standing committees for the Legislative Council. The Committee's work had included sub-committee visits to the Australian Senate and New South Wales Legislative Council in March 2009 and the tabling of an interim report in May 2009.

The Committee's Final Report was tabled on 5 May 2010. In broad terms, the new committee structure proposed was heavily influenced by the Australian Senate model, but was on a smaller scale given the Council's more limited membership and resources. The Report's major recommendations were:

- the establishment of three pairs of committees, each consisting of a Legislation Committee and a References Committee;
- that this twin committee structure encompass three broad subject areas of Economy and Infrastructure, Environment and Planning, and Legal and Social Issues;
- a membership of eight per committee, consisting of four Government members, three Opposition and one from minority parties/independents;
- the chairs of Legislation Committees to be Government Members and the chairs of References Committees to be drawn from non-Government ranks, with all chairs to have both deliberative and casting votes;
- the capacity for substitute members to be appointed to committees with full voting rights, and for participating members to exercise the same rights as normal members, except the right to vote;
- the three Legislation Committees to have self-referencing powers in relation to annual reports and departmental/agency performance, as well as the role of scrutinising bills referred to them by the House; and
- References Committees only to conduct inquiries referred to them by the House.

Although the Standing Orders Committee made no specific recommendations, it noted the possibility of the number of joint investigatory committees being reduced should its central recommendations be accepted by the Council and by the Government in the 57th Parliament.

The Council eventually debated the recommendations in the Final Report during the Council's penultimate sitting day on 6 October. Given that the thrust of the report was supported by all party leaders on the Committee, the recommendations were agreed to unanimously in the House as expected. It will now be in the hands of the new Coalition Government, formed by the Liberal Party and The Nationals after the November 2010 State election, to determine whether the new structure receives the financial backing to become operative.

- Stephen Redenbach,
Assistant Clerk – Committees

Amended Standing Orders

THE OTHER MAJOR WORK of the Standing Orders Committee, which occurred primarily in the second half of 2010, related to the Sanding Orders themselves. These had last been amended in 2006. Although the changes eventually resolved in the House were the result of motions moved by Members, rather than the adoption of a report, the motions were essentially influenced by the work of the Standing Orders Committee. Some of the most noteworthy changes to the Standing Orders include:

- A new Council Standing Committee system (described in commentary above).
- Provision for Standing Committees to meet at 8.00 p.m. on Wednesday or for General Business or Government Business to be taken if the Standing Committees are not meeting.
- An increase from a maximum of 15 to a maximum of 20 Members who may raise matters for consideration by Ministers on the question for the daily Adjournment of the Council.
- Increased flexibility for the conduct of the daily Adjournment Debate by removing the requirement to make a complaint, make a request, pose a query or raise a matter for consideration by a single Minister.
- Provision for Ministers to respond in writing to matters raised on the Adjournment which require a response within 30 days and for a procedure for Members to seek an explanation where a response has not been received within that time. The principal difference between this Standing Order and the preceding Sessional Order is that precedence is not afforded to any motion regarding a Minister's failure to provide a response.
- A change to the time for Questions on Wednesday, Thursday and Friday to 12 noon (the time for Tuesday remains 2.00 p.m upon commencement of the day's proceedings).
- Statements on Reports and Papers being moved from its timeslot on a Thursday morning following Members' Statements to 5.30 p.m. on Wednesday afternoons, the day set aside for non-government business.
- General Business to take precedence every Wednesday (except during Statements on Reports and Papers and Question Time). Such precedence had already been operational since mid-2007 under Sessional Orders adopted by the Council.
- An update of the Standing Order on broadcasting, recording and photographing of proceedings to include material concerning broadcasting of Council proceedings on the internet.
- A clear procedure for dealing with reasoned amendments to the second reading, including the effect of carrying a reasoned amendment. This Standing Order reflects recently adopted practice that the Bill will not be regarded as having been rejected if a reasoned amendment, which seeks only to delay the passage of the Bill, is carried.
- A new Standing Order provides for the Minister or Member (if required) to lay on the table the statement of compatibility as required by the Charter of Human Rights and Responsibilities Act 2006 prior to moving the second reading speech on a Bill.
- Reorganizing the provisions relating to the naming of Members for disorderly conduct into a more logical sequence, with the President being able to require any Member offending to make an explanation or apology, following which the Chair may then name them if he or she sees fit. This means that the President can take into account the apology in explanation before deciding whether to name the Member. The President also now moves the motion for suspension, rather than a Member. The amendments also make it clear that any Member who is ordered to withdraw or suspended may not come within the Council Chamber or its galleries during the period of suspension.
- Consolidation of the provisions relating to offensive words, imputations and personal reflections into a single Standing Order relating to Unparliamentary expressions. The Standing Order also provides for the President to require a withdrawal or apology without a point of order being raised by the offended Member.
- Consolidation of the provisions relating to when a Member may speak more than once, for a Member to be able to speak on an amendment when they have already spoken to the main question which was not previously provided for in the Standing Orders, for the Presi-

Opening of the 57th Parliament

THE VICTORIAN STATE ELECTION was held on 27 November 2010. This was only the second election under the amended Constitution providing for the Council to be elected by a form of proportional representation (8 regions comprised of 5 Members each).

Similar to events in December 2006, the Parliament received short notice that the new coalition Government wanted to open the 57th Parliament before Christmas, the first reasonable opportunity being 21 December 2010.

Members were sworn in in their respective Chambers in the morning and the Governor attended in the afternoon to deliver his address in the Council Chamber.

The opening of the 57th Parliament was marked by two significant changes to the usual course of events on opening day. The first was a procedural change agreed to in the previous Parliament in which Assembly Members are no longer required to attend the Council Chamber in the morning to hear the Senior Commissioner (the Chief Justice) before returning to the Assembly to be sworn in. It was agreed that at the ringing of the bells Members should go to their respective Chambers and the Commissions be read in each Chamber before Members are then sworn in.

The second change was one agreed to informally between the two Houses in the 56th Parliament in which an Aboriginal welcome to country would be held on the day. The ceremony conducted on opening day for the Commonwealth Parliament was noted and after discussions between the two Houses and consultation with the new Government, a welcome to country ceremony was held in the Queen's Hall of Parliament House immediately prior to the first meeting of both Houses in the morning. All Members and approximately 200 more guests attended the welcome to country which was given by two local elders following the entry into Queen's Hall of the official party consisting of the two Commissioners appointed by the Governor and the various party leaders.

The final noteworthy aspect of the occasion was that both Houses sat for one day, rather than the usual three day sitting week.

- Andrew Young, Assistant Clerk House and Usher of the Black Rod

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dent to participate in debate and for the Deputy President to preside when the President speaks.

- Incorporate into the Standing Orders of the provisions of the recent Sessional Orders providing for a question without notice to be asked of a Minister in the Council representing an Assembly Minister.
- Clarifying that a question without notice or a question on notice cannot be asked again in the next six months of the same Session, which is consistent with the same question rule applying to business before the Council.
- A definition of procedural motions with references to appropriate Standing Orders. This new Standing Order removes doubt and makes it clear which motions are procedural motions and are therefore subject to the 30 minute time limit.

- Sarah Hyslop, Procedural Research Officer and Wayne Tunnecliffe, Clerk

Officers of Parliament – Jury Service

IN SEPTEMBER 2009, THE Law Reform Commission of Western Australia published a discussion paper calling for submissions on a review of the operation and effectiveness of the system of jury selection. In carrying out the review, the Commission considered who should be exempted from jury service and proposed that officers of the Legislative Assembly and Legislative Council, who are currently exempted, be removed from the list of ineligible occupations, as contained in the *Juries Act* 1957 (WA).

The Clerks of the Legislative Assembly and Legislative Council presented a Joint Submission recommending that employees of the Legislative Assembly and Legislative Council should remain ineligible for jury service during their term of employment. The Joint Submission argued that there should be no actual or perceived interference from the judicial system in the operations of the Parliament. It was noted that each House of Parliament has exclusive cognisance of its own business and matters internal to it. By extension, each House has the right to require its staff to serve the House first at any time and at short notice, and accordingly any outside demands on its staff that interfered with such service impacts on the operations of the Parliament. Hence, parliamentary independence would be compromised if Legislative Assembly and Legislative Council staff were obliged or required to perform jury service.

Another proposal suggested in the Discussion Paper concerned deferral of jury service to a month when Parliament was not sitting, but this ignored the fact that parliamentary work does not end simply because the Houses are not scheduled to sit. The Joint Submission highlighted instances of variable sitting dates, additional sitting days and weeks, as well as staff having tasks related to each House or its committees which were not confined to specific sitting days. Moreover, as trial dates and periods are variable, a juror would not know whether they would be required for a week, six weeks or a year or more. Even if a Legislative Assembly and Legislative Council employee performed jury service, it did not guarantee that they would not be needed at some time during the trial by the House and would be required by the House to leave the jury.

The Commission also noted in the Discussion Paper that there is no clear definition of an 'officer of Parliament', which may 'unnecessarily extend the exclusion beyond those properly excluded by virtue of their legislative role.' In contrast, the Joint Submission argued that as there are a range of Legislative Assembly and Legislative Council staff who are critical to the operations of each House at various times throughout the entire year, it was not feasible to identify those staff who are 'integral' to the running of Parliament and those who may be temporarily released from their service obligations to the Parliament. Hence, the exemption should apply to all Legislative Assembly and Legislative Council employees. However it was acknowledged that there were some categories of employees who duties generally made them more suitable

Member Changes in the House

ADELE CARLES, WHO WAS elected as the first Greens (WA) member to the Legislative Assembly at a by-election for the seat of Fremantle on 16 May 2009, resigned from the party on 7 May 2010 to become an Independent. Her nominated status is 'Green Independent'.

On 20 July 2010, Alannah MacTiernan, the former Minister for Planning and Infrastructure in the previous Labor Government, resigned as the member for Armadale. A by-election was held on 2 October 2010 and Dr Tony Buti (ALP) was elected.

The current status of the House is as follows: the Australian Labor Party: 26 seats; the Liberal Party: 24 seats; the Nationals: five seats; Independents: three seats; Green Independent: one seat. The Liberal-National Government holds 29 seats, and has the support of the three Independent members.

Officers of Parliament – Jury Service (cont)

to be available for jury service than others and who perhaps should not be exempted, such as all employees of the Parliamentary Services Department of the Parliament e.g. staff working in the areas of Hansard reporting, financial services, information technology, catering, gardening etc.

The Commission's final report was released in April 2010, with no change in the view that officers of the Legislative Assembly and Legislative Council should be removed from the list of ineligible occupations. Subsequently, the Clerk of the Legislative Assembly wrote to the Attorney General, expressing the view that the Houses must retain their right to be properly assisted by their officers and to have that service in priority to the courts. At the very least, the Clerk noted, the positions of Clerk, Deputy Clerk, Clerks Assistant, Sergeant-at-Arms and Usher of the Black Rod, and the Principal Officer assisting each Standing or Select Committee should continue to be excluded in Western Australia.

On 25 November 2010, the *Juries Legislation Amendment Bill* 2010 was introduced into the Legislative Assembly, with one of the aims being to reduce the persons presently ineligible for jury service by virtue of their office or occupation. Under the revised Schedule 1 heading of 'Classes of persons not eligible to be jurors', there was no reference to parliamentary officers.

Ministerial Disclosure of Information – Section 82 of the *Financial Management Act 2006* (WA)

THE PURPOSE OF SECTION 82 of the *Financial Management Act 2006* (FMA), as set out in the Explanatory Memorandum, requires that if a 'Minister decides not to disclose to Parliament certain information concerning an agency, then within 14 days the Minister must notify Parliament and the Auditor General that the information is not provided and the reasons for that action.' However, since the introduction of the FMA, section 82 appears to have been a cause of both confusion and non-compliance.

The ambiguous wording of the section, specifically the phrase 'certain information concerning any conduct or operation of an agency', leaves its meaning open to interpretation. During consideration in detail of the bill, debate centred on what trigger initiates the requirement for a minister to report to Parliament and the Auditor General the decision not to provide information. For example, is the requirement to report to Parliament and the Auditor General always triggered by a parliamentary question or request for information? Or, if the minister was aware of other information that was not widely known (such as a project cost blow-out affecting the budget), would the minister have to inform the Parliament even when he had not been asked? The minister responsible for the bill indicated that the provision was primarily designed to deal with Parliamentary questions, but that it could conceivably allow a minister, when dealing with an issue of broader public concern, to indicate that there is one or other aspects that the minister cannot reveal to the Parliament.

The Legislative Council Estimates and Financial Operations Committee heard evidence from the Department of Treasury and Finance that although the genesis and intended purpose for section 82 was to deal with parliamentary questions, the section would in fact apply in any circumstances in which a minister decides to withhold information about any conduct or operation of an agency from the Parliament. For example, if a minister were to withhold information that would normally appear in an annual report, the provisions of the section would apply.

From this uncertain beginning, the Parliament has seen the full range of ministerial responses to section 82, ranging from compliance, over-compliance, non-compliance and partial compliance.

Compliance

On 14 September 2010, the Minister for Regional Development provided one of the few straightforward examples of complete compli-

ance with section 82 since the Act came into force in 2006. A member of the opposition requested a series of documents related to the Minister's correspondence with Clive Palmer, a National Party donor and owner of mining company Mineralogy. The Minister proceeded to advise both Houses of his decision not to table certain documents, based on his assessment that the correspondence was commercial-in-confidence. The Minister also provided a similar notice to the Auditor General.

Over-compliance

On 24 September 2010, the Minister for Agriculture and Food wrote to inform the Auditor General of his decision not to release information to Parliament relating to the Western Australian Agriculture Authority (WAAA). However, this notification was not required as the WAAA is not an 'authority' for the purpose of the FMA. Accordingly, no notice to Parliament or the Auditor General was required pursuant to section 82.

Non-compliance

On 25 November 2010, the Leader of the Opposition asked the Premier when he would advise the Auditor General of the Government's decision not to provide information to Parliament relating to the Oakajee state development agreement. The Premier replied that 'the Government is not directed by the Auditor General'.

Partial Compliance

The Minister for Culture and the Arts cited commercial-in-confidence as the reason for not providing information to a member's Question on Notice on 25 November 2010. A follow-up question was then asked regarding the Minister's compliance with section 82, in particular whether or not he had informed the Auditor General of his decision not to provide information to Parliament. The Minister replied that he had not compiled with section 82, but that he had subsequently provided written notification to the Auditor General.

As evidenced by these four examples, it is clear that confusion exists with regard to section 82 of the FMA. It will be interesting to observe how this situation develops, given the growing awareness of opposition members to the significance of the section, and the Government's varied record of compliance.

Broadcasting of committee proceedings

THE WA LEGISLATIVE ASSEMBLY has recently developed the capacity to broadcast and record committee hearings in two of its committee rooms in the hope of broadening public access to these proceedings. In making this decision, consideration was given to whether the current media guidelines needed amendment and whether there were additional issues for consideration, particularly given that committee proceedings involve witnesses.

The WA Legislative Assembly, as elsewhere, relies on a mixture of 'in-house' media rules and/or Presiding Officers' guidelines around the use of broadcast material. These are concerned with balancing the need to maintain the integrity of the House with providing public access to proceedings and generally reflect principles that are important to underlying questions of privilege and any ramifications that broadcasting proceedings may have. In this regard footage should be used only for the purposes of fair and accurate reporting, must not be used for satire or ridicule, political party advertising or election campaigns, or commercial sponsorship or advertising. But what does this mean in practical terms?

Most parliaments control the capture of the chamber broadcast by ensuring that audio and visual (AV) recording of parliamentary proceedings is the exclusive responsibility of parliamentary staff. The 'feed' is then provided to media organisations and others for broadcast purposes, in accordance with the relevant guidelines. The capture is further controlled by guidelines for parliamentary camera operators that are similar across jurisdictions. In the WA Legislative Assembly, on-air cameras are directed toward the Member with the call, but no reaction shots of other members are shown. Distur-

bances in the galleries or on the floor of chambers are not broadcast, and at all times the directions of the Presiding Officer are observed.

In the WA Legislative Assembly, AV controllers are required to comply with protocols regarding footage of committee proceedings. These were developed to guide them in using a range of 'standard' camera angles and ensuring that only the proceedings of Committee hearings are broadcast (with particular care given to avoid screen shots that enable identification of Committee documents). The protocols include the need to ensure that the recording and broadcasting of proceedings ceases when the Committee enters into formal deliberations, takes closed or *in camera* evidence, or there is a disturbance that warrants the suspension of proceedings.

Protocols have also been developed with regard to witnesses appearing before broadcasted committee hearings. Witnesses are now informed prior to any hearing of the potential for the proceedings to be recorded and broadcast, whether or not there has been a decision for that committee to broadcast the hearing. The opening statement for the hearing has also been amended to reflect this potential. If a witness objects to a broadcast the committee will deliberate in private, taking into account the objection, and the public interest in deciding whether to proceed with the broadcast. That has not yet occurred.

The media organisations based at Parliament House receive a direct feed of the official broadcast to their offices in Parliament House and have the capacity to directly record those proceedings. Access to that feed is also subject to the 'Rules for Accredited News Media Representatives' issued by the Presiding Officers of both Houses.

Previous arrangements

Prior to the introduction of this facility, media organisations were permitted to take footage within committee hearings for reporting purposes, but without sound recording. The media may still take television footage of a Committee hearing with the endorsement of the Committee. However, to minimise the likelihood of interference in the process, the media is advised to cease filming prior to the commencement of the broadcast.

The broadcast of committee proceedings is still in its infancy in the WA Legislative Assembly. The Speaker has encouraged committees to take advantage of the available technology in the hope that this will promote greater civic awareness of the workings of the parliament. The response and uptake by the various committees has been mixed and perhaps a little cautious, but it is anticipated we will see a growth in its use as members become more comfortable with the concept.