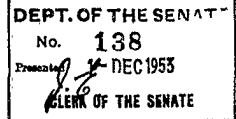


1951-52-53.



THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA.

---

JOINT COMMITTEE OF PUBLIC ACCOUNTS.

---

NINTH REPORT.

---

"STEPHAN" PREFABRICATED BUILDINGS

TOGETHER WITH

TREASURY MINUTES ON FIRST AND THIRD REPORTS  
OF THE COMMITTEE

AND

STATEMENT ON THE PRIVILEGES AND IMMUNITIES  
OF THE MEMBERS OF THE COMMITTEE.

---

By Authority :

L. F. JOHNSON, Commonwealth Government Printer, Canberra.  
(Printed in Australia.)

F4751.

Mr. President

As Vice-Chairman, I present the report  
of the Public Accounts Committee on the following  
subject :-

Ninth Report - "Stephan" Prefabricated  
Buildings, together with Treasury Minutes  
on First and Third Reports of the Committee  
and Statement on the Privileges and Immunities  
of the Members of the Committee.

JOINT COMMITTEE OF PUBLIC ACCOUNTS.

(Appointed 26th September, 1962.)

F. A. BLAND, Esquire, M.P. (Chairman);

Senator C. B. BYRNE (Vice-Chairman).

Senator S. D. PALTRIDGE.  
Senator the HON. H. S. SEWARD.

G. ANDERSON, Esquire, M.P.  
F. CREAM, Esquire, M.P.  
F. J. DAVIS, Esquire, M.P.  
A. S. HULME, Esquire, M.P.  
H. A. LESLIE, Esquire, M.P.  
A. V. THOMSON, Esquire, M.P.

NEIL R. GAFFIN,  
Secretary,  
Parliament House,  
Canberra, A.C.T.

THE DUTIES OF THE COMMITTEE.

Section 8 of the *Public Accounts Committee Act 1951* reads as follows:--

8. The duties of the Committee are--

- (a) to examine the accounts of the receipts and expenditure of the Commonwealth and each statement and report transmitted to the Houses of the Parliament by the Auditor-General in pursuance of sub-section (1.) of section fifty-three of the *Audit Act 1950*;
- (b) to report to both Houses of the Parliament, with such comment as it thinks fit, any items or matters in these accounts, statements and reports, or any circumstances connected with them, to which the Committee is of the opinion that the attention of the Parliament should be directed;
- (c) to report to both Houses of the Parliament any alteration which the Committee think desirable in the form of the public accounts or in the method of keeping them, or in the mode of receipt, control, issue or payment of public moneys; and
- (d) to inquire into any question in connexion with the public accounts which is referred to it by either House of the Parliament, and to report to that House upon that question and include such other duties as are assigned to the Committee by Joint Standing Orders approved by both Houses of the Parliament.

JOINT COMMITTEE OF PUBLIC ACCOUNTS.

NINTH REPORT.

"STEPHAN" PREFABRICATED BUILDINGS.

INDEX.

"STEPHAN" PREFABRICATED BUILDINGS.

	Page.
INTRODUCTION .. .. .	5
HISTORY OF THE 12 "STEPHAN" PREFABRICATED BUILDINGS .. .. .	5
LOSSES AND DETERIORATION OF THE MATERIALS .. .. .	6
THE SUBMISSIONS OF THE WITNESSES .. .. .	6
DELAY IN THE ERECTION OF THE BUILDINGS .. .. .	7
THE COMMITTEE'S OBSERVATIONS .. .. .	7
TREASURY MINUTE ON FIRST REPORT OF THE COMMITTEE DEALING WITH SUPPLEMENTARY ESTIMATES 1951-52 .. .. .	9
TREASURY MINUTE ON THIRD REPORT OF THE COMMITTEE DEALING WITH THE ADMINISTRATIVE ARRANGEMENTS ORDER .. .. .	10
STATEMENT ON THE PRIVILEGES AND IMMUNITIES OF THE MEMBERS OF THE COMMITTEE .. .. .	10

INTRODUCTION.

In pursuance of the powers conferred upon it by section 8 (b) of the *Public Accounts Committee Act 1951*, the Committee commenced, on 21st September, 1951,\* an investigation into the conditions of storage, and the possible use of materials for twelve imported "Stephan" prefabricated buildings.

2. It appeared that the materials had been "stored" in the open at the Botany store near Sydney, New South Wales, by the Department of Supply for an undue length of time. The Committee sought information—

- (1) to find who was responsible for the care of the materials while stored,
- (2) to ascertain whether the materials had deteriorated during storage in the open,
- (3) to explain the reasons why delay had occurred between placing the prefabricated buildings in store and in erecting them.

It therefore obtained written statements from, and examined witnesses of the Snowy Mountains Hydro-electric Authority, Departments of Supply, Works, and of the Postmaster-General.

HISTORY OF THE TWELVE "STEPHAN" PREFABRICATED BUILDINGS.

3. The Snowy Mountains Hydro-electric Authority informed the Committee that it had placed two orders with Stophandach, West Germany, for prefabricated sleeping huts. The first order was for the supply and erection of 40 huts, and the second order, placed in May, 1951, for delivery in July, 1951, was for the supply and delivery, but not erection, of a further 40 huts.

4. Sixty-eight of the huts were received, but the delivery of the balance of twelve huts was delayed. For good and sufficient reasons it was not possible to cancel this part of the order. In the absence of the twelve prefabricated buildings the Authority was forced to build sleeping accommodation out of its own resources and then, because of a shortage of funds, it sought to sell the twelve surplus huts on their arrival in November, 1951.

5. The Authority arranged with the Department of Supply to store the materials on their arrival in Sydney. That Department made it clear that it could only provide storage space in the open in the yard of its store, Sydney, and on the understanding that space would not be occupied for more than a few weeks. Charges for storage in the open were to be paid by the Authority, which was to transport and stack the materials.

\* This report records the situation as at 21st September, 1951.

6. The packages of materials were delivered to the stores and were placed on "dunnage" in the open in the yard of the store during 1st-13th November, 1951.

7. INSPECTIONS OF THE MATERIALS.

November, 1951, and March, 1952—

Inspections were made by the Department of Trade and Customs of sample packages for wasp infestation.

January, 1952—

Officers of the Department of Works and the Postmaster-General's Department inspected the materials in store. The materials were still in open crates, but, as far as could be seen, were in good condition.

May-June, 1952—

The packages were re-sorted by officers of Snowy Mountains Hydro-electric Authority on behalf of the Department of Works.

January, 1953—

A number of contractors inspected the materials at the store.

20th January, 1953—

Thirty and a quarter packages were delivered from the store to a contractor who, on opening the crates, found that some of the materials were damaged.

February, 1953—

Officers of the Department of Works inspected the materials in store and found that damage had been caused by long exposure in the yard of the store.

March-May, 1953—

Further deliveries of the materials were made from the store to the contractor who complained of the damage he found in the material.

21st May, 1953—

As a result of the complaints of the contractor an officer of the Department of Works inspected the material in the store and found the materials had deteriorated.

8. PROPOSALS TO SELL THE MATERIALS.—The main events in the sale of the materials to the Department of Works by the Snowy Mountains Hydro-electric Authority as disclosed in evidence to the Committee were—

November, 1951—

The Authority told the Department of Works orally that materials for twelve prefabricated buildings were for sale.

The Department of Works investigated a number of possible uses for the huts and on 21st November, 1951, told the Authority that it wanted the huts and would issue an order for them when funds were available.

27th December, 1951—

The Authority told the Department of Works that the price for the huts was £26,400.

January, 1952—

The Department of Works told the Postmaster-General's Department that the huts were available.

1st February, 1952—

The Department of Works confirmed its statement to the Authority that, subject to the availability of funds, it would buy the huts.

1st April, 1952—

The New South Wales Branch of the Department of Works told its Head Office that the estimated cost of purchase and erection was £42,450.

6th May, 1952—

The Department of Works again told the Authority, in response to a verbal request from the Authority, it would take over the huts.

21st May, 1952—

The Postmaster-General's Department supplied a requisition to the Department of Works for £42,450 and the requisition was approved on 27th May, 1952.

1st August, 1952—

The Department of Works issued an official purchase order to the Authority for the twelve buildings.

21st November, 1952—

The Authority told the Department of Supply that the huts had been purchased by the Department of Works.

9. Of the twelve huts, the materials for four remain at the stores and are still in the open. A contract has been let for erection of three of the huts and the fourth hut is to be erected by the Department of Works day labour staff. Of the other eight huts, all of which have been removed from the store, the Committee was told two had been erected, five are to be erected shortly by the Department of Works day labour staff, and the erection of the other one is waiting for the selection of a site. In the meantime it is stored as at 21st September, 1953, at Rutherford, New South Wales.

#### LOSSES AND DETERIORATION OF THE MATERIALS.

10. The Department of Works informed the Committee that the cost of making good the damage to the materials was estimated at £4,600. It was stated that—considerable deterioration of the hardboard linings had occurred, whilst fungus growths had attacked the framing timbers of the components. Dry rot had started in some timbers including, in particular, the bundles of roof purlins.

In addition, crates containing glass and asbestos cement roof sheets were examined, and it was found that approximately 33 per cent. of the glass, which was intended for glazing the window sashes and top panels of internal doors, was broken. Furthermore, it was found that there was an average of four (4) sheets of asbestos cement roofing broken in each crate or a loss per building of twelve (12) sheets.

11. The representative of the Snowy Mountains Hydro-electric Authority stated that, amongst the prefabricated material taken direct to Cooma, there was a fairly high damage to glass, asbestos tiles, and similar materials. He said that "our contractors stated . . . that they would not be unduly alarmed if they had the breakages up to 30 per cent."<sup>(a)</sup> The breakages in the prefabricated materials with the Department of Supply would not be very much greater than those in the prefabricated material received at Cooma.

(a) Transcript of Evidence 21st September, 1953.

#### THE SUBMISSIONS OF THE WITNESSES.

RESPONSIBILITY FOR THE CARE OF THE MATERIALS WHILST THEY WERE AT THE DEPARTMENT OF SUPPLY STORE.

12. The Department of Supply stated that the arrangement made with the Snowy Mountains Hydro-electric Authority was for storage for a few weeks.

13. The Department could not produce any documentary record of the initial steps in this arrangement because the negotiations were made orally. It has no record on its files of the details of these negotiations.

14. All transport and handling of the materials had been undertaken by the Authority and, subsequently, by the Department of Works and its contractor. One of the stores officers of the Department of Supply would have been present on the occasions when the packages were moved or examined but that would be only to check the number of packages involved. The Department of Supply did not receive any reports on the condition of the material.

15. For goods in open storage, it accepted responsibility for any losses from pilage but no responsibility for care and maintenance. It recorded the number of packages stored but nothing more. If the material had been stored inside the Department's store, the Department would have accepted full responsibility for any damage to it. In any event, checks would be made normally about every twelve months, but would not involve the opening of crates. The difference between the responsibility accepted by the Department for material stored in the open, or in its store, was reflected in the charges made by the Department: for storage in the open, 3d. per cubic ton per week; for storage inside the store, 6d. per cubic ton per week.

16. The hire charge of 3d. per cubic ton per week was paid by the Authority from 18th November, 1951, to 21st September, 1952, and by the Department of Works after 21st September, 1952. No adjustment of storage charges to 1st August, 1952, was made between the Authority and the Department of Works.

17. The Department of Supply claimed, however, that it had, on several occasions, drawn the attention of the Authority to the fact that the material was lying exposed to the weather and inquired when it would be moved. These were oral approaches and the Department had no notes of them on its files.

18. The Committee drew attention to the fact that the Administrative Arrangements Order allocated to the Department of Supply the function of—

"General storage for other Departments as required and to the extent facilities are available."

In addition, the Treasury Instruction No. 543 stated—

"Officers shall be responsible that all stores under their charge are kept in good order and condition."

The Department of Supply maintained that the Order and the Instruction expressed general principles only. The arrangement made with the Authority in this case was that the Department did not accept responsibility for damage from the weather. Both the Treasury and the Public Service Board agreed that the instruction was a general one. The Board thought that the responsibility for protecting stored government goods rested primarily with the storing department, but in this case the facts would have to be determined.

19. The Authority presented to the Committee a number of views on the question of responsibility for the care of the material—

(1) It accepted the storage on condition that it would be responsible for damage due to the weather. No record could be found of any reminder from the Department of Supply that the materials were in the open, exposed to the weather,

(2) The Authority took the view that its responsibility ceased in May, 1952, when the Department of Works confirmed its intention to purchase the materials. It did not lose any money over the deal.

20. In discussion with the Committee, the representative of the Authority agreed that, although the Department of Works had promised to buy the materials, the Authority was responsible for the care of the materials from the time they were placed in the store to 1st August, 1952, when the Department of Works order for the purchase was issued. During this period, the Authority knew the materials were stored in the open, but did not take any measures to have them protected.

21. In its statement presented to the Committee, the Department of Works avowed that it had agreed to buy the buildings as agent for the Postmaster-General's Department. It considered that, as the buildings had been deposited with the Department of Supply for storage prior to their purchase by the Department of Works, all responsibility for safe storage fell on that Department. In explanation, the representative of the Department of Works said that—

(a) until its order was issued to the Authority, the Department was not finally committed to buying the material: the ownership did not pass to it until the order was placed, and

(b) after the order was placed, the Department of Works assumed that the storage arrangements would continue—it did not inquire into those arrangements to ascertain who was, in fact, responsible for the care of the materials.

22. Senior expert officers of the Department of Works had inspected the crated material in the store in January, 1952, before the purchase. Further inspections were made by the Department in February and May, 1952, after the purchase and as a result of complaints of damage received from the contractor. Nevertheless, no effort had been made to protect the materials; they were left in the open until carted away and, at the date of the Committee's hearing (21st September, 1953), materials for four buildings were still in the open and unprotected. The Department offered as an explanation that it was a case of balancing the cost of moving and repacking the materials against the cost arising from further possible deterioration of the materials. The second course was followed, for in any case, it was obvious that some materials would have to be replaced, and that could be done when the crates were opened for erection of the buildings.

23. The Department's representative agreed that in view of its letter to the Authority dated 6th May, 1952, some responsibility would rest on the Department of Works for the materials; furthermore, the Department should have expected deterioration to take place if the materials were left in the open. He thought that a decision upon the course to be followed should have been made in August, 1952, when the order was first placed. He also stated that the Department expected that the buildings would be erected quickly. As it was not the practice of the Department to store its own material other than under its own control, this was an unusual case.

24. The Postmaster-General's Department stated that, although the buildings were for its use, it had little to do with the materials: that was a matter for the Department of Works which acted on its behalf.

25. Since it wished to use the materials, it would have to agree to the amount of the losses (£4,000) being debited to its vote for buildings (which was under the control of the Department of Works) to get the buildings completed. But it was not happy about the position.

#### DELAY IN THE ERECTION OF THE BUILDINGS.

26. The requisition for the purchase and erection of the buildings was approved on 27th May, 1952, and the first issue of materials from the store was made on 20th January, 1953.

27. It seems, on the evidence placed before the Committee, that from 13th November, 1951, to 27th May, 1952, the Department of Works was engaged in finding a use for the buildings, preparing plans and getting prices for the proposed erection of the buildings.

28. On 1st August, 1952, the Department of Works issued to the Authority its purchase order, but it was not until 3rd December, 1952, that a tender was accepted for erection of two buildings.

29. The Committee was informed that funds were available for the project. One reason for the delay was that the Department of Works design staff was heavily committed on defence works and other urgent projects for the Postmaster-General's Department. In addition, the day labour staff of the Department had been so reduced that the Department was not able to cope with the erection when the orders were issued.

#### THE COMMITTEE'S OBSERVATIONS.

RESPONSIBILITY FOR THE CARE OF THE MATERIALS WHILST THEY WERE AT THE DEPARTMENT OF SUPPLY STORE.

30. The Snowy Mountains Hydro-electric Authority was the owner of the materials until 1st August, 1952, when the Department of Works purchase order was issued. The terms on which the materials were stored with the Department of Supply were not disputed: the responsibility for damage from exposure rested with the Authority. The Authority was, of course, aware of the nature of the materials stored and it must be regarded as having shown lack of care and protection of the materials whilst it was the owner.

31. The Department of Works had undertaken in February, and May, 1952, to buy the materials and these undertakings may have induced the Authority to omit to take protective measures which its knowledge of the materials should have led it to take.

32. From August, 1952, the materials were the property of the Department of Works as agent for the Postmaster-General's Department. A senior expert officer of the Department of Works had inspected the materials in January, 1952, and was aware both of the nature of the materials and the manner in which they were stored. The Department of Works claimed that it had not looked behind the fact that the materials were stored with the Department of Supply, and, in more recent months, had not taken protective measures because of the cost involved.

33. The Committee feels that, as the expert department, the Department of Works should have done something to protect the materials. Even while the Authority was the owner, but after the inspection in January, 1952, the Department should have so acted as to preserve the materials it was seeking to buy and thus protect the interests of the Postmaster-General's Department.

34. As for the part played by the Department of Supply it must be remembered that—

- (1) the materials were stored with the Department of Supply, which is the accepted storage authority for Commonwealth Departments,
- (2) it had a limited responsibility for storage and therefore the other Departments had a greater responsibility.

LAOK OF RECORD OF ORAL ARRANGEMENTS.

35. The Committee was concerned at the lack of record of arrangements entered into for the storage of these materials, particularly in view of the conditions of storage and the nature of the materials.

THE CONCLUSIONS OF THE COMMITTEE—  
Responsibility for the care of the materials in Store—

- (1) The Snowy Mountains Hydro-electric Authority was the owner of the material from the date of purchase to 1st August, 1952. It was aware of the nature of the material and the storage arrangements and cannot disavow itself of responsibility to care for the materials during this period.
- (2) The Department of Works was the owner of the materials from 1st August, 1952. It was aware of the nature of storage and must accept responsibility for the lack of care of the materials during this period.
- (3) The Department of Supply had justification for making strong representations to the owner Departments to take steps to give full protection to the materials stored.
- (4) Responsibility for the care of goods placed in store with the Department of Supply should be so closely defined as to be understood by all concerned.

(5) The loss involved was no small part of the total cost of the 12 buildings, but large or small, the buildings were Commonwealth property, and once again the Committee is as much concerned with the departmental attitudes towards their public responsibilities as with the methods and practices adopted by them.

Defective organisation—

(6) The fact that the deterioration of the materials occurred while in store indicates a weakness in organization that should be rectified.

Lack of records—

(7) Some record should have been kept by the parties of the more important telephonic discussions involving contractual obligations.

On behalf of the Committee,  
E. A. BLAND, Chairman.

Secretary,  
Parliament House,  
Canberra, A.C.T.  
13th November, 1953.

TREASURY MINUTE

COVERING ACTION TAKEN UPON THE RECOMMENDATIONS OF THE PUBLIC ACCOUNTS COMMITTEE IN ITS  
FIRST REPORT UPON SUPPLEMENTARY ESTIMATES 1951-52.

The First Report of the Committee is made under two Parts. Part 1 deals with procedural matters and does not call for any special Treasury comment. This Minute is accordingly directed to the Committee's observations under Part 2 which relate to the Supplementary Estimates 1951-52.

2. The Committee selected for special examination a range of items as typifying the various classes of expenditure which required to be provided in the Supplementary Estimates. Detailed statements on these items were provided to the Committee by the responsible Departments and where necessary it heard evidence from Departmental officials.

3. In view of the information already furnished, the Treasury believes that the Committee does not desire a recapitulation of the circumstances leading up to the provision of funds in each case. Rather it would wish the Treasury to discuss the questions of general principle emerging from the Committee's examination of the accounts. With this in mind, the following comments are offered:

4. *General Observations on 1951-52 Transactions.*—The year under review, viz. 1951-52, was a particularly difficult one from the point of view of the control of funds. The price spiral was at its height and wages and other expenses increased considerably during the year. Furthermore, owing to an improvement in the supply position, goods and materials which previously needed to be ordered well in advance came along earlier than was anticipated. As a result the accounts of the year were called upon to meet many costs which could not be foreseen when the Budget Estimates were prepared. To meet the situation, Additional Estimates amounting to £27,537,000 were presented to Parliament prior to the close of the year. For various reasons, however, items of expenditure amounting to £2,228,000 required appropriation by Parliament in the Supplementary Estimates.

5. *Additional Estimates (i.e. those presented before the end of the financial year) as opposed to Supplementary Estimates (presented after the financial year).*—The Committee referred to the fact that certain items might have been included in Additional Estimates rather than the Supplementary Estimates. The regular presentation of Additional Estimates to Parliament is a comparatively recent practice which had its origin in the war years. Subsequently it was extended to cover items of civil expenditure. The basic principles adopted by the Treasury have been as follows:—

- (1) The amount of the item is comparatively substantial.
  - (2) The proposed expenditure is covered by proper approval.
  - (3) A reasonable estimate of the expenditure can be made.
6. The amount of detail which should be included in the Additional Estimates having regard to the above principles is under review. The Additional Estimates presented to Parliament in respect of the financial year 1952-53 which were in course of preparation at the time the Committee was considering the 1951-52 Supplementary Estimates contained a wider range of items than those of previous years and the matter will be further examined next year.

7. *Fixed Statutory Appropriations as opposed to provision in the Annual Appropriation Act.*—In three instances (Dairy Efficiency Grant, Dairy Products Subsidy and Nitrogenous Fertilizers Subsidy) the Committee commented that the payments rested for their statutory authority on the Annual Appropriation Act. While not questioning the legality of this procedure, it suggested that it would have been preferable for them to have been authorized by specific legislation which would detail the conditions under which the grants were to be made.

8. The Treasury agrees that, as a general principle, it is desirable that payments extending beyond a financial year and subject to specified conditions should, as far as is practicable, be authorized by special statute, particularly where the amount involved is considerable. The extent to which special legislation authorizing expenditure should be

presented to Parliament is a matter for decision by the Government of the day. A limiting factor may sometimes be the difficulty which would be encountered in adding to an already over-full legislative programme.

9. The importance of this issue is appreciated and the Committee's observations will be brought under the notice of the Government.

10. *Forward Ordering Supplies and Services.*—The Committee commented on supplementary provisions necessary to cover certain over-expenditures for supplies and expressed the opinion that no commitment of Commonwealth funds should be made until the authority of Parliament had been obtained or that of the Treasurer for payment from Treasurer's Advance Account.

11. The increases in expenditure referred to were brought about in the main by the easing in the supply position referred to earlier in paragraph 4 of this Minute. As a result the accounts for the year were called upon to meet charges that could not be forecast when the Estimates were being prepared.

12. In the interests of efficient and orderly administration Departments are permitted under Cabinet or Treasury approval to incur liabilities for goods and services, the cost of which would be met from the Appropriation of a subsequent year. Otherwise, because of the time lag in delivery, Departments would not be able to expend within a year the moneys allotted them by Parliament for the purpose of their functions.

13. The operation of the "Programming Procedure" as it is termed is discussed fully in paragraphs 110 and 120 of the Annual Report of the Auditor-General for 1951-52 and 1952-53 respectively.

14. *Expenditure in Anticipation of Parliamentary Authority.*—The Committee referred to an item, viz. Grant to Boy Scouts Association, £5,000 as representing a number of similar items in the Supplementary Estimates. In this case the grant was approved in January, 1952. Because of the small amount involved it was not included in the Additional Estimates which were presented to Parliament in May, 1952, but was provided in the Supplementary Estimates. The Committee commented that it believed that Parliamentary authority for the expenditure of Commonwealth funds should be sought before the money is spent.

15. While the Treasury is in general agreement with the principle that expenditure should not be incurred without specific Parliamentary approval, there are circumstances which make it impossible to lay down an inflexible rule in these terms. Adoption of such a procedure would result in the situation that no urgent or unavoidable expenditure, either in the administrative field or for other purposes, even if deliberately directed as a matter of Government policy, could be incurred during periods when Parliament is in recess. Moreover, Parliamentary procedure which allows unrestricted debate on Supply matters renders impracticable the presentation and discussion of Additional Estimates at frequent intervals throughout the financial year.

16. The vote in the Annual Estimates under the head "Advance to the Treasurer" contains the following narration:—

"To enable the Treasurer to make advances and meet expenditure, particulars of which will afterwards be included in a Parliamentary appropriation."

17. Under this vote Parliament authorizes the Treasurer to incur expenditure in anticipation of subsequent appropriation and, so long as the expenditure is ratified in the Additional Estimates or the Supplementary Estimates, legal requirements are met.

18. In view of the wide ramifications of the financial activities of the Commonwealth, the Treasury believes that it is necessary for the Treasurer to be vested with authority to incur expenditure in anticipation of the approval of Parliament. The present procedure provides the only practical method under which this result can be achieved.

## FURTHER COMMENTS ON INDIVIDUAL ITEMS.

19. *International Development and Relief—Division No. 109, Item 7—U.N.R.R.A.—Contributions £177,404.*—This item relates to expenditure during 1951-52 arising out of the re-negotiation of an uncompleted contract originally entered into for the supply of 50 locally made "McArthur" locomotives to China as part of the Commonwealth Government's contribution to the U.N.R.R.A. scheme. Following a change in the international situation the contract was re-negotiated and the number of locomotives was reduced to 20 of which 10 were for the Commonwealth Railways and 10 for the South Australian Government. The amount voted for 1951-52 represented portion of the loss to the Commonwealth under the modified contract.

20. In discussing the details of this transaction, the Committee expressed the view that the wording of the item in the *Supplementary Estimates* was not sufficient to inform Parliament of the true nature of the transaction.

21. During the hearing Treasury informed the Committee that the head of debit was a temporary one pending examination of the full circumstances of the contract with a view to determining what would be a reasonable charge against the U.N.R.R.A. vote in respect of the cancellation of the original contract.

22. This investigation has now been completed and an appropriate adjustment has been made in the 1952-53 *Supplementary Estimates*. Of the total expenditure to 30th June, 1953 (after allowing for credits from the proceeds of the sale of the locomotives and unused material) an amount of £500,000 has been determined as a reasonable charge to the U.N.R.R.A. vote. The balance of £233,938 was provided under a special Treasury vote designated "net loss on McArthur locomotives".

## DEPARTMENT OF COMMERCE AND AGRICULTURE.

23. *Division 199, Item 1—Subsidies—Dairy Products £1,048,397.*—In the course of its comments the Committee observed that the statutory authority for the payment of the bounty voted on the Annual Appropriation Acts.

24. The Department of Commerce and Agriculture has advised that the authority for paying bounties on Dairy Products was the *Dairying Industry Assistance Act 1943*, now repealed and replaced by the *Dairying Industry Act 1952*.

25. *Division 169, Item 4—Subsidies—Nitrogenous Fertilizers £231,138.*—The Committee commented that the wording of the item did not state adequately the purpose of the expenditure for which approval was sought. In addition, it suggested that the method by which procurement and distribution are financed should be examined.

26. This item was reviewed when the 1952-53 Budget was under consideration, and a change was introduced in order to reflect the true amount paid by the Commonwealth as subsidy on nitrogenous fertilizers. Last financial year the loss incurred in distributing these fertilizers (this amount being the subsidy) was debited to the item. The revenue obtained from the sale of stocks carried over from 1951-52 was credited to Consolidated Revenue. Unless the system of subsidizing nitrogenous fertilizers is altered, this method will be applied in future years. In the event that it is again necessary to finance carry-over stocks, the money required for this purpose will be shown under a separate vote, the subsidy vote carrying only the loss on distribution.

ROLAND WILSON,  
Secretary to the Treasury.

7th October, 1953.

## TREASURY MINUTE

COVERING ACTION TAKEN UPON THE RECOMMENDATIONS OF THE PUBLIC ACCOUNTS COMMITTEE IN ITS

## THIRD REPORT UPON THE ADMINISTRATIVE ARRANGEMENTS ORDER.(a)

1. Reference is made to Treasury Minute of 30th September, 1953, in which the Committee was advised that the contents of its Report on the Administrative Arrangements Order had been brought under the notice of the Departments concerned.

2. The Committee is informed that advice has been received from the Prime Minister's Department that action is being set in train to prepare a draft revision of the Administrative Arrangements Order for consideration by the Government.

3. The Committee is informed that the Treasury is guided by the conclusion expressed in Paragraph 33 (b) that the "Order as such does not possess authority on which to base claims for staff and funds to carry out the functions stated"

ROLAND WILSON,  
Secretary to the Treasury.

14th October, 1953.

(a) For Treasury Minute on Second Report see the Committee's Third Report on the Administrative Arrangements Order.

## PRIVILEGES AND IMMUNITIES OF MEMBERS OF THE COMMITTEE.

### OPINIONS OF THE PRESIDENT OF THE SENATE AND OF Mr. SPEAKER.

The Chairman asked the President of the Senate and the Speaker of the House of Representatives for advice regarding the privileges and immunities of the members of the Committee when engaged in the proper activities of the Committee.

The Committee publishes, for general information, the opinions received from the President and Mr. Speaker.

[Copy.]

President of the Senate.

Canberra, 16th September, 1938.

V. A. Bland, Esq., M.P.,

Chairman,  
Joint Committee of Public Accounts,  
Parliament House,  
Canberra.

Dear Mr. Bland,

Your letter of the 10th September asks for my views on what are the privileges and immunities of members of the Committee of Public Accounts in regard to the activities of the Committee.

Section 49 of the Constitution makes the following provision with respect to the privileges, &c., of the Federal Parliament, its members, and committees:—

"The powers, privileges, and immunities of the Senate and of the House of Representatives, and of the members and the committees of each House, shall be such as are declared by the Parliament, and until declared shall be those of the Commons House of Parliament of the United Kingdom, and of its members and committees, at the establishment of the Commonwealth."

It will be seen from that section that privilege is a matter on which the Parliament may legislate. But no comprehensive declaratory Act has been passed, and consequently the powers, privileges, and immunities of each House of the Federal Parliament and its members and committees are, in the main, the same as those of the House of Commons.

But while no declaratory Act, as such, has been passed, Parliament has, nevertheless, legislated in respect of certain of its powers and privileges. These have relation to Parliamentary papers, the broadcast of Parliamentary proceedings, and the powers of the Public Works Committee and the Public Accounts Committee with respect to witnesses.

I may add, here, that in 1908 a Joint Select Committee of the Federal Parliament on privilege recommended that legislation be enacted providing:

"That all persons printing, publishing, or uttering any false, malicious, or defamatory statements calculated to bring the Senate or House of Representatives or Members of the Committee thereof into hatred, contempt, or ridicule, or attempting to improperly interfere with or unduly influence, or obstructing, or insulting or assaulting, or bribing or attempting to bribe Members of Parliament in the discharge of their duties, shall be deemed guilty of breach of privilege and contempt of Parliament, and shall be liable to be prosecuted for such contempt upon complaint instituted by the Commonwealth Attorney-General before a Justice of the High Court pursuant to a resolution authorizing such prosecution to be passed by the House affected."

The Committee also recommended that such Justice of the High Court have power to impose a fine not exceeding five hundred pounds or imprisonment not exceeding six months. (See Parliamentary Paper No. 83 of session 1907-8.) The recommendations of the Committee were not, however, given effect.

With this explanatory preamble, I come now to a specific answer to your question.

Firstly, I draw your attention to the *Parliamentary Papers Act 1905-1940*. This Act authorises the publication of Parliamentary papers (including *Answers*), and provides that no action, civil or criminal, shall lie against any person for publishing any document, or the reports of the debates, pub-

lished under the authority of the Senate or the House of Representatives. In 1940, by an amendment to the Act, this statutory protection was extended to the publication under the authority of a Parliamentary committee of any document laid before the Committee or of any evidence given before the Committee.

Secondly, your own Committee statute declares the powers of the Committee with respect to witnesses. Apart from these matters, I know of no other legislative declaration by the Federal Parliament touching the privileges and immunities of members of the Committee of Public Accounts.

The position, therefore, is that, except insofar as I have shown, the powers, privileges, and immunities of the members of your Committee are those of the Commons House of Parliament, and of its members and committees, at the establishment of the Commonwealth. These can best be obtained by reference to standard English works on the subject, such as *May's Parliamentary Practice* and *Anson's Law and Custom of the Constitution*.

I select only one of these privileges for comment, viz.: freedom of speech—undoubtedly the best known Parliamentary privilege.

The ninth article of the famous Bill of Rights declares— "That the freedom of speech, and debates or proceedings in Parliament, ought not be impeached or questioned in any court or place out of Parliament."

What is important, insofar as your Committee may be concerned, is what is the meaning of the term "proceedings in Parliament". That is to say, are the sittings of your Committee "proceedings in Parliament", and does privilege apply to things said or done by a member in the exercise of his functions as a Member of the Joint Committee of Public Accounts?

From my reading of *May*, 15th edition, at pp. 61-3 I think the answer to both questions is "Yes".

I now refer you to an opinion by the then Solicitor-General, dated 8th August, 1941, on certain questions relating to the privilege attaching to statements made to the Joint Committee on War Expenditure—see copy attached. You will find of particular interest the Solicitor-General's opinion on question No. 4, which deals with the privilege attaching to statements made to a member of the Committee which statements are disclosed in either House or to the Committee.

I feel that I may very well leave this reply at that. May I say in conclusion, however, that if there is any particular question arising in the proceedings of your Committee which concerns the privileges of the members, and upon which my views may be thought to be helpful, I will always be glad to help in any way I can.

Yours sincerely,  
(Sgd.) A. M. McMULLIN,  
President of the Senate.

[Copy.]

No. 53 of 1941.

PARLIAMENT: PRIVILEGE: STATEMENTS MADE TO SELECT AND JOINT COMMITTEES: CONSTITUTION, SECTION 49: WHETHER SELECT AND JOINT COMMITTEES HAVE POWER TO COMPEL WITNESSES AND ADMINISTER OATHS: WITNESSES PRIVILEGE COULD BE CONFERRED BY REGULATION UNDER NATIONAL SECURITY ACT 1939-1940 IN CASES IN WHICH IT DOES NOT OTHERWISE EXIST.

[Copy.]

By a resolution agreed to by the Senate and the House of Representatives, a Joint Committee of members of those Houses has been appointed "to examine current expenditure and report on it, and to report what, if any, economies consistent with the

execution of the policy decided on by the Government may be effected therein. The Committee has power to send for persons, papers and records.

The Chairman of the Committee has asked for my advice on certain questions relating to the privilege attaching to statements made to the Committee and to its members.

At the outset it will be convenient to refer to section 49 of the Constitution, which reads as follows:—

"49. The powers, privileges, and immunities of the Senate and of the House of Representatives, and of the members and the committees of each House, shall be such as are declared by the Parliament, and until declared shall be those of the Commons House of Parliament of the United Kingdom, and of its members and committees, at the establishment of the Commonwealth."

As no declaration has been made by the Parliament relevant to the subject-matter of this Opinion, it is necessary to consider the corresponding privileges and immunities of the House of Commons, and of its members and committees, as existing on 1st January, 1901.

Questions 1, 2 and 3.

The first three questions for advice are as follows:—

"1. Is a communication made to either House of the Parliament privileged?

"2. Is a communication or statement made to a Select Committee of either House, or to a Joint Committee of both Houses, of the Parliament privileged?

"3. Is there any distinction between a communication or statement made voluntarily and one so made by a person summoned to the Bar of either House or to give evidence before a Committee?"

It will be convenient to answer the first three questions together.

Public policy and convenience require that statements made on certain occasions shall be absolutely privileged, i.e. shall not form the subject of proceedings for defamation. Absolute privilege attaches to certain statements made in the course of parliamentary proceedings. Such statements, if made in the House, may be made either by a member or by a witness appearing to give evidence before the House.

It is clear that statements made by members of either House in Parliament, in their places in the House, through they might be untrue to their knowledge, could not be made the foundation of civil or criminal proceedings, however injurious they may be to a third person. (See *Cockburn C.J.* in *Ex parte Watson*, L.R. 4 Q.B. 573, at p. 576.)

It has been held that an absolute privilege attaches to any statement made by a witness summoned to give evidence before a Select Committee of the House of Commons, while under examination by the Committee. "When a select committee, having power to insist on evidence being given on oath, receives such evidence from a witness whom it has summoned, . . . such witness is protected." (See *Manisty J.* in *Oggin v. Donnelly*, 60 L.J.Q.B. 303, at p. 305.)

In my opinion, there is no distinction for this purpose, between evidence given before a Select Committee of one House and evidence given before the House itself or before a Joint Committee of both Houses.

It will be noted that the judgment of Manisty J. in *Oggin v. Donnelly*, specifically refers to evidence from a witness whom the Select Committee has summoned. There have been unable to find any case where a Court has had to consider whether evidence given before either House of the Parliament or before a Select or Joint Committee by a witness who has appeared voluntarily without being summoned is privileged. The privilege which attaches to the evidence of witnesses in judicial proceedings extends to witnesses who appear voluntarily as well as to witnesses who are summoned. I am unable to see any distinction in principle between witnesses in judicial proceedings and witnesses in parliamentary proceedings and I am, therefore, of opinion that equal protection is given to the evidence of a voluntary witness in parliamentary proceedings.

I am further of opinion that it is immaterial whether the evidence is given on oath or not.

These questions should, therefore, be answered as follows:—

Question 1.—"Yes."

Question 2.—"Yes."

Question 3.—"In my opinion there is no such distinction."

Question 4.

This question is as follows:— "4. Is a statement made to a member of the Parliament or of any such Committee which is disclosed in either House of the Parliament or to the Committee privileged to that protection is afforded to—"

(a) the person making the statement to a member

of the Parliament or Committee; and

(b) the Parliament or Committee

disclosing the statement?"

Dealing first with paragraph (b) of the question, I have stated in considering question 1 that any statement made by a member in the House is absolutely privileged. I have not, however, been able to find any decided case or any reference in the text-books as to the position with respect to statements made by a member of a Select or Joint Committee of the Committee. The reason for this may be that it would not be useful for statements of a hearsay nature to be received in evidence before such a Committee. Any statement made by a witness in a witness box, as stated in answer to question 2, be absolutely privileged. However, I am of opinion that a statement made by a member of a Committee would, if the Committee saw fit to receive it, also be absolutely privileged.

Turning to paragraph (a) of the question, I think it is clear that absolute privilege is not accorded to a statement so made. It is, however, necessary to consider whether the statement would receive qualified privilege.

It has been said that a statement is the subject of qualified privilege when it is made without malice on an occasion where the person making it has no interest or a duty, legal, social or moral, to make it to the person to whom it is made, and the person to whom it is made has a corresponding interest or duty to receive it (see *Adam v. Ward*, (1917) A.C. 309, per Lord Atkinson, at p. 354). An ordinary example of the rule is where a former master gives a "character" to his late servant to a person contemplating engaging the servant. Another example is where reports and references are made as to the commercial credit of a person with whom the inquirer proposes to do business.

There is no general rule as to what occasions are privileged and what are not. Great difficulty has been found by the Courts in defining what kind of social or moral duty, or what quantity of interest, will make an occasion privileged. There appears, however, to be a tendency for the Courts to extend the application of the rule. Each case must be considered on its own facts.

The position as to statements made to a member of Parliament has come before the Courts on several occasions. In *Dickson v. Lord Wilton* (1 F. & F. 419; 175 E.R. 700) the plaintiff, who was Lieutenant-Colonel of a regiment, had been removed from his command. The defendant, who was a colonel and had made complaints against him. A member of the House of Commons put a question on the notice-paper on this subject. Before the day on which the question was asked the defendant called on the member to explain the matter and, in so doing, made a statement on which he was subsequently based this action for slander. Lord Campbell C.J. said (175 E.R. at p. 717):

"With respect to the conversation, I say again the law will justify anything which the defendant might have said to Mr. Duncombe as a member of the House of Commons, for his information as such member."

If Lord Wilton went to Mr. Duncombe and spoke the words *bona fide* and with the view to put him in possession of the real facts of the case, he is protected; but if his object was to prejudice Mr. Duncombe against the plaintiff, and he had the indirect purpose of preventing him from putting his question in the House of Commons, he was not protected."

In *Graham v. Crozier* (44 Up. Can. Q.B. 378) an action for libel was brought in the Court of Queen's Bench of Ontario in the following circumstances. The defendant wrote a letter to the member of Parliament for the country in which the parties resided requesting him to have the plaintiff, a postmaster, removed from office, as his roguesy was unbearable and the defendant was unable to trust his bank-book through the post. The plaintiff should go to the post office and keep the money. The defendant had previously applied to the Post Office Department at Ottawa to have the plaintiff removed. *Hagarty C.J.* said (at p. 382):

"I have arrived at the conclusion that the learned Judge was right in holding that the libel in the case before us was not privileged. It is taken out of the class of cases rested on the doctrine of a honest mistake as to the proper quarter in which to seek redress for alleged misconduct, by the statement contained in it that the defendant had already applied, or was applying, to the Post Office Department at Ottawa to have the plaintiff removed from his office of postmaster. I think it impossible to hold that because it is addressed to Mr. Ross, as the local member of Parliament, it is thereby privileged."

It is no way professed to refer to any existing Parliamentary inquiry or proceeding. Calling on Mr. Ross as his representative in Parliament to have "the scoundrel removed" and charging plaintiff in the most violent and intemperate language with crime, cannot, in my judgment, be tortured, by any liberality of concession to free discussion, into a privileged communication."

The defendant avows that he knew the proper quarter to apply to. He has no right, I think, to send a furious charge of crime to the local or any other member of Parliament. On the same principle he could call the other representative to do what he asks Mr. Ross to do.



There is no trace, that I can find, of any authority going that length. In the case noticed, of *Dixon v. Lord Wilson*, a question was to be put in Parliament, and the defendant waited on the member who was to put it, and to him used the words complained of. This held privileged, so far as the words were used in good faith to put the member in possession of the real facts of the case. But how would it have been if the defendant had voluntarily, and without any question pending, have addressed either this member, Mr. Duncombe, or all or any other of the six hundred and odd members of the Commons, with a violently worded attack on the plaintiff?

I think we should establish a most vicious precedent if we were to hold such a document as that before us privileged, by the fact of its being addressed to a member of Parliament, the writer having already stated his complaint to the proper authority.

I can understand a case in which, all redress being refused or unreasonably delayed by the authorities, a person having an interest applies in good faith to his representative in Parliament to ask a question as to the delay, or to bring the matter before Parliament.

Nothing of the kind is suggested here."

It is clear from the cases cited that each case must be considered on its merits and that it is impossible to lay down any general rule that a statement made to a member of the Parliament is or is not privileged.

The position is, I think, different where the statement is made to a member of a Parliamentary Committee inquiring into a particular matter. It may be that it is the duty of every one, in the public interest, to bring any public abuse to the notice of the proper authority for investigation, and any information so given, though volunteered, is privileged, provided it is made in good faith to the body which has power to inquire into the subject-matter of the complaint (see *Galley on Libel and Slander*, 2nd Edition, pp. 243 and 244).

This question should, therefore, be answered as follows:—

Question 4 (a)—"If the statement is made bona fide to a member of a Parliamentary Committee inquiring into a matter relevant to the statement, Yes. If the statement is made to some other member of the Parliament, the matter is one depending on the particular facts."

Question 4 (b)—"Yes."

#### Question 5.

This question is as follows:—  
"5. Has a Select Committee or Joint Committee power to summon persons to give evidence and to administer oaths to witnesses?"

Reference to Chapter XXII. of the Standing Orders of the Senate and Chapter 25 of the Standing Orders of the House of Representatives makes it quite clear that a Select Committee may be empowered to send for persons, papers and records. If it is so empowered it may, in my opinion, summon witnesses to give evidence. I have not, however, been able to find any provision in the Standing Orders authorizing a Select Committee to administer an oath to a witness.

Provision is made by the Parliamentary Witnesses' Oaths Act, 1871 of Great Britain empowering any Committee of the House of Commons to administer an oath to the witnesses examined before the Committee. The question arises whether that power is one of the powers preserved to the Senate and the House of Representatives under section 40 of the Constitution.

The Act in question is intitled an Act for enabling the House of Commons and any Committee thereof to administer oaths to witnesses. Section 1 of the Act expressly empowers the House of Commons to administer an oath to the witnesses examined at the bar of the House and empowers any Committee of the House to administer an oath to the witnesses examined before the Committee. In my opinion, therefore, the Act confers a substantive power on the House of Commons

and its Committees and by virtue of section 40 of the Constitution that power is conferred on each House of the Commonwealth Parliament and on the Committees of each such House.

The Act does not, however, confer on Joint Committees of the Lords and Commons power to administer an oath. Even if the Act did confer such power it is very doubtful whether that power would be preserved under section 40 of the Constitution, as it is not a power of a Committee of the Commons.

Question 5 should, therefore, be answered as follows:—  
"A Select Committee or a Joint Committee authorized to send for persons, papers and records has power to summon witnesses. A Select Committee also has power to administer oaths to witnesses. It is doubtful whether a Joint Committee has that power."

#### Question 6.

This question is as follows:—  
"6. If any communications or statements of the kind specified in the preceding questions are not privileged, could privilege be afforded thereto by regulation under the National Security Act 1939-1940?"

Section 5 of the National Security Act 1939-1940 authorizes the making of regulations for securing the public safety and defence of the Commonwealth, and for prescribing matters which are necessary or convenient to be prescribed for the more effectual prosecution of any war in which His Majesty is or may be engaged. In my opinion, if the matter in respect of which a Select Committee or Joint Committee is appointed is one relating to the war, privilege (insofar as it does not already exist) as to communications and statements of the kind referred to in this question could be given by regulations under the National Security Act 1939-1940.

(Sgd.) GEO. S. KNOWLES,  
Solicitor-General.

8th August, 1941.

The Chairman,  
Joint Committee on Defence Expenditure,  
Parliament House,  
Canberra, A.C.T.

[Copy.]

HOUSE OF REPRESENTATIVES,  
Parliament of the Commonwealth.

Speaker's Room,  
Canberra, A.C.T.  
11th September, 1953.

My dear Professor,

I have your letter of the 10th September, 1953, in regard to the privileges and immunities of members of the Committee of Public Accounts. I call your attention to Section 40 of the Commonwealth Constitution, which states—

"The powers, privileges, and immunities of the Senate and of the House of Representatives, and of the members and the committees of each House, shall be such as are declared by the Parliament, and until declared shall be those of the Commons House of Parliament of the United Kingdom, and of its members and committees, at the establishment of the Commonwealth."

If any specific prohibition should arise I will be quite happy to discuss the matter with you when we may be able to examine a precedence which might give you guidance.

Yours faithfully,  
(Sgd.) ANNEIE G. CASTLETON.

Professor F. A. Bland, M.H.R.,  
Parliament House,  
Canberra, A.C.T.