LEGISLATIVE COUNCIL

OFFICE OF THE CLERK

8 January 2014

Ms Sophie Dunstone
Committee Secretary
Senate Legal and Constitutional Affairs References Committee

Sent via email: legcon.sen@aph.gov.au

Dear Ms Dunstone

Submission to the Senate Legal and Constitutional Affairs References Committee Inquiry into a claim of public interest immunity raised over documents

I refer to your correspondence dated 12 December 2013 inviting the New South Wales Legislative Council to make a submission to the inquiry being conducted into a claim of public interest immunity raised over documents.

The New South Wales Legislative Council has considerable experience of the matters you raise. Accordingly, I hope the attached submission is of assistance to the Committee.

I note that in 2009, my predecessor, Ms Lynn Lovelock, on behalf of the New South Wales Legislative Council, made a somewhat similar submission to the then Inquiry into Independent Arbitration of Public Interest Immunity Claims being conducted by the Senate Finance and Public Administration References Committee. Some of the information from that previous submission is reiterated here.

Please contact me should you need any further information in relation to any of the issues referred to in this submission.

Yours sincerely

David Blunt
Clerk of the Parliaments

Parliament House
Macquarie Street Sydney
NSW 2000 Australia

Telephone (02) 9230 2323
Facsimile (02) 9230 2761
council@parliament.nsw.gov.au

SENATE LEGAL AND CONSTITUTIONAL AFFAIRS REFERENCES COMMITTEE INQUIRY INTO A CLAIM OF PUBLIC INTEREST IMMUNITY RAISED OVER DOCUMENTS

Submission by the Clerk of the New South Wales Legislative Council

INTRODUCTION

This submission is in response to the Senate Legal and Constitutional Affairs References Committee's request for a submission in relation to its inquiry into claims of public interest immunity raised over documents tabled by the Assistant Minister for Immigration and Border Protection in the Senate.

The submission focuses on that part of the terms of reference concerning 'the authority of the Senate to determine the application of claims of public interest immunity'.

As indicated in the covering letter, the New South Wales Legislative Council has considerable experience of the matters raised in the terms of reference. In the late 1990s, the power of the Council to order the production of state papers, including papers subject to a claim of public interest immunity, was upheld by the courts in the *Egan* decisions.[1] Since that time, the procedures of the Council for ordering the production of state papers, and dealing with claims of privilege such as public interest immunity, have become well established.

THE POWER OF THE NEW SOUTH WALES LEGISLATIVE COUNCIL TO ORDER THE PRODUCTION OF STATE PAPERS

The New South Wales Legislative Council may order the production of state papers held by the executive. These orders are commonly referred to as 'orders for papers' or 'orders for returns'.

The power of the Legislative Council to order the production of state papers is derived from the common law principle of reasonable necessity. This principle finds expression in a series of 19th century cases decided by the Judicial Committee of the Privy Council between 1842 and 1886 in which it was held that while colonial legislature did not possess all the privileges of the Houses of the British Parliament, they were entitled by law to such privileges as were 'reasonably necessary' for the proper exercise of their functions.[2] More extensive privileges could be acquired by legislation.

With self-government in 1855, the New South Wales *Constitution Act 1855* granted the new New South Wales legislature the power to make laws for the peace, welfare and good government of the State. Significantly, however, the *Constitution Act 1855* did not include an express grant of powers and immunities to the Houses of the New South Wales Parliament, for example based

1 See the decision of the New South Wales Court of Appeal in *Egan v Willis and Cahill* (1996) 40 NSWLR 650, the decision of the High Court in *Egan v Willis* (1998) 195 CLR 424 and the decision of the New South Wales Court of Appeal in *Egan v Chadwick* (1999) 46 NSWLR 563.

2 *Kielley v Carson* (1842) 12 ER 225, *Fenton v Hampton* (1858) 14 ER 727, *Barton v Taylor* (1839) 112 ER 1112.

on the powers and immunities of the House of Commons as at a particular date. There has been no comprehensive grant of powers and immunities to the Houses of the New South Wales Parliament since.

Accordingly, today, the common law principle of reasonable necessity remains the source of the majority of the powers enjoyed by the Houses of the New South Wales Parliament, with the exception of certain few powers conferred by statute. As Lord Denman CJ said in *Stockdale and Hansard*:

> If the necessity can be made out, no more need be said: it is the foundation of every privilege of Parliament, and justifies all that it requires.[3]

The power of the Senate to order the production of papers is expressed in *Odgers' Australian Senate Practice* as conferred by section 49 of the Australian Constitution. However, reference is also made in *Odgers* to the powers inherent in a legislature, with specific reference to the circumstances of the New South Wales Legislative Council.[4]

THE *EGAN* DECISIONS

The power of the New South Wales Legislative Council to order the production of state papers was routinely exercised between 1856 and the early 1900s. However, orders for state papers ceased to be a common feature of the operation of the Council during the second decade of the 20th century, with the occasional exception up until as late as 1948. It was during the 1990s that the power of the Legislative Council to order papers was revived, precipitating the *Egan* cases.

The *Egan* cases were generated by the refusal of the former Treasurer and Leader of the Government in the New South Wales Legislative Council, the Hon Michael Egan, to produce certain state papers ordered by the Council. This occurred on a number of occasions, precipitating legal proceedings in the courts.

In November 1996, in *Egan v Willis and Cahill*, the New South Wales Court of Appeal unanimously held that 'a power to order the production of state papers ... is reasonably necessary for the proper exercise by the Legislative Council of its functions'.[5]

In the subsequent decision of the High Court in *Egan v Willis* in November 1998, the majority (Gaudron, Gummow and Hayne JJ) confirmed that it is reasonably necessary for the Council to have the power to order one of its members to produce certain papers. As the majority judgment noted:

> It has been said of the contemporary position in Australia that, whilst 'the primary role of Parliament is to pass laws, it also has important functions to question and criticise government on behalf of the people' and that 'to secure accountability of government activity is the very essence of responsible government'.[6]

---

3 (1839) 112 ER 1112 at 1169. Privilege could, he said, be grounded on 'three principles - necessity, - practice, - universal acquiescence'.

4 *Odgers' Australian Senate Practice*, 13th edn, pp 75 – 76.

5 *Egan v Willis and Cahill* (1996) 40 NSWLR 650, per Gleeson CJ at 667.

6 *Egan v Willis* (1998) 195 CLR 424, per Gaudron, Gummow and Hayne JJ at 451.

However, while the High Court in *Egan v Willis* clearly affirmed the power of the Council to order the production of state papers, it did not consider the production of papers subject to a claim of privilege by the executive such as legal professional privilege, or notably in the context of this submission, public interest immunity. This was not resolved until the decision in *Egan v Chadwick* in June 1999, where the New South Wales Court of Appeal held that the Council's power to require the production of documents, upheld in *Egan v Willis*, extended to documents in respect of which a claim of legal professional privilege or public interest immunity could be made. However, the majority (Spigelman CJ and Meagher JA) did hold that public interest may be harmed if access were given to documents which would conflict with individual or collective ministerial responsibility, such as records of Cabinet deliberations.

Accordingly, the executive in New South Wales is required to produce to the Legislative Council documents subject to an order for papers notwithstanding any claim of public interest immunity. Since the *Egan* decisions, orders for the production of documents have become common in the Legislative Council, with over 300 orders made since 1999. The executive in New South Wales routinely complies with such orders including by the production of documents subject to a claim of public interest immunity.

PROCEDURE IN THE LEGISLATIVE COUNCIL FOR THE PRODUCTION OF STATE PAPERS AND THE CLAIMING OF PRIVILEGE OVER CERTAIN DOCUMENTS BY THE EXECUTIVE

Although documents claimed to be privileged are produced to the Legislative Council in response to its orders, the House has recognised that in some cases the documents so produced should not receive wider publication. This is the case where the wider disclosure of documents would be contrary to the public interest. The House has therefore developed procedures which allow for claims of privilege to be made by the executive over documents provided in returns to orders. The procedures also allow for disputed claims to be referred to an independent arbiter for assessment, but for the House to make the final judgement on the claim of privilege.

The procedure of the House for the production of papers and the arbitration of privilege claims is contained in standing order 52. A copy of standing order 52 is at Attachment 1. The standing order 52 process is now well established over many years as the mechanism for regulating the Council's common law power to order the production of State papers.[7]

It is notable, however, that the process evolved over time. Initial orders for papers at the time the House again started to use the power to order the production of state papers did not include an arbiter process for resolving deadlocks between the executive and the parliament. The process was later included in each order for papers of the House passed, before finally being adopted in the standing orders of the Council in 2004.

Summary of the order for papers procedure under standing order 52

Under standing order 52, orders for papers are initiated by resolution of the House. On an order for papers being agreed to, the terms are communicated by the Clerk to the Director General of the Department of Premier and Cabinet, who liaises with the departments or ministerial offices named in the resolution to coordinate the retrieval of the documents requested. On or before the

7 In *Egan v Willis & Cahill*, Gleeson CJ observed that the standing orders do not operate as a source of power, but rather regulate the exercise of powers that exist independently by some other means. *Egan v Willis & Cahill* (1996) 40 NSWLR 650 at 664 per Gleeson CJ.

due date imposed by the resolution, the Director General lodges the return comprising the documents with the Clerk of the Parliaments. If the House is not sitting the Clerk receives the documents out of session and announces receipt of the return on the next sitting day.

In returning documents to the House, the executive may make a claim of privilege over some or all of the documents provided. Where a claim of privilege is made over documents, the return must also include reasons for the claim of privilege. Documents returned to the House must be accompanied by an indexed list of all documents tabled, showing the date of creation of each document, a description of the document and the author of the document. Where documents are subject to a claim of privilege, a separate index of those documents is required to be provided.

Once the documents have been tabled in the House or received out of session by the Clerk, they are deemed to have been published by authority of the House, unless a claim of privilege has been made. The documents are made publicly available in the same way as any other tabled paper. Documents over which a claim of privilege has been made are kept confidential to members of the Legislative Council only in the Office of the Clerk and may not be copied or published without an order of the House.

A claim of privilege by the Government over a document or documents supplied in a return to order (thereby necessitating that it be kept confidential) may be disputed by any member of the Council by communication in writing to the Clerk. On receipt of such a communication, the Clerk is authorised to release the disputed document or documents to an independent legal arbiter for evaluation and report as to the validity of the claim of privilege. The independent legal arbiter is appointed by the President and must be either a retired Supreme Court judge, Queen's Counsel or Senior Counsel. The report of the arbiter is required within seven days. However, on several occasions arbiters have sought an extension of time where privilege has been claimed over a large volume of documents.

Once completed, the arbiter lodges his or her report with the Clerk, who makes it available to members. The Clerk also informs the House of receipt of the report at the next sitting. As is the case with privileged documents, the report is confidential to members, and cannot be published or copied without an order of the House.

Following receipt of the arbiter's report, in most cases, the member responsible for lodging the dispute on the claim of privilege will then give notice of a motion for the arbiter's report to be tabled and made public. While it is usual for this motion to be agreed to, and the report tabled at a later hour of that day, this is not always the case.

In cases where the arbiter's report is tabled and the arbiter has recommended that the claim of privilege on certain documents be denied, a member will then usually give notice of a motion requiring the Clerk to lay the documents considered not to be privileged on the table of the House and to authorise them to be published. The motion is moved on a subsequent day and, if agreed to, the documents are tabled by the Clerk later that same day.

If the arbiter's report upholds the claim of privilege, the papers remain restricted to members only. While the House, as the final arbiter on any claim of privilege, may vote to make the documents public at any time, notwithstanding the recommendation of the arbiter, this has not happened to date.

CLAIMS OF PUBLIC INTEREST IMMUNITY AND THE DECISION IN *EGAN V CHADWICK*

Perhaps the most contentious, and most likely, claim of privilege raised by the executive over documents supplied to the Council in a return to order is that of public interest immunity, although the earlier expression 'Crown privilege' is sometimes still used.

The claim of public interest immunity refers to a claim by the executive that it is not in the public interest for certain information to be made public. The common law formulation of public interest immunity stated in *Sankey v Whitlam*[8] is as follows:

> [T]he court will not order the production of a document, although relevant and otherwise admissible, if it would be injurious to the public interest to do so.[9]

In *Egan v Chadwick*, all three members of the Court of Appeal agreed that the Council's power to order the production of documents included the power to compel the production of state papers subject to a claim of public interest immunity, on the basis that such a power may be reasonably necessary for the exercise of the Council's legislative function and its role in scrutinising the executive.[10]

However, this raises the further questions of how the House is to determine whether or not to uphold a claim of public interest immunity by the executive, should a claim be contested by a member.

In his judgement, Spigelman CJ noted that where public interest immunity arises in court proceedings, the trial judge is required to balance conflicting public interests - the significance of the information to the issues in the trial, against the public harm from disclosure.[11] Similarly, where public interest immunity arises in parliamentary proceedings, a balance must be struck between the significance of the information to the proceedings in Parliament, against the public harm from disclosure. Spigelman CJ continued in his judgement:

> Where the public interest to be balanced involves the legislative or accountability functions of a House of Parliament, the courts should be very reluctant to undertake any such balancing. This does not involve a constitutional function appropriate to be undertaken by judicial officers. This is not only because judges do not have relevant experience, a proposition which may be equally true of other public interests which they are called upon to weigh. It is because the court should respect the role of a House of Parliament in determining for itself what it requires and the significance or weight to be given to particular information.[12]

In his judgement, Priestley JA noted that where claims of public interest immunity arise in judicial proceedings, the courts have the power to compel the production of documents by the executive government in respect of which immunity is claimed, for the purpose of balancing the public interests for and against disclosure. He continued that the function and status of the Council in the system of government in New South Wales 'require and justifies the same degree of trust being reposed in the Council when dealing with documents in respect of which the

8 (1978) 142 CLR 35.
9 *Sankey v Whitlam* (1978) 142 CLR 35 at 38.
10 *Egan v Chadwick* (1996) 46 NSWLR 568, per Spigelman CJ at 574, per Priestley at 595, per Meagher at 597.
11 *Egan v Chadwick* (1999) 46 NSWLR 568, per Spigelman CJ at 573.
12 *Egan v Chadwick* (1999) 46 NSWLR 568, per Spigelman CJ at 574.

executive claims public interest immunity'. Accordingly, in exercising its powers in respect of such documents, the Council has a duty analogous to that of a court of balancing the public interest considerations, and a duty to prevent publication beyond itself of documents the disclosure of which will be inimical to the public interest.[13]

Accordingly, the Court of Appeal in *Egan v Chadwick* left the decision whether to publish a document subject to a claim of public interest immunity to the Legislative Council. The Council performs this role with the advice of the independent legal arbiter.

FURTHER COMMENTS ON CLAIMS OF PUBLIC INTEREST IMMUNITY FROM THE INDEPENDENT ARBITER

As noted, since the *Egan* decisions, orders for the production of papers have become common in the Legislative Council, with over 300 orders made since 1999. In over 180 of those returns to order, the executive has made a claim of privilege. The validity of the claim has been disputed by a member of the House on 38 occasions.

When assessing whether claims of privilege are valid, the test that is applied by the arbiter and ultimately the House itself is that of the public interest. Put simply: is it in the public interest for the document in question to be made public? This inevitably involves a balancing act between the disclosure of potentially sensitive information in the Government's possession on the one hand, and the public's right to know and the need for transparency and accountability on the part of the executive on the other. As articulated in *Egan v Chadwick*, the test applied by the Legislative Council is not the same as the test applied in the courts.

Over the years, the various arbiters, but particularly Sir Laurence Street, have articulated in their arbiter reports further guidance as to their approach in assessing claims of privilege.

In 2003, in his report on the Millennium Train Papers, Sir Laurence made the following observation on claims of privilege:

> As a generality it can be accepted that there is a clear public interest in respecting validly based claims for Legal Professional Privilege, Public Interest Immunity and Commercial in Confidence Privilege. The ordinary functions of government and the legitimate interests of third parties could be encumbered and harmed if such claims are disregarded or over-ruled. As against this, there can be matters in respect of which the public interest in open government, in transparency and accountability will call for disclosure of every document that cannot be positively and validly identified as one for which the public interest in disclosure is outweighed by the public interest in immunity. It lies with the party claiming privilege to establish it.[14]

Subsequently, in 2005, in his report on the report on the Cross City Tunnel—Second Report, Sir Laurence made the following observation on evaluating the public interest generally:

> When the Legislative Council exercised its authority in 2003 to call upon the Executive Branch of Government to produce the Cross City Motorway documents, the Executive (in this instance principally the RTA) was legally bound to comply totally. But while no such documents could be withheld by the RTA, it was conventionally open to it to claim for any

13 *Egan v Chadwick* (1999) 46 NSWLR 568, per Priestley at 594.

14 Report of the Independent Arbiter, *Millennium Trains Papers*, 22 August 2003, pp 6-7.

> of the documents privilege from their being disclosed to the public. In terms of its absolute authority, Parliament is not bound by such claims, but conventionally it (or its appointed Arbiter) examines the documents and the claims to determine whether or not to grant the claimed immunity from disclosure.
>
> Claims for privilege commonly fall into two categories – Legal Professional Privilege (LPP) and Public Interest Privilege (PIP). These claims are not uncommon in judicial proceedings. LPP is recognized and enforced by Courts in protecting the confidentiality of the lawyer client relationship. PIP is a more wide-ranging and less readily defined privilege based, broadly speaking, on the justification for protecting the confidentiality of documents containing sensitive or confidential information which it would be unreasonably prejudicial to disclose to the public.
>
> Courts have developed a principled approach in deciding such claims of privilege. Parliament has as a matter of convention adopted a somewhat similar approach, particularly in relation to LPP. But there is an important difference between the responsibility of a court ruling on such claims and the function of Parliament. The Court's function is to administer justice and expound the law. Parliament is the guardian of the public interest with age old constitutional authority to call upon the Executive to give an account of its activities.
>
> While Courts apply developed principles in ruling on claims for privilege, Parliament will evaluate the claim (usually by its Arbiter) to consider whether it is in the public interest to uphold it. This process involves balancing against each other two heads of public interest that are in tension. On the one hand, there is a public interest in not invading lawyer client relationships and a public interest in protecting what might be called commercially sensitive material. And, on the other hand, there is a contrary public interest in recognizing the public's right to know and the need for transparency and accountability on the part of the Executive.[15]

It is notable that in the above matter, Sir Laurence ultimately concluded that, in light of the controversy generated by the Cross City Tunnel, '[m]y determination … is that the privilege granted in September 2003 to some of the documents produced by the RTA is no longer justified in the public interest and should now be denied'.[16]

Subsequently, in relation to the above Cross City Tunnel – Further order, Sir Laurence held that the public interest in the construction and commissioning of the tunnel was of such a level as to outweigh legal arguments that would ordinarily have been recognised as clear candidates for legal professional or public interest immunity privilege. As Sir Laurence Street stated, 'the demands of open government, transparency and accountability are almost irresistible.'[17] He further stated:

> … regardless of varying degrees of sensitivity, I am of the view that there is a legitimate public interest in all of the RTA's actions being laid bare. Indeed, although it may find this unwelcome and irksome, I am of the view that it is in the RTA's own interests as one of the State's great institutions of Government, to table all of its material and to 'stand up and be counted'… The public has an over-riding right in the present climate of concern over the tunnel project – financial, environmental and even safety – to have ordinary barriers of confidentiality or privilege placed aside.[18]

---

15 Report of the Independent Arbiter, *Cross City Tunnel—Further* Order, 20 October 2005, pp 1-2.
16 Report of the Independent Arbiter, *Cross City Tunnel—Further* Order, 20 October 2005, p 3.
17 Report of the Independent Arbiter, *Cross City Tunnel—Further Order*, 15 November 2005, p 3.
18 Report of the Independent Arbiter, *Cross City Tunnel—Further Order*, 15 November 2005, p 4.

The balancing of the public interest was further elucidated by Sir Laurence in June 2006 in a report on the sale of PowerCoal Assets:

> ... it must be accepted that the making and testing of such claims are part of the democratic process. In the constitutional fabric of the state of New South Wales there is no absolute doctrine of separation of powers as there is for example in the Commonwealth and the United States. The NSW Parliament is supreme in its authority over the Executive but, in deference to the public expectation that the three branches of Government will co-exist in a conventionally ordered relationship, the underlying philosophy of the separation of powers doctrine is a relevant consideration, albeit that it is not constitutionally mandated or enforceable. Hence the existence of Parliament's authority to over-ride the Executive in the matter of the production of documents. It is a power that exists but is exercised only where it is, in the judgement of Parliament, in the public interest to do so.[19]

Arbiters have also commented on the role of departments and agencies in determining whether privilege is claimed over documents during the initial stages of compiling the return. In assessing a return in 2005, Mr MJ Clarke QC found that a claim of privilege could be validly made in relation to only a portion of the volume of documents over which an umbrella claim had been made.[20] In effect, the extension of the claim to the accompanying documents appeared to have the effect of weakening the claim of privilege in the arbiter's eyes as, taken in the context of the whole, the arbiter determined that the claim of privilege could not be sustained and was outweighed by the high public interest in their disclosure. A similar problem was encountered by Sir Laurence Street during an evaluation in 2003, to which he responded by seeking the permission of the Clerk of the Parliaments to invite representatives of the agencies concerned to assist in identifying and making good the claims for privilege made on individual documents.[21]

Claims of public interest immunity have been validly made in the past in relation to such issues as protecting the identity of an informant[22] and the application of the Government policy of attracting investment to the State.[23]

However, examples where claims of public interest immunity have not been upheld include in relation to the conditional lease of a former quarantine station on the foreshores of Sydney Harbour, when it was held that the public interest in the foreshores of the harbour and the stewardship of the site outweighed the confidentiality of government policy in relation to the site,[24] and in relation to leases and agreements pertaining to Luna Park, where the arbiter held that the documents primarily comprised concluded commitments entered into by a public authority relating to a Sydney icon which contained nothing of such sensitivity as to counterbalance the public interest in the exposure of their contents.[25]

CONCLUSION

The power of the New South Wales Legislative Council to order the production of state papers, including papers over which a claim of public interest immunity may be made, is well established. The power is founded on the common law principle of reasonable necessity and was confirmed

19 Report of the Independent Arbiter, *Sale of PowerCoal Assets*, 27 June 2006, p 6.
20 Report of the Independent Arbiter, *State Finances*, 16 January 2007, p 3.
21 Report of the Independent Arbiter, *Millennium Trains Papers*,22 August 2003, p 7.
22 Report of the Independent Arbiter, *M5 East Motorway*, 25 October 2002, pp 5-6.
23 Report of the Independent Arbiter, *Mogo Charcoal Plant*, 28 May 2002, p 3.
24 Report of the Independent Arbiter, *Conditional Agreement to Lease the Quarantine Station*, 31 July 2001, pp 2-3.
25 Report of the Independent Arbiter, *Luna Park Leases and Agreements*, 19 June 2006, pp 2-4.

by the *Egan* decisions of the late 1990s. Accordingly, the executive in New South Wales is required to produce to the Legislative Council documents subject to an order for papers notwithstanding any claim or public interest immunity. Where a claim of privilege is made, the documents subject to the claim are confidential to members. However, under standing order 52, the House has established a process whereby any member of the House may contest a claim of privilege, precipitating the contested documents being released to an independent legal arbiter for report as to the validity of the claim of privilege. On receipt of the arbiter's report, the decision whether to make public the documents over which privilege is claimed rests with the House, based upon an evaluation of whether it is in the public interest for the documents to be made public.

ATTACHMENT 1

STANDING ORDER 52

Order for the production of documents

(1) The House may order documents to be tabled in the House. The Clerk is to communicate to the Premier's Department, all orders for documents made by the House.

(2) When returned, the documents will be laid on the table by the Clerk.

(3) A return under this order is to include an indexed list of all documents tabled, showing the date of creation of the document, a description of the document and the author of the document.

(4) If at the time the documents are required to be tabled the House is not sitting, the documents may be lodged with the Clerk, and unless privilege is claimed, are deemed to be have been presented to the House and published by authority of the House.

(5) Where a document is considered to be privileged:

(a) a return is to be prepared showing the date of creation of the document, a description of the document, the author of the document and reasons for the claim of privilege,

(b) the documents are to be delivered to the Clerk by the date and time required in the resolution of the House and:

(i) made available only to members of the Legislative Council,

(ii) not published or copied without an order of the House.

(6) Any member may, by communication in writing to the Clerk, dispute the validity of the claim of privilege in relation to a particular document or documents. On receipt of such communication, the Clerk is authorised to release the disputed document or documents to an independent legal arbiter, for evaluation and report within seven calendar days as to the validity of the claim.

(7) The independent legal arbiter is to be appointed by the President and must be a Queen's Counsel, a Senior Counsel or a retired Supreme Court Judge.

(8) A report from the independent legal arbiter is to be lodged with the Clerk and:

(a) made available only to members of the House,

(b) not published or copied without an order of the House.

(9) The Clerk is to maintain a register showing the name of any person examining documents tabled under this order.