17

Papers and documents

PAPERS PRESENTED TO THE HOUSE

In order to exercise effectively its responsibility to oversight the activities of the Executive Government, the Parliament needs to be kept informed of the Government's activities. The presentation of papers and reports by Ministers is very important to Parliament in fulfilling its critical role. Further, it demonstrates the accountability of the Government to the Parliament and, through it, to the community. Papers presented to the House are one of the important primary sources of information from which a Member may draw in asking questions and in making a useful contribution to debate.

The fundamental right of Parliament of access to information concerning the activities of government is often given expression in legislation where, for example, Acts of Parliament require statutory bodies to present reports, including financial reports, of their activities to the Parliament (*see* p. 529). Information is also provided in other ways[1], principally through questions on notice and without notice, in the course of debate, and by means of statements by Ministers on government policy or activities (*see* p. 533). The House itself has a right, expressed in the standing orders[2], to seek information in document form and has on occasions exercised that right (*see* p. 531). The right of Members to information is also acknowledged by the Government. For example, when papers are tabled by command (*see* p. 529), Ministers, in presenting the papers, do so 'for the information of honourable Members'.

The Parliament, through one of its joint committees, has also stressed the right of Members to information on a continuing and regular basis. The Joint Committee on Publications (*see* p. 547), in its 1977 report on the Parliamentary Papers Series, made the following recommendations concerning the presentation of annual reports to the Parliament:

- That departments, statutory authorities and other governmental institutions which are not required, by statute, to present an annual report to Parliament but which have had occasion to table an annual report in recent years, be encouraged to continue to present an annual report to Parliament on a consistent basis.
- That the Clerks of the Parliament advise the Chairman on any occasion where an author body has failed to meet a statutory requirement to table its annual report, return or other document within the stated statutory period, or within a reasonable period of time following the completion of the period to which the report refers.
- That at the conclusion of each year's sitting, or as often as may be deemed necessary, the Committee table a return in Parliament recording the titles of those reports of author bodies which have not been tabled during the stated statutory period or within a reasonable period of time following the completion of the period to which the report refers.[3]

The Speaker, on 24 November 1978, informed the House that he and the President of the Senate supported these recommendations. They had written to the Prime Minister drawing his attention to the first recommendation, and had implemented the proposals

1 *See also* Ch. on 'The role of the House of Representatives'.

2 S.O. 316.

3 'Inquiry into the purpose, scope and distribution of the Parliamentary Papers Series', *Report of Joint Committee on Publications*, PP 216(1977)14.

contained in the second recommendation.[4] On 6 March 1980, the Chairman of the Joint Committee on Publications presented the first return in accordance with the third recommendation.[5]

The continuing acknowledgment of the fundamental right of the House to information is also reflected in a number of other ways. It is seen in the increasing number of Public Service departments that report to the Parliament; 5 for the financial year 1968-69, 23 for 1979-80. It is also seen in the growth of the Parliamentary Papers Series (*see* p. 546); 202 papers ordered to be printed in 1969, 400 in 1980.

Method of presentation

Papers and documents are presented to the House in a number of ways. They can be presented by the Speaker, pursuant to statute, by command of the Governor-General, pursuant to standing orders[6] and by leave of the House.

The more important papers are usually tabled during the period of time set aside in the routine of business following Question Time. However, a Minister may present a paper at any time when he is speaking provided the paper is relevant to the subject under discussion, and also when other business is not before the House.[7] Leave is required for a paper to be presented at any other time (*see* p. 530). It is the practice of the House that the Speaker may present a paper at any time, but not so as to interrupt a Member who is speaking.

By the Speaker

The standing orders provide that papers may be presented to the House by the Speaker.[8] The reports of those committees of which he is chairman, or joint chairman, are presented by the Speaker.[9] He presents the reports of parliamentary delegations of which he is the leader[10], the reports of conferences of Commonwealth Speakers and Presiding Officers[11], and the reports of conferences of Presiding Officers and Clerks of the Parliaments.[12] He tables papers dealing with parliamentary activities[13], and the annual reports of Parliamentary Departments under his control or under the joint control of the Speaker and the President.[14]

The Commonwealth Banking Corporation Board[15] and the Reserve Bank Board[16] must each send a copy of their annual report, together with a report of the Auditor-General on their financial statements, to the Speaker and the President to be laid before the House of Representatives and the Senate. The Audit Act requires the Auditor-General to transmit to each House of the Parliament reports prepared by him under that Act.[17] These reports are tabled in the House by the Speaker in his role as the representative of the House in its external relations with authorities outside the Parliament.[18]

The Speaker may also communicate to the House letters and documents addressed to him as Speaker, such as replies to expressions of congratulation or condolence made

4 H.R. Deb. (24.11.78)3456-7.

5 H.R. Deb. (6.3.80)816-8; VP 1978-80/1319.

6 S.O.s 316, 317, 319, 321.

7 S.O. 102.

8 S.O. 319.

9 In the 32nd Parliament the Speaker was chairman or joint chairman of the Joint Committee on the Broadcasting of Parliamentary Proceedings, the Joint Committee on the New Parliament House, the Standing Orders Committee, and the House Committee sitting as a joint committee with the House Committee of the Senate.

10 VP 1978-80/1159.

11 VP 1978-80/676.

12 VP 1978-80/1025.

13 *See* 'Bills not passed into law', VP 1978-80/602; 'History of Hansard', VP 1970-72/1236.

14 Annual reports of the Department of the House of Representatives, VP 1978-80/733, 1378; VP 1980-81/146. Annual reports of the Department of the Parliamentary Library, VP 1978-80/811,1348.

15 *Commonwealth Banks Act* 1959, s. 121 (3).

16 *Reserve Bank Act* 1959, s. 81 (3).

17 *Audit Act* 1901, ss. 48G, 53 (1).

18 *See* Ch. on 'The Speaker and Officers of the House'.

by the House[19], or messages of the same kind from foreign countries and other legislatures[20], letters acknowledging a vote of thanks of the House[21], or relating to the rights and privileges of the House or its Members, such as communications notifying the House of the arrest or imprisonment of a Member.[22] A document communicated to the House by the Speaker may be read and entered in the Votes and Proceedings or simply recorded as being received. Unless tabled by specific action of the Speaker[23], documents of this kind are not regarded as having been formally tabled.[24]

Pursuant to statute

Papers tabled pursuant to statute are those papers required to be presented to the Parliament by virtue of provisions in Acts of the Parliament. The more important papers are presented by the Minister who has the responsibility for administering the relevant Act or, if the responsible Minister is a Member of the other House, by the Minister representing that Minister.

A number of types of papers are covered by the term statutory papers. For example, a statutory authority is usually required by its enabling legislation to present a report on its operations each financial year, and this report is normally required to be accompanied by financial statements and the report of the Auditor-General on those statements.[25]

Some authorities are required to investigate and report on specific matters and to present their reports to the Parliament.[26] A number of statutes require that the Minister responsible for the administration of an Act report to the Parliament on the operations of that Act[27], and many Acts providing for grants, or financial assistance, to the States require that statements of guarantees and payments, and financial agreements, be tabled in the Parliament.[28]

The Acts Interpretation Act requires that where any Act confers the power to make regulations, those regulations shall be laid before each House of the Parliament.[29] As well as regulations there are statutory requirements for the tabling of many other instruments of a similar nature. They include such papers as notifications of the acquisition of land, ordinances, by-laws, rules of court, determinations, statutes of academic institutions, and certain appointments to the Public Service.

By command of the Governor-General

Command papers, which are papers tabled nominally by command of His Excellency the Governor-General, are tabled in the House by Ministers (or by Assistant Ministers).[30] In some cases command papers are forwarded to the Clerk for recording in the Votes and Proceedings as papers deemed to have been presented (*see* p. 530).

The term 'command paper' covers those reports and other documents, not required by statute to be tabled, which the Government considers important enough to present

19 VP 1978-80/981.

20 VP 1978-80/930, 977.

21 VP 1932-34/583.

22 VP 1970-72/517.

23 VP 1967-68/10.

24 *And see* May, p. 229.

25 Some authorities report for 12 month periods other than the financial year; *see* Royal Military College of Australia, VP 1978-80/1526. Some authorities are not required to table financial statements; *see* Aboriginal Land Commission (Aboriginal Land Rights (Northern Territory) Act), VP 1978-80/1260.

26 *See Australian Science and Technology Council Act* 1978, s. 6(2); *Industries Assistance Commission Act* 1973, s. 29 (2) (dealing with reports of the Temporary Assistance Authority); *Law Reform Commission Act* 1973, s. 37.

27 *See Housing Assistance Act* 1978, s. 15; *Air Navigation Act* 1920, s. 29.

28 *See States Grants (Technical and Further Education) Act* 1974, s. 30 (1); *Urban and Regional Development (Financial Assistance) Act* 1974, s. 8.

29 *Acts Interpretation Act* 1901, s. 48.

30 S.O. 319.

to the House for the information of Members. In many cases it is an exercise in the accountability of the Executive to the Parliament. For example, the annual reports of Public Service departments are tabled as command papers.[31] In other cases it is an acknowledgment of the fundamental right of access of Members to information concerning government policy or activity, and within this framework command papers cover a virtually unlimited range of subject matters. They include reports to the Government by the Industries Assistance Commission, reports of royal commissions, treaties, agreements and exchange of notes with foreign countries, reports of committees of inquiry established by the Government, and ministerial statements.

Deemed to have been presented

In 1962, the Standing Orders Committee recommended an amendment to the standing orders which was designed to save the time of the House by providing that a miscellany of papers, mainly statutory papers which were presented by the Clerk, be deemed to have been presented if they are delivered to the Clerk and recorded in the Votes and Proceedings. The words added to the standing orders by the House were 'Papers may be presented in the House, or may instead be delivered to the Clerk who shall cause them to be recorded in the Votes and Proceedings. Papers so delivered to the Clerk shall be deemed to have been presented to the House on the day on which they are recorded in the Votes and Proceedings'.[32]

In recommending this amendment, the Standing Orders Committee drew the attention of the House to doubts that could arise in relation to the tabling requirements of the Acts Interpretation Act and further recommended that the Act be amended to ensure that the new procedures in the standing orders did not conflict with statutory requirements. In 1963, the Acts Interpretation Act was amended (section 34B) to make the proposed new procedures for the presentation of papers legally effective.[33]

The types of statutory papers which are delivered to the Clerk for recording in the Votes and Proceedings are listed at page 529. In addition, it is not uncommon for command papers to be delivered to the Clerk for tabling. The most recurrent examples are the texts of treaties, agreements, and so on, with foreign countries.[34]

By leave

Other than providing for the tabling of committee reports (*see* p. 532), the standing orders make no provision for private Members to table papers and documents. Any Member wishing to table a paper must obtain leave of the House to do so[35], and leave must be granted without any dissentient voice.[36] This rule also applies to Ministers when other business is before the House.[37] Other business does not include Question Time or a personal explanation.

Pursuant to standing order 321

Standing order 321 provides that any public document quoted from by a Minister or by an Assistant Minister shall, if required by a Member, be tabled, unless it is a confidential document or should more properly be obtained by an Address to the

31 The Director-General, Department of Social Security, is required by s. 148 of the *Social Services Act* 1947 to present an annual report.

32 *Standing Orders Committee Report*, H of R 1(1962-63)57; S.O. 319.

33 *Acts Interpretation Act* 1963 (Act No. 19 of 1963); H.R. Deb. (7.5.63)1066-7.

34 VP 1978-80/1657-60.

35 VP 1978-80/1597.

36 S.O. 111.

37 VP 1976-77/183; VP 1978-80/178.

Governor-General[38] (*see* p. 532). The rule follows the procedure of the courts where evidence not placed before the court may not be cited by counsel.

The Speaker has laid down procedural rules to be followed when a request for tabling is made under this standing order. The Chair will first ask the question 'Has the Minister read from the document?'. If the answer is 'no', the Chair accepts the Minister's word. If the answer is 'yes', then the Chair will ask the further question 'Is it a confidential document?'. If the Minister replies that it is confidential, then it is not required to be tabled. If it is not a confidential document, and the Minister has read from it, he is then required to table the document. The Speaker also said that if a Minister states that he is only referring to notes, then that is the end of the matter. The Chair would not require the tabling of the document.[39]

Although it is not always easy for the Chair to determine the status of documents, the provisions of the standing order do not apply to personal letters quoted from by a Minister[40], nor to private documents.[41] A Minister who summarises correspondence, but does not actually quote from it, is not bound to lay it on the Table.[42] The standing order also applies in the committee of the whole[43] and in legislation committees.[44]

The High Court in *Sankey* v. *Whitlam and others* laid down that when Crown privilege was claimed by the Government in court proceedings it was the duty of the court, and not the privilege of the Executive Government, to decide whether a document would be produced or withheld[45] (*see also* p. 534). On 14 November 1978, a Member raised, as a matter of privilege, the possible application of the principles of the court declaration to the tabling of documents in the House under standing order 321. The Member suggested that the Speaker should stand in a similar position to the court and when, under standing order 321, a document relating to public affairs was quoted from by a Minister and was required to be tabled any claim by a Minister that the document was confidential should be judged by the Speaker and not the Minister concerned. The Speaker stated the cases were significantly different and the clear course of standing order 321 must be followed.[46]

Laid on the Table by the Clerk

RETURNS TO ORDER

The House itself can order papers to be laid before it. Upon the House agreeing to a resolution that certain papers should be laid before it, the Clerk communicates the order to the Minister concerned. When the papers are received, they are laid on the Table by the Clerk.[47] As a general rule only papers which are of a public or official character should be ordered to be laid before the House.[48]

This procedure of calling for papers was frequently followed during the early years of the Parliament, but has since fallen into disuse.[49] Much of the information previously sought in this way is now presented to the House in the form of command or statute papers. However, this power has continuing importance as it may be delegated to committees, thus enabling them to send for papers and records.[50] In the Senate orders are still occasionally made for the tabling of accounts and papers.[51]

38 VP 1978-80/1648.

39 H.R. Deb. (1.4.76)1239.

40 H.R. Deb. (28.8.13)646-7.

41 H.R. Deb. (23.2.49)612.

42 H.R. Deb. (23.2.72)110; *and see May*, pp. 431-2.

43 H.R. Deb. (20.9.73)1385.

44 *May*, p. 621.

45 *Sankey* v. *Whitlam and others* (1978) 142 CLR 1.

46 VP 1978-80/529,541; H.R. Deb. (14.11.78)2715; H.R. Deb. (15.11.78)2867.

47 S.O. 316.

48 *May*, p. 256.

49 The last return to order was laid on the Table of the House on 25 July 1917, VP 1917-19/20.

50 S.O. 334; *and see May*, p. 256.

51 J 1976-77/248.

ELECTION PETITIONS

The validity of any election or return may be disputed by petition addressed to the High Court acting as the Court of Disputed Returns.[52] Although there are no tabling provisions under the standing orders or under statute, it has been the practice for the Clerk to lay on the Table for the information of the House copies of election petitions, and copies of orders of the Court of Disputed Returns on the petitions[53], forwarded to him in accordance with the Commonwealth Electoral Act.[54]

RETURNS TO WRITS

The standing orders provide that on the first day of the meeting of a new Parliament for the despatch of business the writ or copy–writ of the election of each Member is to be laid on the Table of the House by the Clerk.[55]

ADDRESSES FOR PAPERS

When the Royal prerogative is concerned in any paper which the House desires to be laid before it, an Address must be presented to the Governor-General praying that such paper may be laid before the House.[56] There is no precedent of the House having presented an Address to the Governor-General praying for the production of a paper.

The term 'Royal prerogative' refers to the Crown's discretionary authority and has been described as that which the Crown or its servants can do without the authority of an Act of Parliament. Any exercise of the Royal prerogative is normally taken on the advice, and is the responsibility, of Ministers of the Crown. In Australia the prerogatives would include the appointment of Ministers, the summoning, proroguing and dissolution of Parliament, the right to make war and peace, to make treaties, and to receive and send ambassadors and other diplomatic representatives from and to foreign states.[57]

Parliamentary committee reports

The standing orders provide that the reports of standing and select committees may be presented at any time when other business is not before the House.[58] However, in 1979, in regard to a report of the Standing Committee on Expenditure, the House authorised the Speaker to give direction for the printing and circulation of the report if the House was not sitting when the committee had completed its inquiry.[59] The reports are normally tabled by the chairman of the committee or, in the case of a joint committee where the chairman is a Senator, by the deputy chairman.[60] Any member of a committee may, when asked to do so, present a committee report on behalf of the chairman.[61] The publishing or disclosure of a committee report, or making its contents known, before the report is tabled constitutes a contempt of the House.[62]

In 1980, the House agreed to a resolution delegating to the Speaker the authority, under standing order 340, to release for public scrutiny committee records which have been in the custody of the House for at least 10 years.[63]

52 *Commonwealth Electoral Act* 1918, s. 183 (1); *and see* Ch. on 'Elections and the electoral system'.

53 On 3 occasions a copy of the order of the Court of Disputed Returns has not been forwarded. In each case the election petition had been forwarded and tabled, VP 1913/14; VP 1950-51/10; VP 1978-80/18.

54 *Commonwealth Electoral Act* 1918, s. 196.

55 S.O. 2(*d*); VP 1980-81/3.

56 S.O. 317.

57 Wilding & Laundy, pp. 656-8.

58 S.O. 102. For a detailed discussion of committee reports *see* Ch. on 'Parliamentary committees'.

59 VP 1978-80/1205; *and see* Ch. on 'Parliamentary committees'.

60 VP 1978-80/1584.

61 VP 1977/367-9.

62 S.O. 340; *see* 'Article published in *The Sun*, 18 September 1973', *Report of Committee of Privileges*, PP 217(1973); *see also* Ch. on 'Parliamentary committees'.

63 VP 1978-80/1539-40; H.R. Deb. (22.5.80)3133-4; *and see* Ch. on 'Parliamentary committees'.

Petitions

It is the inherent right of every citizen to petition the House.[64] As the standing orders provide that only a Member can lodge a petition with the Clerk for presentation to the House[65], citizens must lodge their petitions with a Member. There is no obligation on a Member to present a petition, and the fact that a Member presents a petition does not mean that he agrees with its content. The Clerk is required to announce in the House each petition lodged with him for presentation (if it is in conformity with the standing orders), indicating the Member who lodged the petition, and identifying the petitioners and the subject matter of the petition.[66] Unless ordered to be printed[67], all petitions presented to the House stand referred to the Publications Committee which reports from time to time as to which petitions ought to be printed[68] (*see* p. 548). Following the presentation of a petition a Member may not move for its printing unless he intends to take some action on it.[69] Under the standing orders the House begins its ordinary routine of business each day with the presentation of petitions.[70]

Ministerial statements

Ministerial statements are made to the House by Ministers on behalf of the Government and are usually the means by which the Government's domestic and foreign policies and decisions are announced to the House. Leave of the House is required to make a statement. It is normal practice for the opposition spokesman on the subject, and occasionally other Members, to also make a statement on the same matter, by leave.[71] If leave to the Minister to make a statement is refused, it is open to him to move a motion to suspend the standing orders to enable the statement to be made[72] or, alternatively, the Minister may table the statement, move 'That the House take note of the paper' and speak to that question.

Having concluded a statement made by leave, it is common practice for a Minister to table a copy of the statement as a command paper (*see* p. 529). He or another Minister may then move a motion 'That the House take note of the paper'.[73] Upon this motion the contents of the statement may be debated immediately (*see* p. 545).

Custody and availability of original documents

The custody of all documents laid before the House is invested in the Clerk. Documents may not be removed from the Chamber or offices without the permission of the Speaker.[74] All papers and documents presented to the House are considered to be public. Any paper not ordered to be printed may be inspected at the offices of the House by Members at any time, and, with the permission of the Speaker, by other persons, and copies of it or extracts from it may be made (*see* p. 544).[75]

A department may make an application to the Clerk for the return of any original document tabled in the House. If the document is not likely to be further required by Members, it may, at the Speaker's discretion, be returned to the author department.[76] In 1904, the Speaker informed the House that he intended, with the approval of the House, to allow original documents to be returned to departments when it appeared

64 *See* Hatsell, vol. III, p. 240 *n.*
65 S.O. 126.
66 S.O. 129.
67 S.O. 130; *and see* VP 1977/377.
68 S.O. 28.
69 S.O. 131; H.R. Deb. (8.11.77)3022-3; VP 1977/430.
70 S.O. 101; *and see* Ch. on 'Parliament and the citizen'.
71 VP 1978-80/877-8.
72 VP 1978-80/1202; *and see* Ch. on 'Control and conduct of debate'.
73 S.O. 322; *and see* Ch. on 'Motions'.
74 S.O. 39.
75 S.O. 320.
76 S.O. 39.

that they would not be further required by Members.[77] This procedure, which did not find expression in the standing orders until 1950, has only rarely been used.[78]

ORDERS AND RESOLUTIONS OF THE HOUSE IN RELATION TO PAPERS AND DOCUMENTS

Crown privilege of documents

In the exercise of its function of scrutiny of government policy and activity the House has recourse under its standing orders to call for the production of papers, both before the House itself and before its committees.[79] However, an order for papers to be laid before the House or an Address for a paper which concerns the Royal prerogative may give rise to a claim of Crown privilege. In other words, in respect of certain classes of documents, the Crown, through its Ministers, may claim an immunity in respect of their production.

By the end of the 19th century the United Kingdom Parliament was invested with the power of ordering all documents to be laid before it which were necessary for its information. Despite the powers of each House of the United Kingdom Parliament to enforce the production of documents, a sufficient cause had to be shown for the exercise of that power.[80] This unquestioned power of the House of Commons is extended to the Australian Parliament by way of section 49 of the Constitution.

In relation to the courts the general view, until 1968 following the decision of the House of Lords in *Duncan* v. *Cammell Laird & Co.*, was that if a Minister certified that it was contrary to the public interest for documents under subpoena to be produced, the certificate was conclusive and the courts would not go behind that certificate. In 1968, the House of Lords examined the matter thoroughly and held that the Minister's certificate was not conclusive in all cases. The court was justified in certain cases in looking at the documents and forming its own opinion as to whether it was in the public interest that they be withheld. In making such a decision, due weight would be given to the opinion expressed by the Minister. It was seen as a duty on the part of the court to hold a balance between the public interest as expressed by the Minister to withhold certain documents and the public interest in ensuring the proper administration of justice.[81] The House of Lords went on to say that there was a class of document such as Cabinet minutes and minutes of discussions between heads of departments which were entitled to Crown privilege and that the court would uphold the claim for privilege because the documents by their nature fell into that class and **the court would not order their disclosure irrespective of their contents.**

In the judgment of the High Court of Australia in *Sankey* v. *Whitlam and others* it was held that the public interest in the administration of justice outweighed any public interest in withholding documents which belonged to a class of documents which may be protected from disclosure irrespective of their contents. The court held that such documents should be inspected by the court which should then itself determine whether the public interest rendered their non-disclosure necessary. The court held that a claim of Crown privilege has no automatic operation; it always remains the function of the court to determine upon that claim. Accordingly a class claim supported by reference to the need to encourage candour on the part of public servants in their advice to Ministers was not a tenable claim of Crown privilege.[82]

77 VP 1904/71.

78 VP 1950-51/36.

79 S.O.s 316, 317, 334.

80 *May*, 10th edn, pp. 507-11.

81 *Conway* v. *Rimmer* (1968) AC 910.

82 *Sankey* v. *Whitlam and others* (1978) 142 CLR 62-4.

On a number of occasions questions have been raised as to the limits of the power of the Parliament in Australia to call for documents from the Executive, giving rise to conflict between Crown privilege and parliamentary privilege.[83] The report of the 1969 Senate Select Committee on the Canberra Abattoir[84], a committee comprised of 3 opposition Senators, made 2 references to the question of Crown privilege. Firstly, the committee reported that in seeking assistance from the Treasurer it was informed that, subject to certain specific restrictions, officers of the Treasury would assist the committee to the fullest practicable extent. The restrictions specified were that the officers should not respond to questions that called for an expression of opinion on government policy, and that officers should not provide confidential information on the abattoir that had not been released to the public. Whilst not disagreeing with the first restriction placed on officers who were to appear before it, the committee took exception to the second restriction and advised the Treasurer that it reserved the right to discuss the matter with him should circumstances arise. The committee believed that, in its response to the Treasurer's second restriction, it had acted in accordance with proper parliamentary practice and procedures.[85] No circumstances arose which required the committee to discuss this matter with the Treasurer. Secondly, the committee requested the Minister for Health for a copy of an inter-departmental committee report. The Minister replied saying that, as the report was prepared at the request of Cabinet by senior officials for the purpose of formulating government policy, it was an area where the confidentiality of advice should be preserved. The committee reported to the Senate the Minister's refusal to supply the report.[86] Consideration of the committee's report was not finalised by the end of the 26th Parliament in 1969 and the question raised by the claim of Crown privilege was not pursued.

In 1972, the question of Crown privilege was given serious consideration by the Attorney-General (Senator Greenwood) and the Solicitor-General (Mr Ellicott) in a paper entitled 'Parliamentary Committees —Powers over and protection afforded to witnesses'.[87] In the paper the Law Officers expressed the view that the power of each House of the Australian Parliament to call for documents from the Executive is as wide as that of the House of Commons in 1901 whose power was, at least in theory, unlimited. The Law Officers believed that, because of the unlimited nature of this power, the extent to which it is used must necessarily rest on convention. Prior to the decision of the House of Lords in *Conway* v. *Rimmer*, the parliamentary practice of accepting, as conclusive, a certificate of a Minister regarding a claim of Crown privilege was consistent with the practice of the courts. Given the change in practice by the courts, the Law Officers raised the question as to whether the Parliament should accept as conclusive the certificate of a Minister or adopt a system similar to that now adopted by the courts. The Law Officers were of the opinion that, given a parliamentary system based on party government and ministerial responsibility to the Parliament, the preferred course would be to continue the practice of treating a Minister's certificate as conclusive. However, in an addendum to the report of the Senate Committee of Privileges on matters referred by Senate resolution of 17 July 1975[88], Senator Greenwood expressed the view that 'The conclusiveness of the Minister's certificate is for the Senate to determine'. The Senator also pointed out that where this view conflicted with that given by him earlier as Attorney-General in the paper referred to above he preferred the later view.[89]

83 'Parliamentary committees: powers over and protection afforded to witnesses', paper prepared by I.J. Greenwood and R.J. Ellicott, PP 168(1972)33-40.

84 'Canberra Abattoir', *Report of Senate Select Committee*, PP 99(1969).

85 PP 99(1969)3.

86 PP 99(1969)4.

87 PP 168(1972).

88 J 1974-75/836-7.

89 'Matters referred by Senate resolution of 17 July 1975', *Report of Senate Committee of Privileges*, PP 215(1975)58.

A substantial claim of Crown privilege was made by the Prime Minister and 3 other Ministers in 1975. In this instance public servants were summoned to the Bar of the Senate to answer questions and produce documents relating to the Government's overseas loans negotiations. The Prime Minister and the 3 other Ministers (the Minister for Minerals and Energy, the Treasurer and the Attorney-General) each wrote to the President of the Senate making a claim of privilege on the grounds that for departmental officers to answer questions and to produce documents, as required by the Senate resolution of 9 July 1975[90], would be detrimental to the proper functioning of the Public Service and its relationship to Government, and would be injurious to the public interest.[91] The 3 Ministers wrote further to the President advising him that they had given instructions to their officers, summoned to attend before the Senate, to the effect that, should the Senate reject the claim of Crown privilege, the officers were to decline to answer questions, except of a formal nature, and to decline to produce documents.[92] The Solicitor-General, also summoned to the Bar of the Senate, wrote to the President pointing out that as the Crown had already made a claim of privilege he, as second Law Officer of the Crown, could not, consistent with his constitutional duty, intentionally act in opposition to the Crown's claim. Therefore, he concluded, he must object to answer any questions relating to the Senate resolution of 9 July 1975.[93] The Committee of Privileges, which was directed to inquire into the Crown's claims of privilege, presented its report to the Senate on 7 October 1975.[94] The report, agreed to by a majority, that is, by 4 government Senators, had no doubt that the directions given by the Ministers were valid and lawful directions.[95] The dissenting report, by 3 opposition Senators, held the view that a Minister's certificate of a claim of privilege was not conclusive; it is entitled to consideration, but the conclusiveness of the certificate is for the Senate to decide.[96] The report of the committee was not considered by the Senate before both Houses of Parliament were dissolved on 11 November 1975.

The Joint Committee on the Parliamentary Committee System also considered the question of Crown privilege. The committee found itself unable to offer any clarification of the rules concerning Crown privilege, but expressed the opinion that Crown privilege is relied on by Governments to protect themselves, and that the protection of the confidentiality of advice to Ministers, and of security matters, is a shield behind which witnesses sometimes retreat. The committee was also of the opinion that the events in the Senate in July 1975, when the Senate attempted to question public servants on certain matters, had shown that neither House is likely to overcome the use of Crown privilege unless the Government is prepared to release the relevant information.[97]

A government paper entitled 'Parliamentary Committees — Proposed guidelines for official witnesses' was tabled in the House in 1978.[98] The paper sets out guidelines for making a claim of Crown privilege in respect of the production of documents and the giving of oral evidence by departmental officers. The paper lists the categories of documents in respect of which a claim of privilege may be considered, and indicates that there are documents within these categories which in themselves may not appear to warrant a claim of privilege but the production of which may effect subsequent claims of privilege. In such circumstance, official witnesses are to raise the matter with their Minister. The main thrust of the guidelines concerning Crown privilege is that a claim

90 J 1974-75/824-5.

91 PP 215(1975)16-20.

92 PP 215(1975)23-8.

93 J 1974-75/824-5; PP 215(1975)21-2.

94 J 1974-75/936; PP 215(1975).

95 PP 215(1975)11-12.

96 PP 215(1975)51.

97 'A new parliamentary committee system', *Report of the Joint Committee on the Parliamentary Committee System*, PP 128(1976)87-8.

98 VP 1978-80/434; *and see* Ch. on 'Parliamentary committees' where the guidelines appear in full.

of privilege is to be based on a certificate by the Minister, that only a Minister may make a claim of Crown privilege, and that that privilege is to rest on a class of documents.[99]

In a statement accompanying the tabling of the guidelines it was pointed out that, while referring to situations where Ministers might consider making a claim of privilege, the statement and the guidelines were not an attempt to resolve the complex question of deadlock between the Parliament and the Executive on such claims. No claim of privilege would be made without substantial cause.[100] The question of the formal approval of the guidelines by the Parliament does not arise, as they are simply for the guidance of officials.[101] They are in no way binding on the Houses or their committees.

There are therefore obvious differences between the relationship of the Executive and the Parliament, and the relationship of the Executive and the courts on the question of Crown privilege. As has been mentioned (*see* p. 534) the courts in *Conway* v. *Rimmer* and more strongly in *Sankey* v. *Whitlam and others* have ruled that it is for the courts to decide on the conclusiveness of a Minister's certificate, and that a claim of privilege on the basis of a class of documents, the need of which is to preserve candour in Public Service advice to Ministers, is not now a tenable one.

In any further consideration of this question it is important to bear in mind that, because different aspects of the public interest are involved, that is, the proper functioning of the Parliament as against the due administration of justice, the question of disclosure of documents to the Parliament is not the same question as disclosure of documents to the courts.[102]

Production of documents and attendance of officers in court proceedings

There are 2 classes of documents which can be sought to be produced in a court of law. There are those documents tabled in the House (*see* p. 528) or in the custody of the Clerk of the House (*see* p. 533), and those documents that constitute the record of proceedings of the House, that is, the Votes and Proceedings (*see* p. 549) and Hansard (*see* p. 554).

The standing orders provide that officers of the House or shorthand writers may not give evidence elsewhere in respect of the proceedings in the House or in its committees without special leave of the House.[103]

The practice of seeking leave of the House to produce documents and for the attendance of officers in court, is based on the past experience and practice of the House of Commons, which practice was in turn governed by a resolution of that House in 1818 which provided that no clerk or officer of the House or shorthand writer employed to take minutes of evidence before the House or any committee thereof, shall give evidence elsewhere in respect of any proceedings or examination at the Bar, or before any committee of the House, without express leave of the House.[104] The Speaker of the House of Commons has observed that the custom of the House in allowing its records to be referred to in a court of law or to be proved by one of its officers only with the leave of the House was an attempt to preserve the privileges of the House[105] (*but see* p. 542).

99 H.R. Deb. (28.9.78)1506-08.
100 H.R. Deb. (28.9.78)1505.
101 S. Deb. (12.5.81)1875.
102 PP 168(1972)40.
103 S.O. 368.
104 CJ (1818)389.
105 *House of Commons Committee of Privileges, 1st Report*, Appendix, HC 102(1978-79)2.

Those who desire to produce evidence of parliamentary proceedings or any document in the custody of the Clerk of the House of Representatives must petition the House praying for leave of the House to be given for the production of the documents and for the attendance of an appropriate officer in court[106] (*see also* p. 540).

During a period when the House is not sitting, as in 1933 (*see* p. 539), the Speaker, in order to prevent delays in the administration of justice, may allow the production of documents and the attendance of officers in court on the application of the parties to the suit. However, should the suit involve any question of privilege, especially the privilege of a witness, or should the production of a document appear, on other grounds, to be a subject for the discretion of the House itself, the request would be declined and the matter referred to the House. During a recess following a dissolution the Clerk may sanction the production of documents following the principle adopted by the Speaker.[107]

Tabled documents and documents in the custody of the Clerk

The House has dealt with the granting of leave for the production of documents tabled in the House or in the custody of the Clerk of the House on 4 occasions.

In 1904, the Clerk of the House was authorised by the House to answer a subpoena to appear at the Supreme Court of Victoria on 20 June 1904 and produce the original writ issued by the Speaker on 15 March 1904 for an election for the Division of Melbourne.[108]

In 1912, the House gave its permission for the Clerk to appear before the Court of Petty Sessions, Melbourne, and to produce a writ for a by-election issued by the Speaker and a letter from the Chief Electoral Officer to the Speaker.[109]

In 1928, the House granted leave for the Clerk or some officer of his staff to attend before a royal commission in Sydney and to produce before the royal commission a letter of resignation of a Member.[110]

The House was petitioned in 1975[111], in 1976 and in 1977[112], seeking leave of the House, amongst other things, for the petitioner and his legal representative to issue and serve subpoenae for the production of certain documents tabled in the House. In June 1976, the House gave leave for the tabled documents, mentioned in the petition, to be inspected, for subpoenae to be issued and served for the production of the documents in court, and for an appropriate officer of the House to produce the documents in the court.[113] The Clerk produced the documents in court in December 1976 but retained the documents in his possession, a position interpreted by the magistrate as 'constructive production'. The documents were finally tendered to the court in September 1977. As the documents tendered to the court were original documents presented to the House and constituted part of the records of the House, the Clerk advised the court of his responsibilities under the standing orders and sought the return of the documents when the courts had no further use for them. The documents were returned to the custody of the Clerk in January 1981. Questions as to the privilege attaching to these and other documents and their admissibility in court were raised in the High Court in 1978. It was submitted to the court that the action of a magistrate, in refusing to act on the evidence that the documents had been tabled, was correct, because to receive and act

106 *See* 'The use of or reference to the records of proceedings of the House in the courts', *Report of Committee of Privileges*, PP 154(1980)6.

107 *May*, p. 89.

108 VP 1904/85; H.R. Deb. (17.6.04)2466.

109 VP 1912/15; H.R. Deb. (25.6.12)107.

110 VP 1926-28/597; H.R. Deb. (9.6.28)5736.

111 VP 1974-75/1002.

112 VP 1976-77/33, 563; VP 1977/39.

113 VP 1976-77/247.

upon the evidence would infringe the privileges of Parliament. The court held that permission to produce in the court documents described as 'documents tabled in this House' clearly implied permission to place before the court evidence as to what documents had been tabled. The court ruled that, as the House had given permission for the documents to be produced in court, a claim of parliamentary privilege, to prevent their production, could not be made. The court also commented that it would be an absurd result if it were impermissible to prove that a document which by the standing orders of both Houses should be considered public could not be proved to be so.[114]

Records of proceedings

The requirement for officers and shorthand writers to have prior leave of the House before giving evidence elsewhere is designed to protect the privileges of the House, in particular the privilege of freedom of speech.[115] Article 9 of the Bill of Rights 1688 provides that the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament. In the exercise of this fundamental privilege the House must weigh the need to protect this privilege of the House against the need to ensure that it does not hinder the administration of justice.

There have been 2 occasions on which officers or shorthand writers have appeared before the courts in relation to the debates or proceedings of the House. In 1933, during an adjournment of the House, the Speaker authorised the appearance of a Hansard reporter to give evidence in court. The reporter appeared and gave evidence in the course of which he swore to a shorthand note of statements made in the House of Representatives.[116] In 1963, the House authorised 2 Hansard reporters to attend court and to give evidence in relation to certain proceedings of the House.[117] In this case leave was granted for the reporters to appear in court without the House being petitioned. An approach had been made to the Speaker by counsel for the plaintiff in a libel suit with a view to having certain Hansard reporters made available to give evidence. Due to the urgency of the matter the House resolved, on the same day, that leave be granted for the 2 reporters to attend the court.

In 1960, the Principal Parliamentary Reporter was approached with a request that members of his staff be made available as witnesses in a libel action. The matter was discussed with the Speaker who indicated that it would be necessary for those making the request to petition the House praying for leave of the House for the officers to appear in court. No petition was received by the House as the matter was settled out of court.

In 1972, a subpoena was served on the Clerk of the House in his office requesting his appearance before the Supreme Court of New South Wales, with the Votes and Proceedings for the period October 1969 to April 1971. However, when the solicitors involved were informed of the parliamentary requirements in such circumstances, they apologised and indicated that they would take no further action in the matter.

In 1974, the Clerk of the House received a request from the Crown Solicitor's Office, for the clerk to the Joint Committee on Prices to make a statement and, if necessary, to give evidence before a board of inquiry of the Australian Broadcasting Control Board. The inquiry related to the alleged failure of commercial television stations to broadcast details of a report of the joint committee on household soaps and detergents.[118] The Clerk, after consultation with the Clerk of the Senate, gave permission for a statement to be prepared on the processes by which the joint committee's

114 *Sankey* v. *Whitlam and others* (1978) 142 CLR 35-6.

115 *See* Ch. on 'Parliamentary privilege'.

116 Referred to in House, H.R. Deb. (7.5.63) 1064.

117 VP 1962-63/464.

118 'Prices of household soaps and detergents', *Report of Joint Committee on Prices*, PP 326 (1974).

report was tabled and made available to the public. The Crown Solicitor was informed that the clerk to the joint committee could not give evidence in respect of any proceedings before the joint committee without special leave of both Houses of the Parliament. The clerk to the joint committee appeared before the board of inquiry and read a prepared statement which was limited to an outline of the sequence of events relating to the tabling of the report and copies being made available to the public.

Requirement to petition House

Petitions seeking leave of the House for the production of documents and the attendance of officers in the courts, have been lodged for presentation on 3 occasions.[119] It has been the practice for the Clerk, pursuant to standing orders[120], to refer the petition to the Leader of the House who is the appropriate Minister to move the necessary motion in the House.

In 1979, the House agreed to refer the following matter to the Committee of Privileges:

> The extent to which the House might facilitate the administration of justice with respect to the use of or reference to the records of proceedings of the House in the Courts without derogation from the Privileges of the House, or of its Members.[121]

The reference arose out of a matter of privilege, raised just prior to the moving of this motion, concerning an order made by Mr Justice Begg in the Supreme Court of New South Wales in a case in which a Member had commenced an action for damages for defamation against a newspaper.[122]

The defendant (John Fairfax & Sons Limited) had asked for an order that certain interrogatories be answered and verified by the plaintiff (Mr Uren). Certain of the interrogatories asked the plaintiff to agree that certain speeches in the Parliament shown in photostat copies of Hansard as having been made by him and 2 other persons were in fact made by him or them. Counsel for the defendant submitted that what the defendant was seeking to do did not infringe the privilege of a House of Parliament in relation to proceedings before it but merely to prove as a matter of fact that the plaintiff and others had made certain speeches in the House —not in any way to criticise them nor to call them in question in court proceedings, **but to prove them as facts upon which the defendant's alleged comments were made in the publication sued upon by the plaintiff.** Mr Justice Begg accepted the submission and ruled that this use of the fact of what was said in Parliament would not be a breach of the privilege of Parliament. Mr Justice Begg said in his ruling:

> In my judgment one might pause to question whether the privilege of Parliament in relation to the mere proof of *Hansard* in a court in Australia has not been entirely waived by Parliament in this country. It is a well known fact that proceedings in the Parliament are broadcast on radio to all the world and copies of *Hansard* are freely sold for fifty cents a copy at the Commonwealth Publications Sales Department in this city. And insofar as it falls to me to decide the question, I would hold that waiver by Parliament to this extent is clearly established. (Of course I am not dealing with any question of copyright in the publication.)

The committee examined the judgment of Mr Justice Begg and concluded that His Honour was in error. The opinion of counsel was sought and it supported the conclusion at which the committee had arrived. The committee stated in its report:

> The Committee believes that any alleged 'waiver' of Parliamentary privilege involved in the tacit consent to or statutory authorisation of, the particular modes of broadcasting or other publication of Parliamentary proceedings referred to by His Honour should not be taken to

119 VP 1974-75/1002; VP 1976-77/33; VP 1978-80/960-1.

120 S.O. 132.

121 VP 1978-80/975.

122 *Uren* v. *Fairfax & Sons Limited* (1979) 2 NSW LR 287.

be 'an entire waiver' of any relevant privilege in all conceivable circumstances and for all conceivable purposes. Also His Honour may be thought to have missed the point that the relevant time for determining the privileges of Parliament for the purpose of applying Section 49 of the Constitution is not the present, but rather the time of the establishment of the Commonwealth. If that point is borne in mind it is not easy to ascribe an 'entire' effect to limited forms of supposed waiver. Parliament cannot 'waive' the law of privilege (which is part of the common law) in any sense of repealing it by alleged non-enforcement. Any established head of privilege remains part of the law, available to be enforced if it is the will of one of the Houses of Parliament that it should be enforced in relation to the proceedings of that House.

The committee concluded that where, in the administration of justice, it is sought to produce the records of proceedings of the House without derogation from the privileges of the House or of its Members, the special leave of the House should be obtained. The committee believed that the petitioning process derived from the House of Commons continues to be entirely appropriate and serves the purpose of ensuring that the House itself is apprised of the circumstances of each case and is able to grant or withhold its leave for the use of its records in court. It appeared to the committee that, from the decision of the High Court in *R.* v. *Richards; ex parte Fitzpatrick and Browne*[123], it is for the House to judge of the occasion and the manner of its exercise of an undoubted privilege and it is therefore entirely proper for the House to place conditions on the use to which it will allow its records to be put in court proceedings. The committee therefore recommended:

(1) That the practice of petitions being presented to the House for leave to refer to House records in the Courts, derived from the long-established practice of the United Kingdom House of Commons, should be maintained.

(2) That upon presentation of a petition, the House shall, at the earliest opportunity, refer the petition to the Committee of Privileges for its consideration and report.

(3) That in considering the petition the Committee of Privileges should enable the Member (or former Member) referred to in the petition to be heard on his own behalf.

(4) That the Committee of Privileges, at the completion of its deliberations, should report to the House its views on the petition and, in addition, recommend such conditions upon the production of the record or Hansard report as it deems appropriate in all the circumstances.

The committee further recommended that the House should resolve:

(1) That the broadcast of the proceedings in the House of Representatives and the publication of those proceedings in Hansard do not amount to a waiver of privilege by the House of Representatives and that the decision to the contrary by Begg, J. in the case of *Uren* v. *John Fairfax & Sons Limited* is in error.

(2) That, whilst recognising that there are statutory exceptions, such as the Parliamentary Proceedings Broadcasting Act, and common law exceptions, such as the fair and accurate reporting of the proceedings of the House by the Press, the House reaffirms—

(a) that as a matter of law there is no such thing as a waiver of Parliamentary Privilege,

(b) that the House has a paramount right to impose such conditions as it deems appropriate on the production of any Hansard report or record of its proceedings in a Court, and

123 *R.* v. *Richards; ex parte Fitzpatrick and Browne* (1955) 92 CLR 157.

(c) that such conditions as a matter of law are binding upon the Court before which the Hansard report or other records of its proceedings are produced.[124]

When the House considered the committee's report, it resolved that:

(1) this House, recognising the need for extensive consideration by the House of the report from the Committee of Privileges relating to the use of or reference to the record of proceedings of the House in the Courts, is of the opinion that the report should be considered early in the 32nd Parliament . . .[125]

It is of interest that the Committee of Privileges of the House of Commons, in its first report for the session 1978-79, recommended that the practice of presenting petitions for leave to make reference to the official reports in court proceedings ought not to be followed in future.[126] On 31 October 1980 the House of Commons gave effect to this recommendation when it agreed to the following resolution:

That this House, while re-affirming the status of proceedings in Parliament, confirmed by Article 9 of the Bill of Rights, gives leave for reference to be made in future Court proceedings to the Official Report of Debate and to the published Reports and evidence of Committees in any case in which, under the practice of the House, it is required that a petition for leave should be presented and that the practice of presenting petitions for leave to refer to parliamentary papers be discontinued.

Authorisation of publication of documents

Documents authorised to be published

The decision of the Court of Queen's Bench in the case of *Stockdale* v. *Hansard* (1837) prescribed the limits of the right of the House of Commons to publish its proceedings or matters connected therewith, and laid down that, apart from statutory protection, such publication, if defamatory, was actionable unless it was confined to Members of the House. Lord Denman's judgment in this case drew a distinction between what the House may order to be printed for the use of its Members and what may be published and sold indiscriminately.[127] As a result of the decision, the United Kingdom Parliament passed the Parliamentary Papers Act 1840 in which it is enacted that proceedings, criminal or civil, against persons for the publishing of a paper printed by either House of the Parliament, shall be immediately stayed on the production of a certificate, verified by affidavit, to the effect that such publication is by order of either House of the Parliament.[128]

Similar legislation was introduced into the House of Representatives in 1908. The object of the legislation was to authorise the publication of parliamentary papers (*see* p. 546), and to put beyond doubt the power of either House to authorise the publication of papers laid before it.[129] Similar provisions to those in the United Kingdom Act were included whereby the production of a certificate, verified by affidavit, stating that a document had been published by authority of either House shall immediately stay any proceedings, criminal or civil.[130] During the second reading debate the Attorney-General, in answer to queries regarding statutory protection for the publication of Hansard, informed the House that the publication of Hansard was protected at common law.[131] However, during the following 27 years the authority for publication of

124 PP 154(1980).

125 VP 1978-80/1672.

126 HC 102(1978-79) iii.

127 *May*, p. 82.

128 *May*, p. 83.

129 H.R. Deb. (28.5.08) 11 673.

130 *Parliamentary Papers Act* 1908, s. 4 (Act No. 16 of 1908).

131 H.R. Deb. (28.5.08) 11 673.

Hansard and the protection of those who published it, was consistently raised.[132] As a result the Act was amended in 1935 to establish the legal basis for the official character of Hansard, and to place beyond cavil its privileged position.[133] The Act has been further amended as follows:

- in 1946 to give absolute protection against civil or criminal proceedings in respect of the publication, under the authority of a parliamentary committee, of any document laid before a committee or of any evidence given before a committee[134];
- in 1963 to provide for any papers deemed to have been presented to the House by being delivered to the Clerk and recorded in the Votes and Proceedings to be covered by the Act[135];
- in 1974 to provide absolute protection to the Government Printer in publishing Hansard and documents the publication of which is deemed to be authorised by either House, a joint sitting or a committee; to place the publication of the debates and proceedings of a joint sitting held pursuant to the Constitution, and the documents laid before a joint sitting, on the same footing as the publication of debates and proceedings of either House and a document laid before either House[136], and
- in 1981, to extend the change made in 1974 to cover any joint sitting held pursuant to an act.[137]

Where a paper is ordered to be printed, the protection of the Parliamentary Papers Act applies only to a paper in the form printed by the Government Printer as a parliamentary paper, and not to the publication of a paper in any other form.

Although the House since 1908 had the authority under the Parliamentary Papers Act to authorise the publication of any document laid before it, this authority was not exercised until 1971.[138] In that instance a report of the committee on the *Problem of the Crown-of-Thorns Starfish*[139] was to be tabled by command. Advice had been received that some references in the report might be regarded as defamatory and that the report had been printed by a statutory authority, not by the Government Printer. It was decided that the appropriate course of action would be to authorise the publication of the report in accordance with the provisions of the Act. As publication, for the purposes of the Act, includes the distribution of a document to the public, it was decided that each copy of the report distributed by officers of the House would bear the stamp 'Publication authorised by the House of Representatives, 30 March 1971'. Arrangements were made for all copies of the report held by the authority to be delivered to the House of Representatives to be stamped, prior to being distributed. When the report was tabled, the following motion was agreed to:

(1) That this House, in accordance with the provisions of the *Parliamentary Papers Act* 1908-1963, authorises the publication of the report of the Committee on the Problem of the Crown-of-Thorns Starfish, and
(2) That the paper be printed.[140]

A motion in similar terms is moved each time there is a perceived need for the House to authorise the publication of a paper laid before it.[141]

---

132 *'Commonwealth Hansard—Its establishment and development, 1901 to 1972'*, PP 286(1972)4-8.

133 Act No. 64 of 1935; H.R. Deb. (6.12.35)2829.

134 Act No. 35 of 1946; H.R. Deb. (4.7.46)2235-6.

135 Act No. 29 of 1963; H.R. Deb. (8.5.63)1116.

136 Act No. 33 of 1974; H.R. Deb. (31.7.74)879.

137 *Parliamentary Joint Sittings Amendment Act* 1981 (Act No. 39 of 1981); H.R. Deb. (29.4.81)1735-6.

138 VP 1970-72/489.

139 PP 34(1971).

140 VP 1970-72/489.

141 The motion may not always include the order to print, VP 1978-80/110.

Motions to authorise the publication of a paper are normally moved only at the request of those responsible for the paper. As well as applying to command papers, such motions have been moved in relation to statute papers[142], and committee reports.[143]

Votes and Proceedings and Notice Paper

Over the years questions have been raised concerning the authority by which the Votes and Proceedings and the Notice Paper are published, and concerning the protection, if any, afforded to officers of the House in the publication of these documents and papers not ordered to be printed.

Although the Clerk is required, under the standing orders[144], to record all the proceedings of the House, there is no explicit authority by which the Votes and Proceedings are published. A procedure has been used in the House of Commons, since at least 1680, whereby the Votes and Proceedings of that House are published under a sessional order passed on the first day of sitting of each session.[145]

The Votes and Proceedings obtain statutory recognition in the Evidence Act which provides that all documents purporting to be copies of the Votes and Proceedings, if purporting to be printed by the Government Printer, shall on their mere production be admitted as proof of proceedings in Parliament in all courts.[146]

The Votes and Proceedings of the House of Representatives is probably a publication within the meaning of the Parliamentary Papers Act. It therefore follows that the Clerk of the House and the Government Printer would probably have the complete protection of parliamentary privilege in respect of the publication of the Votes and Proceedings.[147] Reliance is also to be placed in the general privileges of the Parliament based on Article 9 of the Bill of Rights 1688.

Although the standing orders acknowledge the existence of the Notice Paper and provide for what may be entered on it, there is no explicit authority for its publication. However, as the Notice Paper is an essential part of the proceedings of the House, the Clerk of the House and the Government Printer, in arranging for the printing and distribution of the Notice Paper to Members and officials concerned with the business of Parliament, are performing an essential function of the House and, consequently, protection is afforded them by virtue of Article 9 of the Bill of Rights. Insofar as the wider distribution of the Notice Paper is concerned, the Clerk and the Government Printer would have, at least, qualified privilege.[148]

Documents not ordered to be printed

Standing Order 320 provides that:

> All papers and documents presented to the House shall be considered public. Papers not ordered to be printed may be inspected at the offices of the House at any time by Members, and, with the permission of the Speaker, by other persons, and copies thereof or extracts therefrom may be made.

As the House considers all papers and documents laid before it as public documents, every effort is made to meet genuine requests for access to these papers.

Although it is one of the fundamental purposes of the Parliament to inform the public, in the broader sense, of the functions of Government and factors affecting the operations of Government much of which is revealed through papers and documents, the

142 e.g. *see* report of the Auditor-General, VP 1978-80/1648, and report of A.C.T. Consumer Affairs Council and Consumer Affairs Bureau, VP 1978-80/1688.

143 e.g. *Joint Committee of Public Accounts, 181st Report*, VP 1978-80/1664.

144 S.O. 38.

145 *May*, p. 248; Redlich, vol. II, pp. 47-8.

146 *Evidence Act* 1905, s. 7.

147 Advice of Attorney-General's Department, dated 24 July 1964.

148 Advice of Attorney-General's Department, dated 24 July 1964.

release of certain tabled papers by officers of the House raises legal doubts. Questions have been raised as to whether officers of the House would enjoy absolute privilege in respect of an action for defamation if, in accordance with standing order 320, they made available to a member of the public a document tabled in the House but not ordered to be printed. The question has also been raised as to whether standing order 320 represents an authorisation by the House, for the purposes of the Parliamentary Papers Act, for the publication of papers and documents presented to the House. The position seems to be that it does not so operate (*see also* p. 542). Although section 50 of the Constitution empowers each House to make rules and orders with respect to the mode in which its powers, privileges and immunities may be exercised and upheld, publication to members of the public of proceedings in Parliament, with immunity from defamation proceedings, has never been a privilege or power of any one House of the Parliament.[149] Consequently, the standing orders cannot, by virtue of section 50 of the Constitution, make privileged the publication to the public of documents presented to the House. Although officers of the House, acting in accordance with standing order 320, would seem not to enjoy absolute privilege by virtue of section 50 of the Constitution or under the Parliamentary Papers Act they would appear to be entitled to qualified privilege under the general law in respect of publication.[150]

In view of the present state of the law, officers of the House, acting for the Speaker, look at documents to be made available to see if they contain actionable material. In problem cases factors considered include the purposes for which documents are sought, for example, bona fide research purposes. If necessary, the advice of the Attorney-General's Department is sought.

Motions to print and to take note of papers

Standing order 322 provides that, upon a paper being presented to the House by the Speaker or a Minister, a Minister (or an Assistant Minister) may move, without notice, that the paper be printed and/or that the House take note of the paper. It is to be noted that standing order 322 does not apply to reports of standing and select committees which are tabled by committee chairmen. In these cases a motion to take note by a Minister requires the prior leave of the House.

By ordering that a paper be printed, the House is not only ensuring that important information on government or parliamentary activity is being made available to its Members, it is also providing information to the public about the activities of government through the Parliamentary Papers Series of which all documents ordered to be printed become a part (*see* p. 546).

In past years it was the practice of the House to use a motion to print as a vehicle for debate on the subject matter of the tabled document. A major objection to this procedure was that, if the debate on the motion was adjourned, there could be a considerable delay in the House ordering the document to be printed; a situation which was regarded as undesirable in certain circumstances.[151] Following a general review of the standing orders in 1962, standing order 322 was framed in its present form which enables debate to take place on the motion 'That the House take note of the paper'. If the motion is not moved by a Minister at the time of presentation of the paper, it may be moved on a subsequent day, pursuant to notice. The Standing Orders Committee observed that this was a procedure frequently used in the House of Commons and, apart from being a more suitable vehicle for debate, would allow the motion to print to be

149 *Stockdale* v. *Hansard* (1837), 9 Ad and E1 1.

150 Advice of Attorney-General's Department, dated 1 November 1967.

151 H.R. Deb. (27.6.46)1910-11.

passed immediately, if necessary.[152] A motion 'That the House take note of the paper' is a procedure employed in cases where the House wishes to debate the subject matter of a paper, whether it be a ministerial statement that has been tabled (*see* p. 533) or any other document tabled in the House, without coming to any positive decision concerning the paper.

DISTRIBUTION AND PRINTING OF DOCUMENTS

Distribution of papers tabled

After the tabling of papers each sitting day, arrangements are made through the Table Office for the distribution of copies to Members. Members have an option of either receiving automatically one copy of each paper that is tabled or they may receive a list showing the titles of papers tabled in the House that day from which they can select the particular papers they wish to receive. Provided stocks permit, Members can, upon request, receive up to 6 copies of any tabled paper. At the same time as arrangements are made for the distribution of papers to Members, (if sufficient copies are made available by the responsible executive departments) copies are also distributed to members of the Press Gallery, the Parliamentary Library and others located in Parliament House. These distribution arrangements do not apply to machinery papers, that is, those papers deemed to have been presented to the House (*see* p. 530). However, copies of these papers are kept in the Table Office should a Member wish to receive a copy.

It has always been considered a matter of impropriety to make documents publicly available before they are tabled in the Parliament. The Parliament acknowledges, however, that there will be circumstances in which it might be considered appropriate to release a report before it is tabled, such as during long adjournment periods.

Usually, once a report has been tabled in the Parliament, it is made available for sale to the public through the book shops of the Australian Government Publishing Service.

Parliamentary Papers Series

All papers and petitions that are ordered to be printed by either House of the Parliament form part of the Parliamentary Papers Series. The series is designed to be a comprehensive collection of the papers of a substantial nature presented to the Parliament[153], and since Federation these papers have been a major reference source for information on, and research into, the role and activities of Parliament and of Government for Members and the general public.[154]

The rationale behind the series is to preserve in a permanent, convenient and accessible form those papers presented to the Parliament which have particular importance as part of the National Record. This rationale had its genesis in the right of any Member of Parliament or any ordinary citizen to be able to refer to these documents without any undue difficulty despite any lapse of time since publication.

The responsibility for deciding which papers are of a substantial nature or are important enough to form part of the National Record resides with both or either House

152 *Standing Orders Committee Report*, H of R 1 (1962-63)57.

153 'Parliamentary and government publications', *Report from Joint Select Committee*, PP 32(1964-66)28.

154 PP 216(1977)1.

of the Parliament. This responsibility is normally delegated, by way of the standing orders[155], to the Publications Committees of each House acting independently or jointly.

The Parliamentary Papers Series consists of reports, returns and statements from departments, authorities, parliamentary and ad hoc committees of inquiry, delegations to conferences, royal commissions and the like which are presented to the Parliament and considered appropriate for inclusion.[156] Also included in the series are any other papers of an ad hoc nature, including ministerial statements and petitions, which either House orders to be printed, either through their own action or through the recommendation of the Publications Committee of either House acting independently or jointly.

Until 1967, parliamentary papers were numbered in arithmetical sequence on a sessional basis, a new series of numbers commencing with each session. The reports of the committees of each House were numbered separately. In 1964, the Joint Select Committee on Parliamentary and Government Publications recommended that the parliamentary papers be numbered on a calendar year basis and that they be bound in annual volumes.[157] This recommendation came into effect beginning with the calendar year 1967 and, at the same time, the reports of the committees of each House were numbered as part of the Parliamentary Papers Series.

Members of Parliament have ready access to parliamentary papers through either the Table Office of the House of Representatives or the Records and Table Office of the Senate. Members can also obtain, at no cost to themselves, 2 copies of any government or parliamentary publication at AGPS bookshops.

There is a wide distribution of parliamentary papers and members of the public have access to the bound volumes and to single issues of parliamentary papers through State, municipal and tertiary institution libraries. Single copies can also be purchased through AGPS bookshops.

Parliament also maintains an extensive free distribution of parliamentary papers to the libraries of States, State Parliaments, municipalities, universities, colleges of advanced education, teachers colleges, post secondary institutions, Commonwealth departments, foreign embassies, newspapers, members of the Parliamentary Press Gallery, political parties which contest federal elections and eligible overseas addressees.

The distribution of the annual bound volumes of Parliamentary Papers is limited to State, parliamentary, university, college of advanced education, departmental and some overseas libraries. In general, the distribution overseas is limited to the national library of the recipient country. Exceptions include the United Kingdom, where the universities of both Cambridge and Oxford receive the bound volumes, and the United States of America where several universities as well as the Library of Congress are on the distribution list.

Role of the Publications Committee

The Publications Committee, which consists of 7 members, also has the power to confer with a similar committee of the Senate.[158] Apart from initial meetings to elect their respective chairmen, the committees rarely meet other than as a joint committee.[159]

The Publications Committee replaced the Printing Committee when standing orders were amended in 1970.[160] The Joint Select Committee on Parliamentary and Government Publications recommended in its report, tabled in the House in 1964, that

155 S.O. 28; Senate S.O. 36.
156 PP 216(1977)15-16.
157 PP 32(1964-66)31.
158 S.O. 28.
159 The last occasion was 1976, VP 1976-77/569-70.
160 VP 1970-72/203.

there should be a continuing parliamentary review of Commonwealth printing and publishing.[161] The Printing Committees of the 2 Houses could not undertake the task as they were restricted in their powers under standing orders. The committee recommended appointment of a joint standing committee to undertake the reviews it proposed, together with the existing functions of the Joint Printing Committee. After the Presiding Officers and the Standing Orders Committees of both Houses had considered ways of implementing the proposal and the latter had reported to their respective Houses, the standing orders were amended to give effect to the joint select committee's recommendation.

The printing and investigatory functions

The Publications Committee has 2 main functions, namely, a printing and an investigatory function. In performing its printing function the committee considers all petitions and papers presented to the Parliament, and not ordered to be printed by either House, and reports from time to time as to which should be printed as parliamentary papers, and whether wholly or in part.[162] The committee can make recommendations only. It is for the Houses to decide whether a paper is to be printed. In reporting to Parliament, the Publications Committee recommends that specified papers be printed. The committee does not recommend that specified papers submitted to it be not printed. It is therefore open to any Member to move that a paper be printed, without the necessity of moving for the rescinding of an earlier motion, even though the Publications Committee has not so recommended.

The joint committee has adopted the principle recommended by the Joint Select Committee on Parliamentary and Government Publications that all reports, returns and statements presented pursuant to statute, or presented annually by command, and other important reports of an ad hoc nature, ought to be published as parliamentary papers and usually recommends accordingly. Other papers of an individual or non-recurring nature are considered on their merits.

Papers which the Senate or the House orders to be printed are not brought before the Publications Committee, the question of printing having been determined by the superior body. Similarly, if a motion for the printing of a paper is before either House, the paper is not considered by the Publications Committee. The paper would be considered by the committee later if the motion were subsequently to be withdrawn or if it lapsed.

In accordance with the principle that each House is master of its own affairs, papers presented to only one House are considered by members of the Publications Committee of that House, not by the joint committee, and any recommendation to print must be made in a report by the committee of the relevant House alone. In 1960, the Joint Printing Committee resolved to recommend for printing a paper which was tabled in the House of Representatives only.[163] However, as the paper had not been tabled in the Senate, Senators should not have voted on the recommendation. The matter was reconsidered before the joint committee's report was tabled and the resolution recommending printing was rescinded. The House Printing Committee then considered the paper and decided not to recommend its printing.[164]

The committee, when conferring with a similar committee of the Senate, has the power to inquire into and report on the printing, publication and distribution of parliamentary and government publications and on such matters as are referred to it by the

161 PP 32(1964-66)40.

162 S.O. 28.

163 *Interim Report of the Federal Parliamentary Labor Party Mining Committee on the Coal and Shale Mining Industry*, VP 1960-61/127.

164 *See* Odgers, pp. 518-19.

relevant Minister. The investigatory function has become a time consuming feature of the role of the joint committee. The joint committee has completed 7 inquiries, of which 2 were matters referred by the responsible Minister. The committee has power to send for persons, papers and records and, depending on the particular inquiry, may be given power by the Houses to move from place to place.[165]

Reports

In undertaking its printing function the House Publications Committee normally reports that it has met in conference with the Senate Publications Committee and that the 'Joint Committee', having considered petitions and papers presented to the Parliament since the last meeting of the committee, recommends that specified petitions and papers be printed. The report is presented to both Houses and is reproduced in full in the Votes and Proceedings and the Senate Journals. The Chairman, by leave, moves that the report be agreed to.[166] Joint committee reports on inquiries are dealt with in the same manner as reports from select and standing committees.

DOCUMENTS OF THE HOUSE[167]

Votes and Proceedings

The official record of proceedings of the House of Representatives is the Votes and Proceedings. Standing order 38 provides that:

> All proceedings of the House shall be recorded by the Clerk, and such records shall constitute the Votes and Proceedings of the House, and shall be signed by the Clerk.

A definitive interpretation of 'proceedings of the House' raises difficulties and has been the subject of decisions both by the courts and in Parliament in the United Kingdom. However, its primary meaning, as a technical parliamentary term, is some formal action, usually a decision, taken by the House in its collective capacity. This is extended to the forms of business in which the House takes action, and to the whole process by which the House reaches a decision.[168]

It is the purpose of the Votes and Proceedings to record all that is, or is deemed to be, done by the House, but to ignore everything that is said apart from the words of motions, unless it is especially ordered to be entered.[169] The Votes and Proceedings should not be confused with Hansard, which is a report of the debates of the House (*see* p. 554).

The entries are compiled, on the authority of the Clerk, in the Table Office and are printed and circulated the next day in proof form. This proof is checked against the minutes kept by the Deputy Clerk and the original documents of the House. The Votes and Proceedings are then printed and distributed in final form and are issued for each session in bound volumes.

The standing orders require that Members' attendance[170], divisions[171], and any reason stated by the Chair for its casting vote[172], be recorded in the Votes and Proceedings. The standing orders also provide that a Member may, if he wishes, have his dissent to any question recorded if he is the only Member calling for a division.[173]

---

165 VP 1977/166-7.

166 e.g. VP 1978-80/608-11; J 1978-80/436-8.

167 A *bill* is technically a document of the House while in the possession of the House; *see* Ch. on 'Legislation'. The *Daily Program* is a document of a less formal nature; *see* Ch. on 'Business of the House and the sitting day'. *The Standing Orders* are maintained by the Clerk of the House; their authority is discussed in the Ch. on 'The Parliament'.

168 *May*, pp. 77,87; HC 34(1967-68)9.

169 e.g. under S.O.s 210, 276, in relation to the Chair's casting vote.

170 S.O. 31.

171 S.O. 207.

172 S.O.s 210,276.

173 S.O.s 193,204. On one occasion the dissent of the Opposition was recorded, by leave, VP 1978-80/686.

A typical day's Votes and Proceedings records the petitions lodged for presentation, that questions without notice were asked[174], the papers presented by Ministers, ministerial statements and the committee reports presented. These are followed by the items of business considered by the House, and the Votes and Proceedings concludes with the adjournment, a list of papers deemed to have been presented and the record of Members' attendance.

In respect of notices called on and orders of the day, the record in the Votes and Proceedings is, broadly speaking, an account of what actually takes place in the House. The decisions of the House on all questions before it are recorded irrespective of whether or not a division is called for, as are the terms of every motion and amendment moved in the House. If debate takes place on any question, that fact is also recorded.

The proceedings of the committee of the whole were first recorded in the Votes and Proceedings on 1 July 1910.[175] With the introduction, under sessional orders, of legislation committees and estimates committees, in 1978 and 1979 respectively, it has been the practice to record the minutes of these committees in the Votes and Proceedings as a supplement.[176]

Some matters not formally being business of the House are also recorded in the Votes and Proceedings because of the importance attached to them by the House. These include the welcoming of distinguished visitors[177], announcements concerning ministerial arrangements[178], the absence of the Governor-General[179], and references to the deaths of persons which are not the subject of motions of condolence.[180]

The standing orders provide that motions and amendments not seconded shall not be recorded in the Votes and Proceedings.[181] These are the only specific exclusions from the Votes and Proceedings mentioned in the standing orders. However, it has been the practice to exclude from the Votes and Proceedings certain matters which are not considered to be part of the business of the House. Proceedings which are not recorded include:

- **New notices.** These are listed on the next day's Notice Paper[182] (*see* p. 552);
- **Personal explanations.** These are not formally part of the business of the House; they arise mainly from what is reported about a Member in the media and through what is said in debate, and are therefore not normally recorded. When a personal explanation gives rise to some further proceedings then it may be recorded[183];
- **Points of order.** These are not normally recorded unless they give rise to some further procedural action[184], and
- **Rulings of the Chair.** These are not normally recorded unless they are of a significant nature[185] or there is a motion of dissent from the ruling moved.[186]

As it is the purpose of the Votes and Proceedings to record those things done by the House and to ignore what has been said in the House, no record is made of debates other than to record that debate took place on a particular question.

---

174 This entry was first included in 1962, VP 1962-63/15.

175 VP 1910/8.

176 VP 1978-80/427-8,1109-32.

177 VP 1978-80/695.

178 VP 1978-80/1662.

179 VP 1978-80/966.

180 VP 1978-80/213.

181 S.O.s 160,174; *but see* VP 1978-80/700-01 where a motion to suspend standing orders, although not seconded, was recorded as it led to further proceedings.

182 S.O. 133.

183 *See* VP 1978-80/848,913-14; *and see* Ch. on 'Control and conduct of debate'.

184 VP 1978-80/153.

185 VP 1974-75/169.

186 VP 1978-80/1182-3; *and see* Ch. on 'The Speaker and Officers of the House'.

Accuracy and alterations

The accuracy of the Votes and Proceedings has only been challenged in the House on 3 occasions. On 25 July 1901, a Member directed the attention of the Speaker to an alleged omission from the Votes and Proceedings of some of the proceedings of the House. The Speaker ruled that, as the proceedings which were omitted were proceedings which were out of order, under the standing orders the entry had to appear in that form.[187]

In March 1944, a question was asked of the Speaker as to what procedures were available to Members to challenge the accuracy of the Votes and Proceedings. The Speaker suggested that the matter ought to be raised with him and he would discuss it with the Clerks. The Speaker ruled that such questions were not questions of order, and that a substantive motion, of which notice had been given, would be necessary if the matter were to be dealt with otherwise. The Speaker went on to say that the submission of such a motion might have far reaching consequences and warned Members of the danger of establishing a precedent of moving for the alteration of the records of the House.[188] A specific matter was then raised, as a point of order, concerning an alleged inaccuracy in the Votes and Proceedings of 15 March 1944. The Speaker reiterated his earlier ruling and undertook to consult with the Clerks, Hansard and the Chairman of Committees.[189] On 17 March 1944, a motion to suspend standing orders was unsuccessfully moved seeking a debate on the accuracy of the Votes and Proceedings of 15 March 1944.[190] The Speaker later reported to the House that, having investigated the allegation of inaccuracy, he was satisfied that the Votes and Proceedings of 15 March 1944 presented a correct record of the proceedings.[191]

On 22 November 1979, a Member sought the indulgence of the Speaker to bring to his attention an alleged anomaly in the Votes and Proceedings of 20 November 1979. The Speaker indicated that the record would be checked and, if found to be inaccurate, corrected.[192] As the record was found to be accurate, no alteration was made.

There have been 2 occasions on which the House has considered motions to expunge entries from the Votes and Proceedings. On 28 July 1909, during the debate on the election of the Speaker, a motion was moved that the debate be adjourned. The ensuing division resulted in an equality of voting and the Clerk, who was acting as Chairman during the election, purported to exercise a casting vote against the motion for the adjournment of the debate. On a point of order being raised that the Clerk could not vote, the Clerk ruled that, if he did not have a casting vote as Chairman, the motion nevertheless had not been agreed to, as it had not received a majority of votes.[193] On 29 July 1909, a Member raised the matter as one of privilege and unsuccessfully moved for the expunging of those entries from the Votes and Proceedings which recorded the exercise of a casting vote by the Clerk.[194]

On 29 April 1915, a Member moved that a resolution of the House in the previous Parliament, which suspended a Member from the services of the House, be expunged from the Votes and Proceedings, as the resolution was subversive of the right of a Member to freely address his constituents. The motion was agreed to without a division[195] and the entry in the printed volumes held by the Clerk was inked out.

187 H.R. Deb. (25.7.01)3056-7.

188 H.R. Deb. (16.3.44)1472-3.

189 H.R. Deb. (16.3.44)1474; VP 1943–44/99.

190 VP 1943-44/101.

191 H.R. Deb. (21.3.44)1640.

192 H.R. Deb. (22.11.79)3369.

193 VP 1909/62; *and see* Ch. on 'The Speaker and Officers of the House'.

194 VP 1909/67.

195 VP 1914-17/181; *see also* Ch. on 'Members'.

The standing orders provide that, if a division has been inaccurately recorded, the Speaker may cause the record to be corrected.[196] The Votes and Proceedings are also altered on other occasions to correct minor errors, without reference to the House. On such occasions either an erratum slip[197], or a substitute copy of the Votes and Proceedings[198], is issued.

Notice Paper

The Notice Paper is an official document of the House, published by authority of the Clerk (*see* p. 544), showing all the business before the House on the particular sitting day for which the Notice Paper is issued. The business includes notices and orders of the day which have been set down for a particular date.

The Notice Paper is prepared by the Table Office and, with the exception of the first sitting day of a session, is issued for every day of sitting. The Notice Paper is divided into 3 distinct sections, namely, the business section, questions on notice and, after the Clerk's signature, an information section.

The business before the House, under both government business and general business, includes notices of motions, notices of intention to introduce bills and incompleted items of business which have been set down as orders of the day. Also included on the Notice Paper are notifications regarding grievance debate and the next General Business Thursday, questions on notice, and other information not directly connected with the business of the House, such as the names of Deputy Chairmen of Committees, a list of committees showing membership and current inquiries, and a list showing the appointments of Members to statutory bodies.

Items of business

The business section of the Notice Paper is in 2 parts; one dealing with government business, the other dealing with general, or private Members', business. In both parts notices, orders of the day and contingent notices of motion may be listed.

NOTICES

A notice of motion[199] is entered on the Notice Paper after a Member has either stated its terms to the House or delivered a copy of its terms to the Clerk and the Clerk has reported its terms to the House at the first convenient opportunity.[200] The standing orders are, to the necessary extent, applied and read as if a notice of intention to present a bill were a notice of motion.[201] A notice becomes effective only when it appears on the Notice Paper.[202]

ORDERS OF THE DAY

An order of the day is a bill or other matter which the House has previously ordered to be taken into consideration at a future time. Subject to the provision that Ministers may arrange the order of government business as they think fit, orders of the day are entered on the Notice Paper in accordance with the order in which the notices of motion were moved.[203] However, where an order of the day is set down for a day other than the next day of sitting, it is entered on the Notice Paper under a heading showing that day.[204]

---

196 S.O. 209; *see* VP 1940/105; *and* H.R. Deb. (7.4.78)1239-40.

197 VP 1974-75/129.

198 VP 1978-80/547.

199 See Ch. on 'Motions' for full details.

200 S.O. 133.

201 S.O. 211(e); *and see* Ch. on 'Legislation'.

202 S.O. 141.

203 *See* Chs on 'Business of the House and the sitting day' and 'Motions'.

204 NP 42(2.12.74)4503.

The standing orders provide that orders of the day shall have precedence according to the order in which they appear on the Notice Paper.[205] At the adjournment of the House those orders of the day which have not been called on are set down on the Notice Paper for the next sitting day at the end of the orders set down for that day.[206]

CONTINGENT NOTICES OF MOTION

Contingent notices normally appear under a separate heading following orders of the day, government business.[207]

GRIEVANCE DEBATE AND GENERAL BUSINESS—PRECEDENCE

Following the general business section the Notice Paper shows the precedence accorded to grievance debate and to general business.[208] Unless otherwise ordered, general business has precedence of government business until 12.45 p.m. on sitting Thursdays alternate to those sitting Thursdays on which grievance debate is the first order of the day under government business.[209] The alternation is determined in relation to sitting Thursdays, not by consecutive calendar weeks. On the first sitting Thursday after the Address in Reply has been adopted grievance debate has precedence and the alternation process commences from that time.[210] For convenience, numbers are allotted consecutively throughout a session to General Business Thursdays. The number of the next General Business Thursday is shown on the Notice Paper and information is provided as to whether, on the next sitting Thursday, grievance debate or general business will take precedence. In addition to the restriction imposed by the precedence accorded to the Address in Reply, it has become customary for the House to agree to a motion during the Budget sittings each year which provides for government business to take precedence of general business on each sitting day until Appropriation Bills (Nos 1 and 2) have passed all stages in the House. Such an order is also shown in this section of the Notice Paper.[211]

Questions on notice

The standing orders provide that notices of questions[212] shall be printed and placed on the Notice Paper in the order in which they are received by the Clerk.[213] In 1980, a question which had been lodged was inadvertently not printed on the Notice Paper. As the Notice Paper concerned was the last for the Autumn sittings, and the next Notice Paper would not be printed for some months, the Speaker directed that the question be printed in Hansard and treated as a question placed on notice.[214] In delivering a notice of question to the Clerk a Member is required to show the day proposed for asking the question.[215] The practice of the House is that, unless otherwise shown, a notice of question is for the next sitting day. If a notice of question is given for a specific date, it is shown accordingly on the Notice Paper.[216]

Questions on notice remain on the Notice Paper until written replies are received by the Clerk. Since 13 August 1963, questions on notice have retained the number originally allotted to them instead of being renumbered each sitting day.[217] On 23 March 1977, the format of the Questions on Notice section of the Notice Paper was altered. The new format provides that on the first sitting day of each week all unanswered questions are printed. On the remaining sitting days of each week only those questions on

205 S.O. 189.
206 S.O. 190.
207 NP 176(19.8.80)10 851. *See* Ch. on 'Motions'.
208 *See* Ch. on 'Private Members' business'.
209 S.O. 104.
210 S.O. 106; NP 5(4.12.80)212.
211 NP 181(28.8.80)11 303.
212 *See* Ch. on 'Questions'.
213 S.O.s 148,149.
214 H.R. Deb. (22.5.80)3105,3142.
215 S.O. 148.
216 NP 64(16.10.70)4351.
217 *See* NP 89(13.8.63); NP 90(14.8.63).

notice which appear for the first time during that week are printed. However, the numbers of those unanswered questions which have not been printed on a particular day are listed at the commencement of the section.[218]

General information

The final section of the Notice Paper appears after the Clerk's signature. This section is for the information of Members and the public generally and is not directly connected with the business of the House. It contains a current listing of the Deputy Chairmen of Committees, the membership of all committees on which Members of the House are serving, and, since 1977[219], the current inquiries being undertaken by those committees. The appointments of Members to statutory bodies and the delegates of the Parliament to the Australian Constitutional Convention are also included in this section of the Notice Paper.

Parliamentary debates (Hansard)

The parliamentary debates are the full reports of the speeches of Members of the House. The debates are substantially the verbatim reports with repetitions and redundancies omitted and with obvious mistakes corrected, but which on the other hand leave out nothing that adds to the meaning of a speech or illustrates an argument. The debates are better known as Hansard which is a name derived from the printing firm which began printing the House of Commons debates in the early 19th century. The term Hansard did not appear on the title page of the volumes of the Australian Parliamentary debates until 1946, when it was added in parentheses.[220]

The parliamentary debates, as well as containing the verbatim report of Members' speeches, also contain **the full text of petitions** presented, notices of motion, questions on notice **and the answers thereto**, questions without notice, details of divisions and requests for detailed information concerning the Parliament asked of the Speaker. The report of the debates does not constitute the official record of the proceedings of the House; that is the purpose of the Votes and Proceedings (*see* p. 549).

Hansard is issued twice. There is a daily proof issue available the day after the proceedings to which it refers, and a weekly final issue from which the permanent volumes are compiled.

The production of Hansard is the responsibility of the Principal Parliamentary Reporter and his department which is officially known as the Department of the Parliamentary Reporting Staff. This is a separate Parliamentary department serving both Houses under the direct joint control of the Presiding Officers.[221]

Control of publication

Control over the published content of the Hansard reports of the House resides in the House itself. Speakers have consistently ruled that, ultimately, only the House itself can exercise this control.[222]

However, in 1977 the Speaker ruled that if the House passed a resolution ordering the incorporation of a document in Hansard, the Speaker still had a discretionary

218 *See* NP 7(23.3.77)423.

219 NP 13(20.4.77).

220 For a full account of the history of Hansard *see* PP 286(1972).

221 For further discussion of the functions of the Department and the distribution of Hansard *see* Ch. on 'Parliament House and the House of Representatives Chamber'.

222 H.R. Deb. (29.4.15)2724; H.R. Deb. (21.5.15)3344; H.R. Deb. (28.11.18)8511; H.R. Deb. (1.5.40)416; H.R. Deb. (8.5.42)1030; H.R. Deb. (27.9.51)164.

power to refuse that incorporation on the basis of the size of the document and the inconvenience it might cause in the production of the daily Hansard.[223]

Until September 1953 the Hansard reports of the Senate and the House of Representatives were published in the same volume. In answer to a question without notice concerning the change to separate volumes, the Speaker informed the House that the change took place as a result of an agreement between the 3 political parties.[224]

Corrections

Prior to the sub-edited transcript being forwarded to the Government Printer, each Member is given an opportunity to read what he himself has said and, if necessary, to make minor corrections. The right of Members to peruse and revise the proofs of their speeches was a well established practice long before the Commonwealth Parliament first met.[225] Although Members have this right to make corrections to their remarks, emendations which alter the sense of words used in debate or introduce new matter are not admissible.[226] In some instances of error or inaccuracy in the Hansard reports, the position is better clarified by a personal explanation.[227]

The copy of the subedited transcript forwarded to each Member is confidential and may not be seen by any one else without the permission of the Member.[228] There are, however, 3 exceptions to this rule of confidentiality. The Speaker has access to the proofs of Members' speeches when they raise questions upon which he has to intervene[229], and both the Prime Minister and the Leader of the Opposition have an acknowledged right to see the proof transcripts of any part of a day's proceedings.[230] The effectiveness of this rule of confidentiality has been reduced further by the introduction of tape recordings of the proceedings of the House. Members are permitted to listen to this tape record and to compare it with the proof of the daily Hansard.[231]

As well as having an opportunity to make corrections before the subedited transcript is forwarded to the Government Printer for inclusion in the daily proof issue, Members also have a week in which to forward to the Principal Parliamentary Reporter any suggested corrections for the weekly issue and the bound volumes.

Deletion and incorporation of material

Although only the House itself can exercise control over the content of the Hansard reports, in practice this responsibility has devolved onto the Speaker. It is the rulings of the Chair that form the guidelines for what is to be deleted from the debates and what is to be incorporated.

Since 1904, interjections to which the Member addressing the Chair does not reply ought not to be included in the Hansard record.[232] The Chair has ruled that questions without notice which do not receive replies should be omitted from Hansard[233] as should questions ruled out of order.[234] The Chair has a responsibility to ensure that no objectionable material is included in the debates.[235] Offensive remarks ordered to be withdrawn have been deleted from the records.[236] The Chair has ruled that the remarks made by a Member after his time has expired are not to be recorded[237] and that the remarks of a Member who has not received the call are not to be entered in the record.[238]

223 H.R. Deb. (21.9.77)1390-2,1418-19.
224 H.R. Deb. (16.10.53)1507.
225 PP 286(1972)74.
226 H.R. Deb. (26.6.06)745; H.R. Deb. (12.10.71)2160; H.R. Deb. (10.4.78)1299.
227 H.R. Deb. (10.4.78)1299.
228 H.R. Deb. (12.10.71)2160.
229 H.R. Deb. (12.11.13)3060.
230 H.R. Deb. (20.9.73)1337.
231 H.R. Deb. (20.9.73)1337.
232 H.R. Deb. (11.11.04)6885; PP 286(1972)84.
233 H.R. Deb. (13.8.13)112-13.
234 H.R. Deb. (10.5.40)697.
235 H.R. Deb. (13.11.13)3118.
236 H.R. Deb. (13.10.33)3540; H.R. Deb. (9.5.50)2235; H.R. Deb. (21.9.77)1432.
237 H.R. Deb. (25.2.69)32.
238 H.R. Deb. (2.4.74)804.

The House has always had procedures for the incorporation of unread material into Hansard. However, the final decision as to the practicability of incorporating material such as graphs, maps, blocks, and so on, and incorporating matter of a libellous or improper nature or which is irrelevant, rests with the Speaker.[239]

During both World War I and World War II the House acted to censor its own debates and at both times the Chair reiterated that only the House itself could exercise this form of control over its own debates.[240]

239 The question of incorporation of unread matter is considered in detail in Ch. on 'Control and conduct of debate'.

240 H.R. Deb. (21.5.15)3344; H.R. Deb. (1.5.40)416.