

CHAPTER 18

Documents tabled in the Senate

One of the principal means whereby the Senate informs itself in relation to public affairs is the formal presentation of documents to the Senate.

A document formally presented to the Senate is said to be “laid on the table”, and that expression is used in the standing orders. In common usage a document presented to the Senate is said to be “tabled”. Such a document is then formally before the Senate, and may be the subject of action by the Senate.

Tabling of documents

Documents may be presented to the Senate by means of the following procedures:

- (a) the Senate may make an order requiring that documents be tabled;¹
- (b) the Senate may request that documents relating to the Governor-General be tabled, by means of an address to the Governor-General;²
- (c) a statute may require that documents be laid before the Senate;³
- (d) the President may present documents to the Senate;⁴ and
- (e) ministers may present documents to the Senate.⁵

Reports of Senate committees are regarded as documents which the Senate has ordered to be presented, because committees on appointment are required to report to the Senate on the matters referred to them.

1 SO 164.

2 SO 165.

3 SO 166.

4 SO 166.

5 SO 166.

The rationale of allowing the President and ministers to present documents to the Senate without the authorisation of an order of the Senate or a statute is that the President and ministers have a duty to inform the Senate, in relation to the powers, responsibilities and proceedings of the Senate in the case of the President, and in relation to public affairs generally in the case of ministers, and therefore they ought to be able to present documents when they consider it appropriate.

Documents which may be presented to the Senate under the standing orders may be tabled at any time when there is no other business before the chair,⁶ or during consideration of a relevant matter. For example, material from a committee arising from the committee's inquiry into a bill may be tabled during consideration of the bill.⁷

There is no provision in the standing orders giving senators other than the President and ministers a right to table documents. Such senators may table documents only in response to an order of the Senate, by leave or by the suspension of standing orders, on behalf of a committee, or according to statute.

A minister or a parliamentary secretary⁸ who tables a document is presumed to do so in a ministerial capacity unless the contrary is indicated. If acting in a non-ministerial capacity, they are in the same situation as other senators.⁹

The Senate usually grants leave for documents to be tabled. A senator wishing to present a document shows it to the minister and party leaders or whips present in the chamber before seeking leave, so that they may be aware of the contents of the document before granting leave. Leave may be refused if any senator considers that it would not be appropriate for the document to be tabled and therefore published.¹⁰

An instance of a senator's tabling a document after the suspension of standing orders occurred on 15 October 1992, when the Leader of the Opposition in the Senate sought leave to table a document relating to the Australia Quarantine and Inspection Service.¹¹ Leave having been refused, he successfully moved for the suspension of standing orders to enable him to table the document and move to take note of the document.

A senator refused leave to table a document may quote it in the course of a speech, provided that

6 SO 63.

7 22/8/2001, J.4682.

8 Parliamentary secretaries have this and other powers of ministers: see Chapter 19, Relations with the Executive Government, under Parliamentary secretaries.

9 7/6/2000, J.2762.

10 See below, under Publication of documents.

11 15/10/1992, J.2925.

the rules of debate are not infringed. Another senator may then move that the quoted document be tabled,¹² and the question of the tabling of the document is then determined by vote rather than by leave.

The term ‘document’ refers to any item recording information, which may include sound, video or computer tapes.¹³ Occasionally documents other than written documents have been tabled. On 17 March 1988, for example, a senator tabled a sound recording which she had quoted in debate.¹⁴ Other non-paper documents tabled include a message stick, a hand-painted banner, video recordings, computer discs and a nanochip. In 2010, DVDs with footage of the sinking of Suspected Illegal Entry Vessel (SIEV) 36 were tabled pursuant to a ministerial undertaking¹⁵ while maps showing forest cover were also provided on DVD in response to an order for production of documents because it was not possible to print the maps at the required high resolution.¹⁶

On a document being tabled, a motion may be moved without notice to appoint a day for its consideration or for it to be printed.¹⁷ An order to print a document has the effect of including it in the parliamentary papers series.¹⁸

In practice, motions to appoint a day for consideration are rare, and motions to print documents are generally moved only in relation to reports of parliamentary committees, to have them printed as part of the parliamentary paper series.

The accepted vehicle for debate on the subject matter of a document is a motion, moved by leave or on notice, to take note of the document, which allows the Senate to conduct a debate without coming to any substantive decision. Debates on motions moved by leave to take note of documents are subject to a special time limit. Each senator speaking is limited to 10 minutes, with a limit of 30 minutes per motion and a total limit of 60 minutes for any such motions moved in succession.¹⁹

A motion to appoint a day for consideration of a document may nominate only a future day; a document cannot be considered on the day on which it is tabled except by leave.²⁰

12 See below, under Documents quoted in debate.

13 See also s. 2B of the *Acts Interpretation Act 1901*.

14 17/3/1988, J.563.

15 25/2/2010, J.3227.

16 18/3/2010, J.3401.

17 SO 169.

18 See below, under Publication of documents.

19 SO 169(2).

20 30/4/1992, J.2221.

Types of tabled documents

Committee reports are presented by the chairs of committees or by other senators acting on behalf of the chairs.

Documents ordered to be produced by the Senate are usually tabled by ministers to whom the orders are directed, but are occasionally provided to the Clerk who then tables them as contemplated by standing order 164.

Delegated legislation, that is, legislation made by the executive government or a statutory body under the authority of a statute, must be tabled in the Senate within a prescribed time. Delegated legislation includes instruments such as regulations, ordinances, by-laws, determinations, orders and guidelines. These instruments, which may be disallowed by either House of the Parliament, are sent to the Clerk of the Senate, who presents them at a time allocated for the presentation of documents each day. Details of the documents are entered in the Senate Journals. Although the instruments are almost invariably presented by the Clerk, there is nothing to prevent a senator presenting such documents. Procedures relating to delegated legislation are discussed in detail in Chapter 15, Delegated Legislation.

Many other documents are also tabled pursuant to statute. These include the annual reports of departments and statutory authorities and annual reports on the operation of certain statutes. These documents are tabled by a minister and, together with other documents such as reports of government-appointed committees of inquiry, are referred to as 'government documents'.

Documents presented by the President include reports of the Auditor-General, responses by Australian and foreign governments to resolutions of the Senate and various parliamentary publications, such as the annual report of the Department of the Senate.

An entry is also made in the Journals of the Senate of tabled documents, and this record, which has a wide circulation, supplies a reference to the documents presented to the Senate. An index of tabled documents is also published and images of tabled documents are published on the internet.

Orders for production of documents

The Senate may make an order for the production of documents. Standing order 164 provides:

- (1) Documents may be ordered to be laid on the table, and the Clerk shall communicate to the Leader of the Government in the Senate all orders for documents made by the Senate.
- (2) When returned the documents shall be laid on the table by the Clerk.

Orders under this standing order are sometimes known as “orders for returns”, and the documents when produced as “returns to order”.

A motion for the production of documents is moved on notice, although leave of the Senate may be given to move it without notice. The terms of the motion describe the documents and usually specify a day for their production.

Orders for the return of documents are relatively common as the following table shows.

Parliament	Orders	No. of orders complied with
1993 – 1996	53	49
1996 – 1998	48	43
1998 – 2001	56	41
2002 – 2004	89	43
2004 – 2007	21	15
2008 – 2010	63	30

These figures reflect increasing resistance by governments to the orders.²¹

Orders for documents are used by the Senate as a means of obtaining information about matters of concern to the Senate. They usually relate to documents in the control of a minister, but may refer to documents controlled by other persons. Documents called for are often the subject of some political controversy, but may simply relate to useful information not available elsewhere.

Orders for the production of documents may require the production of documents in the possession of a person or body, or the creation and production of documents by the person or body having the information to compile the documents.²² Some orders require the production by the relevant officers or bodies of statements about particular matters.²³ See also below for orders requiring statutory bodies to produce reports on matters relating to their responsibilities.

Orders for the production of documents may be permanent orders, requiring periodical productions of documents for an indefinite period. Examples of permanent orders include:

21 See below, under Resistance by government to orders.

22 See SD, 27/9/1993, pp. 1165-6; 9/5/1996, J.139; 5/3/1997, J.1560-1.

23 28/9/1995, J.3887; 17/10/1995, J.3935; 11/9/1996, J.562; 7/3/2001, J.4050; 8/3/2001, J.4065; 10/3/2005, J.463-4.

- an order requiring the production of indexed lists of government files;²⁴
- an order made by way of a second reading amendment in respect of the Shipping Grants Legislation Bill 1996 for production of regular reports on international shipping standards;²⁵
- a permanent order, now in SO 139(2), for the production of lists of commencement dates of legislation;²⁶
- an order of 25 March 1999 requiring the Australian Competition and Consumer Commission to produce reports on the practices of health funds;²⁷
- an order of 20 June 2001 requiring departments and agencies to publish on the Internet lists of contracts to the value of \$100 000 or more with statements of reasons for any confidentiality clauses or claims;²⁸
- an order of 29 October 2003 requiring the production of statements giving details of government advertising campaigns costing \$100 000 or more;²⁹
- an order by way of an amendment to the motion for the adoption of the report of the committee of the whole on the Transport and Communications Legislation Amendment Bill (No. 3) 1993 for regular reports on action taken under the bill;³⁰
- two orders made on 24 June 2008 for the production of regular reports on government appointments and grants by departments and agencies, the timing of the reports linked to the estimates hearings.³¹

The Finance and Public Administration Committee presented in February 2007 a report on the order requiring the Internet listing of contracts, recommending the maintenance and strengthening of the order.³²

Occasionally the Senate has inserted orders for documents into statutes by way of amendments

24 30/5/1996, J.279.

25 29/11/1996, J.1161-2.

26 See Chapter 12, Legislation, under Commencement of legislation.

27 25/3/1999, J.626; 18/9/2002, J.748-9, 761.

28 20/6/2001, J.4358-9; 26/9/2001, J.4976; 27/9/2001, J.4994-5; 18/9/2002, J.757; 12/12/2002, J.1344; 4/12/2003, J.2851.

29 29/10/2003, J.2641; the then government subsequently refused to comply with this order, but the information was pursued through estimates hearings: SD, 12/2/2004, pp. 20168-9; Finance and Public Administration Legislation Committee transcript, 16/2/2004, p. 154ff.

30 24/3/1994, J.1517.

31 J.589-90.

32 PP 45/2007.

to bills.³³

Orders for documents usually specify a time by which the documents are to be produced. The time allowed varies greatly, from days to years. In 1995, by way of an amendment to the motion for the adoption of the report of the committee of the whole on the First Corporate Law Simplification Bill 1995, the Senate made an order requiring the Australian Securities Commission to produce a report on the first two years of operation of certain amendments to the bill. The report was duly produced in 1998.³⁴

Several orders for production of documents have related to an order of the Senate, now in SO 74(5), requiring that answers to questions on notice be supplied within 30 days. The order provides that if a Senate minister does not supply an answer within 30 days and does not give an explanation of why the answer has not been provided, a senator may move a motion, without notice, relating to the minister's failure to provide either an answer or an explanation. On a number of occasions this motion has taken the form of an order for the production of a document, namely, the answer to the question. The government has complied with these orders.³⁵

Orders have also been made to require the production of answers to questions placed on notice during committee hearings on estimates.³⁶

On a motion being agreed to for the production of documents, the Clerk transmits copies of the resolution to the Leader of the Government in the Senate and to the relevant minister in the Senate. Although the standing order specifies that the Clerk shall table the document, it is now more usual for the responsible minister to do so, in accordance with standing order 166.

Although orders for the return of documents are almost invariably directed to ministers, orders may be made to other persons or organisations.

Orders were formerly addressed to the Auditor-General.³⁷ Following the passage of the *Auditor-General Act 1997*, which provides that the Auditor-General is immune from parliamentary as well as executive government direction, the Senate has requested, rather than ordered, the production

33 Measures to Combat Serious and Organised Crime Bill 2001, 27/8/2001, J.4780; for reports under this provision, see 8/12/2005, J.1748; 6/12/2006, J.3271.

34 28/9/1995, J.3887; 22/6/1998, J.3969-70.

35 23/11/1988, J.1144; 28/11/1990, J.485; 21/2/1991, J.785; 14/3/1991, J.875; 17/4/1991, J.951; 16/6/1992, J.2443; 11/5/1995, J.3289; 12/8/1999, J.1489-90; 26/10/2009, J.2564-5; 12/5/2011, J.921.

36 30/8/1999, J.1592; 31/8/1999, J.1607.

37 16/12/1992, J.3382; 22/6/1994, J.1830; 22/9/1994, J.2214; 20/10/1994, J.2349; 2/2/1995, J.2850; see also 52nd report of Committee of Privileges, PP 21/1995.

of reports by the Auditor-General.³⁸

On 14 May 2003, the Senate, adopting recommendations in a report of the Foreign Affairs, Defence and Trade References Committee, made requests to the Auditor-General, as well as an order to the government, for reports on Defence Department equipment acquisitions.³⁹

Orders have been directed to the Australian Securities Commission;⁴⁰ to the Australian Competition and Consumer Commission to produce reports⁴¹ and to the Productivity Commission.⁴² The Human Rights and Equal Opportunity Commission responded with a report to a request from the Senate.⁴³ Telstra responded to an order for documents in 2001.⁴⁴

For a request (rather than an order) directed to a joint committee to produce a document in the possession of the committee, see the question of the scrutiny by the Public Works Committee of the new ASIO headquarters building in Canberra.⁴⁵ The resolution took the form of a request because an instruction to a joint committee would otherwise require the agreement of both Houses.

An order passed on 25 June 2009 requested the government to commission the Productivity Commission to produce a report on some aspects of the government's carbon pollution reduction scheme legislation, and ordered that information already in the possession of the Commission be produced.⁴⁶ The information was produced, although the government did not make the reference.

In 2010 a further order directed to the Productivity Commission required it to produce a report on default superannuation funds for the purpose of industrial awards or agreements.⁴⁷ A response indicated that the matter had been referred to the Treasurer but, at a subsequent estimates hearing, the Commissioner indicated that the project was on the Commission's work plan for a subsequent

38 2/11/2000, J.3474; 20/6/2001, J.4358-9; 7/8/2001, J.4595; 27/9/2001, J.4994-5; 29/8/2002, J.706; 4/12/2003, J.2851.

39 14/5/2003, J.1799-1800; response by Auditor-General, 17/6/2003, J.1865.

40 28/9/1995, J.3887; 22/6/1998, J.3969-70.

41 25/3/1999, J.626; 12/4/2000, J.2621; 8/11/2000, J.3523; 8/2/2001, J.3910-1; 24/9/2001, J.4925-6; 27/6/2002, J.527; 18/9/2002, J.748-9, 761; 12/11/2002, J.1025; 30/8/2001, J.4846; 14/5/2002, J.322; 15/10/2002, J.874; 9/12/2002, J.1261; 24/11/2003, J.2689; 25/11/2003, J.2713; 10/3/2005, J.463-4; 11/5/2005, J.621; 14/6/2005, J.655; 30/11/2005, J.1461; 7/12/2005, J.1721; 4/12/2006, J.3227; 13/3/2008, J.228; 11/2/2009, J.1594.

42 11/8/2009, J.2235.

43 13/4/2000, J.2631; 11/5/2000, J.2706.

44 28/8/2001, J.4798; 18/9/2001, J.4866.

45 20/8/2009, J.2362-3.

46 25/6/2009, J.2192-3.

47 16/11/2010, J.301-2.

period.⁴⁸

Orders were also directed to the newly established Australian Information Commissioner for the production of assessments of the adequacy of the government's reasons for not complying with orders on aspects of the proposed mining tax and variations to the GST agreements with the states. When, in relation to the mining tax orders, the Information Commissioner indicated his view that he was not empowered by his statute to perform the function asked of him by the Senate (or by the agreements on parliamentary reform), the Senate passed a declaratory resolution on 22 November 2010 drawing attention to its powers under the Constitution and the lack of any legislative constraint on those powers in the Information Commissioner's enabling statute.⁴⁹ The matter remains unresolved.

Orders for the production of documents normally require that they be laid before the Senate. Orders for documents may, however, require the provision of documents to committees. An order passed by the Senate on 5 November 1992 required that a report to the government on Medicare fraud be provided to the Standing Committee on Community Affairs that day. On 9 November the committee reported that the document had not been produced to the committee. The Minister for Health, Housing and Community Services had indicated that he was unwilling to produce the document because he did not wish it to be made public. The presentation of a document to a committee does not automatically make it public, but the committee is able to authorise the publication of the document. The Minister representing the Minister for Health, Housing and Community Services in the Senate moved by leave a motion to the effect that the document be provided to the committee but that the committee not publish the document until after 11 December. This motion, representing a compromise on the issue, was agreed to.⁵⁰ In 2005 the Australian Competition and Consumer Commission was ordered to produce a report on a confidential basis to a committee. The report was duly produced.⁵¹

A senator, after question time on any day in the Senate, may seek an explanation of, and initiate a debate on, any failure by a minister to respond to an order for documents within 30 days after the documents are due.⁵² In 2009 correspondence tabled from ministers in the Health and Ageing portfolio indicated a misconception about this provision by claiming that it effectively grants a 30 day extension on every order for documents.⁵³ Repetition of the claim suggested the

48 9/2/2011, J.550; Economics Legislation Committee estimates hearing, 2/6/2011, transcript pp. 94-95.

49 For orders, see 26/10/2010, J.206-8, 23/11/2010, J.395-6; for Information Commissioner's responses, see 15/11/2010, J.280, 9/2/2011, J.540; declaratory resolutions 22/11/2010, J.367, 10/2/2011, J.572.

50 J.2973, 2996-7, 3000; for further precedents of orders to produce documents to committees, see 22/3/1995, J.3106-7; 26/3/2001, J.4084-5; 3/4/2001, J.4152; 5/4/2001, J.4215.

51 10/3/2005, J.463-4; 17/3/2005, J.566.

52 SO 164(3).

53 20/8/2009, J.2372; 23/11/2009, J.2816.

misconception would continue to be used as an excuse for non-compliance and when this occurred again in 2010, the President wrote to the minister concerned correcting the misinterpretation. The correspondence was tabled in the Senate.⁵⁴

The Senate occasionally passes resolutions calling for the production of documents, such as reports on particular matters. These resolutions which “call for” documents are not technically orders for documents, but governments often respond to them as if they were.⁵⁵

Resistance by government to orders

Refusals by the government to comply with orders for documents are usually based on the argument that to produce the documents would not be in the public interest.⁵⁶

On 10 September 1991 the Senate agreed to an order requiring the government to table a tape recording of conversations between a minister and representatives of conservation groups. On 12 September a letter from the Leader of the Government was tabled, stating that the government would not table the tape recording, but attaching an extract from the transcript of the tape recording. The Senate censured the government for its refusal to table the tape. In the terms of the censure motion it was noted that, unlike previous refusals to provide documents in response to orders of the Senate, this refusal was not based on any claim of executive privilege.⁵⁷

On 19 May 1993, after considerable debate on the tendering process for pay television licences, an order was passed requiring the Minister for Transport and Communications to table relevant documents by noon on the following day. On the next day the minister stated that he was unable to comply with the order because of the voluminous nature of the documents, but that he intended to table documents as soon as possible. He also produced a report by a government-appointed inquiry into the matter. His statement and the report were debated later in the day. On the following sitting day, 24 May, the minister tabled a large collection of documents in response to the order of the Senate. After further consideration of the matter, on 27 May the Senate appointed a select committee to inquire into the pay television tendering process, including “the extent to which the Minister for Transport and Communications discharged his ministerial responsibilities”.⁵⁸

In March 1999 the Leader of the Government in the Senate, Senator Hill, was censured by the Senate for not responding properly to an order for documents relating to the Jabiluka uranium

54 17/6/2010, J.3607.

55 30/9/1999, J.1803-4; 5/9/2000, J.3203; 6/12/2000, J.3753.

56 See Chapter 19, Relations with the Executive Government, under Claims by the executive of public interest immunity.

57 J.1497-8; J.1509.

58 19/5/1993, J.201-2; 20/5/1993, J.217-8, 221; 24/5/1993, J.238; 27/5/1993, J.301-3.

mine. The minister had tabled some documents and listed others which were withheld on stated grounds, but subsequently stated that only “key documents” had been produced.⁵⁹

Frequent claims of commercial confidentiality in relation to government contracts led to the continuing order of the Senate for lists of contracts to the value of \$100 000 or more to be published on the Internet with statements of reasons for any confidentiality clauses or claims.⁶⁰ A claim by the government that the order was beyond the power of the Senate was rejected and later tacitly abandoned.⁶¹

On 16 May 1991 a minister raised a point of order to the effect that a motion for an order to require the tabling of certain documents was not in order because the documents in question were advices to government which should not be tabled. The Deputy President ruled that the standing orders do not preclude orders for the tabling of advices to government, and that the motion was in order. The motion was passed and the documents were subsequently tabled.⁶²

An order of August 2000 for contracts entered into by Telstra allowed the withholding of “genuinely commercially sensitive” material. Documents were produced in response to the order.⁶³

A remedy against government refusal was included in an order for documents made on 1 November 2000. It provided that, should the required documents not be produced, the responsible Senate minister would be obliged to make a statement and a debate could then take place. Documents were produced in response to the order.⁶⁴

Orders for production of documents are among the most significant procedures available to the Senate to deal with matters of public interest giving rise to questions of ministerial accountability or the accountability of statutory bodies or officers.

It is open to the Senate to treat a refusal to table documents as a contempt of the Senate. In cases

59 24/3/1999, J.612-13.

60 20/6/2001, J.4358-9.

61 26/9/2001, J.4976; 27/9/2001, J.4994-5; report of the Finance and Public Administration References Committee on accountability to the Senate in relation to government contracts, PP 212/2001, advice from the Clerk of the Senate in that report, opinion by the Australian Government Solicitor’s Office and comments by the Clerk on that opinion, published by the committee; report by the Auditor-General, 18/9/2002, PP 367/2002; further report by the Finance and Public Administration References Committee, 12/12/2002, PP 610/2002; reports by Auditor-General, 5/3/2003, PP 23/2003; 11/9/2003, PP 183/2003, and subsequent reports; order amended 18/6/2003, J.1881-2; 26/6/2003, J.2011-13; 4/12/2003, J.2851.

62 16/5/1991, J.1049-50; 28/5/1991, J.1053.

63 31/8/2000, J.3169; 7/9/2000, J.3253.

64 1/11/2000, J.3462; 2/11/2000, J.3479; 27/11/2000, J.3586.

of government refusal without due cause, however, the Senate has preferred political remedies. In extreme cases the Senate, to punish the government for not producing a document, could resort to more drastic measures than censure of the government, such as refusing to consider government legislation.⁶⁵

Addresses for documents

If the Senate requires the tabling of a document concerning the royal prerogative or correspondence addressed to the Governor-General, it must present an address to the Governor-General requesting that the documents be laid before the Senate.⁶⁶

This procedure is of ancient origin and has not been used for many years. On 17 June 1914, the Senate agreed to a motion for an address to the Governor-General requesting him to allow the publication of the communications between the Governor-General and his advisers relating to the simultaneous dissolution of both Houses of the Parliament.⁶⁷ The Governor-General, however, in a reply to the address, stated that, on the advice of his ministers, he was unable to accede to the request contained in the address.⁶⁸

Presentation of documents when Senate not sitting

Documents may be certified by the President, and on that certification are deemed to be presented to the Senate and their publication authorised.⁶⁹ This procedure is used for documents the President would normally present to the Senate when it is sitting, but only the President may exercise the power conferred by the provision.

Committee reports, government documents and reports of the Auditor-General may be presented to the President when the Senate is not sitting, and on presentation to the President are deemed to be presented to the Senate and their publication authorised.⁷⁰

These procedures were used by way of special orders relating to particular reports over several years, and were adopted as permanent orders on 13 February 1991 on the recommendation of

65 See also Chapter 19, Relations with the Executive Government, under Remedies against executive refusal of information.

66 SO 165.

67 J.86-8.

68 Correspondence relating to simultaneous dissolutions has been frequently tabled since that time: see Chapter 21, Relations with the House of Representatives, under Disagreements between the Houses.

69 SO 166(2).

70 SO 38(7), 166(2).

the Procedure Committee.⁷¹

The provision relating to committee reports is as follows:

If the Senate is not sitting when a committee has prepared a report for presentation, the committee may provide the report to the President or, if the President is unable to act, to the Deputy President, or, if the Deputy President is unavailable, to any one of the Temporary Chairs of Committees, and, on the provision of the report:

- (a) the report shall be deemed to have been presented to the Senate;
- (b) the publication of the report is authorised by this standing order;
- (c) the President, the Deputy President, or the Temporary Chair of Committees, as the case may be, may give directions for the printing and circulation of the report; and
- (d) the President shall lay the report upon the Table at the next sitting of the Senate.

The provision authorising the publication of a report attracts paragraph 16(2)(d) of the *Parliamentary Privileges Act 1987*, which provides that proceedings in Parliament includes the publication of a document by or pursuant to an order of a House or a committee, and the document so published.⁷²

The provision relating to documents presented by ministers and reports of the Auditor-General is in similar terms.

Publication of documents

The publication of each document laid on the table of the Senate is authorised on tabling.⁷³ This provision attracts paragraph 16(2)(d) of the *Parliamentary Privileges Act*, which extends the protection of proceedings in Parliament to the publication of a document by or pursuant to an order of a House or a committee, and to the document so published (see Chapter 2, *Parliamentary Privilege*, under *Preparation and publication of documents*).

A standing order in these terms was first adopted on 19 February 1988 after the Procedure Committee had drawn attention to a potential difficulty arising from the wording of the old standing order, which did not make it clear that the publication of every tabled document was

71 Second Report of 1990, PP 435/1990 pp. 11-2; Auditor-General's reports were included by an amendment made on 27 May 1993, and President's documents on 7 December 1998. Also see *Annotated Standing Orders of the Australian Senate*, under SO 166.

72 See Chapter 2, *Parliamentary Privilege*, under *Preparation and publication of documents*.

73 SO 167.

authorised. It was considered that there was no absolute privilege for the publication of a tabled document in the absence of an order of the Senate authorising its publication. In recommending that the standing order be changed, the committee suggested that the new order should enable the Senate to continue the past practice of making tabled documents generally available.⁷⁴

All documents laid upon the table and not ordered to be printed are referred to the Publications Committee, which considers all such documents, and reports from time to time on which documents ought to be printed. The Senate usually adopts the reports of the committee, thereby ordering the printing of documents in accordance with recommendations of the committee.

Documents ordered to be printed, either by order of a House or by the adoption of the recommendations of the Publications Committee, are published as Parliamentary Papers. This series of papers is widely distributed according to a list approved by the Presiding Officers on the recommendation of the Clerks of the Houses. The series is distributed to organisations such as state public libraries and universities, which retain them for reference and research purposes. In 2010, the Joint Committee on Publications presented a report recommending that the parliamentary departments develop a digital repository for the Parliamentary Papers Series to address concerns about wider and long-term access.⁷⁵ A response from the Presiding Officers agreeing to the recommendations in principle was tabled in both Houses.⁷⁶

Petitions

It is the right of any person or organisation to petition Parliament to obtain redress of grievances, or to ask it to take some action or not to do something that is contemplated. The right to petition Parliament is of great antiquity.

The presentation of a petition to the Senate is a proceeding in Parliament and is protected by parliamentary privilege. The publication of a petition before presentation is not similarly protected.⁷⁷

Petitions nowadays are mainly used to express views on public policy issues. The use of petitions to request redress of personal grievances has declined as other avenues for that purpose have developed. Senators frequently attend directly to the problems of constituents, and other sources of redress have been provided by the establishment of the Office of the Commonwealth Ombudsman and legislation relating to administrative appeals and reviews.

74 First Report, 63rd Session, PP 215/1987. Also see *Annotated Standing Orders of the Australian Senate*, under SO 167.

75 PP No. 160/2010.

76 25/11/2010, VP.260; 9/2/11, J.547. A government response to the remaining recommendation was tabled on 15/9/2011, J.1487.

77 See Chapter 2, Parliamentary Privilege, under Circulation of petitions.

Petitions when presented, like other documents presented to the Senate, are public documents. Any person may therefore inspect a petition and extract any information from it, including names and addresses of signatories. There is nothing to prevent such a person then sending material to the signatories. The harassment or other adverse treatment of a person in consequence of their signing a petition could be held by the Senate to constitute a contempt and punished accordingly.

Petitions are presented only by senators. This means that a person who wishes to petition the Senate must forward the petition to a senator and ask the senator to present it. Senators are not obliged to present petitions, but most senators take the view that they should present any petition forwarded to them, unless it is contrary to the rules of the Senate, and despite any disagreement they may have with its contents. This principle was the subject of questions to the Clerk at the additional estimates hearings of the Finance and Public Administration Committee in 2011.⁷⁸

Petitions to be presented are lodged with the Clerk.⁷⁹ The senator presenting the petition places the senator's name at the beginning of it, together with a statement of the number of signatures. Petitions must be lodged with the Clerk at least 3 hours before the meeting of the Senate at which it is proposed to have them presented. In practice the rule is that petitions for presentation on days when the Senate meets early are lodged the previous evening.

Petitions must be certified by the Clerk as being in conformity with the standing orders. Rules relating to the form and content of petitions are set out in standing orders 70 and 71. The most important rule is that a petition must be addressed to the Senate and contain a request for action by the Senate or the Parliament.

Petitions which are posted and signed electronically on the Internet are accepted if the Senator certifies that they have been duly posted with the text available to the signatories.

Petitions are tabled by the Clerk at the time provided in the routine of business.⁸⁰ A summary which is circulated indicates in respect of each petition the senator who presents it, the number of signatures and the subject matter. These petitions are deemed to have been received and the texts of the petitions are printed in Hansard. A motion may be moved that a petition not be received.⁸¹ Petitions that are received are ordered to be published under standing order 167 and therefore attract parliamentary privilege.

There is no provision in the standing orders for petitions for private bills, which in some legislatures

78 21/2/2011, pp. F&PA 6-9.

79 SO 69.

80 SO 57.

81 SO 69(3).

are founded upon a petition of the interested parties, but which are unknown in the Commonwealth Parliament.⁸²

Senators often receive representations from citizens which do not qualify as petitions, such as petitioning letters or documents not properly addressed to the Senate or the Parliament. Such documents may be presented as petitions if the President is satisfied that exceptional circumstances so warrant.⁸³ Exceptional circumstances are, for example, that the subject matter of the petition is immediately before the Senate, that the petition refers to facts of which the Senate might not otherwise be aware, that the petition refers to a serious grievance or injustice to which the Senate should give immediate attention, or that there is no other way in which the document can be treated so as to bring it to notice. Circumstances which are not exceptional are, for example, that there are a lot of signatures attached to the petition, that a great deal of trouble has been taken to collect the signatures, or that the subject matter of the petition is an important public issue.

Some unusual petitions have been presented, including one relating to the textile, clothing and footwear industries written on a jacket and continued on a roll of cloth, which was presented on 2 April 1992.

A petition received in 1991 was from foreign nationals resident outside Australia. Some senators questioned the propriety of this, but the President ruled that there is nothing to prevent such petitions being presented.⁸⁴ There are many circumstances in which foreigners overseas could legitimately ask the Senate to take some action in relation to matters of concern to them.

Petitions presented to the Senate are brought to the notice of the appropriate legislative and general purpose standing committee. Committees have occasionally undertaken inquiries based on petitions relating to their standing references.

Standing order 207 contains residual provision for any question concerning the election, choice or appointment of a senator which cannot, under the provisions of the Commonwealth Electoral Act, be brought before the Court of Disputed Returns, to be brought before the Senate by petition.⁸⁵

Other submissions to the Senate

A person who wishes to bring matters to the attention of the Senate other than by petition may write to the President or Clerk. The President may table the correspondence if it is considered

82 See Chapter 12, Legislation.

83 SO 69(8).

84 SD, 6/3/1991, p. 1234.

85 For a recent example of a petition purporting to invoke this standing order see Chapter 6, Senators, under Determination of disqualifications.

that the Senate should be informed of it.

On 1 November 1988 and 28 February 1989 the President tabled submissions from a Deputy President of the Conciliation and Arbitration Commission concerning his position on the Commission.⁸⁶ These submissions led to the appointment of the Joint Select Committee on the Tenure of Appointees to Commonwealth Tribunals to inquire into the principles which should govern that tenure.⁸⁷

On 25 February 1992 a submission relating to proceedings in the Senate and in Estimates Committee A was tabled by the Deputy President. The claim was made in the submission that false evidence had been given to the committee and that false answers may have been given in respect of a question without notice. Another submission from the same citizen relating to alleged false evidence given to the committee was tabled on 4 May 1992.⁸⁸ The matters raised in the submissions were examined in part by the Public Accounts Committee in the course of its inquiry into an Australian Customs Service investigation and prosecution case involving the Midford Paramount company. This matter had been referred to the committee by the Senate. In its report the committee “concluded that not only the minister, but also Midford, their Tariff Advisor, the Comptroller-General and the committee had been misled ...”.⁸⁹ Questions raised by the submissions, together with allegations of improper interference with the submitter in his capacity as a witness before the Public Accounts Committee, were subsequently referred to the Senate Privileges Committee. That committee concluded that a contempt had been committed by a threat by an unknown person to the witness, and that misleading answers had not been intentionally given.⁹⁰ The person who made the submission was compensated by the government because of his treatment by the Customs Service.

Similarly, in its 71st and 72nd reports, in 1998, the Privileges Committee reported on matters which were raised in submissions made by persons to the Senate, the first involving alleged misleading evidence to a Senate committee and the second alleged interference with a person who provided information to a senator.⁹¹

Other legislatures have occasionally submitted documents to the Senate. On 29 August 1962, the Legislative Council for the Northern Territory submitted a document entitled “The Remonstrance”, the terms of which were in a resolution agreed to by the Council, and referred to grievances of

86 J.1050, 1385.

87 Report of the committee, PP 289/1989.

88 J.2007, 2238.

89 Joint Committee of Public Accounts, Report 325, the Midford Paramount Case and Related Matters, PP 491/1992, p. 206.

90 50th report of the committee, PP 322/1994.

91 PP 86/1998, 117/1998.

the Council.⁹² Another remonstrance passed by the Legislative Assembly of that territory was presented on 28 October 1996, and a resolution of the Norfolk Island Assembly was presented on the same day.⁹³ A resolution of the Northern Territory Legislative Assembly on East Timorese asylum seekers was presented on 9 December 2002.⁹⁴ A resolution of the Queensland Legislative Assembly requesting an inquiry into a criminal prosecution was tabled on 24 November 2003.⁹⁵

Government documents – consideration

Documents presented by ministers are considered under a special procedure.⁹⁶

Committee reports – consideration

Special procedures for the consideration of committee reports are provided by standing order 62.⁹⁷

Annual reports – scrutiny

Annual reports presented to the Senate by departments, statutory authorities, non-statutory bodies and companies are referred to the legislative and general purpose standing committees for inquiry and report.⁹⁸ This procedure provides those committees with an opportunity to inquire into the activities of government departments and agencies. The annual reports are referred to the committees in accordance with an allocation contained in a resolution. This allocation is also used to determine the allocation of references to the committees.⁹⁹

The committees are required to report in relation to each report whether it is apparently satisfactory, and to report on any which are not apparently satisfactory and on any which are selected by the committees for detailed consideration. The committees are directed to report twice in each year, and draw to the attention of the Senate any significant matters relating to the operation and performance of the bodies furnishing the annual reports. The committees are also required to report on any lateness in the presentation of annual reports. Each committee must present each year a report indicating whether there are any bodies which do not present annual reports and which should do so.

92 J.129.

93 J.765.

94 J.1261.

95 J.2688.

96 SO 61; see Chapter 8, Conduct of Proceedings, under Consideration of government documents.

97 See Chapter 8, Conduct of Proceedings, and Chapter 16, Committees, under Consideration of committee reports.

98 SO 25(20). This replaced an earlier order of 14 December 1989.

99 SO 25(3).

The operation of these procedures is treated in more detail in Chapter 16, Committees.

Documents quoted in debate

A document quoted by a senator may be ordered to be laid on the table by motion without notice moved immediately on the conclusion of the speech of the senator who quoted the document.¹⁰⁰ Ministers may refuse to table a document under this procedure if it is stated to be of a confidential nature or if it should more properly be obtained by address. Such a refusal is subject to any subsequent order of the Senate that the document be produced.

In practice, senators usually ask other senators if they will table quoted documents. Ministers may table documents by right but may decline to table on the basis that the quoted document is confidential. A senator who is not a minister has no power to table documents under the standing orders, and must obtain the leave of the Senate to do so. It is more appropriate therefore for senators wanting documents quoted by private senators to follow the standing orders and move that the document be tabled. That motion is open to debate, subject to the rule of relevance, so that debate is confined to reasons for tabling the document.

The Standing Orders Committee recommended, in the light of contradictory precedents, that the standing order should be interpreted as applying only to a document actually in a senator's possession in the chamber. This principle has since been followed.

The Standing Orders Committee also recommended, that the terms of standing order 168 apply only to a document which is actually quoted by a senator and have no application to speech notes used by a senator.¹⁰¹ There have nevertheless been cases of senators tabling their speech notes.

The operation of these procedures is set out more fully in Chapter 10, Debate, under Quotation of documents.

Treaties

The texts of treaties entered into by Australia are tabled as government documents. This was to have been done at least 12 sitting days before ratification or accession, in accordance with an undertaking given by the government in 1961.¹⁰²

Treaties may be considered in accordance with the same procedures as apply to other government

100 SO 168.

101 First Report, 62nd Session, PP 504/1985.

102 HRD, 10/5/1961, pp. 1693-4.

documents.

Australian governments consider that the making of treaties is a matter for the executive government and does not require approval of the Parliament.¹⁰³ This contrasts with the situation in the United States of America, where the President requires the advice and consent of two-thirds of the Senate before making a treaty. In Britain treaties are not ratified until 21 days after the text is laid before Parliament, although the government may modify this procedure in cases of urgency or when other important considerations arise.

Treaties may be incorporated or referred to in legislation where their provisions are to be applied as part of the law of Australia.

Over many years efforts were made in the Senate to strengthen parliamentary scrutiny of treaties. These efforts bore some fruit in 1996.

A notice of motion was given in the Senate in 1983 by Senator Harradine for the establishment of a Senate standing committee to consider and report in respect of treaties:

- (i) whether Australia should undertake to be bound by that treaty if that treaty is not already binding upon Australia, and
- (ii) the effect which Australia's being bound by that treaty has or would have upon the legislative powers and responsibilities of the Australian States.¹⁰⁴

This motion arose from concern about the scope of the external affairs power under section 51 of the Constitution, and the power of the Commonwealth Parliament to legislate to enforce treaties entered into by the government, as interpreted by the High Court in *Commonwealth v Tasmania* (1983) 158 CLR 1. The motion to establish the committee was not moved, but a notice in the same terms was given in each session after 1983. The tabling of 36 treaties on 30 November 1994 led to a debate on the need for some more formal means of scrutiny of treaties by the Senate.¹⁰⁵ The establishment of a committee to scrutinise treaties was then under consideration by senators. The treaties tabled on that day included those under negotiation or active consideration for Australia.

Concern about the lack of parliamentary scrutiny and control of treaties culminated in a comprehensive examination of the subject and a report by the Legal and Constitutional References Committee in 1995.¹⁰⁶ After the 1996 general election, the incoming government responded

103 See, for example, statement by the Minister for Veterans' Affairs, SD, 7/9/1983, pp. 437-8.

104 23/8/1983, J.205-6.

105 SD, pp. 3602-3.

106 PP 474/1995.

favourably to the committee's report and agreed to table treaties in both Houses before ratification, establish a treaties council for consultation with the states, and move for the establishment of a joint committee for parliamentary scrutiny of treaties.¹⁰⁷ The joint committee was subsequently established. These measures fell short of provision for parliamentary approval of treaties.

For a select committee on a treaty, see the Select Committee on the Free Trade Agreement between Australia and the United States.¹⁰⁸

It has been suggested that the Parliament could legislate to provide that treaties not enter into force in respect of Australia until approved by each House. In 1994 Senator Bourne introduced the Parliamentary Approval of Treaties Bill which would provide for treaties to be approved in the absence of any parliamentary action or, if raised for consideration in either House, by resolution of that House.¹⁰⁹

The Senate Foreign Affairs, Defence and Trade References Committee, in its report *Voting on Trade*,¹¹⁰ suggested a scheme of parliamentary involvement in negotiation of trade agreements and procedures for approval by both Houses of such agreements.

Custody and alteration of documents

The custody of all documents laid before the Senate is in the Clerk and they may not be taken from the chamber or Senate offices without the permission of the Senate.¹¹¹ A resolution of 6 October 2005, on the recommendation of the Procedure Committee, authorises the storage of original tabled documents outside Parliament House.¹¹² All documents tabled in the Senate since its first meeting in 1901 are registered and are stored in document storage rooms in Parliament House. Indexes to the documents are published regularly, and the documents themselves have been microfilmed, digitally imaged, and progressively published online.

If a senator tables a document and subsequently discovers that it includes material the senator did not intend to table, the material may be excluded from the tabled document at the request of the senator, provided that this does not create any disparity between the senator's description of the document to the Senate and the content of the document as amended.

107 SD, 2/5/1996, pp. 217-247.

108 12/2/2004, J.2997-8.

109 A revised version of this bill was introduced in 1995.

110 PP 401/2003.

111 SO 44.

112 6/10/2005, J.1200.

A document ordered to be printed may not be altered without the approval of the Senate, except for corrections and amendments not affecting the substance of the document.¹¹³

113 SO 170.