

Documents

DOCUMENTS 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 activities of government departments and bodies under the control of government. The presentation of documents and reports by Ministers is very important to Parliament in fulfilling its critical role. It demonstrates the accountability of the Government to the Parliament and, through it, to the community. Documents presented to the House are important primary sources of information from which a Member may draw in asking questions and in making a useful contribution to debate. The presentation of a document to the House places it on the public record.

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 government departments and statutory bodies to present reports, including financial reports, of their activities to the Parliament. Information is also provided in other ways, principally through answers to questions in writing and without notice, in the course of debate, and by means of statements by Ministers on government policy or activities. The House itself has a right, expressed in the standing orders,¹ to seek information in documentary form.

Annual reports for virtually all federal government departments and agencies are presented to the Parliament, and this situation was arrived at after pressure and recommendations from within Parliament.²

Before the revised standing orders were adopted in 2004, the traditional term ‘paper’ extended in practice to documents presented to the House in electronic form, such as computer disk or videotape.³ The term used in the current standing orders is ‘document’, which is now defined as meaning a paper or any record of information, including:

- (i) anything on which there is writing;
- (ii) anything on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them;
- (iii) anything from which sounds, images or writings can be reproduced with or without the aid of anything else; or
- (iv) a map, plans, drawing or photograph.⁴

However, only printed documents can be included in the Parliamentary Papers Series and it is a government requirement for printed versions of government reports to be presented in addition to any electronic version.

1 S.O. 200.

2 E.g. Joint Committee on Publications, *Inquiry into the purpose, scope and distribution of the Parliamentary Papers Series*, PP 216 (1977) 14, H.R. Deb. (24.11.78) 3456–7.

3 VP 1996–98/619; VP 1998–2001/296–7; VP 1998–2001/853.

4 S.O. 2. This aligns with the definition of a document in the *Acts Interpretation Act 1901*, s. 25.

The traditional phrase ‘table a paper’ and the more recently preferred phrase ‘present a document’ are synonymous.

Method of presentation

Documents are presented to the House in a number of ways. They can be presented pursuant to statute, at government initiative, pursuant to standing orders,⁵ by order of the House and by leave of the House. Documents may be presented by the Speaker, by Ministers and, in restricted circumstances, by private Members. There are special provisions for the presentation of petitions and committee and delegation reports. Various documents are presented by the Clerk. As well as being presented by Ministers, government documents may be delivered to the Clerk and be deemed to be presented.

Time of presentation

The more important ministerial documents are usually presented during the period of time set aside in the order of business following Question Time on Tuesdays, Wednesdays and Thursdays.⁶ However, a Minister may present a document at any time when other business is not before the House.⁷ With some exceptions, leave is required for a document to be presented at any other time (*see* p. 589). It is the practice of the House that the Speaker may present a document at any time, but not so as to interrupt a Member who is speaking. Documents may be presented in the Main Committee.⁸

Documents presented at the time provided in the order of business are generally presented together according to a previously circulated list. A schedule of documents to be presented is made available to the Manager of Opposition Business by 12 noon on the day of presentation, and circulated to Members in the Chamber at the first opportunity. Following Question Time a Minister presents the documents as listed, and the documents so listed are recorded in the Votes and Proceedings and Hansard. Documents are presented individually if a schedule has not been circulated, if they are not listed on a schedule or if a statement is to be made in connection with a document.⁹

By the Speaker

The standing orders provide that documents may be presented to the House by the Speaker.¹⁰ The reports of those committees of which the Speaker is chair, or joint chair, are presented by the Speaker.¹¹ The Speaker presents the reports of parliamentary delegations of which he or she is leader.¹² The Speaker also presents documents dealing with parliamentary activities,¹³ and, pursuant to the Parliamentary Service Act, the annual reports of the Parliamentary Service Commissioner, the Department of the House of Representatives, and the Department of Parliamentary Services (the parliamentary department under the joint authority of the Speaker and the President).¹⁴

5 S.O.s 199–200.

6 S.O. 34.

7 S.O. 199(b).

8 E.g. VP 1993–95/2516; VP 1996–98/457.

9 Resolution of the House effective March 1988. VP 1987–89/302–3.

10 S.O. 199(a).

11 E.g. VP 1993–95/965.

12 E.g. VP 1993–95/1613; VP 1998–2001/1115.

13 *See* for example, *History of Hansard*, VP 1970–72/1236; *Radio broadcasting of parliamentary proceedings—papers*, VP 1993–95/1327; VP 1996–98/95, 160.

14 *Parliamentary Service Act 1999*, ss. 42, 65. Note that a report or other document presented by both Presiding Officers may be presented to the two Houses on different days.

The Auditor-General Act requires the Auditor-General to transmit to each House of the Parliament reports prepared under that Act.¹⁵ Having furnished information to the Prime Minister in relation to an investigation, the Commonwealth Ombudsman may also forward copies of a report concerning the investigation to the President and the Speaker for presentation to Parliament.¹⁶ These reports are presented to the House by the Speaker in his or her role as the representative of the House in its relations with authorities outside the Parliament.¹⁷

The Speaker may also communicate to the House letters and documents addressed to the Speaker, such as replies to expressions of congratulation or condolence made by the House,¹⁸ or messages of the same kind from foreign countries and other legislatures,¹⁹ letters acknowledging a motion of thanks of the House,²⁰ 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.²¹ In 1988 the Acting Speaker presented a copy of a letter from a Deputy President of the Conciliation and Arbitration Commission seeking the appointment of a joint select committee to inquire into his situation. Another letter from the same person was presented on 28 February 1989.²² The Speaker has presented a letter from a High Court Judge, and read a statement from the judge, received following criticism of the judge in Parliament.²³ In 2003 the Speaker presented a resolution of the Queensland Parliament which, in part, requested the Commonwealth Parliament to establish an inquiry.²⁴ 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 presented by specific action of the Speaker,²⁵ documents of this kind are not regarded as having been formally presented to the House.

Pursuant to statute

Documents presented pursuant to statute are those documents required to be presented to the Parliament by virtue of provisions in Acts of the Parliament. They may be presented by the Speaker (*see above*), by Ministers, or delivered to the Clerk for deemed presentation (*see p. 589*).

Various types of document are covered by the term ‘statutory document’. For example, an agency is usually required by its enabling legislation to present a report on its operations each financial year, and the report required to be accompanied by financial statements and the report of the Auditor-General on those statements.²⁶

Agencies may be permitted or required to investigate and report on specific matters and to present their reports to the Parliament.²⁷ A number of statutes require that the Minister

¹⁵ *Auditor-General Act 1997*, ss. 15, 16, 17, 18, 25, 28.

¹⁶ *Ombudsman Act 1976*, s.17; VP 1985–87/392.

¹⁷ See Ch. on ‘The Speaker, Deputy Speakers and officers’.

¹⁸ E.g. VP 1978–80/981; VP 2002–04/1061–2.

¹⁹ VP 1978–80/930, 977; VP 1996–98/366–9; VP 2002–04/1318.

²⁰ VP 1932–34/583.

²¹ VP 1970–72/517; VP 1990–92/1633 (letter of apology).

²² VP 1987–89/811, 1025.

²³ VP 2002–04/122–2.

²⁴ In response to a question the Speaker later indicated that he intended to take no action on the matter unless instructed by the House. H.R. Deb. (25.11.2003) 22719–20; (2.12.03) 23432.

²⁵ VP 1967–68/10.

²⁶ An authority could report for a 12 month period other than the financial year; for example, *see* reports of joint fisheries authorities under the *Fisheries Act 1952* (now repealed), VP 1993–95/949, 1983.

²⁷ E.g. *Automotive Industry Act 1984*, s. 10.

responsible for the administration of an Act present a report to the Parliament on the operations of that Act,²⁸ and Acts providing for grants or financial assistance to the States have required that statements of guarantees and payments, and financial agreements, be presented to the Parliament.²⁹

Since 1986 annual reports of government departments have been presented pursuant to statute. This followed amendments to the Public Service Act³⁰ providing that reports should be prepared and presented to Parliament each year,³¹ in accordance with guidelines from time to time presented to Parliament by the Prime Minister after approval by the Joint Committee of Public Accounts and Audit.³²

There is a statutory requirement that where any Act confers the power to make regulations, those regulations shall be laid before each House of the Parliament. There are also statutory requirements for the presentation of many other instruments of a similar nature. These include such documents as notifications of the acquisition of land, ordinances, by-laws, rules of court, determinations, statutes of academic institutions, determinations under the Parliamentary Service Act and certain instruments under the Public Service Act.³³

At government initiative

Many reports and other documents, not required by statute to be presented, are considered by the Government important enough to present 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 were presented in this way before there was a statutory requirement to do so. 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 documents presented to the House cover a virtually unlimited range of subject matters. They include reports of royal commissions, treaties,³⁴ agreements and exchanges of notes with foreign countries, reports of committees of inquiry established by the Government, and ministerial statements. These documents are usually presented by Ministers, although in some cases they are forwarded to the Clerk for recording in the Votes and Proceedings as documents deemed to have been presented (*see below*).

In the past such documents were presented nominally 'by command of the Governor-General',³⁵ and referred to as command papers. This term in relation to documents presented to the Australian Parliament did not have the same significance as the term used in the United Kingdom Parliament where such documents are printed as a separate Command Paper series. The term in Australia was purely technical, referring to the manner of presentation, and is no longer current usage.

28 E.g. *Housing Assistance Act 1996*, s. 14; *Air Navigation Act 1920*, s. 29.

29 E.g. *Urban and Regional Development (Financial Assistance) Act 1974*, s. 8.

30 (Now) *Public Service Act 1999*, s. 63.

31 For the year ended 30 June.

32 VP 1990–92/616.

33 See 'Delegated legislation' in Ch. on 'Legislation'.

34 New arrangements for treaties were announced in May 1996: the Government undertook to table treaties at least 15 sitting days before taking binding action; treaties were to be tabled with a national interest analysis, to facilitate community and parliamentary scrutiny; and a Joint Standing Committee on Treaties was created to consider tabled treaties and related matters. H.R. Deb. (2.5.96) 231–5.

35 Former S.O. 319. Documents were recorded in the Votes and Proceedings as being presented by command until 1983.

Deemed to have been presented

In 1962, to save the time of the House, the Standing Orders Committee recommended an amendment to the standing orders providing that a miscellany of papers (mainly statutory documents) may be deemed to have been presented if they are delivered to the Clerk and recorded in the Votes and Proceedings.³⁶ The recommendation was adopted and in 1963 the Acts Interpretation Act was amended to make the proposed new procedures for the presentation of documents legally effective.³⁷

Current standing orders provide that documents may be delivered to the Clerk who shall record them in the Votes and Proceedings. Documents delivered to the Clerk are deemed to have been presented to the House on the day on which they are recorded in the Votes and Proceedings.³⁸ Documents received on a sitting day before 5 p.m. are recorded in the Votes and Proceedings of the day of receipt. In other circumstances they are recorded in the Votes and Proceedings of the next sitting day. Government departments are advised to consider the time limit in cases where the day of presentation may be significant.

The main types of document delivered to the Clerk for recording in the Votes and Proceedings are the documents presented pursuant to statute described above, including, in particular, delegated legislation.

By leave

Leave of the House is required to enable the presentation of a document in circumstances not provided for in the standing orders or established practice of the House.

It is expected that a Member or Minister seeking leave to present a document will first show it to the Minister at the Table or to the Member leading for the Opposition, as the case may be, and leave may be refused if this courtesy is not complied with.³⁹

BY PRIVATE MEMBERS

Other than providing for the presentation of committee and delegation reports, the standing orders make no provision for private Members to present documents. Any private Member (unless presenting a parliamentary committee report, or a delegation report during the time allotted on Mondays, or unless the document relates to a matter of privilege raised by the Member⁴⁰) wishing to present a document must obtain leave of the House to do so,⁴¹ and leave may be granted only if no Member present objects.⁴² Leave is not required to present an explanatory memorandum to a private Member's bill.

MINISTERS

The requirement for leave also applies to Ministers when other business is before the House.⁴³ Other business is defined as any question before the House (or Main Committee) for decision. Ministers therefore do not require leave to present documents between items of business, during Question Time,⁴⁴ while making a ministerial statement or personal

³⁶ Standing Orders Committee, *Report*, H of R 1 (1962–63) 57.

³⁷ *Acts Interpretation Act 1963*, s. 34B; H.R. Deb. (7.5.63) 1066–7.

³⁸ S.O. 199(b).

³⁹ H.R. Deb. (9.10.79) 1724; H.R. Deb. (3.6.99) 5947.

⁴⁰ VP 1998–2001/1350; and see S.O. 53.

⁴¹ VP 1978–80/1597; VP 1996–98/162. Speaker Hawker held that a request from a private Member for leave to present a document during Question Time would not be put to the House where the document was already on the public record, H.R. Deb (17.11.2004) 73.

⁴² S.O. 63.

⁴³ S.O. 199(b), VP 1976–77/183; VP 1978–80/178; VP 1996–98/276.

⁴⁴ VP 2004–05/63.

explanation, or during a discussion of a matter of public importance. Conversely, leave is required during adjournment and grievance debates, when there is a question before the House. As in other procedural matters, the same rules apply to Parliamentary Secretaries—thus Parliamentary Secretaries do not require leave to present documents during the period for Members' three minute statements in the Main Committee. Ministers do not require leave to present an explanatory memorandum or other documents connected to a bill before the House. Leave has been required for a newly appointed Minister to present a report of a parliamentary delegation of which he had been a member while a private Member.⁴⁵

Pursuant to standing order 201

Standing order 201 provides that if a Minister quotes from a document relating to public affairs, a Member may ask for it to be presented to the House. The document must be presented unless the Minister states that it is of a confidential nature.⁴⁶ The rule has been said to be akin to the rule of evidence in the courts where evidence not placed before the court may not be cited by counsel.⁴⁷

Speaker Snedden laid down steps to be followed when a request for presentation 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 presented. If it is not a confidential document, and the Minister has read from it, he or she is then required to present 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.⁴⁸

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,⁴⁹ nor to private documents.⁵⁰ A Minister who summarises correspondence, but does not actually quote from it, is not bound to lay it on the Table.⁵¹ The standing order also applied in the former committee of the whole⁵² and legislation committees, and by extension of these precedents would apply in the Main Committee.

It has been held that when public interest immunity (*see* p. 608) is claimed by the Government in court proceedings it is the duty of the court, and not the right of the Executive Government, to decide whether a document would be produced or withheld.⁵³ In 1978 a Member raised as a matter of privilege the possible application of these principles to the tabling of documents under the standing order. The Member suggested that the Speaker should stand in a similar position to the court and when a document relating to public affairs was quoted from by a Minister any claim by the Minister that the document was confidential should be judged by the Speaker and not the Minister. The Speaker stated

45 H.R. Deb. (20.3.2002) 1702.

46 VP 1993–95/1972; VP 1996–98/491.

47 Lord Campion, *An introduction to the procedure of the House of Commons*, 3rd edn, London, MacMillan, 1958, p. 197.

48 H.R. Deb. (1.4.76) 1239. In most cases Speakers have accepted the Minister's word as to a document's confidentiality.

Speaker Sinclair insisted that documents should be marked confidential, H.R. Deb. (9.3.98) 736, but Speakers Andrew and Hawker did not continue this approach.

49 H.R. Deb. (28.8.13) 646–7.

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

51 H.R. Deb. (23.2.72) 110; *and see* *May*, 23rd edn, pp. 441–2.

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

53 *Sankey v. Whittlam and others* (1978) 142 CLR 1.

that the cases were significantly different and that the clear course of the standing order must be followed.⁵⁴

Presented by the Clerk

RETURNS TO ORDER

The House itself can order documents to be presented. Upon the House agreeing to a resolution that certain documents should be presented, the Clerk refers the order to the Minister concerned. When the documents are received, they are presented by the Clerk.⁵⁵

Although the standing order only contemplates orders in relation to documents to be produced by Ministers, the House has the power to order other persons or bodies to produce documents. However, according to *May*, as a general rule only documents which are of a public or official character should be ordered to be laid before the House.⁵⁶ In 1999 a private Member was ordered to produce a document. However, the Member did not comply with the order, stating that the document was no longer in his possession, and no further action was taken by the House.⁵⁷

The procedure of calling for documents was frequently followed during the early years of the House, but it fell into disuse.⁵⁸ Much of the information previously sought in this way is now presented to the House pursuant to statute or at government initiative. However, this power has continuing importance and it may be delegated to committees, thus enabling them to send for documents and records.⁵⁹ In the Senate orders have been made more recently for the presentation of documents.⁶⁰

An order for documents to be laid before the House may give rise to a claim of public interest immunity. In other words, in respect of certain documents, the Executive may claim an immunity in respect of their production (*see* p. 608).

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.⁶¹ Although there are no presentation provisions under the standing orders or under statute, it has been the practice for the Clerk to present for the information of the House copies of election petitions,⁶² and copies of orders of the Court of Disputed Returns on the petitions,⁶³ forwarded in accordance with the Commonwealth Electoral Act.⁶⁴

54 VP 1978–80/529, 541; H.R. Deb. (14.11.78) 2715; H.R. Deb. (15.11.78) 2867 (references to former S.O. 321).

55 S.O. 200.

56 *May*, 23rd edn, p. 263.

57 The order was by way of a government amendment to a motion censuring a Minister. The document involved was apparently a 'leaked' copy of a cabinet submission, the content of which was the ground of the attempted censure. The Member stated that he did not acknowledge the right of the House to order him to produce the document. The Speaker later stated that the comments, although contemptuous, did not constitute a prima facie case of contempt, and that the House might be best advised to consult its own dignity and not take any further action in the matter. VP 1998–2001/957–63, H.R. Deb (13.10.99) 11479–510. The Speaker had earlier been asked to rule the amendment out of order on the grounds that the House did not have the power to order a private Member to produce documents. The Speaker's response was that it was not his intention to limit the power of the House to determine what could or could not be produced.

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

59 S.O. 236; *and see* Ch. on 'Committees'.

60 *Odgers*, 11th edn, pp. 437–42.

61 *Commonwealth Electoral Act 1918*, s. 353(1); *and see* Ch. on 'Elections and the electoral system'.

62 E.g. VP 1993–95/45, 63, 106, 147; VP 1996–98/72, 109; VP 1998–2001/205; VP 2002–04/17; VP 2004–05/130, 143.

63 E.g. VP 1993–95/176, 1106; VP 1996–98/428–30; VP 1998–2001/717; VP 2002–04/328.

64 *Commonwealth Electoral Act 1918*, s. 369.

RETURNS TO WRITS

The standing orders provide that at the first meeting of a new Parliament the Clerk shall present the return to writs following the general election.⁶⁵

Parliamentary committee and delegation reports

The standing orders provide that the reports of committees or delegations may be presented at any time when other business is not before the House. In addition, a special set period is provided on Mondays for the presentation and consideration of committee and delegation reports.⁶⁶ During this period Members can make statements in relation to reports presented (subject to Selection Committee determinations). When a report is presented at other times, leave is required to make a statement, and there can be no assurance that time will be made available.

In the case of committee reports, the Speaker (or Deputy Speaker if the Speaker is unavailable) is authorised to give directions for the printing and circulation of a report if the House is not sitting when the committee has completed its inquiry, and the committee must then present the report to the House as soon as possible.⁶⁷ Committee reports must be presented by a member of the committee⁶⁸ and are normally presented by the committee chair or, in the case of a joint committee where the chair is a Senator and the deputy a Member of the House, by the deputy chair.⁶⁹ Another member of a committee may, when asked to do so, present a committee report on behalf of the chair.⁷⁰

Ministerial statements

Ministerial statements are made to the House by Ministers on behalf of the Government and are a means by which the Government's domestic and foreign policies and decisions are announced to the House. A place is provided in the order of business for ministerial statements on Tuesdays, Wednesdays and Thursdays, following questions and the presentation of documents.⁷¹ However, they may also be made at other times.

In all cases leave of the House is required to make a ministerial statement. The relevant shadow minister, and occasionally other Members, may also make a statement on the same matter, by leave. If leave to make a statement is refused, it is open to the Minister, or another Member, to move a motion to suspend the standing orders to enable the statement to be made or, alternatively, the Minister may present the statement, move 'That the House take note of the document' and speak to that question.

Having concluded a statement made by leave, it is common practice for a Minister to present a copy of the statement. The Minister or another Minister may then move a motion 'That the House take note of the document'.⁷² Debate on this motion enables the contents of the statement to be debated immediately or at a later time (*see* p. 593).

The making of ministerial statements is discussed in more detail under 'Statements by leave' in the chapter on 'Control and conduct of debate'.

65 S.O. 4(d); E.g. VP 2004–05/2–6.

66 S.O. 39. For a detailed discussion of committee reports *see* Ch. on 'Parliamentary committees'.

67 S.O. 247(b), *see* Ch. on 'Parliamentary committees'.

68 S.O. 247(a).

69 E.g. VP 1978–80/1584.

70 E.g. VP 1977/367–9; VP 1996–98/535; VP 1998–2001/1625.

71 S.O. 34.

72 S.O. 202(a).

ORDERS AND RESOLUTIONS IN RELATION TO DOCUMENTS

Motion that a document be made a Parliamentary Paper

The motion ‘That the document be made a Parliamentary Paper’ is moved to enable the House to print the document separately for the Parliamentary Papers Series (*see* p. 596). Debate on this motion is possible.⁷³ Standing order 202 provides that, on any document being presented to the House, a Minister may move without notice ‘That the document be made a Parliamentary Paper’ and/or ‘That the House take note of the document’.

The publication of documents ordered to be made a Parliamentary Paper is protected under the Parliamentary Papers Act (*see* p. 606). However, this consideration is no longer critical, as all documents presented to the House are now automatically authorised for publication by standing order 203.

Before November 2004 the motion ‘That the paper be printed’ was used. The effect was exactly the same as the current motion to make a document a Parliamentary Paper.

Motion to take note of document

A motion ‘That the House take note of the document’ is a procedure employed in cases where the House may wish to debate the subject matter of a document, whether it is a ministerial statement that has been presented or any other document presented to the House, without coming to any positive decision concerning the document.⁷⁴ If the motion is not moved by a Minister at the time of presentation of the document, it may be moved later on notice,⁷⁵ or by leave.

It is the usual practice that motions to take note of ministerial statements are debated immediately, shadow ministers having been given advance copies of the statements. However, in the case of the majority of motions to take note of a presented document such as a report, debate is immediately adjourned (customarily on the motion of an opposition Member) and the adjourned debate made an order of the day for the next sitting. The timing of the resumption of debate (possibly in the Main Committee) is a matter for negotiation between the parties.

Before the establishment of the Main Committee a large proportion of these orders of the day were later discharged from the Notice Paper, or lapsed on dissolution, not having been debated. A more recent innovation is the moving to take note of documents presented for the specific purpose of enabling debate or further debate on a matter to be referred to the Main Committee—for example, copies of motions already passed in the House.⁷⁶ Orders of the day referred to the Main Committee may be returned to the House after debate.⁷⁷

When documents are presented together according to a previously circulated list (*see* p. 586), a single motion may be moved that the House take note of certain documents presented, and the resumption of debate on the motion to take note of each of the documents is made a separate order of the day on the Notice Paper.⁷⁸

⁷³ E.g. H.R. Deb. (10.5.2000) 16187, VP 1998–2001/1433.

⁷⁴ For procedures applying to the presentation of committee and delegation reports *see* Chs on ‘Non-government business’ and ‘Committees’.

⁷⁵ S.O. 202(c).

⁷⁶ E.g. VP 2002–04/691; 1064; 1233–4. Another example is a copy of an announcement of the death of a former Member, providing, in effect, the opportunity for a condolence debate, VP 2002–04/1401, 1428.

⁷⁷ VP 1993–95/2427.

⁷⁸ S.O. 202(b).

A motion to take note is open to amendment. Amendments generally take the form ‘That all words after “That” be omitted with a view to substituting the following words: . . .’. The terms of such amendments have proposed action relating to the document presented,⁷⁹ or expressed opinion on the subject of the document.⁸⁰ It is unusual for a vote to be taken on a motion to take note.⁸¹ Normally, debate is adjourned and the order of the day remains on the Notice Paper, thus enabling further debate on the matter if this is desired.

Resolutions authorising the production of documents and attendance of House employees in court or other proceedings

Only if the House grants permission, may an employee of the House, or other staff employed to record evidence before the House or one of its committees, give evidence relating to proceedings or give evidence relating to the examination of a witness.⁸² This requirement has been extended in practice to cover the production of documents and records. Those who desire to produce evidence of parliamentary proceedings or any document in the custody of the Clerk of the House of Representatives have been required, by the traditional practice of the House, to petition the House for leave of the House to be given for the production of the documents and, if necessary, for the attendance of an appropriate employee in court.⁸³ On receipt of the petition it has been the practice of the Clerk, pursuant to standing orders,⁸⁴ to refer it to the Leader of the House, who is the appropriate Minister to move a motion for the granting of leave of the House.⁸⁵ In some cases motions to grant leave have been moved without a petition having been presented⁸⁶ or following the presentation by the Speaker of a less formal communication.⁸⁷ All sides of the House have been involved in the consideration of such a matter.⁸⁸

During a period when the House is not sitting, the Speaker, in order to prevent delays in the administration of justice, may allow the production of documents and the attendance of employees in response to a request.⁸⁹ However, should any question of privilege be involved, 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 probably be declined and the matter referred to the House.

This practice and the issues involved are covered in detail in the Chapter on ‘Parliamentary privilege’. Further information of a historical nature is contained in Chapter 17 of the first edition.

79 E.g. VP 1985–87/882—amendment to disallow regulations that were the subject of the ministerial statement.

80 E.g. VP 2002–04/400, 709, 725–6 (amendment to proposed amendment)—amendments critical of government position given in ministerial statements, and expressing alternative views.

81 Rare examples of a ‘take note’ being agreed to: VP 1970–72/667 (Privileges Committee report); VP 1995–96/2293–4 (ministerial statement on ‘An Australian Republic’).

82 S.O. 253.

83 See Committee of Privileges, *The use of or reference to the records of proceedings of the House in the courts*, PP 154 (1980) 6. Leave of the Senate is not required in these circumstances (resolution of 25.2.88, J 1987–90/525, 536). In 1980 the UK House of Commons dispensed with the requirement that leave be granted in respect of the production of parliamentary records.

84 S.O. 212.

85 VP 1985–87/1355.

86 VP 1983–84/881.

87 H.R. Deb.(25.2.92) 27 (faxed letter to the Speaker); VP 1996–98/514, 525 (following statement of committee chair); VP 1998–2001/823, 827 (faxed letter to the Speaker).

88 In a 1992 case the matter was referred also to the Manager of Opposition Business and the (sole) independent Member, who each spoke to the motion moved on behalf of the Leader of the House, H.R. Deb. (25.2.92) 390–92.

89 VP 1996–98/408 (House informed of Speaker’s decision).

DISTRIBUTION AND PRINTING OF DOCUMENTS

After documents have been presented, copies are available to Members from the Table Office. Members can order their requirements on the intranet-based Daily Documents Ordering System.

Custody and availability of original documents

Under the direction of the Speaker, the Clerk has custody of all documents presented to the House.⁹⁰ All documents presented to the House are considered to be public and, by arrangement, may be inspected at the offices of the House.

Although documents held by the House are Commonwealth records for the purposes of the Archives Act,⁹¹ the requirements of the Act relating to the disposal of and access to such records do not apply unless provided for by regulation.⁹² The relevant regulations acknowledge the position of the Parliament within the Commonwealth, the special recognition and treatment that should be given to particular parliamentary records, and the different powers and functions of the Parliament and the Executive Government.⁹³ The regulations recognise Parliament's control over the records of proceedings of the Houses, presented documents and certain committee documents ('class A records'). Other records, for example, administrative records of the parliamentary departments ('class B records') are subject to the provisions of the Archives Act applying to similar records of executive departments.

In 1980 the House agreed to a resolution delegating to the Speaker the authority to release for public scrutiny committee records (other than in camera or confidential evidence) which have been in the custody of the House for at least 10 years. Similar authority was given to the Speaker and the President in respect of joint committee records.⁹⁴ A further resolution in 1984 permits in camera evidence to be disclosed after 30 years, if in the Speaker's opinion, disclosure is appropriate.⁹⁵

See also 'Publication of evidence' in the Chapter on 'Parliamentary committees'.

Release prior to presentation

It has always been considered a matter of impropriety to make documents publicly available before they are presented to the Parliament. It has been acknowledged, however, that there will be circumstances in which it might be considered appropriate to release a document before it is presented, such as during long adjournment periods. Where departments find it necessary to release a document in such circumstances, guidelines issued by the Department of the Prime Minister and Cabinet permit this, provided that:

- the Minister has approved release;
- there is no question of publication of the report having to be covered by presentation (previously by a motion to authorise publication); and
- in the case of reports required to be presented by statute, such statutes do not prevent the reports from being published as public documents prior to presentation.

⁹⁰ S.O. 28.

⁹¹ *Archives Act 1983*, s. 3.

⁹² *Archives Act 1983*, ss. 18, 20.

⁹³ Archives (Records of Parliament) Regulations 1995, s. 2 (SR 91 of 1995).

⁹⁴ VP 1978–80/1539–40; H.R. Deb. (22.5.80) 3133–4.

⁹⁵ VP 1983–84/988–9.

In such cases copies of the report are sent by the sponsoring department to all Members and Senators at their electorate offices.⁹⁶

On 11 October 1984 the House agreed to a motion authorising the Speaker, notwithstanding the pending dissolution of the House, to provide to all Members copies of the final report of the Royal Commission of Inquiry into the Federated Ship Painters and Dockers' Union. The Speaker stated that he had received an assurance of indemnity from the Government if the motion was carried and he acted in accordance with it.⁹⁷

If the House is not sitting when a committee has completed a report of an inquiry, the report may be published by authority of the Speaker prior to presentation to the House.⁹⁸

Parliamentary Papers Series

In 1997 the Joint Committee on Publications reported on the future of the Parliamentary Papers Series, in response to a request for advice by the Presiding Officers on a proposal to discontinue it. The committee recommended that the Parliamentary Papers Series should continue in its present form until there was a viable replacement either in electronic or printed form (or both), but that proposals for the replacement of the series should be explored further.⁹⁹ The Presiding Officers accepted these recommendations.¹⁰⁰

Historically all documents and petitions ordered to be printed or made a Parliamentary Paper¹⁰¹ by either House of the Parliament have formed part of the Parliamentary Papers Series. The series was designed to be a comprehensive collection of the documents of a substantial nature presented to the Parliament,¹⁰² and since Federation these documents have served as a useful reference source for information on and research into the role and activities of the Parliament and of the Government for Members and the general public.¹⁰³

The ultimate responsibility for deciding whether documents are of a substantial nature or important enough to form part of the series resides with both or either House of the Parliament. This responsibility has been delegated, by way of the standing orders,¹⁰⁴ to the Publications Committee 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 and royal commissions and the like which have been presented to the Parliament and considered appropriate for inclusion. Also included in the series have been other documents of an ad hoc nature, including ministerial statements and petitions, which either House has ordered to be printed or made a Parliamentary Paper, either through its own action or through the recommendation of the Publications Committee of either House acting independently or jointly. Documents becoming parliamentary papers have been labelled accordingly.

Prior to 1963 certain documents, including committee reports, relating solely to either the House or the Senate were issued in a separate series, designated H of R or S, and (prior

96 *Guidelines for presentation of ministerial statements and reports to Parliament*. Department of the Prime Minister and Cabinet, November 1991.

97 VP 1983–84/989; H.R. Deb. (11.10.84) 2200.

98 S.O. 247(b)—see Ch. on 'Committees'.

99 Joint Committee on Publications, *The future of the Parliamentary Papers Series*. PP 416 of 1997.

100 Presiding Officers' response, S. Deb. (10.11.98) 32–3; government response, S. Deb. (11.3.99) 2773.

101 The order to print was the traditional term and is still used by the Senate.

102 Joint Select Committee on Parliamentary and Government Publications, *Report*, PP 32 (1964–66) 28.

103 PP 216 (1977) 1.

104 S.O. 219; Senate S.O. 22.

to 1961) published in bound form only in the Votes and Proceedings or Journals volumes respectively.

Role of the Publications Committee

The Publications Committee consists of seven members and has the power to confer with a similar committee of the Senate.¹⁰⁵ Apart from initial meetings to elect their respective chairs, the committees usually meet as a joint committee. The Publications Committee has two functions, namely, a Parliamentary Paper function and an investigatory function.

The Parliamentary Paper function

In performing its Parliamentary Paper function the committee considers all documents presented to the Parliament and not ordered to be printed or made a Parliamentary Paper by either House. It reports from time to time as to which should be printed as parliamentary papers, and whether wholly or in part.¹⁰⁶ The committee is able to make recommendations only: it is for the Houses to decide whether a document is to be made a Parliamentary Paper. In reporting, the Publications Committee recommends that specified documents be made Parliamentary Papers. It is open to any Member to seek in the House to move that a document be made a Parliamentary Paper even though the Publications Committee has not recommended it.

From 1987 the committee has followed guidelines to the effect that all reports, returns and statements of departments, authorities, parliamentary and ad hoc inquiries and royal commissions presented to Parliament should be recommended to be made Parliamentary Papers. Interim annual reports of departments and authorities, reports of unfinished parliamentary inquiries and reports of ad hoc inquiries with short term interest do not fall within the guidelines.¹⁰⁷ Other documents of an individual or non-recurring nature are considered on their merits.

Documents which the Senate or the House have ordered to be printed or made a Parliamentary Paper are not brought before the Publications Committee, the question having been determined by the superior body. Similarly, if such a motion is before either House, the document is not considered by the Publications Committee. The document would be considered by the committee later if the motion were subsequently withdrawn or if it lapsed.

The investigatory function

The committee, when conferring with a similar committee of the Senate (as the Joint Committee on Publications), has the power to inquire into and report on the publication and distribution of parliamentary and government publications and on matters referred to it by a Minister.¹⁰⁸ The joint committee has completed 11 inquiries, of which two were matters referred by a Minister.

¹⁰⁵ S.O. 219.

¹⁰⁶ S.O. 219(a).

¹⁰⁷ Joint Committee on Publications, *Review of the cost and distribution of the Parliamentary Papers Series*, PP 450 (1986).

¹⁰⁸ S.O. 219(c).

Reports

In undertaking its Parliamentary Paper function the House Publications Committee reports (normally stating that it has met in conference with the Senate Publications Committee) that the committee, having considered documents presented to the Parliament since a certain date, recommends that specified documents be made Parliamentary Papers. The report is presented to the House by the House committee (and to the Senate by its committee) and reproduced in full in the Votes and Proceedings (and the Senate Journals).¹⁰⁹ The chair, by leave, moves that the report be agreed to.¹¹⁰ Reports of the Joint Committee on Publications on inquiries are dealt with in the same manner as reports from other joint select and standing committees.

HOUSE DOCUMENTS—AGENDA AND RECORD

Notice Paper

The Notice Paper is an official document of the House, published by authority of the Clerk, showing all the business before the House and the Main Committee 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. Standing order 36 provides that business before the House shall be published on the Notice Paper for each sitting, in accordance with standing and sessional orders. 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 available electronically on the House's internet site.

The Notice Paper has three distinct sections, namely, the business section, questions in writing and, after the Clerk's signature block, an information section.

Items of business

Business before the House is listed in the Notice Paper under the headings 'Government Business', 'Committee and Delegation Reports', and 'Private Members' Business', and within each category divided, where relevant,¹¹¹ into 'Notices' and 'Orders of the day'. Occasionally, if proceedings on a bill have been by completed in the Main Committee but not reported to the House the same day (the usual practice), there is an additional heading 'Bill to be reported from the Main Committee'.¹¹² When business has been accorded priority by the Selection Committee for the next sitting Monday,¹¹³ including committee and delegation reports for presentation and debate as well as the selected items of private Members' business, this is listed separately under the heading 'Business accorded priority for . . .'. When, occasionally, items of business are sponsored by the Speaker, these are listed separately as 'Business of the House'.¹¹⁴

109 The report covering the same documents will be numbered differently by each House, e.g. the 28th report of the House committee presented on 30.11.95 equated to the 25th report of the Senate committee presented the same day. VP 1993–95/2696; J 1993–95/4304.

110 E.g. VP 1978–80/608–11; VP 1996–98/535–6; J 1978–80/436–8. Leave has been refused, VP 2004–05/585.

111 Notice is not necessary for presentation of a committee or delegation report.

112 E.g. NP (29.8.2002) 1127.

113 Pursuant to S.O. 222, see Ch. on 'Non-government business'.

114 NP 61 (23.5.88) 2483; NP 50 (29.6.99) 17.

Business which has been referred to the Main Committee is listed separately under the heading ‘Business of the Main Committee’—subdivided if necessary into ‘Committee and Delegation Reports’ and ‘Government Business’.

NOTICES

‘Notices’ are new proposed business—that is, business that has not yet come before the House. A notice of motion¹¹⁵ is entered on the Notice Paper after a Member has delivered a copy of its terms to the Clerk.¹¹⁶ A notice of intention to present a bill is treated as if it were a notice of motion.¹¹⁷ A notice becomes effective only when it appears on the Notice Paper.¹¹⁸ Subject to the ability of the Leader of the House to rearrange the order of government business¹¹⁹ (prior to each sitting) and of the Selection Committee to arrange the order of private Members’ business on Mondays,¹²⁰ notices are entered on the Notice Paper in the order in which they are received by the Clerk, and before orders of the day.¹²¹ Private Members’ notices not called on for eight consecutive sitting Mondays are removed from the Notice Paper.¹²²

ORDERS OF THE DAY

Orders of the day are items of business which have already been before the House and which the House has ordered to be taken into consideration at a future time (in the House or the Main Committee).

The standing orders provide that the Notice Paper shall state the sequence in which orders of the day are called on.¹²³ Orders of the day are entered on the Notice Paper in accordance with the order in which the notices of motion were given.¹²⁴ 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.¹²⁵ 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.¹²⁶ As with notices, this sequence is subject to the ability of the Leader of the House to rearrange the order of government business¹²⁷ (prior to each sitting) and of the Selection Committee to arrange the order of private Members’ business on Mondays.¹²⁸

Orders of the day relating to committee and delegation reports and private Members’ business which have not been re-accorded priority by the Selection Committee for eight consecutive sitting Mondays are removed from the Notice Paper.¹²⁹

CONTINGENT NOTICES OF MOTION

Contingent notices are in practice normally given only by Ministers and appear under a separate heading following orders of the day, government business.¹³⁰

115 See ‘Notice’ in Ch. on ‘Motions’ for full details.

116 S.O. 106.

117 S.O. 139(c); and see Ch. on ‘Legislation’.

118 S.O. 108.

119 S.O. 45.

120 S.O. 222.

121 S.O. 108.

122 S.O. 42.

123 S.O. 37(a).

124 See Chs on ‘Order of business and the sitting day’ and ‘Motions’.

125 NP 42 (2.12.74) 4503.

126 S.O. 37(d).

127 S.O. 45.

128 S.O. 222.

129 S.O. 42.

130 NP 176 (19.8.80) 10851; NP 34 (8.10.96) 1231. See Ch. on ‘Motions’.

Questions in writing

Questions in writing are numbered consecutively in order of receipt by the Table Office¹³¹ and remain on the Notice Paper until written replies are received by the Clerk. On the first sitting day of each sitting fortnight all unanswered questions are printed. On the remaining sitting days only those questions in writing which appear for the first time that day are printed and a list is included identifying by number the unanswered questions not printed.¹³² An electronic ‘questions paper’ on the House website, updated daily, gives the full text of all unanswered questions.

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 would not be printed for some months, the Speaker directed that the question be printed in Hansard and treated as a question placed in writing.¹³³

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 occupants of the Chair, the membership of all parliamentary committees on which Members of the House are serving, and a list of the current inquiries being undertaken by those committees. The appointments of Members to statutory bodies are also included in this section.

Votes and Proceedings

The Votes and Proceedings are the official record of the proceedings of the House of Representatives. This record contains the proceedings and decisions of the House and the Main Committee; and the attendance of Members in the House, including any leave.¹³⁴

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. The Votes and Proceedings are, in effect, the minutes of the House and should not be confused with Hansard, which is a verbatim report of the debates of the House.

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 notes 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. Since 1999 the proof issue of the Votes and Proceedings has been published combined with the daily proof Hansard. The Votes and Proceedings are available electronically on the House’s internet site.

The standing orders require that Members’ attendance,¹³⁵ divisions,¹³⁶ and any reason stated by the Chair for its casting vote,¹³⁷ be recorded in the Votes and Proceedings. The

131 Before 13.8.63 questions were renumbered each sitting day, *see* NP 89 (13.8.63), NP 90 (14.8.63). The practice is to list consecutively all questions received from an individual Member, and to list these in order of the seniority of the Ministers to whom they are addressed, even though they may not have been received in that exact order.

132 Until 1977 all unanswered questions were printed in every Notice Paper—changes since then have been to save printing costs.

133 H.R. Deb. (22.5.80) 3105, 3142.

134 S.O. 27.

135 S.O. 27(c).

136 S.O. 135(a).

137 S.O. 135(c).

standing orders also provide that a Member may, if he or she wishes, have dissent to any question recorded if he or she is the only Member calling for a division.¹³⁸ The names of Members voting for or against the question are recorded for each division.¹³⁹ ‘Pairs’ have been recorded since 1999.

A day’s Votes and Proceedings record the items of business considered by the House. Depending on the sequence of business on the particular day, they also record that questions without notice were asked,¹⁴⁰ the documents presented by Ministers, ministerial statements, any committee reports presented, the matter of public importance discussed, and legislation presented or considered, and they conclude with a reference to the adjournment, a list of documents deemed to have been presented and the record of Members’ attendance (the names of absent Members are recorded).

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 proposed in the House. If debate takes place on any question, that fact is also recorded.

On the days on which the Main Committee meets, the Minutes of Proceedings of the Main Committee, under the name of the Deputy Clerk in his or her capacity as Clerk of the Committee, are included as a supplement to the Votes and Proceedings.¹⁴¹ During the trial, under sessional orders, of legislation committees and estimates committees in 1978 and 1979, it was the practice to record the minutes of these committees in the Votes and Proceedings as a supplement.¹⁴²

The Votes and Proceedings also record the substance of statements by the Speaker on matters of privilege and important procedural and administrative matters. Some matters not formally being business of the House in a technical sense are also recorded because of the importance attached to them by the House. These include announcements concerning ministerial arrangements,¹⁴³ the absence of the Governor-General¹⁴⁴ (on occasions), and references to the deaths of persons that are not the subject of motions of condolence.¹⁴⁵

The standing orders provide that motions and amendments not seconded shall not be recorded in the Votes and Proceedings.¹⁴⁶ These are the only specific exclusions 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;¹⁴⁷
- **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

138 S.O.s 126. On one occasion the dissent of the Opposition was recorded, by leave, VP 1978–80/686.

139 Except if there are four or fewer Members on a side only the names of the minority are recorded, S.O. 127.

140 This entry was first included in 1962, VP 1962–63/15.

141 S.O.s 27(b), 189.

142 VP 1978–80/427–8, 1109–32.

143 E.g. VP 1978–80/1662; VP 1996–98/241.

144 E.g. VP 1978–80/966.

145 E.g. VP 1978–80/213.

146 S.O.s 116(a), 121(b); *but see* VP 1978–80/700–1 where a motion to suspend standing orders, although not seconded, was recorded as it led to further proceedings.

147 S.O. 108.

said in debate, and are therefore not normally recorded. When a personal explanation gives rise to some further proceedings then it may be recorded;¹⁴⁸

- **Points of order.** These are not normally recorded unless they give rise to some further procedural action;¹⁴⁹ and
- **Rulings of the Chair.** These are not normally recorded unless they are of a significant nature¹⁵⁰ or there is a motion of dissent from the ruling moved.¹⁵¹

As it is the purpose of the Votes and Proceedings to record those things done by the House and not 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.

Accuracy and alterations

The accuracy of the Votes and Proceedings has been challenged in the House on only three 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 omitted were proceedings which were out of order, under the standing orders the entry had to appear in that form.¹⁵²

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.¹⁵³ 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.¹⁵⁴ Subsequently, a motion to suspend standing orders was unsuccessfully moved seeking a debate on the accuracy of the Votes and Proceedings.¹⁵⁵ 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.¹⁵⁶

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.¹⁵⁷ As the record was found to be accurate, no alteration was made.

On 24 November 1988, although the accuracy of the record in the Votes and Proceedings was not challenged per se, there was some confusion as to decisions taken during consideration of a bill at the previous sitting and, following the suspension of

148 See VP 1978–80/848, 913–14; and see Ch. on ‘Control and conduct of debate’.

149 VP 1978–80/153.

150 VP 1974–75/169.

151 VP 1978–80/1182–3; VP 1996–98/462; and see Ch. on ‘The Speaker, Deputy Speakers and officers’.

152 H.R. Deb. (25.7.01) 3056–7.

153 H.R. Deb. (16.3.44) 1472–3.

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

155 VP 1943–44/101.

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

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

standing and sessional orders, the House resolved that the recorded decisions of the committee of the whole, and the House itself, on the bill be rescinded and the committee and remaining stages be considered again. This happened immediately.¹⁵⁸

There have been two 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 Chair 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 Chair, the motion nevertheless had not been agreed to, as it had not received a majority of votes.¹⁵⁹ 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.¹⁶⁰

On 29 April 1915 a Member moved that a resolution of the House in the previous Parliament, which had suspended a Member from the service 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 division¹⁶¹ and the entry in the printed volumes held by the Clerk was inked out.

If a Member complains to the House that a division has been wrongly recorded, the Speaker may direct the record to be corrected.¹⁶² 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 or a substitute copy of the Votes and Proceedings¹⁶³ is issued.

Hansard—the parliamentary debates

The parliamentary debates are the full reports of the speeches of Members of the House. The debates are substantially the verbatim reports, with no unnecessary additions, with repetitions and redundancies omitted and with obvious mistakes corrected, but on the other hand leaving 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.¹⁶⁴

The parliamentary debates, as well as containing the verbatim report of Members' speeches, contain the full text of petitions presented and any responses from Ministers, notices of motion, questions in writing and the answers thereto, results of divisions and requests for detailed information 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.

158 VP 1987–89/925–7; H.R. Deb. (24.11.88 a.m.) 3312.

159 VP 1909/62; *and see* Ch. on 'The Speaker, Deputy Speakers and officers'.

160 VP 1909/67.

161 VP 1914–17/181; *see also* Ch. on 'Members'.

162 S.O. 135(b); *see* VP 1940/105; *and* H.R. Deb. (7.4.78) 1239–40.

163 E.g. VP 1978–80/547.

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

Hansard is issued in two editions. There is a daily proof available the day after the proceedings to which it refers. The Official Hansard contains the reports of proceedings for each sitting period. Hansard is available electronically and may be accessed by Members and other users.

The production of Hansard is the responsibility of the Department of Parliamentary Services.¹⁶⁵ For privilege in relation to Hansard *see* p. 605.

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.¹⁶⁶ 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 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.¹⁶⁷

Correction, deletion and incorporation of material

Prior to the subedited transcript being forwarded for publication, each Member is given an opportunity to read the transcript prepared of what he or she has said and, if necessary, to make minor corrections. The right of Members to peruse and revise the drafts of their speeches was a well established practice long before the Commonwealth Parliament first met.¹⁶⁸ 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.¹⁶⁹ In some instances of error or inaccuracy in the Hansard reports, the position is better clarified by a personal explanation.¹⁷⁰ Drafts of speeches delivered to Members are also available electronically to other Members and Senators on the Senators and Members Services Portal on the day of sitting.

As well as having an opportunity to make corrections before the subedited transcript is forwarded for inclusion in the daily proof issue, Members also have one week in which to suggest corrections for the Official Hansard.

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

Since 1904 the practice has been followed that interjections to which the Member addressing the Chair does not reply ought not to be included in the Hansard record.¹⁷¹ The Chair has ruled that questions ruled out of order should not be included in Hansard,¹⁷² however, in more recent years they have been published. The Chair has a responsibility to ensure that no objectionable material is included in the debates.¹⁷³ Exceptionally, offensive

165 For further discussion of the functions of the department *see* Ch. on 'The Speaker, Deputy Speakers and officers'.

166 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.

167 H.R. Deb. (21.9.77) 1390–2, 1418–19.

168 PP 286 (1972) 74.

169 H.R. Deb. (26.6.06) 745; H.R. Deb. (12.10.71) 2160; H.R. Deb. (10.4.78) 1299.

170 H.R. Deb. (10.4.78) 1299; H.R. Deb. (3.12.96) 7510.

171 H.R. Deb. (11.11.04) 6885; PP 286 (1972) 84.

172 H.R. Deb. (10.5.40) 697.

173 H.R. Deb. (13.11.13) 3118.

remarks ordered to be withdrawn have been deleted from the records.¹⁷⁴ The Chair has ruled that the remarks made by a Member after his time has expired are not to be recorded¹⁷⁵ and that the remarks of a Member who has not received the call are not to be entered in the record.¹⁷⁶

Although Hansard is basically a record of the spoken word, the House has always had procedures for the incorporation of unread material. The final decision on incorporating material rests with the Speaker and occupants of the Chair are guided in this matter by guidelines issued by the Speaker (*see* Chapter on ‘Control and conduct of debate’).

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.¹⁷⁷

Copyright

In recent years the issue of copyright has arisen in connection with parliamentary publications, principally bills. Parliament has taken the position that it is important that it facilitate access by interested persons to its proceedings and publications. As is to be expected, requests have often been made for the use of various items, and permission has been given on many occasions. To ensure that the administrative arrangements are as straightforward and clear as possible on these matters, especially from the point of view of persons making inquiries, parliamentary authorities have agreed that the responsible area of the Executive¹⁷⁸ may serve as a single contact point for persons or organisations with copyright queries. Under the arrangements any relevant matter concerning Parliament must then be referred to the appropriate parliamentary department. The Parliament has been careful to ensure that, whilst agreeing to certain administrative arrangements for reasons of practicality, it has never countenanced the concept that parliamentary publications, such as bills, should in any sense be regarded as the ‘property’ of the Executive.¹⁷⁹

A legal opinion given in respect of the Yirrkala bark petitions (*see* p. 615) indicated that the fact that the petitions had been presented to the House did not extinguish the copyright interest of the persons who had created them. Special arrangements were made in respect of requests to publish images of these items, in recognition of their unique status and significance, but it was considered that the Houses of the Parliament, and committees, had undoubted rights in respect of the publication of documents presented to them or in their possession.¹⁸⁰

PARLIAMENTARY PRIVILEGE RELATING TO DOCUMENTS

Subsection 16(2) of the *Parliamentary Privileges Act 1987* provides *inter alia* that the formulation, making or publication of a document, including a report, by or pursuant to an

174 H.R. Deb. (13.10.33) 3540; H.R. Deb. (9.5.50) 2235; H.R. Deb. (21.9.77) 1432; H.R. Deb. (15.5.2002) 2228; (16.5.2002) 2379; (28.5.2002) 2480. *See also* H.R. Deb. (25.11.98) 637–8, 679 (deletion of name of person mentioned in personal explanation).

175 H.R. Deb. (25.2.69) 32.

176 H.R. Deb. (2.4.74) 804.

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

178 At the time of publication this was Commonwealth Copyright Administration (CCA), Attorney-General’s Department.

179 *See* for example correspondence between Presiding Officers and Attorneys-General. In the United Kingdom the Copyright, Designs and Patents Act 1988 gives statutory recognition to the principle of ‘parliamentary copyright’.

180 *And see* H.R. Deb. (7.12.2000) 23810.

order of a House or a committee, and the document so formulated, made or published, is included in the term ‘proceedings in Parliament’— that is, it is absolutely privileged.

Section 2 of the *Parliamentary Papers Act 1908* empowers the Senate, the House of Representatives, a joint sitting or a committee to authorise the publication of any document laid before it or any evidence given before it. Under section 3 (now redundant), when one of the above bodies has ordered a document or evidence to be printed, it is deemed, unless the contrary intention appears in the order, to have authorised the Government Printer¹⁸¹ to publish the document or evidence. Section 4 of the Act provides inter alia that no action or proceeding, civil or criminal, shall lie against any person for publishing any document under an authority given in pursuance of section 2 (or deemed by section 3 to have been given). Section 4 of the Act also provides that the production of a certificate, verified by affidavit, stating that a document has been published by authority of either House shall immediately stay any proceedings, criminal or civil.

Documents presented to the House

All documents presented to the House are authorised for publication by standing order 203 and their publication is thus absolutely privileged.

This automatic authorisation has existed since 1997. Previously, where a document was ordered to be printed, the protection of the Parliamentary Papers Act was considered to apply only to the document printed by the Government Printer pursuant to the order to print (that is, the parliamentary paper copy) and not to the document’s prior publication.¹⁸² If a wider protection was sought, for example, for a document printed other than by the Government Printer, publication had to be separately authorised. The publication to Members by parliamentary staff of presented documents not ordered to be printed or authorised for publication was specifically protected by section 11 of the Parliamentary Privileges Act. For further details of the former practice and status of documents not ordered to be printed or authorised for publication *see* pages 575–6 and 577–8 of the 3rd edition.

Committee documents

Privilege in relation to committee documents is discussed in more detail in the Chapter on ‘Committees’. In brief, publication of a document is absolutely privileged if its publication has been authorised by a parliamentary committee. Such authorisation is given by a motion of the committee, and is not automatic.

Hansard

During the second reading debate on the Parliamentary Papers Bill in 1908 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.¹⁸³ However, during the following 27 years questions regarding the authority for publication of Hansard and the protection of those who published it were consistently raised.¹⁸⁴ As a result the Act was amended in 1935 to establish the legal basis for the

181 The office of Government Printer ceased with the privatisation of the Australian Government Publishing Service in 1997.

182 Advice of Attorney-General’s Department, 1 November 1967.

183 H.R. Deb. (28.5.08) 11673.

184 *Commonwealth Hansard—Its establishment and development, 1901 to 1972*, PP 286 (1972) 4–8.

official character of Hansard, and to place beyond cavil its privileged position, with a provision that each House shall be deemed to have authorised the Government Printer to publish the reports of its debates and proceedings.¹⁸⁵

In 1993 the House and the Senate passed resolutions, with continuing effect, authorising the publication of the Hansard record of their respective proceedings. This action removed any doubt that might have applied to the status of the Hansard report when published by anyone other than the Government Printer (a particular consideration being distribution in electronic form).¹⁸⁶

Votes and Proceedings

Although the Clerk had always been required under the standing orders to record all the proceedings of the House, explicit authority for the publication of the Votes and Proceedings came only with the resolution of 1994 declaring the Votes and Proceedings to be the record of the proceedings of the House of Representatives.¹⁸⁷ Current standing order 27 now contains similar words, stating that ‘The Clerk shall keep and sign the official record of the proceedings of the House, the Votes and Proceedings’.

It is considered that the actions of the Clerk of the House and others responsible for the preparation and publication of the Votes and Proceedings would be protected by parliamentary privilege, as these actions would fall within the ambit of s. 16 of the Parliamentary Privileges Act. Before the enactment of that law, it had been considered that the Votes and Proceedings of the House of Representatives was probably a publication within the meaning of the Parliamentary Papers Act and that therefore the Clerk of the House and the printer would probably have the complete protection of parliamentary privilege in respect of the publication of the Votes and Proceedings.¹⁸⁸

Notice Paper

Although the standing orders acknowledged the existence of the Notice Paper and provided for what may be entered on it, there was until recently 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 printer, in arranging for the printing and distribution of the Notice Paper to Members and others concerned with the business of Parliament, are performing an essential function of the House and, consequently, protection was afforded them by virtue of Article 9 of the Bill of Rights. In so far as the wider distribution of the Notice Paper was concerned, the Clerk and the Government Printer would have had at least qualified privilege.¹⁸⁹ It is also likely that s. 16 of the Parliamentary Privileges Act has removed any residual doubts in this matter. The position was further strengthened on 1 May 1996 when a standing order was agreed to providing that ‘All business before the House shall be set down on the Notice Paper . . . and the Notice Paper shall be published’. In explaining the new standing order the Leader of the House stated ‘This will ensure that all matters in the Notice Paper, including questions on notice, whether in printed or electronic form, are covered by parliamentary privilege’.¹⁹⁰ Current standing order 36 gives similar

185 *Parliamentary Papers Act 1908*, ss. 3, 4; H.R. Deb. (6.12.35) 2829.

186 H.R. Deb. (5.5.93) 89–90; VP 1993–95/25; J 1993–95/123.

187 VP 1993–95/1620.

188 Advice of Attorney-General’s Department, dated 24 July 1964.

189 Advice of Attorney-General’s Department, dated 24 July 1964.

190 H.R. Deb. (1.5.96) 87 (former S.O. 100A).

authority by stating that ‘Business before the House shall be published on the Notice Paper for each sitting’.

PUBLIC INTEREST IMMUNITY

Under the doctrine of ‘public interest immunity’, historically described as ‘Crown privilege’, the Executive Government may seek to claim immunity from requests or orders, by a court or by Parliament, for the production of documents on the grounds that public disclosure of the documents in question would be prejudicial to the public interest.

The courts

The approach taken by the courts in relation to claims of crown privilege or public interest immunity has developed over the years. The general view following the 1942 decision of the United Kingdom 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.¹⁹¹ This position was to some extent relaxed in 1968, when in *Conway v. Rimmer* the House of Lords held the Minister’s certificate was not conclusive in all cases, and that it was the court’s duty to balance the public interest as expressed by the Minister and the public interest in ensuring the proper administration of justice. Nevertheless, it was also held that there was a class of document such as Cabinet minutes and minutes of discussions between heads of departments which was entitled to Crown privilege and the court would not order disclosure of such documents, irrespective of their contents.¹⁹²

In the judgment of the High Court of Australia in *Sankey v. Whitlam* 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.¹⁹³

Subsequent court decisions¹⁹⁴ have supported the principle that no class of document is entitled to absolute immunity from disclosure and that all cases may be resolved by the courts on the balance of the competing aspects of the public interest.¹⁹⁵

A court may consider that the competing public interests would best be served by the limited, rather than public, disclosure of documents for which immunity is claimed.¹⁹⁶

191 *Duncan v. Cammell Laird & Co.* (1942) AC 624.

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

193 *Sankey v. Whitlam and others* (1978) 142 CLR 62–4.

194 See in particular the judgement of the Federal Court of Australia in *Harbours Corporation of Queensland v. Vessey Chemicals Pty Ltd* (1986) 67 ALR 100, which analysed *Sankey v. Whitlam* and subsequent judgements. The court found against the proposition that there was a presumption in favour of immunity from disclosure attaching to Cabinet documents.

195 However this common law position was overridden by statute in New South Wales by that State’s *Evidence Amendment Act 1979*, which made the certificate of the Attorney-General conclusive.

196 For example, the Federal Court has ordered confidential Foreign Investment Review Board documents to be made available to an applicant’s legal representatives, *INP Consortium Limited and ors v. John Fairfax Holdings Limited (formerly Tourang Limited) and ors* (1994).

The Parliament

By the end of the 19th century each House of 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 to enforce the production of documents, a sufficient cause had to be shown for the exercise of that power.¹⁹⁷ This unquestioned power of the House of Commons is extended to the Australian Parliament by way of section 49 of the Constitution.

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 public interest immunity and parliamentary privilege. These issues are most likely to arise in connection with parliamentary committee inquiries, and are covered in the Chapter on 'Committees'. Because of the majority of government Members in the House, disputes over such matters between the Government and the House are less likely to arise and when they do, it is likely that a compromise may be reached, for example, by agreement to produce documents on a confidential basis.

The situation is different in the Senate, where the Government does not necessarily have a majority. Instances where the government of the day has come into conflict with the Senate or a Senate committee over claims of executive privilege or public interest immunity are outlined in *Odgers*.¹⁹⁸ In brief summary, it would seem that the Senate has not conceded its right to determine Executive claims of public interest immunity but, on the other hand, it has not taken steps to enforce production of documents when immunity has been claimed, 'other than exacting a political penalty'.¹⁹⁹ Ministers (including a Minister in the House) have been censured for contempt of the Senate for not responding to Senate orders to produce documents.²⁰⁰

The powers of the New South Wales Legislative Council to order the production of executive government documents and to sanction a Minister for not complying with the order have been upheld by the New South Wales Court of Appeal and by the High Court.²⁰¹ In a related case, the Court of Appeal further ruled that the Council's power extended to the production of documents (Cabinet documents excepted) to which claims of legal professional privilege and public interest immunity could be made.²⁰²

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'.²⁰³ 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 1901 House of Commons, 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

197 *May*, 10th edn, pp. 507–11.

198 *See Odgers*, 11th edn, pp. 464–85.

199 *Odgers*, 11th edn, p. 468.

200 E.g. J 1993–95/1641. The censures did not result in the production of documents. *Odgers*, 11th edn, p. 461–2.

201 *Egan v. Willis and Cahill* (1996) 40 NSWLR 650, *Egan v. Willis and Cahill* (1998) HCA 71, 158 ALR 527.

202 *Egan v Chadwick and others* (1999) 46 NSWLR 563.

203 PP 168 (1972).

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 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 1975,²⁰⁴ 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.²⁰⁵

A substantial claim of Crown privilege was made by the Prime Minister and three 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 certain government overseas loans negotiations. The Prime Minister and the 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 1975,²⁰⁶ would be detrimental to the proper functioning of the Public Service and its relationship to Government, and would be injurious to the public interest.²⁰⁷ The three 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.²⁰⁸ 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 answering any questions relating to the Senate resolution of 9 July 1975.²⁰⁹ 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 1975.²¹⁰ The report, agreed to by a majority—that is, by four government Senators—had no doubt that the directions given by the Ministers were valid and lawful directions.²¹¹ The dissenting report, by three opposition Senators, held the view that a Minister's certificate of a claim of privilege was not conclusive; it was entitled to consideration, but the conclusiveness of the certificate was for the Senate to decide.²¹² The report of the committee was not considered by the Senate before both Houses of Parliament were dissolved on 11 November 1975.

The final report of the Joint Select Committee on Parliamentary Privilege (1984)²¹³ addressed these matters. The committee noted the trend in respect of court proceedings and

204 J 1974-75/836-7.

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

206 J 1974-75/824-5.

207 PP 215 (1975) 16-20.

208 PP 215 (1975) 23-8.

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

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

211 PP 215 (1975) 11-12.

212 PP 215 (1975) 51.

213 PP 219 (1984).

considered it possible that an analogous evolution in thinking might develop in Parliament to help resolve cases where disputes arose between committees requesting information and Executives resisting their requests; however, it could not be presumed that this would happen. Observing that the Parliament had never conceded that any authority other than its Houses should be the ultimate judge of whether or not a document should be produced or information given, the committee rejected the adoption of any mechanism for the resolution of disputes over the production of executive documents, such as by arbitration by the Head of State, which involved concessions to executive authority. The committee further reasoned that it was inherent in the different functions and interests of the Parliament and the Executive that there be areas of contention between them on such matters, that it was impossible to devise any means of eliminating contention between the two without one making major and unacceptable concessions to the other, and that adjudication by a third party would be acceptable to neither ‘in this quintessentially political field’. In effect, the committee’s conclusion was that matters should be allowed to stand as they were.

In 1994, following a dispute between the Government and a Senate select committee over the production of documents concerning Foreign Investment Review Board decisions, a private Senator introduced a bill giving the Federal Court the power to determine whether documents in dispute in such circumstances could be withheld from a House or committee on public interest grounds.²¹⁴ The bill was referred to the Senate Privileges Committee, which recommended that the bill not be proceeded with and that claims of public interest immunity should continue to be dealt with by the House concerned.²¹⁵ The House also referred the matter of the appropriateness of such legislation to its Privileges Committee.²¹⁶ The committee concluded that the evidence available did not establish that it would be desirable for legislation to be enacted to transfer to the Court the responsibility to adjudicate in these matters.²¹⁷

In any 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.²¹⁸

PETITIONS

The right of petitioning the Crown and Parliament for redress of grievances dates back to the reign of King Edward I in the 13th century. It was from petitions that legislation by bill was gradually derived. Petitions have indeed been described as ‘the oldest of all parliamentary forms, the fertile seed of all the proceedings of the House of Commons’.²¹⁹

The form and purpose of petitions changed over the centuries, the present form having developed in the 17th century. The rights of petitioners and the power of the House of Commons to deal with petitions were affirmed by the following resolutions in 1669:

214 Parliamentary Privileges Amendment (Enforcement of Lawful Orders) Bill 1994.

215 *Odgers*, 11th edn, pp. 477–8.

216 VP 1993–95/1107.

217 H.R. Deb. (8.12.94) 4375. PP 408 (1994).

218 PP 168 (1972) 40.

219 J. Redlich, *The procedure of the House of Commons: a study of its history and its present form*, Constable, London, 1918, vol. II, p. 239.

That it is an inherent right of every Commoner of England to prepare and present petitions to the House in case of grievance; and of the House of Commons to receive them.

That it is the undoubted right and privilege of the House of Commons to adjudge and determine, touching the nature and matter of such Petitions, how far they are fit and unfit to be received.²²⁰

Petitions in the House of Representatives

The right of petitioning Parliament remains a fundamental right of the citizen. It is the only means by which the individual can directly place grievances before the Parliament. Petitions may be received by the House on public or individual grievances provided that they relate to matters over which the House has jurisdiction. Most petitions concern public issues.

The practice of accepting petitions has been viewed from time to time as an ineffective anachronism which makes excessive demands on the time of the House. It seems true that the importance of petitions has diminished over the centuries. Individual grievances can often be dealt with by more direct non-public action by Members, by the Commonwealth Ombudsman and by such bodies as the Administrative Appeals Tribunal. Public grievances may be more effectively brought to public attention through other parliamentary forms such as questions, debate and committee inquiries, and through direct communication with Members and Ministers.

To concede that petitions have diminished in importance is not to suggest, however, that they have no importance at all. About 500 petitions are presented each year.²²¹ In 1993 a petition was presented from an estimated 513 445 citizens (concerning health care funding).²²² A new record was set in 2000 when a petition was presented from 792 985 citizens (concerning taxation and beer prices).²²³ It would seem from these figures that the many people who organise petitions and the thousands who sign them consider their efforts to be worthwhile. An important effect of the petitioning process is that Members and the Government are informed, in a formal and public way, of the views of sections of the community on public issues. Even if no action is immediately taken on a petition, it and others like it may assist in the creation of a climate of opinion which can influence or result in action. The petition usually forms part of a broader attempt by individual groups within the community to draw public attention to grievances. Petitions also provide a focal point for individuals and groups attempting to organise campaigns on various issues—for example, public meetings are sometimes organised around the signing of petitions.

Major changes were made to the standing orders concerning petitions with effect from the first sitting in 2001. These were made on the recommendation of the Procedure Committee, which had reported on petitions in its 1999 report which dealt with ways to enhance community involvement in the procedures and practices of the House. The

220 J. Hatsell, *Precedents of proceedings in the House of Commons with observations*, 4th edn, Hansard, London, 1818, vol. III, p. 240.

221 The 1995–2004 average was 374 per year. For statistics of petitions presented since 1901 see Appendix 20. There was a noticeable increase during the 1970s and 1980s, with a peak of 5528 in 1986. In its 1972 report the Standing Orders Committee commented: 'More recently it has been noticeable that, rather than present all sheets of a petition as one document, a single sheet or a group of sheets of a petition has been distributed to a number of Members and presentation has been repeated on many sitting days presumably to have the effect of securing greater publicity', PP 20 (1972) 8. It is considered that since it has only been possible for petitions to be presented on one sitting day each week the number of petitions recorded as presented each year has dropped because there have been bigger 'groupings' of sheets of petitions.

222 VP 1993–95/71.

223 H.R. Deb. (4.12.2000) 23253–4. Note that the number of signatures has been recorded only since 1988.

committee's approach was aimed at making it easier for people to get their message into the House and to improve the impact of petitions once received by the House.²²⁴

Form and content

There are a considerable number of rules associated with the form and content of petitions and their presentation. These rules are designed to ensure that the authenticity of petitions is established and hence provide protection to the petitioner and the House alike. It is important that those involved in drawing up petitions follow a suitable format and familiarise themselves with the rules governing petitions before taking steps to collect signatures. This will avoid the possibility of the petition being found to be out of order and not presented to the House.

The standing orders do not impose any particular style of expression,²²⁵ but a recommended form of a petition to the House of Representatives, in contemporary language, is shown at page 614.

What must be in a petition

Standing Order 204 provides that a petition for presentation to the House must:

- (a) be addressed to the House of Representatives;
- (b) refer to a matter which is within the power of the House of Representatives to act on, that is, a Commonwealth legislative or administrative matter;
- (c) state the facts which the petitioners wish to bring to the notice of the House; and
- (d) contain a request for the House or the Parliament to take one or more specified actions.

In earlier times the request was referred to as a prayer and the phrase 'humbly pray' was commonly used, but there is no requirement for the word 'pray' to appear and alternatives such as 'request' or 'ask' are now usual. If a petition consists of more than one page, the request must appear on every page to which signatures are affixed. If the House has the power to grant the request of a petition, the absurdity of the request is no objection, in itself, to the receiving of the petition.²²⁶

How a petition should be prepared

Standing Order 205 provides that a petition must conform to the following requirements:

- (a) It must be on paper.
- (b) It must be legible.
- (c) It must be in English or be accompanied by a translation certified to be correct. The person certifying the translation must place his or her name and address on the translation.
- (d) The text of the petition must not contain any alterations.
- (e) It must not have any letters, affidavits or other documents attached to it.
- (f) The language used must be respectful, courteous and moderate. The petition must not contain irrelevant statements.

224 Standing Committee on Procedure; *It's your House: Community involvement in the procedures and practices of the House of Representatives and its committees*, PP 363 (1999) 6.

225 H.R. Deb. (19.8.82) 693–4.

226 *May*, 23rd edn, p. 936. A petition may be received even if the matter complained of has passed, E.g. VP 1993–95/1790.

Form of a petition

PETITION
TO THE HONOURABLE THE SPEAKER AND MEMBERS OF THE
HOUSE OF REPRESENTATIVES ASSEMBLED IN PARLIAMENT:

The petition of certain

*(Here identify, in general terms, who
the petitioners are, e.g.—*

citizens of Australia,

or

residents of the State of

or

electors of the Division of)

draws to the attention of the House

or

points out to the House

.....

(Here give the circumstances of the case)

Your petitioners therefore request the House

or

ask the House

or

pray that the House

.....

(Here outline the action that the House should, or should not, take)

Signatures

Addresses

- (g) The petition must not contain any indication that it has been sponsored or distributed by a Member of the House of Representatives. However to facilitate its lodgement, the petition may show the name and address of a Member as an address to which the petition may be sent for presentation to the House.
- (h) A petition from a corporation must be made under its common seal. Otherwise it will be received as the petition of the individuals who signed it.

On rare occasions petitions have been received with attachments to them.²²⁷ While no comment was made in the House on their acceptability and the attachments were not mentioned in the Votes and Proceedings, they were probably kept because they were important for a full understanding of the petition itself. For example, a petitioner requested the House to appoint a select committee to inquire into his plans for altering the law of legal tender and his plans were appended to the petition.²²⁸ Petitions consisting of a typed sheet of paper pasted to a bark sheet with surrounds decorated in a traditional Aboriginal manner were presented to the House in 1963 and 1968 on behalf of the Yirrkala Aboriginal community.²²⁹ A translation was submitted with these petitions.

Reflections must not be cast upon the Queen, members of the Royal Family, the Governor-General, members of the judiciary, or Members and Senators. The Clerk of the House has declined to certify a petition criticising the conduct of a judge of the Family Court of Australia and praying for the judge's removal from office, and a petition which reflected on a named Senator. Petitions calling for the censure of certain unnamed judges have been received.²³⁰ In 1979 the Clerk certified, and the House received, a petition which asked the House to take action to receive the resignation of certain unnamed Members for allegedly not having honoured an election undertaking.²³¹ It was considered acceptable because it was not disrespectful and, in seeking the resignation of several Members collectively, it did not breach the spirit of the standing orders. A petition, also not disrespectful, calling for the resignation of a Minister has been received.²³² The rule has also been held to apply in respect of a prospective Governor-General. In August 1988 a petition, although it did not identify a prospective Governor-General explicitly, was not accepted, as it was considered to impugn his character. In 1976 petitions praying that the House call on the Governor-General to resign were certified by the Clerk and received by the House. The petitions complied with standing orders and made no express criticism of the character or conduct of the Governor-General.²³³ According to *May*, petitions should not impugn the character or conduct of Parliament, the courts or any other tribunal or constituted authority.²³⁴ However, it is considered that a petition is acceptable if its language is courteous and moderate, provided it conforms with the standing orders in other respects. In 1977 the Clerk certified petitions which were critical of individual members of the Australian Broadcasting Tribunal and the Schools Commission.

227 VP 1907–08/41; VP 1909/83; VP 1917–19/197.

228 VP 1907–08/41.

229 VP 1962–63/515, 531; VP 1968–69/223.

230 H.R. Deb. (3.6.2002) 2933.

231 VP 1978–80/662; H.R. Deb. (6.3.79) 601.

232 H.R. Deb. (6.11.2000) 22168.

233 VP 1976–77/315.

234 *May*, 23rd edn, p. 935.

Under a former rule no reference could be made in a petition to any debate in Parliament,²³⁵ but this restriction was dropped in 2001. Petitions relating to bills before the Senate have been received,²³⁶ as have petitions relating to matters currently on the Notice Paper,²³⁷ and petitions praying for the repeal of Acts.²³⁸

Rules about signatures

Standing Order 206 requires that every petition must contain the signature and address of at least one person on the page on which the terms of the petition are written.

All the signatures on a petition must meet the following requirements:

- (i) Each signature must be made by the person signing in his or her own handwriting. A petitioner who is not able to sign must make a mark in the presence of a witness. The witness must sign the petition as witness and write his or her address, and the name and address of the petitioner.
- (ii) Every signature must be written on a page bearing the terms of the petition, or the action asked for by the petition. Signatures must not be copied, pasted or transferred on to the petition or placed on a blank page on the reverse of a sheet containing the terms of the petition.

There are precedents in the House of Commons for the forgery of signatures to petitions, the subscribing of fictitious signatures to and tampering with petitions being regarded as contempts.²³⁹ In the House of Representatives in 1907, in voting to receive a petition, Members took the view that a petition should not be invalidated, and the persons who signed the petition should not be disadvantaged, because of some individual's improper conduct. It was also considered that neither Members nor the House can ensure that every signature on every petition is genuine. The petition was referred to the Printing Committee to investigate alleged forgery. The committee concluded that specified signatures were forgeries and that available evidence pointed to an unnamed individual as the perpetrator. The committee recommended that the Crown Law authorities be requested to take action with a view to a criminal prosecution of the offender and that the evidence gathered by the committee be placed at their disposal for that purpose. The House adopted the report and was subsequently informed that the Crown Solicitor had advised that, in his opinion, a prosecution for forgery would be unsuccessful.²⁴⁰

The inclusion of the addresses of signatories became a requirement in 1988.

Presentation

Only a Member may lodge a petition for presentation to the House but a Member cannot lodge a petition from himself or herself.²⁴¹ However, a Member may sign a petition to be lodged by another Member. While it is traditional for Members to lodge for presentation any petition which is forwarded to them, they are not bound to do so.²⁴² The fact that a Member lodges a petition for presentation does not mean that he or she necessarily agrees

235 Former S.O. 124. A petition praying that boisterous behaviour by Members be dealt with harshly has been received, VP 1996–98/404.

236 VP 1911/107, 113.

237 VP 1959–60/239; NP 57 (27.10.59) 475. This petition prayed that the House delete certain clauses of the Matrimonial Causes Bill.

238 VP 1960–61/139.

239 *May*, 23rd edn, pp. 131–2, 935, but see also *Parliamentary Privileges Act 1987*, s. 4.

240 VP 1907–08/91–2, 165, 267; H.R. Deb. (18.9.07) 3408–19; H.R. Deb. (13.12.07) 7457–8.

241 S.O. 207.

242 H.R. Deb. (19.9.47) 94.

with its content. It is the practice of the House that the Speaker does not lodge petitions for presentation. If a petition submitted to the Speaker is in order, another Member is asked to present it. Ministers frequently lodge petitions for presentation.

Prior to 1988 the presentation of petitions was the first item in the ordinary order of business at each sitting. Petitions were presented by Members themselves until 1972, when the system changed to presentation by means of an announcement by the Clerk.²⁴³ Since 1988 petitions have been announced by the Clerk once a week, on the private Members' business day. Current standing orders provide for the announcement of petitions by the Clerk after Question Time on each sitting Monday.²⁴⁴

Procedures in effect since 2001 have provided opportunities for Members to present petitions themselves during the periods for Members' statements in the House (S.O. 43) or in the Main Committee (S.O. 193).²⁴⁵

A Member may also present a petition which refers to a motion or order of the day when that motion or order of the day is moved or called on for the first time.²⁴⁶

Before presenting a petition a Member is required to count the signatories and write at the beginning of the petition his or her name and electoral division and the number of signatories.²⁴⁷ The Clerk or the Deputy Clerk must check that each petition lodged for presentation complies with the standing orders, and if the petition complies, certify the compliance on the petition.²⁴⁸ This certification must be obtained by a Member before he or she presents a petition during a period for Members' statements or presents a petition referring to a motion or order of the day.²⁴⁹ When a petition is found to be not in order, it is returned to the Member concerned with an explanation as to why it is not in order.

A petition to be announced by the Clerk must be lodged with the Clerk (in practice the Table Office) by 12 noon on the Friday before the Monday on which it is proposed that it be presented.²⁵⁰ Petitions lodged outside a normal sitting week or during a prorogation are kept for presentation at the next sitting.

On Mondays, when the Speaker calls for petitions, the Clerk announces the petitions lodged for presentation, indicating in the case of each petition the Member who lodged it, not by name but by electoral division, the identity of the petitioners, the number of petitioners and the subject matter of the petition. Petitioners are usually identified simply as certain citizens of Australia, certain residents of a State, certain electors of an electoral division or occasionally certain members of a particular group. If petitions in the same terms are lodged by more than one Member, they are grouped together for the purposes of the announcement. A petition has been presented by two Members.²⁵¹ The Clerk also announces any ministerial responses to petitions previously presented. The full terms of the petitions and responses are printed in Hansard.²⁵² The announcement of petitions has been interrupted when disciplinary action had to be taken against a Member.²⁵³

243 Standing Orders Committee, *Report*, PP 20 (1972) 8–11; VP 1970–72/1012–13; H.R. Deb. (18.4.72) 1703–43.

244 S.O.s 34, 209(a).

245 S.O. 209(b).

246 S.O. 209(c).

247 S.O. 208(a).

248 S.O. 210.

249 S.O. 208(b). A petition not certified has been presented by leave —VP 1998–2001/2634.

250 S.O. 209(a).

251 H.R. Deb. (16.2.2004) 24782.

252 S.O. 213(d).

253 VP 2002–04/1241–2.

Discussion on the subject matter of a petition at the time of presentation is allowed only when a petition is presented during Members' statements, or when a petition which refers to a motion or order of the day is presented at the time the notice or order of the day is moved or called on.²⁵⁴ In other situations, for discussion to take place leave must be granted or standing orders suspended.²⁵⁵

Following criticism of the lack of follow-up procedures for the consideration of petitions, the matter was considered by the Standing Orders Committee in 1972²⁵⁶ and the standing orders subsequently amended to provide for copies of petitions to be referred to Ministers. After a petition is presented to the House, the Clerk must refer a copy of the petition to the Minister responsible for the administration of the matter raised in the petition.²⁵⁷ If more than one Minister is responsible, the petition is referred to the Minister having the greater responsibility. Since 1992 standing orders have provided that a Minister may respond to a petition by lodging a written response with the Clerk.²⁵⁸ The Clerk announces any responses to petitions previously presented at the end of the petitions announcement.²⁵⁹ As noted by the Procedure Committee in 1999, few such responses have been provided.²⁶⁰

Each petition presented is received by the House, unless a motion that it not be received is moved immediately and agreed to.²⁶¹ As petitions which do not conform with standing orders are not presented to the House (that is, as petitions²⁶²), it is unlikely that a motion that a petition be not received would be moved on procedural grounds.²⁶³ The only other motion relating to a petition that may be moved is a motion on notice that the petition be referred to a particular committee.²⁶⁴

Formerly the motion 'That the petition be printed' was possible, although uncommon. Two cases are of special interest because of their relevance to the question of the effectiveness of petitions. In 1963 a Member presented a petition from the Aboriginal people of Yirrkala praying that the House, inter alia, appoint a committee to hear their views before permitting the excision of any land from the Aboriginal Reserve in Arnhem Land. The Member indicated his intention to submit a notice of motion in connection with the petition and moved that the petition be printed. The motion for printing was agreed to.²⁶⁵ The Member's subsequent motion for the appointment of a select committee was also agreed to.²⁶⁶ In 1970 a similar sequence of events followed the presentation of a petition praying that the export of all kangaroo products be banned. The House subsequently agreed to a motion, which had been foreshadowed by the Member presenting the petition,

254 S.O. 213(a).

255 H.R. Deb. (30.8.79) 830–4.

256 VP 1970–72/1012–13; H.R. Deb. (18.4.72) 1703–41; PP 20 (1972) 4, 8–11.

257 S.O. 212(a).

258 S.O. 212(b).

259 S.O. 211(b).

260 Standing Committee on Procedure, *It's your House: Community involvement in the procedures and practices of the House of Representatives and its committees*. PP 363 (1999) 16–17. The committee reported 18 responses to that time. The next response was received in 2003. VP 2002–2004/1313, H.R. Deb. (24.11.2003) 22498–9.

261 S.O. 213(b).

262 Some petitions which have been technically out of order (or in order but received late) have been presented as documents by the Leader of the House, e.g. VP 1996–98/531–2. Out of order petitions have also been described by a Member in the House, H.R. Deb. (25.5.89) 2943; and presented by leave (as a document) during the grievance debate, VP 1996–98/162. Such documents are not formally announced in the House or recorded in House records as petitions received, and standing orders providing for referral to a Minister or a committee do not apply.

263 The House has rarely debated the question that a petition be received; VP 1907–08/91.

264 S.O. 213(c). VP 1980–83/102, 294; VP 1987–89/1119–23.

265 VP 1962–63/531; H.R. Deb. (28.8.63) 561. (One of the 'bark petitions' referred to at p. 615.)

266 VP 1962–63/549; H.R. Deb. (12.9.63) 927–39. See also Select Committee on Grievances of Yirrkala Aborigines, Arnhem Land Reserve, *Report*, PP 311 (1963).

appointing the Select Committee on Wildlife Conservation to examine, inter alia, the issues raised in the petition.²⁶⁷

Although such action is in practice unlikely, all petitions, as documents presented to the House, are referred to the Publications Committee, which may recommend that a petition be made a Parliamentary Paper. In 1909 the House agreed to a motion, moved by leave, that a petition be printed (that is, as a Parliamentary Paper), even though the then Printing Committee had considered it and had not recommended its printing.²⁶⁸

General Purpose Standing Committees are empowered to inquire into and report on any petition referred by either the House or a Minister.²⁶⁹ In 1999 the Procedure Committee recommended that all petitions be automatically referred to the relevant general purpose standing committee for any inquiry the committee may wish to make.²⁷⁰

Petitions from unusual sources

The standing orders specifically provide for petitions from a company or corporation.²⁷¹ Petitions from individual citizens²⁷² and from minors²⁷³ may be received. Receipt by the House of petitions from Australian citizens abroad is permitted, but the House does not normally receive petitions from foreign citizens abroad.²⁷⁴ An exception was a petition signed by citizens of the United States of America which was presented by a Member by leave of the House.²⁷⁵ Petitions sent directly to the Speaker from foreign citizens abroad have normally been referred to the relevant Minister for information and the petitioners have been informed.

In 1962 a Member presented a petition from certain Members of the Northern Territory Legislative Council praying that the House debate and redress the grievances set out in a remonstrance earlier made by the Council.²⁷⁶ In 1975 a petition was presented from the Northern Territory Legislative Assembly praying that the recommendations of the Parliament's Joint Committee on the Northern Territory on the transfer of executive powers and administrative functions to the Territory be implemented.²⁷⁷

Abuse of the right of petition

Various abuses of the right of petition have been dealt with as contempts in the United Kingdom. The following are some examples cited by *May*:²⁷⁸

267 VP 1970–72/133, 147–8; and see Select Committee on Wildlife Conservation, *Conservation and commercial exploitation of kangaroos, Interim report*, PP 219 (1971).

268 VP 1909/39; H.R. Deb. (8.7.09) 983; H.R. Deb. (9.7.09) 1058–61.

269 S.O. 215(b).

270 Standing Committee on Procedure, *It's your House: Community involvement in the procedures and practices of the House of Representatives and its committees*. PP 363 (1999) 17–18.

271 S.O. 205(h); e.g. petition from Roche Products Pty Ltd, VP 1983–84/886.

272 VP 1970–72/475; H.R. Deb. (9.8.99) 8103.

273 VP 1970–72/681; see also S. Deb. (14.5.68) 943.

274 This practice reflects House of Commons practice, see *May*, 23rd edn, p. 936.

275 VP 1970–72/357.

276 VP 1962–63/203. A remonstrance is a document in which grievances are stated and remedial action is sought. The Speaker later announced that he had received the remonstrance and that it had been placed in the Parliamentary Library for the information of Members, H.R. Deb. (29.8.62) 793; and see H.R. Deb. (23.8.62) 656–7. On 28 October 1996 the Speaker reported receiving a remonstrance from the N. T. Legislative Assembly praying that the Commonwealth Parliament not proceed with the Euthanasia Laws Bill 1996. The Speaker also reported a letter and an accompanying resolution adopted by the Norfolk Island Legislative Assembly on the same matter. VP 1996–98/714. The documents were included in the records of the House and copies circulated in the Chamber. The texts of the documents (also received and reported by the President of the Senate) were incorporated in the Senate Hansard.

277 VP 1974–75/1085.

278 *May*, 23rd edn, pp. 131–2, 935–6.

- frivolously, vexatiously, or maliciously submitting a petition containing false, scandalous or groundless allegations against any person, whether a Member of the House or not, or contriving, promoting or presenting such petitions;
- inducing parties to sign a petition by false representations;
- threatening a Member that a petition would be submitted to the House unless he took certain action;
- forging signatures or subscribing fictitious signatures to petitions (the petition thus being a falsified or fabricated document); and
- tampering with a petition.

The House of Representatives has only once taken action on an alleged abuse of the right to petition. The case concerned allegations that signatures had been forged (*see* p. 616). With the enactment of the *Parliamentary Privileges Act 1987* any action proposed in such matters needs to be considered, inter alia, in terms of section 4 of the Act which provides, in effect, that conduct does not constitute an offence against a House unless it amounts or is intended to amount to an improper interference with the House, its committees or its members.

Privilege attaching to petitions

Under the Parliamentary Privileges Act the presentation or submission of a document (including a petition) to the House, and the preparation of such a document, is absolutely privileged.²⁷⁹

May notes that petitioners are considered as under the protection of Parliament and that obstruction of or interference with such persons, or conduct calculated to deter them from preferring or prosecuting petitions, may be treated as a breach of privilege.²⁸⁰ *May* gives as an instance of this kind of offence bringing an action against petitioners for a libel alleged to be contained in a petition presented by them to the House.²⁸¹

²⁷⁹ *Parliamentary Privileges Act 1987*, s. 16.

²⁸⁰ *But see* also Senate Committee of Privileges, *The circulation of petitions*, PP 46 (1988).

²⁸¹ *May*, 23d edn, p. 152.