

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. While this situation is now a legislative requirement,² it was arrived at after pressure and recommendations from within Parliament.³

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.⁴ 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.⁵

1 S.O. 200.

2 *Public Governance, Performance and Accountability Act 2013*, s. 46(1).

3 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. (24.11.1978) 3456–7.

4 E.g. VP 1996–98/619 (15.10.1996); VP 1998–2001/296–7 (10.2.1999); VP 1998–2001/853 (20.9.1999); VP 2004–07/1349 (4.9.2006).

5 S.O. 2. This aligns with the definition of a document in the *Acts Interpretation Act 1901*.

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.

There is no requirement for documents to be in English. Unusual documents presented in recent years have included a ‘message and signatures written on fabric’ (i.e. a bed sheet), and a 13 metre long banner containing signatures.⁶

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,⁷ 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. Documents may be presented in the Federation Chamber.⁸ A document presented to the Federation Chamber is taken to have been presented to the House.⁹

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 each sitting day.¹⁰ However, a Minister may present a document at any time when other business is not before the House.¹¹ With some exceptions, leave is required for a document to be presented at any other time (*see* page 605). 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 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.¹²

By the Speaker

The standing orders provide that documents may be presented to the House by the Speaker.¹³ The reports of those committees of which the Speaker is chair, or joint chair, are presented by the Speaker.¹⁴ The Speaker presents the reports of parliamentary

6 VP 2004–07/602 (12.9.2005), 1216 (19.6.2006).

7 S.O.s 199–200.

8 E.g. VP 1993–96/2516 (19.10.1995); VP 1996–98/457 (11.9.1996); VP 2008–10/942 (16.3.2009).

9 S.O. 2.

10 S.O. 34.

11 S.O. 199(b).

12 Resolution of the House effective March 1988. VP 1987–90/302–3 (9.12.1987).

13 S.O. 199(a).

14 E.g. VP 1993–96/965 (12.5.1994); VP 2010–13/71 (18.10.2010).

delegations of which he or she is leader.¹⁵ The Speaker also presents documents dealing with parliamentary activities,¹⁶ and, pursuant to the Parliamentary Service Act, the annual reports of the Parliamentary Service Commissioner and the Department of the House of Representatives; and the Department of Parliamentary Services and the Parliamentary Budget Office (the parliamentary departments under the joint authority of the Speaker and the President).¹⁷

The Auditor-General Act requires the Auditor-General to transmit to each House of the Parliament reports prepared under that Act.¹⁸ 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.¹⁹ 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.²⁰

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,²¹ or messages of the same kind from foreign countries and other legislatures,²² letters acknowledging a motion of thanks of the House,²³ 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.²⁴ 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 in 1989.²⁵ 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.²⁶ In 2003 the Speaker presented a resolution of the Queensland Parliament which, in part, requested the Commonwealth Parliament to establish an inquiry.²⁷ 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,²⁸ documents of this kind are not regarded as having been formally presented to the House.

15 E.g. VP 1993–96/1613 (5.12.1994); VP 1998–2001/1115 (6.12.1999); VP 2010–13/239 (24.11.2010).

16 See for example, *History of Hansard*, VP 1970–72/1236 (11.10.1972); *Radio broadcasting of parliamentary proceedings—papers*, VP 1993–96/1327 (22.9.1994); VP 1996–98/95 (9.5.1996), 160 (27.5.1996); VP 2010–13/260 (25.11.2010) (response to committee report).

17 *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.

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

19 *Ombudsman Act 1976*, s. 17; VP 1985–87/392 (10.9.1985).

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

21 E.g. VP 1978–80/981 (12.9.1979); VP 2002–04/1061–2 (12.8.2003).

22 E.g. VP 1978–80/930 (21.8.1979), 977 (11.9.1979); VP 1996–98/366 (20.8.1996); VP 2002–04/1318 (25.11.2003); VP 2008–10/750 (27.11.2008).

23 VP 1932–34/583 (23.3.1933).

24 E.g. VP 1970–72/517 (20.4.1971); VP 1990–93/1633 (18.8.1992) (letter of apology).

25 VP 1987–90/811 (1.11.1988), 1025 (28.2.1989).

26 VP 2002–04/122–3 (19.3.2002).

27 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; H.R. Deb. (2.12.1903) 23432.

28 VP 1967–68/10 (21.2.1967).

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 Parliament. They may be presented by the Speaker (*see above*), by Ministers, or delivered to the Clerk for deemed presentation (*see page 605*).

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.²⁹

Agencies may be permitted or required to investigate and report on specific matters and to present their reports to the Parliament.³⁰ A number of statutes require that the Minister responsible for the administration of an Act present a report to the Parliament on the operations of that Act,³¹ 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.³² Since 1986 annual reports of government departments have been presented pursuant to statute. This followed amendments to the Public Service Act providing that reports should be prepared and presented to Parliament each year, in accordance with guidelines approved on behalf of the Parliament by the Joint Committee of Public Accounts and Audit.³³

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 presentation of many other instruments of a similar nature.³⁴

At government initiative

Many reports and other documents, not required by statute to be presented, are considered by the Government as 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,³⁵ 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*). The

29 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 1993–96/949 (10.5.1994), 1983 (28.3.1995).

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

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

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

33 *Public Service Act 1999*, ss. 63, 73. *Requirements for Annual reports — for departments, executive agencies and other non-corporate Commonwealth entities*, Department of the Prime Minister and Cabinet, June 2015.

34 *And see* ‘Delegated legislation’ in Ch. on ‘Legislation’.

35 New arrangements for treaties were announced in May 1996: the Government undertook to table treaties at least 15 sitting days before taking binding action (except in cases of urgency, under the now so-called ‘national interest exemption’); 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. (2.5.1996) 231–5. A period of 20 sitting days is now provided for some categories of treaties.

Government has issued guidelines for departments on the presentation of government documents to the Parliament.³⁶

In the past such documents were presented nominally ‘by command of the Governor-General’,³⁷ 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.

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.³⁸ 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.³⁹

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.⁴⁰ Documents received on a sitting day before 5 p.m. (3 p.m. on Thursday) 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.⁴¹

BY PRIVATE MEMBERS

Other than providing for the presentation of committee and delegation reports, and petitions, 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 Member⁴²) wishing to present a document must

³⁶ *Guidelines for the presentation of documents to the Parliament (including government documents, government responses to committee reports, ministerial statements, annual reports and other instruments)*, Department of the Prime Minister and Cabinet, February 2017.

³⁷ Former S.O. 319. Documents were recorded in the Votes and Proceedings as being presented by command until 1983.

³⁸ Standing Orders Committee, *Report*, H of R 1 (1962–63) 57.

³⁹ *Acts Interpretation Act 1963*, s. 34B; H.R. Deb. (7.5.1963) 1066–7.

⁴⁰ S.O. 199(b).

⁴¹ H.R. Deb. (9.10.1979) 1724; H.R. Deb. (3.6.1999) 5947.

⁴² VP 1998–2001/1350 (4.4.2000); and see S.O. 53.

obtain leave of the House to do so,⁴³ and leave may be granted only if no Member present objects.⁴⁴ Leave is not required to present an explanatory memorandum to a private Member's bill, or to present a petition pursuant during specified periods.⁴⁵ The Leader of the Opposition does not require leave to present details of the Shadow Ministry.⁴⁶

MINISTERS

The requirement for leave also applies to Ministers when other business is before the House.⁴⁷ Other business is defined as any question before the House (or Federation Chamber) for decision. Ministers therefore do not require leave to present documents between items of business, during Question Time,⁴⁸ while making a ministerial statement or personal explanation, during a discussion of a matter of public importance, or during the period for Members' three minute statements in the Federation Chamber. 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. 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.⁴⁹

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.⁵⁰ 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.⁵¹

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.⁵²

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

43 VP 1978–80/1597 (28.8.1980); VP 1996–98/162 (27.5.1996). 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. Speaker Jenkins would not permit private Members, other than the questioner, to seek to table a document during Question Time, H.R. Deb. (22.2.2011) 913; H.R. Deb. (24.3.2011) 3206. Speaker Bishop stated she would uphold these earlier rulings, and that a request to table by a private Member would not be permitted when used as a disruptive device, H.R. Deb. (26.5.2014) 4105–6.

44 S.O. 63.

45 S.O. 207(b), *see* page 636.

46 VP 2010–13/1825.

47 S.O. 199(b). VP 1976–77/183 (19.5.1976); VP 1978–80/178 (4.5.1978); VP 1996–98/276 (20.6.1996).

48 VP 2004–07/63 (1.12.2004).

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

50 VP 1993–96/1972 (27.3.1995); VP 1996–98/491 (16.9.1996).

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

52 H.R. Deb. (1.4.1976) 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. (9.3.1998) 736, but subsequent Speakers have not continued this approach.

Minister,⁵³ nor to private documents.⁵⁴ A Minister who summarises correspondence, but does not actually quote from it, is not bound to lay it on the Table.⁵⁵ The standing order also applied in the former committee of the whole⁵⁶ and legislation committees, and by extension of these precedents would apply in the Federation Chamber.

It has been held that when public interest immunity (*see* page 625) 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.⁵⁷ 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 that the cases were significantly different and that the clear course of the standing order must be followed.⁵⁸

Presented by the Clerk

RETURNS TO ORDER

The House itself can order documents to be presented. Upon the House agreeing to a resolution that documents should be presented, the Clerk refers the order to the Minister concerned. When the documents are received, they are presented by the Clerk.⁵⁹

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, generally only documents which are of a public or official character would be ordered to be presented to the House. The power to require the production of papers by private bodies or individuals is in practice more likely to be exercised by committees.⁶⁰

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.⁶¹

The procedure of calling for documents was frequently followed during the early years of the House, but it fell into disuse.⁶² 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,

53 H.R. Deb. (28.8.1913) 646–7.

54 H.R. Deb. (23.2.1949) 612.

55 H.R. Deb. (23.2.1972) 110; and *see* *May*, 24th edn, pp. 445–7.

56 H.R. Deb. (20.9.1973) 1385.

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

58 VP 1978–80/529 (14.11.1978), 541 (15.11.1978); H.R. Deb. (14.11.1978) 2715; H.R. Deb. (15.11.1978) 2867 (references to former S.O. 321).

59 S.O. 200.

60 *See also* *May*, 24th edn, p. 133.

61 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 (13.10.1999), H.R. Deb (13.10.1999) 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.

62 The last return to order was laid on the Table of the House on 25 July 1917, VP 1917–19/20 (25.7.1917).

thus enabling them to send for documents and records.⁶³ In the Senate orders have been made more recently for the presentation of documents.⁶⁴

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* page 625).

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.⁶⁵ 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,⁶⁶ and copies of orders⁶⁷ (and related documents⁶⁸) of the Court of Disputed Returns on the petitions, forwarded in accordance with the Commonwealth Electoral Act.⁶⁹

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.⁷⁰

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, special set periods are provided on Mondays in the House and Federation Chamber for committee and delegation business and private Members' business.⁷¹ During these periods Members can present reports and 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.

Committee reports must be presented by a member of the committee⁷² 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.⁷³ Another member of a committee may, when asked to do so, present a committee report on behalf of the chair.⁷⁴

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.⁷⁵

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

64 *Odgers*, 14th edn, pp. 581–6.

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

66 E.g. VP 1996–98/72 (8.5.1996), 109 (20.5.1996); VP 1998–2001/205 (9.12.1998); VP 2002–04/17 (13.2.2002); VP 2004–07/130 (9.12.2004), 143 (8.2.2005); VP 2010–13/174–5 (15.11.2010).

67 E.g. VP 1993–96/176 (19.8.1993), 1106 (27.6.1994); VP 1996–98/428–30 (11.9.1996); VP 1998–2001/717 (9.8.1999); VP 2002–04/328 (19.8.2002).

68 E.g. VP 2008–10/133 (11.3.2008).

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

70 S.O. 4(e); E.g. VP 2004–07/2–6 (16.11.2004); VP 2010–13/2–6 (28.9.2010).

71 S.O. 39. For a detailed discussion of committee reports *see* Ch. on 'Committee inquiries'.

72 S.O. 247(a).

73 E.g. VP 1978–80/1584 (27.8.1980).

74 E.g. VP 1977/367–9 (27.10.1977); VP 1996–98/535 (19.9.1996); VP 1998–2001/1625 (14.8.2000).

75 S.O. 247(c), *see* page 612 and Ch. on 'Committee inquiries'.

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 each sitting day, following questions and the presentation of documents.⁷⁶ However, they may also be made at other times.

In all cases leave of the House is required to make a ministerial statement. The granting of leave to the Minister is deemed to grant leave to the Leader of the Opposition or Member representing (i.e. the shadow minister) to speak in response to the statement for an equivalent amount of time.⁷⁷ 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, a Minister may present a copy of the statement. If this is done, the Minister or another Minister may then move a motion 'That the House take note of the document'.⁷⁸ Debate on this motion enables the contents of the statement to be debated immediately or at a later time (*see below*).

Government guidelines for departments in relation to the making of ministerial statements include a formal approval process.⁷⁹ House processes for the making of ministerial statements are discussed in more detail under 'Statements by leave' in the chapter on 'Control and conduct of debate'.

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 page 613*). Debate on this motion is possible.⁸⁰ 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'. Unless otherwise ordered, a committee report is automatically made a parliamentary paper on presentation;⁸¹ no motion is necessary in this case.

The publication of documents ordered to be made a parliamentary paper is protected under the Parliamentary Papers Act (*see page 623*). 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.

76 S.O. 34.

77 S.O. 63A.

78 S.O. 202(a).

79 *Guidelines for the presentation of documents to the Parliament (including government documents, government responses to committee reports, ministerial statements, annual reports and other instruments)*, Department of the Prime Minister and Cabinet, February 2017, pp. 12–13.

80 E.g. H.R. Deb. (10.5.2000) 16187; H.R. Deb. (7.2.2006) 37–8; H.R. Deb. (2.2.2016) 57–60.

81 S.O. 39(e).

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.⁸² If the motion is not moved by a Minister at the time of presentation of the document, it may be moved by any Member later on notice,⁸³ or by leave.⁸⁴ This motion is used only in relation to a document that has been presented to the House, and thus is not possible in relation to a statement if a copy has not been presented.⁸⁵

A motion to take note of a ministerial statement may be 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 Federation Chamber) is a matter for negotiation between the parties.

Before the establishment of the Main Committee (now renamed Federation Chamber) a large proportion of these orders of the day were later discharged from the Notice Paper, or lapsed on dissolution, not having been debated. Motions have been moved to take note of documents presented for the specific purpose of enabling a matter to be referred to the Federation Chamber for debate or further debate—for example, copies of motions already passed in the House.⁸⁶ Orders of the day referred to the Federation Chamber may be returned to the House after debate.⁸⁷

When documents are presented together according to a previously circulated list (*see* page 602), 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.⁸⁸

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,⁸⁹ or expressed opinion on the subject of the document.⁹⁰ It is unusual for a vote to be taken on a motion to take note.⁹¹ 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.

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

83 S.O. 202(c).

84 VP 2008–10/495 (2.9.2008).

85 H.R. Deb. (10.3.2010) 2166.

86 E.g. VP 2002–04/691 (4.2.2003), 1064 (12.8.2003), 1233–4 (9.10.2003). 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 (10.2.2004), 1428 (12.2.2004) (Main Committee).

87 VP 1993–96/2427 (27.9.1995) (Main Committee).

88 S.O. 202(b). This ‘single motion’ procedure has not been routinely used since the 44th Parliament.

89 E.g. VP 1985–87/882 (29.4.1986)—amendment to disallow regulations that were the subject of the ministerial statement.

90 E.g. VP 2002–04/400 (17.9.2002), 709 (6.2.2003), 725–6 (11.2.2003) (amendment to proposed amendment)—amendments critical of government position given in ministerial statements, and expressing alternative views.

91 Examples of a ‘take note’ being agreed to: VP 1970–72/667 (23.8.1971) (Privileges Committee report); VP 1993–96/2293–4 (30.6.1995) (ministerial statement on ‘An Australian Republic’); VP 2004–07/475 (23.6.2005) (copies of three condolence motions, already agreed to, referred for debate in the Main Committee); VP 2016–18/320 (9.11.2016) (Prime Minister’s statement on the death of an international figure).

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.⁹² 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.⁹³ On receipt of the petition it has been the practice of the Clerk 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.⁹⁴ In some cases motions to grant leave have been moved without a petition having been presented⁹⁵ or following the presentation by the Speaker of a less formal communication.⁹⁶ All sides of the House have been involved in the consideration of such a matter.⁹⁷

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.⁹⁸ 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.

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.

92 S.O. 253.

93 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 (24.2.1988), 536 (25.2.1988)). In 1980 the UK House of Commons dispensed with the requirement that leave be granted in respect of the production of parliamentary records.

94 E.g. VP 1985–87/1355 (26.11.1986).

95 E.g. VP 1983–84/881 (2.10.1984).

96 H.R. Deb. (25.2.1992) 27 (faxed letter to the Speaker); VP 1996–98/514 (18.9.1996), 525 (19.9.1996) (following statement of committee chair); VP 1998–2001/823 (31.8.1999), 827 (1.9.1999) (faxed letter to the Speaker).

97 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. (25.2.1992) 390–92.

98 VP 1996–98/408 (9.9.1996) (House informed of Speaker’s decision).

Custody and availability of original documents

Under the direction of the Speaker, the Clerk has custody of all documents presented to the House.⁹⁹ 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, the requirements of the Act relating to the disposal of and access to such records do not apply unless provided for by regulation.¹⁰⁰ 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.¹⁰¹ 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.¹⁰² A further resolution in 1984 permits in camera evidence to be disclosed after 30 years, if in the Speaker's opinion, disclosure is appropriate.¹⁰³

See also 'Publication of evidence' in the Chapter on 'Committee inquiries'.

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. Guidelines for government departments and agencies issued by the Department of the Prime Minister and Cabinet advise that every effort should be made to ensure a document is tabled in Parliament prior to, or to coincide with, its public release.¹⁰⁴

Presentation when Parliament not sitting

The House has no provision for documents to be presented when the House is not sitting. However, if the House is not sitting when a committee has completed a report of an inquiry, the report may be sent to the Speaker prior to presentation to the House. When the Speaker receives the report, it may be published and he or she may give directions for printing and circulation. The committee must then present the report to the House as soon as possible.¹⁰⁵

In 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.

99 S.O. 28.

100 *Archives Act 1983*, ss. 3, 18, 20.

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

102 VP 1978–80/1539–40 (22.5.1980); H.R. Deb. (22.5.1980) 3133–4.

103 VP 1983–84/988–9 (11.10.1984).

104 *Guidelines for the presentation of documents to the Parliament (including government documents, government responses to committee reports, ministerial statements, annual reports and other instruments)*, Department of the Prime Minister and Cabinet, February 2017, p. 7.

105 S.O. 247(c)—*see* Ch. on 'Committee inquiries'.

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.¹⁰⁶

The Senate has provision for documents to be presented when the Senate is not sitting. Under Senate standing order 166(2), if the President of the Senate certifies that a document is to be presented to the Senate, or a Minister or the Auditor-General provides a document to the President to be presented, the document is deemed to be presented and its publication is authorised. The President must then present the document at the next sitting of the Senate. The Prime Minister and Cabinet guidelines referred to above advise departments to consider this option if there is a statutory or urgent and compelling need to have documents presented at a time when Parliament is not sitting.

Senate standing order 38(7) provides for the deemed presentation of a committee report when the Senate is not sitting, on the provision of the report to the President.

Parliamentary Papers Series

Historically all documents and petitions ordered to be printed or made a parliamentary paper¹⁰⁷ 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,¹⁰⁸ 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.¹⁰⁹

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,¹¹⁰ 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 to 1961) published in bound form only in the Votes and Proceedings or Journals volumes respectively.

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

106 VP 1983–84/989 (11.10.1984); H.R. Deb. (11.10.1984) 2200.

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

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

109 PP 216 (1977) 1.

110 S.O. 219; Senate S.O. 22.

the series should be explored further.¹¹¹ In its 2006 report into the distribution of the Parliamentary Papers Series the committee recommended, *inter alia*, that any digital versions of the series augment the hard copy series, and that the development of an online digital repository for the series be investigated.¹¹² In 2010 the committee recommended that the parliamentary departments develop a digital repository for the Parliamentary Papers Series, and that author departments and agencies be required to provide electronic copies of documents at the same time that print copies are provided for tabling in the Parliament.¹¹³ These recommendations have been progressively implemented and it is now a government requirement that documents tabled in Parliament must also be available electronically.¹¹⁴ Parliamentary papers from 2013 are available through a digital repository that can be accessed from the Parliament of Australia website.

Printed as well as electronic copies are still required for the Parliamentary Papers Series. However, in 2016 the Presiding Officers agreed to a recommendation¹¹⁵ by the Joint Committee on Publications that the distribution of printed parliamentary papers cease after 2016.

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.¹¹⁶ Apart from initial meetings, 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. The committee may report when it sees fit, and may recommend a document be made a parliamentary paper, in whole or in part.¹¹⁷ Since March 2018 the number of documents in this category that the committee needs to consider has been minimal—*see below*.

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. If such a motion is before either House, the document is not considered by the Publications Committee, but would be considered later if the motion were subsequently withdrawn or if it lapsed.

Pursuant to the resolution of the House of 28 March 2018,¹¹⁸ unless otherwise ordered, and provided that they conform to the printing standards, the following documents are automatically made parliamentary papers upon their presentation to the House:

- (a) substantive reports of parliamentary committees;
- (b) annual reports of Commonwealth entities;

111 Joint Committee on Publications, *The future of the Parliamentary Papers Series*. PP 416 (1997). The Presiding Officers' response accepted these recommendations, S. Deb. (10.11.1998) 32–3; Government response, S. Deb. (11.3.1999) 2773.

112 Joint Committee on Publications, *The distribution of the Parliamentary Papers Series*. PP 114 (2006).

113 Joint Committee on Publications, *Inquiry into the development of a digital depository and electronic distribution of the Parliamentary Papers Series*, PP 160 (2010).

114 Department of the Prime Minister and Cabinet, *Guidelines for the presentation of documents to the Parliament*, 2017.

115 Conveyed by correspondence.

116 S.O. 219.

117 S.O. 219(a).

118 VP 2016–18/1484 (28.3.2018).

- (c) a report of a royal commission;
- (d) a report of the Productivity Commission;
- (e) a report of the Auditor-General;
- (f) a report of the Australian Human Rights Commission;
- (g) a report of the Australia Law Reform Commission;
- (h) a report of the Australian Electoral Commission on the redistribution of electoral division boundaries;
- (i) Australian Government white papers;
- (j) a report in a series that has previously been included in the Parliamentary Papers Series on the recommendation of a Publications Committee; and
- (k) budget papers and ministerial statements presented following the presentation of the appropriation bills.

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.¹¹⁹ The joint committee has completed 14 inquiries, of which two were matters referred by a Minister.

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).¹²⁰ The chair, by leave, moves that the report be agreed to.¹²¹ 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 Federation Chamber 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 web site.¹²²

119 S.O. 219(c).

120 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 1993–96/2696 (30.11.1995); J 1993–96/4304 (30.11.1995).

121 E.g. VP 1978–80/608–11 (24.11.1978); VP 1996–98/535–6 (19.9.1996); J 1978–80/436–8 (26.10.1978); VP 2010–13/151–4 (28.10.2010). Leave has been refused, e.g. VP 2004–07/585 (7.9.2005); H.R. Deb. (21.3.2013) 2919.

122 <http://www.aph.gov.au/Parliamentary_Business/Chamber_documents/>

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 Business', and 'Private Members' Business', and within each category divided, where relevant,¹²³ into 'Notices' and 'Orders of the day'. Occasionally, if proceedings on a bill or another item of business have been by completed in the Federation Chamber but not reported to the House the same day (the usual practice), there is an additional heading 'Matters to be reported from the Federation Chamber'.¹²⁴ When business has been accorded priority by the Selection Committee for the next sitting Monday,¹²⁵ 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—Federation Chamber' and 'Business accorded priority—House of Representatives Chamber'. When, occasionally, items of business are sponsored by the Speaker, these are listed separately as 'Business of the House'.¹²⁶

Business which has been referred to the Federation Chamber is listed separately under the heading 'Business of the Federation Chamber'—subdivided if necessary into 'Government Business', 'Committee and Delegation Business' and 'Private Members' Business'.

NOTICES

'Notices' are new proposed business—that is, business that has not yet come before the House. A notice of motion¹²⁷ is entered on the Notice Paper after a Member has delivered a copy of its terms to the Clerk.¹²⁸ A notice of intention to present a bill is treated as if it were a notice of motion.¹²⁹ A notice becomes effective only when it appears on the Notice Paper.¹³⁰ Subject to the ability of the Leader of the House to rearrange the order of government business¹³¹ (prior to each sitting) and of the Selection Committee to arrange the order of private Members' business on Mondays,¹³² notices are entered on the Notice Paper in the order in which they are received by the Clerk, and before orders of the day.¹³³ Private Members' notices not called on for eight consecutive sitting Mondays are removed from the Notice Paper.¹³⁴

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 Federation Chamber).

The standing orders provide that the Notice Paper shall state the sequence in which orders of the day are called on.¹³⁵ Orders of the day are entered on the Notice Paper in

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

124 E.g. NP (22.2.2008) 20 (Main Committee).

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

126 E.g. NP 61 (23.5.1988) 2483; NP 50 (29.6.1999) 17.

127 *See* 'Notice' in Ch. on 'Motions' for full details.

128 S.O. 106.

129 S.O. 139(c); *and see* Ch. on 'Legislation'.

130 S.O. 108.

131 S.O. 45.

132 S.O. 222.

133 S.O. 108.

134 S.O. 42.

135 S.O. 37(a).

accordance with the order in which the notices of motion were given.¹³⁶ 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.¹³⁷ 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.¹³⁸ As with notices, this sequence is subject to the ability of the Leader of the House to rearrange the order of government business¹³⁹ (prior to each sitting) and of the Selection Committee to arrange the order of private Members' and committee business on Mondays.¹⁴⁰

Orders of the day relating to committee and delegation business and private Members' business which have not been called on for eight consecutive sitting Mondays are removed from the Notice Paper.¹⁴¹

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.¹⁴²

Questions in writing

Questions in writing are numbered consecutively in order of receipt by the Table Office¹⁴³ 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.¹⁴⁴ An electronic 'questions paper' on the House website, updated daily, gives the full text of all unanswered questions.¹⁴⁵

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.¹⁴⁶

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. The first Notice Paper of each sitting period (fortnight or single week) includes a list of House and joint committee reports awaiting government response.

136 See Chs on 'Order of business and the sitting day' and 'Motions'.

137 NP 42 (2.12.1974) 4503.

138 S.O. 37(d).

139 S.O. 45.

140 S.O. 222.

141 S.O. 42.

142 NP 176 (19.8.1980) 10851; NP 34 (8.10.1996) 1231. See Ch. on 'Motions'.

143 Before 13 August 1963 questions were renumbered each sitting day, see NP 89 (13.8.1963), NP 90 (14.8.1963). 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.

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

145 <http://www.aph.gov.au/Parliamentary_Business/Chamber_documents>

146 H.R. Deb. (22.5.1980) 3105, 3142.

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 Federation Chamber; and the attendance of Members in the House, including any leave.¹⁴⁷

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, amendments, and so on, 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 Clerk and Deputy Clerk and the original documents of the House. The Votes and Proceedings are then printed and distributed in final form and are issued for each session in bound volumes. The Votes and Proceedings are available electronically on the House's web site.¹⁴⁸

The standing orders require that Members' attendance,¹⁴⁹ divisions,¹⁵⁰ and any reason stated by the Chair for its casting vote,¹⁵¹ be recorded in the Votes and Proceedings. The 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.¹⁵² The names of Members voting for or against the question are recorded for each division.¹⁵³

The Votes and Proceedings record the items of business considered by the House. Depending on the sequence of business on the particular sitting, they also record that questions without notice were asked,¹⁵⁴ the documents presented by Ministers, ministerial statements made, 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 Federation Chamber meets, the Minutes of Proceedings of the Federation Chamber, under the name of the Deputy Clerk in his or her capacity as Clerk of the Federation Chamber, are included as a supplement to the Votes and Proceedings.¹⁵⁵ 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.¹⁵⁶

147 S.O. 27.

148 <<http://www.aph.gov.au/votes>>; electronic copies of all Votes since 1901 are available. The draft Votes (Live Minutes) for the current sitting can be accessed at <<http://www.aph.gov.au/LiveMinutes>>, and for the Federation Chamber at <<http://www.aph.gov.au/LiveMinutes-FC>>; this site is updated every five minutes when the House is sitting.

149 S.O. 27(c).

150 S.O. 135(a).

151 S.O. 135(c).

152 S.O.s 126. On one occasion the dissent of the Opposition was recorded, by leave, VP 1978–80/686 (22.3.1979).

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

154 This entry was first included in 1962, VP 1962–63/15 (21.2.1962).

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

156 VP 1978–80/427–8 (27.9.1978), 1109–32 (23.10.1979).

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,¹⁵⁷ the absence of the Governor-General¹⁵⁸ (on occasions), and references to the deaths of persons that are not the subject of motions of condolence.¹⁵⁹

The standing orders provide that motions and amendments not seconded shall not be recorded in the Votes and Proceedings.¹⁶⁰ 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;¹⁶¹
- **Personal explanations.** These are not formally part of the business of the House; they arise mainly from what is reported about a Member in the media and through what is said in debate, and are therefore not normally recorded. When a personal explanation gives rise to some further proceedings then it may be recorded;¹⁶²
- **Points of order.** These are not normally recorded unless they give rise to some further procedural action;¹⁶³ and
- **Rulings of the Chair.** These are not normally recorded unless they are of a significant nature¹⁶⁴ or there is a motion of dissent from the ruling moved.¹⁶⁵

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.¹⁶⁶

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

157 E.g. VP 1978–80/1662 (16.9.1980); VP 1996–98/241 (17.6.1996).

158 E.g. VP 1978–80/966 (29.8.1979).

159 E.g. VP 1978–80/213 (10.5.1978); VP 2010–13/89 (19.10.2010).

160 S.O.s 116(a), 121(b); *but see* VP 1978–80/700–1 (27.3.1979) where a motion to suspend standing orders, although not seconded, was recorded as it led to further proceedings.

161 S.O. 108.

162 E.g. VP 1978–80/848 (31.5.1979), 913–4 (6.6.1979).

163 E.g. VP 1978–80/153 (13.4.1978); VP 2008–10/666 (23.10.2008).

164 E.g. VP 1974–75/169 (18.9.1974).

165 E.g. VP 1978–80/1182–3 (13.11.1979); VP 1996–98/462 (12.9.1996); VP 2008–10/666 (23.10.2008).

166 H.R. Deb. (25.7.1901) 3056–7.

House.¹⁶⁷ 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.¹⁶⁸ Subsequently, a motion to suspend standing orders was unsuccessfully moved seeking a debate on the accuracy of the Votes and Proceedings.¹⁶⁹ 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.¹⁷⁰

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.¹⁷¹ 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 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.¹⁷²

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.¹⁷³ 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.¹⁷⁴

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 division¹⁷⁵ 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.¹⁷⁶ 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 Proceedings¹⁷⁷ is issued.

167 H.R. Deb. (16.3.1944) 1472–3.

168 H.R. Deb. (16.3.1944) 1474; VP 1943–44/99 (16.3.1944).

169 VP 1943–44/101 (17.3.1944).

170 H.R. Deb. (21.3.1944) 1640.

171 H.R. Deb. (22.11.1979) 3369.

172 VP 1987–90/925–7 (24.11.1988); H.R. Deb. (24.11.1988 a.m.) 3312.

173 VP 1909/62 (28.7.1909); *and see* Ch. on ‘The Speaker, Deputy Speakers and officers’.

174 VP 1909/67 (29.7.1909).

175 VP 1914–17/181 (29.4.1915); *see also* Ch. on ‘Members’.

176 S.O. 135(b); *see* VP 1940/105 (21.6.1940); *and* H.R. Deb. (7.4.1978) 1239–40.

177 E.g. VP 1978–80/547 (16.11.1978).

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 UK House of Commons debates in the early 19th century. The term Hansard did not appear on the title pages of the Australian parliamentary debates until 1946, when it was added in parentheses.¹⁷⁸

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. Also included, pursuant to standing order 222, are reports of Selection Committee determinations. 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.

Hansard is issued in two editions. There is a daily proof traditionally 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.¹⁷⁹ For privilege in relation to Hansard *see* page 624.

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.¹⁸⁰ 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.¹⁸¹

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.¹⁸² 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.¹⁸³ In some instances of error or inaccuracy in the Hansard reports, the position is better clarified by a personal explanation.¹⁸⁴ Draft reports 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.

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

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

180 H.R. Deb. (29.4.1915) 2724; H.R. Deb. (21.5.1915) 3344; H.R. Deb. (28.11.1918) 8511; H.R. Deb. (1.5.1940) 416; H.R. Deb. (8.5.1942) 1030; H.R. Deb. (27.9.1951) 164.

181 H.R. Deb. (21.9.1977) 1390–2, 1418–9.

182 PP 286 (1972) 74.

183 H.R. Deb. (26.6.1906) 745; H.R. Deb. (12.10.1971) 2160; H.R. Deb. (10.4.1978) 1299.

184 H.R. Deb. (10.4.1978) 1299; H.R. Deb. (3.12.1996) 7510.

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.¹⁸⁵ The Chair has ruled that questions ruled out of order should not be included in Hansard,¹⁸⁶ 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.¹⁸⁷ Exceptionally, offensive remarks ordered to be withdrawn have been deleted from the records,¹⁸⁸ as have names of persons for reasons of privacy.¹⁸⁹ The Chair has ruled that the remarks made by a Member after his time has expired are not to be recorded¹⁹⁰ and that the remarks of a Member who has not received the call are not to be entered in the record.¹⁹¹

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.¹⁹²

Copyright

The issue of copyright has arisen in connection with parliamentary publications, principally in relation to 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 Executive¹⁹³ 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

185 H.R. Deb. (11.11.1904) 6885; PP 286 (1972) 84.

186 H.R. Deb. (10.5.1940) 697.

187 H.R. Deb. (13.11.1913) 3118.

188 H.R. Deb. (13.10.1933) 3540; H.R. Deb. (9.5.1950) 2235; H.R. Deb. (21.9.1977) 1432; H.R. Deb. (15.5.2002) 2228; H.R. Deb. (16.5.2002) 2379; H.R. Deb. (28.5.2002) 2480.

189 H.R. Deb. (25.11.1998) 637–8, 679 (deletion of name mentioned in personal explanation); VP 2016–18/801 (31.5.2017) (deletion of name mentioned in question without notice some years earlier—by resolution of the House).

190 H.R. Deb. (25.2.1969) 32.

191 H.R. Deb. (2.4.1974) 804.

192 H.R. Deb. (21.5.1915) 3344; H.R. Deb. (1.5.1940) 416.

193 Currently the Department of Communications and the Arts.

parliamentary publications, such as bills, should in any sense be regarded as the ‘property’ of the Executive.¹⁹⁴

A legal opinion given in respect of the Yirrkala bark petitions (*see* page 632) 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.¹⁹⁵

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 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 Printer¹⁹⁶ 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 was inserted into the standing orders (by amending former S.O. 320) in 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.¹⁹⁷ If a wider protection was sought, for example, for a document printed other than by the Government Printer, publication was 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.

194 *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’.

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

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

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

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.¹⁹⁸ 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.¹⁹⁹ As a result the Act was amended in 1935 to establish the legal basis for the official character of Hansard, and to place beyond cavil its privileged position, with a provision that each House shall be deemed to have authorised the Government Printer to publish the reports of its debates and proceedings.²⁰⁰

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).²⁰¹

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.²⁰² 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 section 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.²⁰³

198 H.R. Deb. (28.5.1908) 11673.

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

200 *Parliamentary Papers Act 1908*, ss. 3, 4; H.R. Deb. (6.12.1935) 2829.

201 H.R. Deb. (5.5.1993) 89–90; VP 1993–96/25 (5.5.1993); J 1993–96/123 (12.5.1993).

202 VP 1993–96/1620 (5.12.1994).

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

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.²⁰⁴ It is also likely that section 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’.²⁰⁵ Current standing order 36 gives similar 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.²⁰⁶ 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.²⁰⁷

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

205 H.R. Deb. (1.5.1996) 87 (former S.O. 100A).

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

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

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.²⁰⁸

Subsequent court decisions²⁰⁹ 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.²¹⁰

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.²¹¹

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.²¹² 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 'Committee inquiries'. 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 political situation has been different in the Senate, where the Government often has not had 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*.²¹³ 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 usually not taken steps to enforce production of documents when immunity has been claimed, 'other than exacting a political penalty'.²¹⁴

208 *Sankey v. Whitlam and others* (1978) 142 CLR 1 at 62–4.

209 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.

210 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.

211 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).

212 *May*, 10th edn, pp. 507–11.

213 See *Odgers*, 14th edn, pp. 643–75.

214 *Odgers*, 14th edn, pp. 657.

Ministers (including a Minister in the House) have been censured for contempt of the Senate for not responding to Senate orders to produce documents.²¹⁵

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.²¹⁶ 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.²¹⁷

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'.²¹⁸ 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 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 1975,²¹⁹ 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.²²⁰

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 1975,²²¹ would be detrimental to the proper functioning of the Public Service and its relationship to Government, and would be injurious to the public interest.²²² 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

215 E.g. J 1993-96/1641 (10.5.1994). The censure did not result in the production of documents. *And see Odgers*, 14th edn, p. 640.

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

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

218 PP 168 (1972).

219 J 1974-75/836-7 (17.7.1975).

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

221 J 1974-75/824-5 (9.7.1975).

222 PP 215 (1975) 16-20.

answer questions, except of a formal nature, and to decline to produce documents.²²³ 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 1975.²²⁴ 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 1975.²²⁵ 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.²²⁶ 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.²²⁷ 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)²²⁸ addressed these matters. The committee noted the trend in respect of court proceedings and 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 which involved concessions to executive authority.²²⁹ 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.²³⁰ 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.²³¹ The House also referred the matter of the appropriateness of such legislation to its Privileges Committee.²³² The committee concluded that the evidence

223 PP 215 (1975) 23–8.

224 J 1974–75/824–5 (9.7.1975); PP 215 (1975) 21–2.

225 J 1974–75/936 (7.10.1975); PP 215 (1975).

226 PP 215 (1975) 11–12.

227 PP 215 (1975) 51.

228 PP 219 (1984).

229 Examples referred to were arbitration by the Head of State (Papua New Guinea) or Administrator (Northern Territory).

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

231 *Odgers*, 14th edn, p. 651.

232 VP 1993–96/1107 (27.6.1994).

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.²³³

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.²³⁴

PETITIONS

In the Westminster tradition 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’.²³⁵

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 UK House of Commons to deal with petitions were affirmed by the following resolutions in 1669:

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.²³⁶

In Australia 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. Petitions may ask the House to introduce legislation, or repeal or change existing legislation; to take action for a certain purpose or for the benefit of particular persons; or to redress a personal grievance, for example by the correction of an administrative error. However, most petitions concern public issues.

The practice of accepting petitions has been viewed from time to time in the past as an ineffective anachronism which makes excessive demands on the time of the House. 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.

233 H.R. Deb. (8.12.1994) 4375. PP 408 (1994).

234 PP 168 (1972) 40.

235 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.

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

About 300 petitions are presented each year.²³⁷ In 1993 a petition was presented from an estimated 513 445 citizens (concerning health care funding).²³⁸ In 2000 a petition was presented from 792 985 citizens (concerning taxation and beer prices).²³⁹ A new record was set in 2014 when a petition was presented from 1 210 471 citizens (concerning funding for community pharmacies).²⁴⁰ 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 in 2008, following an inquiry by the Procedure Committee. The committee's report *Making a difference: Petitioning the House of Representatives*²⁴¹ made recommendations aimed at enhancing the status of petitions and making the petitioning process more effective, including the establishment of the Standing Committee on Petitions. Soon after its establishment the Petitions Committee recommended the adoption of electronic petitioning,²⁴² and such a system was introduced in 2016 at the start of the 45th Parliament. The following text outlines current procedures; additional historical information may be found in earlier editions.

Definition of a petition

Standing order 2 defines a petition as ‘a formal request (in paper or electronic form) to the House to take action that is within its power to take’, and states that a petition for presentation to the House must comply with the standing orders. An electronic petition (e-petition) is further defined as a petition that persons may sign through the House of Representatives e-petition website (House website). A paper petition includes any petition that is not an electronic petition.

The request must be to the House—that is, not to the Parliament, nor to the Government or an individual Minister. Any legislative or administrative action requested must concern a matter on which the House, as part of the Commonwealth Parliament, has the power to legislate.²⁴³ If the House has the power to grant the request of a petition, the impracticality of the request is no objection, in itself, to the receiving of the petition.²⁴⁴

237 For statistics of petitions presented since 1901 see Appendix 20.

238 VP 1993–96/71 (13.5.1993).

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

240 VP 2013–16/325 (26.2.2014).

241 PP 189 (2007).

242 Standing Committee on Petitions, *Electronic petitioning to the House of Representatives*, PP 389 (2009).

243 See sections 51 and 52 of the Constitution.

244 *May*, 24th edn, p. 486. A petition may be received even if the matter complained of has passed, e.g. VP 1993–96/1790 (6.2.1995).

Form of a petition

**TO THE HONOURABLE THE SPEAKER AND MEMBERS OF THE
HOUSE OF REPRESENTATIVES**

This petition of (*e.g. certain citizens of Australia*)

draws to the attention of the House:

. (*i.e. reasons for the petition*)

We therefore ask the House to:

. (*i.e. request for action*)

PRINCIPAL PETITIONER

(The Principal Petitioner's details are only needed on the first page of the petition)

Name: _____ Signature: _____

Address: _____

_____ Postcode: _____

Email (if available): _____ Telephone: _____

NAME AND SIGNATURE

1.
2.
3.
4.
5.
6.
7.
8.
9.
10.
11.
12.
13.

Rules for the form and content of petitions

The rules associated with the form and content of petitions 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,²⁴⁵ but a recommended form of a petition to the House of Representatives, in contemporary language, is shown at page 631.

Standing order 204 provides that:

- (a) A petition must:
 - (i) be addressed to the House of Representatives;
 - (ii) refer to a matter on which the House has the power to act;
 - (iii) state the reasons for petitioning the House; and
 - (iv) contain a request for action by the House.
- (b) The terms of the petition must not contain any alterations and must not exceed 250 words. The terms must be placed at the top of the first page of the petition and the request of the petition must be at the top of every other page. The terms of an e-petition must be available through the House website.
- (c) The terms of the petition must not be illegal or promote illegal acts. The language used must be moderate.
- (d) An e-petition must be in English. A paper petition 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.
- (e) No letters, affidavits or other documents should be attached to the petition. Any such attachments will be removed before presentation to the House.
- (f) 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.

The terms of the petition consist of the reasons for the petition and the request for action by the House.²⁴⁶

Attachments

Although not permitted under the standing orders, on rare occasions petitions have been received with attachments to them.²⁴⁷ 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.²⁴⁸ 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.²⁴⁹ A translation was submitted with these petitions.

245 H.R. Deb. (19.8.1982) 693–4.

246 S.O. 2.

247 VP 1907–08/41 (6.8.1907); VP 1909/83 (11.8.1909); VP 1917–19/197 (24.4.1918).

248 VP 1907–08/41 (6.8.1907).

249 VP 1962–63/515 (14.8.1963), 531 (28.8.1963); VP 1968–69/223 (8.10.1968).

Moderate language

Standing order 204(c) requires the language used in a petition to be moderate. Relevant criteria include the rules concerning offensive words and personal reflections which apply to debate in the House.²⁵⁰

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.²⁵¹ 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.²⁵² 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.²⁵³ 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.²⁵⁴ According to *May*, petitions should not impugn the character or conduct of Parliament, the courts or any other tribunal or constituted authority.²⁵⁵ 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. A petition asking that boisterous behaviour by Members be dealt with harshly has been received.²⁵⁶

Rules for signatures—paper petitions

Standing order 205 requires that:

- (a) Every petition must contain the signature and full name and address of a principal petitioner [*see* page 634] on the first page of the petition.
- (b) All the signatures on a paper petition must meet the following requirements:
 - (i) Each signature must be made by the person signing in his or her own handwriting. Only a petitioner incapable of signing may ask another person to sign on his or her behalf.
 - (ii) 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.
- (c) A Member must not be a principal petitioner or signatory to a paper petition.

250 S.O.s 88–90.

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

252 VP 1978–80/662 (6.3.1979); H.R. Deb. (6.3.1979) 601.

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

254 VP 1976–77/315 (9.9.1976).

255 *May*, 24th edn, p. 485.

256 VP 1996–98/404 (9.9.1996).

Petitioners, other than the principal petitioner, are not required to supply addresses.²⁵⁷

Rules for e-petitions

Standing order 205A requires that:

- (a) A principal petitioner for an e-petition must provide the petitioner's full name and address.
- (b) The posted period for an e-petition is to be four weeks from the date of publication on the House website.
- (c) Once published on the House website the terms of an e-petition cannot be altered.
- (d) Once the posted period for an e-petition has elapsed, the petition shall be presented to the House in accordance with standing order 207.
- (e) Names must not be copied, pasted or transferred on to an e-petition.
- (f) A Member must not be a principal petitioner or signatory to an e-petition.

Forgery of signatures

It is long established practice that a whole petition is not invalidated because of a signature that seems to be false. 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 could ensure that every signature on every petition was 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.²⁵⁸

There are precedents in the UK House of Commons for the forgery of signatures to petitions, the subscribing of fictitious signatures to and tampering with petitions being regarded as contempts.²⁵⁹

Principal petitioner

The requirement for a principal petitioner was introduced in 2008, along with the establishment of the Petitions Committee (*see below*), in order to improve the ability of the House to respond to petitions. A principal petitioner is needed even where a group of people sponsor a petition. This person, who initiates, sponsors or organises a petition, must provide his or her full name and address and, in the case of a paper petition, signature. This enables the Petitions Committee to contact him or her regarding any response or follow-up to the petition.

²⁵⁷ The inclusion of the addresses of signatories was a requirement between 1988 and 2007.

²⁵⁸ VP 1907–08/91–2 (18.9.1907), 165 (15.11.1907), 267 (13.12.1907); H.R. Deb. (18.9.1907) 3408–19; H.R. Deb. (13.12.1907) 7457–8.

²⁵⁹ *May*, 24th edn, p. 485, *but see also Parliamentary Privileges Act 1987*, s. 4.

The House's website contains information for potential petitioners.²⁶⁰ Principal petitioners are encouraged to refer to this information and to contact the Petitions Committee before submitting an e-petition or distributing a paper petition for signature, to ensure that the form of the petition is correct and that it will be able to be accepted by the committee on behalf of the House.

Petitions Committee

The Standing Committee on Petitions was established in 2008 to receive and process petitions, and to inquire into and report to the House on any matter relating to petitions and the petitions system. The committee consists of eight members—five government and three non-government members.²⁶¹

The committee checks that each petition submitted for presentation complies with the standing orders, and if the petition complies the committee approves it for presentation to the House.²⁶² The committee has taken the view that it is required to approve a petition for presentation if it complies with the standing orders in terms of its form, content and language. Approval of a petition for presentation does not indicate that the committee agrees with its content.²⁶³

The committee is also able to recommend action to be taken on a petition. The committee will advise principal petitioners when their petition has been presented to the House and inform them of any action the committee has recommended. In some cases the committee may choose to seek further information on the subject of a petition, through meetings with the principal petitioner and other relevant individuals and groups. Petitions from individuals or small numbers of people go through the same process as petitions with many signatures.

All petitions presented are listed on the committee's website, which shows (with petitions grouped by portfolio area): the text of each petition; presentation details; number of signatures; and any further action, including responses from Ministers and relevant transcripts from public hearings of the committee.²⁶⁴

Submitting a petition

All petitions must be submitted to the Standing Committee on Petitions. The committee checks that each petition submitted for presentation complies with the standing orders, and if it does so, approves it for presentation to the House. Petitioners may send paper petitions directly to the committee or via a Member. In the latter case, a petition that a Member wishes to present personally is returned to the Member concerned after approval by the committee. A petition to be presented must be submitted in sufficient time for committee consideration.

E-petitions are checked by the committee after their creation through the e-petitions website. If a petition complies with the standing orders it is posted online for the collection of signatures for a four week period, after which it is ready for presentation to the House.²⁶⁵ There is no provision for extending this period.

260 <<http://www.aph.gov.au/house/petitions>>

261 S.O. 220.

262 S.O. 206.

263 See statement by committee chair, H.R. Deb. (7.9.2009) 8747.

264 Linked from <<http://www.aph.gov.au/house/petitions>>

265 Normally by the chair of the Petitions Committee, e.g. H.R. Deb. (7.11.2016) 2849–53 (first e-petitions presented). If a Member has agreed with a petitioner to present an e-petition, the committee will forward the petition to the Member.

Presentation

While most petitions are presented by the chair of the Petitions Committee at the scheduled time on Monday, they may also be presented by any Member.

Presentation by the Petitions Committee

On Mondays the first 10 minutes of the period provided for committee and delegation reports and private Members' business is reserved for Petitions Committee business.²⁶⁶ The chair of the Petitions Committee presents the petitions submitted for presentation, indicating in the case of each petition, the number of petitioners and the subject matter of the petition. If petitions in the same terms are submitted, they are grouped together for the purposes of the announcement. The announcement includes ministerial responses to petitions previously presented. Reports by the Petitions Committee are also presented during this period. The chair and one other member of the committee may make statements concerning petitions and reports presented.²⁶⁷ Apart from these statements, discussion on the subject matter of a petition presented is not allowed at this time.²⁶⁸ The full terms of the petitions and responses are printed in Hansard and published on the House's website.²⁶⁹

Presentation by a Member

A Member may present a petition during:

- the period for Members' 90 second statements in the House or Federation Chamber, in accordance with standing order 43;
- the periods for Members' constituency statements in the Federation Chamber, in accordance with standing order 193;²⁷⁰
- the adjournment debate in the House in accordance with standing order 31, and in the Federation Chamber in accordance with standing order 191; and
- the grievance debate in accordance with standing order 192B.²⁷¹

Members presenting a petition during these periods may discuss the petition.²⁷²

The fact that a Member presents a petition or submits one for presentation does not mean that he or she necessarily agrees with its content.

Before being presented, every petition must be approved by the Petitions Committee as complying with the standing orders. If a Member purports to present a petition which has not been approved by the Petitions Committee it is treated as an ordinary document rather than as a petition²⁷³ (*see below*). If on examination by the committee it turns out to be in order it is presented by the committee as a petition on a subsequent day.

266 Initially, standing orders adopted on 13.2.2008 provided for presentation by the Speaker. The current provisions were introduced by sessional order on 24.6.2008 and adopted permanently in the 43rd Parliament.

267 S.O. 207(a).

268 S.O. 208(a).

269 S.O.s 208(d), 209(c); <<http://www.aph.gov.au/house/petitions>> (Petitions Committee link).

270 A constituency statement would provide the appropriate occasion should the Speaker wish to present a petition. Traditional practice (pre 2008, before the establishment of the Petitions Committee) was that the Speaker did not lodge petitions for presentation.

271 S.O. 207(b).

272 S.O. 208(a).

273 E.g. H.R. Deb. (17.11.2009) 11970.

Presentation of out of order petitions

The Petitions Committee cannot present to the House petitions which are out of order. However, staff of the committee liaise with principal petitioners to ensure as far as possible that petitions are in order before they are formally received.

Before the establishment of the Petitions Committee it had become the practice for petitions which were out of order to nevertheless be presented to the House as ‘ordinary’ documents by the Leader of the House.²⁷⁴ Similarly, if a Member now purports to present a petition which has not been approved by the Petitions Committee as complying with the standing orders and it is subsequently found to be out of order, it remains treated as a document rather than as a petition. Such documents are not formally announced in the House nor recorded in House records as petitions received; they are not referred to a Minister for response, and no further action is taken.

Motion at time of presentation

Each petition presented is received by the House, unless a motion that it not be received is moved immediately and agreed to.²⁷⁵ As petitions which do not conform with the standing orders are not presented to the House (that is, as petitions—*see above*), it is unlikely that a motion that a petition be not received would be moved on procedural grounds.²⁷⁶

No other motion can be moved at the time of presentation.²⁷⁷ Formerly a Member could move ‘That the petition be printed’ if intending to take action on the petition. Such action was rare, but is noted here as background to the cases cited below of petitions being referred to select committees. 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.²⁷⁸

Action taken on petitions

Referral to a Minister

The Petitions Committee may choose to forward a petition to the Minister responsible for the administration of the matter raised in the petition.²⁷⁹ If this is the case, there is an expectation that the Minister will provide a written response to the committee within 90 days.²⁸⁰ Details of ministerial responses are tabled, recorded in Hansard and published on the Petitions Committee's web site.²⁸¹

Before 2008 all petitions presented were automatically referred to the relevant Minister and Ministers could respond to a petition by lodging a written response with the Clerk. However, as noted by the Procedure Committee in 1999, few such responses were

²⁷⁴ Generally on the last Thursday of a sitting block, e.g. VP 2004–07/2167 (20.9.2007).

²⁷⁵ S.O. 208(b).

²⁷⁶ The House has rarely debated the question that a petition be received; VP 1907–08/91 (18.9.1907).

²⁷⁷ S.O. 208(c).

²⁷⁸ VP 1909/39 (9.7.1909); H.R. Deb. (8.7.1909) 983; H.R. Deb. (9.7.1909) 1058–61.

²⁷⁹ S.O. 209(a).

²⁸⁰ S.O. 209(b).

²⁸¹ S.O. 209(c).

provided.²⁸² Since 2008, under the new procedures, almost all petitions presented to date have been referred to Ministers,²⁸³ and almost all have been responded to.²⁸⁴

Public hearing by Petitions Committee

In the case of selected petitions, the Petitions Committee may hold public hearings at which the committee may seek further information from petitioners regarding their petition and from government departments in relation to a ministerial response.²⁸⁵

Referral to another committee

Apart from the motion that a petition not be received, the only motion relating to a petition that may be moved is a motion *on notice* that the petition be referred to a particular committee.²⁸⁶

General purpose standing committees are empowered to inquire into and report on any petition referred by either the House or a Minister.²⁸⁷ However, to date none have been so referred. 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,²⁸⁸ but this recommendation was not adopted.

All petitions are now received by the Standing Committee on Petitions. A possible course of action open to the Petitions Committee could be to recommend to the House that a petition be referred to another committee for inquiry.²⁸⁹

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.²⁹⁰ The Member's subsequent motion for the appointment of a select committee was also agreed to.²⁹¹ 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, appointing the Select Committee on Wildlife Conservation to examine, *inter alia*, the issues raised in the petition.²⁹²

282 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. By the end of 2007 there had been 3 more.

283 Petitions in the same or very similar terms to a petition that has already been responded to are not referred again.

284 See H.R. Deb. (7.9.2009) 8746.

285 See H.R. Deb. (7.9.2009) 8747.

286 S.O. 208(c).

287 S.O. 215(b).

288 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.

289 In 2010 the Petitions Committee recommended that standing orders be amended to enable the Petitions Committee to refer a petition to a House committee for inquiry and report (should that committee choose to undertake the inquiry). Standing Committee on Petitions, *The work of the first Petitions Committee: 2008–2010*. PP 141 (2010) 28.

290 VP 1962–63/531 (28.8.1963); H.R. Deb. (28.8.1963) 561. (One of the 'bark petitions' referred to at p. 632.)

291 VP 1962–63/549 (12.9.1963); H.R. Deb. (12.9.1963) 927–39. See also Select Committee on Grievances of Yirrkala Aborigines, Arnhem Land Reserve, *Report*, PP 311 (1963).

292 VP 1970–72/133 (12.5.1970), 147–8 (14.5.1970); and see Select Committee on Wildlife Conservation, *Conservation and commercial exploitation of kangaroos, Interim report*, PP 219 (1971).

Petitions from unusual sources

The standing orders specifically provide for petitions from a company or corporation.²⁹³ Petitions from individual citizens²⁹⁴ and from minors²⁹⁵ 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.²⁹⁶ 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.²⁹⁷ 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.²⁹⁸ 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.²⁹⁹ In 2015 the Speaker presented a remonstrance from the Legislative Assembly of Norfolk Island which petitioned the Commonwealth Parliament to re-examine aspects of the Norfolk Island Legislation Amendment Bill 2015 that would result in the removal of the Assembly.³⁰⁰

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 examples cited by *May*:³⁰¹

- 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;
- presenting a petition containing gross misrepresentations;
- 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;
- tampering with a petition; and
- forgery or fraud in the preparation of petitions or in the signatures attached, or being privy to, or cognizant of, such forgery or fraud.

293 S.O. 204(f), e.g. petition from Roche Products Pty Ltd, VP 1983–84/886 (2.10.1984).

294 VP 1970–72/475 (16.3.1971); H.R. Deb. (9.8.1999) 8103.

295 VP 1970–72/681 (26.8.1971); see also S. Deb. (14.5.1968) 943.

296 This practice reflects House of Commons practice, see *May*, 24th edn, p. 486.

297 VP 1970–72/357 (14.10.1970).

298 VP 1962–63/203 (29.8.1962). 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. (29.8.1962) 793; and see H.R. Deb. (23.8.1962) 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 (28.10.1996). 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.

299 VP 1974–75/1085 (4.11.1975).

300 VP 2013–16/1320–1 (27.5.2015).

301 *May*, 24th edn, pp. 253–4, 485.

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* page 634). 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.³⁰²

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 contempt.³⁰³ *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.³⁰⁴

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

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

304 *May*, 24th edn, pp. 269–70.