

INTRODUCTION

13.1 The tabling of documents is an important aspect of the Assembly's role in monitoring the conduct of the executive and ensuring that the community has access to the information necessary to judge the performance of government.

13.2 This chapter considers two categories of documents: those that are presented to the Assembly—tabled—by Ministers, the Speaker and, in certain circumstances, backbench Members; and those that are generated by the Assembly itself—*Minutes of Proceedings*, the *Notice Paper*, *Hansard* records of debates, etc—which facilitate the conduct of business, provide a record of proceedings and communicate the work of the Assembly to the community.

DOCUMENTS PRESENTED TO THE ASSEMBLY

13.3 This section deals with documents (also referred to as 'papers' in the standing orders) that are presented to the Assembly pursuant to standing orders, pursuant to legislation, at the initiative of the government, by order of the Assembly or in conformity with established practice. 'Document' is interpreted broadly to also include electronic 'documents', photographs, etc. For example, the extensive supporting documentation to the appropriation bills (the budget) is tabled in the form of a compact disc.

13.4 Because the Assembly sits periodically, there are provisions included in certain Acts which allow documents to be presented by the Speaker when the Assembly is not sitting—for example, the *Auditor-General Act 1996*¹ and the *Annual Reports (Government Agencies) Act 2004*.² In some cases, despite the fact that a document is deemed to have been presented, the relevant Act may also require that it be presented to the Assembly on the next sitting day.³

13.5 In addition to the above document types, documents or 'papers' may be presented by any Member by leave of the Assembly. Leave requires the consent of all Members present in the Chamber. It is often the practice of the Assembly that a Member seeking leave to table a document will inform other Members of its content and the reason for its presentation

Pursuant to standing order

13.6 Standing order 211 confers a general right on the Speaker and Ministers to present papers to the Assembly. Other Members, in their capacity as committee chairs, are authorised to present committee reports and other documents.⁴ The standing orders also include a requirement for the Clerk to present certain papers (see paragraph 5.70).⁵

1 *Auditor-General Act 1996*, subsection 17(5).

2 *Annual Report (Government Agencies) Act 2004*, subsection 13(4).

3 *Auditor-General Act 1996*, subsection 17(5)(f); *Annual Report (Government Agencies) Act 2004*, subsection 13(4)(c)(i).

4 Standing orders 246A (statements and discussion papers); standing order 253 (reports and minutes of proceedings).

5 Standing order 1(d) (election notification).

By the Speaker

13.7 As chair of the Standing Committee on Administration and Procedure, it is the responsibility of the Speaker to present any report of that committee.⁶ The Speaker also has responsibility under a number of Acts for the presentation of certain documents to the Assembly. For example, section 17 of the *Auditor-General Act 1996* requires the Speaker to present to the Assembly reports prepared for it by the Auditor-General. The Speaker, at his or her discretion, also presents documents related to parliamentary matters. These have included:

- study trip reports of Members;⁷
- non-executive MLAs' quarterly travel reports;⁸
- letters from Members in relation to alleged breaches of privilege;⁹
- warrants of nomination of temporary deputy speakers;¹⁰
- Secretariat annual reports;¹¹
- responses received from the Governor-General; and
- resolutions from other parliaments.¹²

By Ministers

13.8 Standing order 211 also provides that a Minister may present papers to the Assembly. An indication of the range of papers presented by Ministers is provided by the *Minutes of Proceedings* for 21 August 2007, the first sitting day in a new financial year and after the winter adjournment. Ministers presented details of:

- variations to employment contracts of senior public servants;
- salary determinations made by the Remuneration Tribunal;
- notifiable instruments pursuant to the Annual Reports (Government Agencies) Act;
- the Consolidated Financial Report under the Financial Management Act, details of expenditure from the Treasurer's Advance and transfers of funds within and between agencies;
- papers in relation to greenhouse gas abatement, human rights in correctional facilities and the administration of justice;
- variations to the Territory Plan; and
- subordinate legislation and explanatory statements in relation to more than 80 disallowable instruments.¹³

13.9 While subordinate legislation may be presented under standing order 211, the presentation of a bill requires a Minister (or other Member) to give notice. If notice of intention to present a bill is not given by a Minister, he or she must gain leave of the Assembly to do so (see Chapter 11: Legislation).

6 MoP 2001-04/1654.

7 MoP 2004-08/457.

8 MoP 2004-08/172.

9 MoP 2001-04/1403.

10 MoP 2004-08/11.

11 MoP 2004-08/829.

12 MoP 2004-08/755.

13 MoP 2004-08/1068-80.

Pursuant to legislation

13.10 Documents presented pursuant to legislation are those papers required to be presented to the Assembly by virtue of provisions in Acts. For example, under section 205 of the *Civil Law (Wrongs) Act 2002* the Attorney-General must present a copy of general reporting requirements of insurers within five sitting days after 1 October in each year. There are also a number of papers that are required by statute to be presented to the Assembly on a regular basis. Examples of these include:

- executive contracts and contract variations made under the *Public Sector Management Act 1994*;¹⁴
- instruments made under the *Financial Management Act 1996*;¹⁵ and
- determinations made under the *Remuneration Tribunal Act 1995*.¹⁶

Subordinate legislation

13.11 The bulk of papers presented to the Assembly fall into the category of subordinate legislation. For example, 337 items of subordinate legislation were presented to the Assembly in 2006. The requirement to present these papers is provided for in section 64 of the *Legislation Act 2001*, which states that a subordinate law or disallowable instrument must be presented to the Legislative Assembly no later than six sitting days after its notification on the Legislation Register.¹⁷

13.12 This section of the Act also states that if the subordinate law or disallowable instrument is not presented within this time, it is taken to be repealed. Thus, it is essential for the government to ensure that it is presented to the Assembly within the allocated timeframe.

Government initiative

13.13 The government often considers certain papers significant enough to present to the Assembly for the information of Members even though presentation is not required under legislation or pursuant to a standing order. These papers cover every aspect of government in the ACT and have included, but are certainly not limited to:

- exposure drafts of bills;¹⁸
- government legislation programs;¹⁹ and
- government strategies.²⁰

By order of the Assembly

13.14 Sometimes the Assembly passes resolutions ordering that certain documents be presented. Such resolutions can be made in relation to the presentation of committee reports²¹ or of certain other documents. For example, on 24 May 2000²² a motion was passed calling on the Gambling and Racing Commission to report to the Assembly on a number

¹⁴ See, for example, MoP 2001-04/1190-1.

¹⁵ See, for example, MoP 2001-04/1408, 1506.

¹⁶ See, for example, MoP 2001-04/1406-7.

¹⁷ MoP 2001-04/1320-1. And see paragraphs 11.221 to 11.271 on subordinate legislation.

¹⁸ MoP 2004-08/906.

¹⁹ MoP 2004-08/758.

²⁰ MoP 2004-08/778.

²¹ MoP 1998-2001/843-5.

²² MoP 1998-2001/872-4.

of issues relating to interactive gambling. The paper was presented to the Assembly on 27 June 2000.²³ One of the more significant resolutions was that requesting the tabling of documents relating to the Bruce Stadium redevelopment.²⁴

13.15 Other resolutions have requested that papers be presented to the Assembly on a regular basis. For example, on 24 May 2000 a resolution was passed calling on the Minister for Education to issue six-monthly reports on his department's progress on indigenous education.²⁵ Occasionally the Assembly has had to deal with issues relating to executive privilege and commercial-in-confidence documents (see paragraphs 2.88 to 2.97).

Tabling of quoted documents

13.16 Standing order 213 enables the Assembly to order that a document quoted from by a Member during a speech be tabled. The standing order also states that the order may be moved without notice immediately upon the conclusion of the speech of the Member who has quoted from the document. Generally this standing order is directed to documents used by Members to support arguments that they are presenting to the Assembly. Its purpose is to enable other Members to have access to the material and judge its validity for themselves.²⁶

13.17 Practical difficulties can arise with regard to the application of standing order 213. There have been debates in the Assembly on what constitutes 'quoting' as distinct from merely referring to a document. For example, on 25 November 1993 a Member moved a motion requesting that a Minister present a document he had referred to during question time. After some debate the Speaker ruled that the motion was out of order as the Minister had not quoted from the document but had only referred to it.²⁷

13.18 This same occasion also raised the question of the sensitivity of material in a document being quoted. The Minister was concerned that tabling of the document would identify its author and expose that person to the threat of reprisals. Where a document contains material that might be subject to claims of executive or other privilege, be it commercial in confidence or personal details the publication of which might be a breach of the privacy of an individual or individuals, the Assembly must give consideration to those issues before requiring that it be tabled. As is discussed elsewhere in this Companion, claims of executive and other privilege are not conclusive and must be decided by the Assembly.

13.19 A further issue has arisen with regard to the application of standing order 213 and possible conflict with established practices or conventions of the Assembly. On 23 August 1995 the Minister for Education and Training was ordered, after a vote of the Assembly, to present a document from which he had quoted. During debate on the motion it was argued that the Minister had not been quoting from a document but had merely relied on speech notes, and that:

There has been an informal agreement in this place that members are entitled to read from briefs or speaking notes without having to table those notes. Where a member reads from, say, a letter or a document, that is another matter. Members would certainly expect to have to table that document if they use it on

²³ MoP 1998-2001/902.

²⁴ MoP 1998-2001/412-4. And see paragraph 9.98.

²⁵ MoP 1998-2001/869. The resolution was amended on 16 February 2006 to change the reporting requirements (MoP 2004-08/552-3).

²⁶ See paragraphs 10.41 to 10.43.

²⁷ Assembly Debates (25.11.1993) 4165-6. The document in question was a statutory declaration stating certain matters which a Minister relied upon in answering a question without notice.

the floor of the house. This is a speaking note prepared for Mr Stefaniak in his office and he has read it in full.²⁸

13.20 Members accepted in principle the distinctions outlined above between supporting documents and speaking notes. However, in this particular instance it was argued that the document quoted from was a ministerial statement, not speaking notes, and, as such, the Assembly insisted that it be tabled.

By private Member

13.21 Other than for the presentation of committee papers or reports, standing orders make no provision for private Members to present documents to the Assembly and they are therefore required to seek leave to do so.

By the Clerk

13.22 On the first sitting day of a new Assembly the Clerk is required to present the official instrument notifying the names of candidates elected to the Legislative Assembly for the ACT at a general election.²⁹ This is the only occasion when the Clerk presents documents to the Assembly.

Time of presentation

13.23 Under the routine of business for each sitting day,³⁰ which is established in the standing orders, the presentation of papers occurs at the conclusion of question time. However, standing order 211 does allow for papers to be presented by the Speaker and Ministers at any time (see paragraphs 13.7 and 13.8). Generally, the practice of the Assembly has been to allow papers to be presented at any time as long it does not interrupt a Member who is speaking and it occurs between items of business. Standing order 75 permits the presentation of standing or select committee papers and reports at any time when other business is not before the Assembly.

Custody of records

13.24 Standing order 26 gives the Clerk custody of *Minutes of Proceedings*, records and all documents laid before the Assembly.

Inspection and copying of documents presented

13.25 The practice of the House of Representatives and the Senate is that tabled papers are automatically authorised for publication.³¹ The relevant standing orders in those chambers were adopted relatively recently—in 1997 and 1988 respectively. Thus, when self-government was granted to the ACT the automatic publication of tabled papers was not a practice of the House of Representatives and was a recent innovation in the Senate. Accordingly, no provision for automatic publication of tabled papers was included in the draft standing orders of the Legislative Assembly.

28 Assembly Debates (23.08.1995) | 389.

29 MoP 2004-08/2.

30 Standing order 74.

31 See *House of Representatives Practice*, p. 606 and *Odgers*, p. 443. The Houses have standing orders expressed in similar terms. The publication of each document laid on the table of the Senate is authorised by Senate standing order 167.

13.26 Consideration of such a provision has occurred in the Assembly.³² In early Assemblies, lack of experience or any well-established conventions gave rise to a concern that the process could be abused and that the protections afforded by parliamentary privilege might be given to documents that should not receive such protection. Similar procedures have, therefore, not been adopted by the Assembly, although in March 2008 the Assembly did amend its standing orders to enable Auditor-General reports, Assembly committee discussion papers and reports to be automatically published upon tabling.³³

13.27 Standing order 212 sets out that papers which have been tabled but not ordered to be published may be made available to Members. It also provides that if permission is given by the Speaker, a paper may be inspected by other persons or copies or extracts may be made from it. Such papers are held by the Chamber Support Office, which provides copies to Members and other persons as required.

Motion to take note of paper/s

13.28 A motion to take note of a paper that has been presented to the Assembly may be moved without notice by a Minister, pursuant to standing order 214(a). This practice is used in cases where the Assembly may wish to debate the subject matter of the document at a later time. If such a motion is moved, debate is usually adjourned and made an order of the day for the next day of sitting.³⁴ If the motion is not moved by a Minister at the time a paper is presented, it may be moved at a later time with notice or by leave.

13.29 Amendments may be moved to such motions. Generally, these amendments have added words to the motion proposing action relating to the document presented or expressing an opinion on the subject matter of the document.³⁵ Occasionally, an amendment to an amendment has been moved.³⁶

Referral to committee

13.30 Standing order 214(b) allows a Minister to move without notice that a paper which has been presented to the Assembly be referred to a committee for inquiry and report.³⁷ The standing order also states that if the motion is not moved at the time of presentation of the paper, it may be moved subsequently with notice or by leave. The Assembly has utilised this standing order on a number of occasions. For example, on 18 February 1999 a motion was agreed to referring the 1999-00 draft capital works program to the Standing Committee on Urban Services for inquiry and report by 24 March 1999.³⁸ The committee report was presented to the Assembly on Tuesday, 20 April 1999 after the reporting date had been altered.³⁹ On 1 July 1999 a motion was passed referring a discussion paper entitled *A Parliamentary Ethics Adviser for the ACT Legislative Assembly* to the Standing Committee on Administration and Procedure for inquiry and report. The report was presented on 22 August 2001.⁴⁰

32 See MoP 1998-2001/1660, Standing Committee on Administration and Procedure, Report No. 9, Legislative Assembly (Privileges) Bill 1998, 21 August 2001.

33 See standing order 212A.

34 MoP 2004-08/778.

35 MoP 1995-97/537; MoP 1998-2001/1317-8; MoP 2001-04/694.

36 MoP 1995-97/537; MoP 1998-2001/939-40.

37 Petitions may also be referred, see paragraphs 14.26 and 14.27.

38 MoP 1998-2001/321.

39 MoP 1998-2001/352-3.

40 MoP 1998-2001/1660.

ASSEMBLY DOCUMENTS

Notice Paper

13.31 The *Notice Paper* is an official document of the Assembly which is published by authority of the Clerk. It lists all outstanding business currently before the Assembly. The *Notice Paper* consists of three distinct sections: the business section, the questions section and the general information section. With the exception of the first sitting day of an Assembly, a *Notice Paper* is issued for every sitting day. It is prepared by the Chamber Support Office and is available electronically on the Assembly's website the evening before a sitting day and as hard copy on the day of sitting.

Items of business

13.32 Business before the Assembly is listed on the *Notice Paper* under the headings 'Executive business', 'Private Members' business' and 'Assembly business'. Each of these sections is divided into 'notices' and 'orders of the day'. Executive business refers to any bill or motion initiated by a government Minister in his/her official capacity. Similarly, private Members' business includes any bill or motion initiated by a Member who is not a Minister, including government backbenchers and the Speaker. Assembly business is defined in standing order 77 as:

- any notice of a motion or order of the day relating to the establishment or membership of a committee or the referral of a matter to a committee;
- any order of the day for the consideration of a motion moved upon the presentation of a committee discussion paper, committee report or the government response to a committee report;
- any notice of motion or order of the day to amend, disallow, disapprove or declare void and of no effect any instrument made under any Act of the Assembly which provides for the instrument to be subject to amendment, disallowance or disapproval of the Assembly or subject to a resolution of the Assembly declaring the instrument to be amended or void and of no effect or any other order of the day to consider such a motion; and
- any notice of motion or order of the day which deals with the administration of the Assembly or the manner in which the Assembly conducts its proceedings

Notices

13.33 Standing order 105 stipulates that notices should have priority over orders of the day and that they should be entered on the Notice Paper in the order in which the Clerk receives them.

Orders of the day

13.34 Standing orders define an order of the day as a bill or any other matter which the Assembly has ordered to be taken into consideration on a particular day.⁴¹ Standing orders also set out the order in which orders of the day will appear on the *Notice Paper*⁴² and what course of action will be taken if an order of the day has not been called on at an adjournment of the Assembly.⁴³

41 Standing order 148. See also paragraphs 6.58 to 6.64.

42 Standing order 149.

43 Standing order 151.

No confidence motion in the Chief Minister

13.35 Section 19 of the Self-Government Act sets out the procedures that need to be followed when a no confidence motion against the Chief Minister is lodged in the Assembly. Standing orders also reflect these procedures.⁴⁴

Order of business on the Notice Paper

13.36 Standing order 78 gives responsibility for the ordering of executive business to the Manager of Government Business, with standing order 16(a)(iii) giving the Standing Committee on Administration and Procedure the task of organising private Members' and Assembly business. The committee does this at its meeting every sitting Tuesday when the Assembly suspends for lunch.

13.37 On occasion the committee has clarified ambiguities or recommended specific rules with regard to the consideration of business. For example, on 27 August 1998 the Assembly agreed to the following resolution which related to private Members' business:

That the order of the day relating to a notice of motion under private Members' business having been moved and debated either:

- (1) adjourned pending the Assembly's suspension for lunch; or
- (2) interrupted pursuant to standing order 74 and the Speaker setting a later hour of the day for consideration of the matter;

such item of business has precedence over all other private Members' business, in accordance with standing orders 74 and 77, if debate has been adjourned by the Assembly until a later hour that day.⁴⁵

13.38 The resolution was the result of a recommendation of the Standing Committee on Administration and Procedure in its report entitled *Order of private Members and Assembly business*⁴⁶ which was presented to the Assembly on 27 August 1998.⁴⁷

Questions on notice

13.39 Standing order 113 gives Members the authority to place questions on notice and standing order 120 sets out the rules for giving notice of a question to be placed on the *Notice Paper*. A question will remain on the Notice Paper until an answer is received or until it is withdrawn by the Member who lodged the question (see Chapter 12: Questions seeking information).

General information

13.40 The final sections of the *Notice Paper* appear after the Clerk's signature. They are not an official part of the document and are included for information only. They contain a list of outstanding ministerial responses to petitions and a list of all committees for the current Assembly, together with up-to-date committee membership information.

44 Standing order 81.

45 MoP 1998-2001/134.

46 See <<http://www.parliament.act.gov.au/downloads/reports/A01orderofprivatemembersbusiness.pdf>>.

47 MoP 1998-2001/133.

Minutes of Proceedings

13.41 Section 20 of the Self-Government Act states that the Assembly shall cause minutes of meetings to be kept and that those minutes shall, on request, be made available for inspection.

13.42 The minutes of the Assembly are known as the *Minutes of Proceedings*. They provide the official record of the business transacted on every sitting day. Standing orders state that, 'All proceedings of the Assembly shall be recorded by the Clerk, and such records shall constitute the Minutes of Proceedings of the Assembly and shall be signed by the Clerk.'⁴⁸ Standing orders also set out what must be included in the *Minutes of Proceedings*. For example, standing order 21 states that the attendance of Members for each sitting shall be included in the *Minutes of Proceedings* and standing order 164 states that the Clerk shall record lists of votes in the minutes. If a complaint is made to the Assembly that a vote has been inaccurately reported, standing order 166 states that the Speaker may cause the record to be corrected. The *Minutes of Proceedings* also include details about the status of particular items presented and debated.

13.43 Proof *Minutes of Proceedings* are usually available online at <www.parliament.act.gov.au> within two hours of the Assembly rising, with final versions available some days later.

Hansard

13.44 *Hansard* is the name given to the official report of debates in the Assembly and to transcripts of public committee hearings. The official report is a 'rational verbatim' record of Assembly debates while transcripts of committee hearings tend to report more closely the evidence given. *Hansard* produces proof and final reports. Members may suggest changes to proof transcripts (but not additions or changes that alter the sense or meaning of what was said) and the Speaker may order that matters be omitted from the record.⁴⁹ Accordingly, there may be some variation between the proof and final versions. When there is dispute about what precisely was said in the Chamber, with the Speaker's approval reference may be made to the audio recording of proceedings.

13.45 Although *Hansard* is essentially a record of the spoken word, it also contains other information relating to other proceedings in the Chamber, including the results of divisions, the text of amendments moved to motions and bills, the text of petitions presented and the titles of papers tabled. The full text of both questions placed on notice and the answers to them are also published in *Hansard*. In the event that there is a procedural discrepancy between what is published in the *Minutes of Proceedings* and *Hansard*, minutes are deemed to be the definitive reference.

13.46 During the First Assembly a resolution was passed authorising the preparation and publication of transcription of debates and proceedings of the Assembly and its committees (*Hansard*). On 27 March 1992 the Assembly agreed to a resolution⁵⁰ authorising the preparation and publication of the *Hansard* record of the Assembly and its committees. The resolution also authorised publication of extracts of *Hansard* of the Assembly and its committees by the Clerk. The resolution had effect from the commencement of the Second Assembly and

48 Standing order 25.

49 For example, the name of a person who was the subject of a coronial inquest and whose name was the subject of a suppression order by the Coroner was mentioned in the Assembly. The Speaker advised the Assembly that he had instructed that the name not be included in the day's *Hansard*; see MoP 1998-01/53.

50 MoP 1992-94/5.

continues in force unless amended or repealed by a subsequent Assembly. Proof and final *Hansard* transcripts are published on the internet at <www.parliament.act.gov.au>.

BROADCASTING OF ASSEMBLY PROCEEDINGS

13.47 The *Legislative Assembly (Broadcasting) Act 2001* authorises the proceedings of the Assembly and its committees to be broadcast or recorded for broadcast to the public. This broadcasting may be audio only or visual and audio and may be carried by 'radio, television landline, the internet or any other electronic means'. The Clerk may also authorise audio transmission of proceedings of the Assembly or a committee to ACT public service departments and agencies, subject to the proviso that the department or agency bears the costs of providing the service.

13.48 Pursuant to section 5(2) of the Act, the Assembly has adopted a resolution setting out guidelines governing the broadcasting of proceedings.⁵¹ Essentially, the guidelines ensure that control of broadcasting remains with the Assembly. For example, anybody wishing to broadcast proceedings must first obtain the permission of the Speaker or committee chair and must abide by the guidelines. The process of recording, however undertaken, must not interfere with the proceedings of the Assembly or a committee. Committee members or witnesses at committee hearings may object to the proceedings being recorded or broadcast.

13.49 The resolution sets out in some detail the restrictions on the use of cameras, either for still photography or television, including the types of shots that may be taken and subjects that may be covered. For example, panning shots of the benches, coverage of the galleries and any demonstrations are not permitted. The person undertaking the broadcasting must also observe any instructions given by the Speaker or committee chair.

13.50 The broadcast must be a fair and accurate record and must not be used for:

- (a) the purpose of satire or ridicule;
- (b) advertising for or by political parties or electioneering; or
- (c) commercial advertising or sponsorship; ...⁵²

The Speaker, in the case of the Assembly, or a committee chair, in the case of a committee, can cancel the permission to record proceedings. The Assembly has taken strong action when the broadcasting guidelines have been breached. This has included banning reporters of the offending broadcasters from the Assembly Chamber for specific periods.

Webstreaming

13.51 In 2006 the Speaker approved a six-month trial to webstream proceedings.⁵³ Webstreaming provides realtime broadcasts of Assembly and committee proceedings to anyone who has a personal computer with internet access. In 2007 the Speaker approved the implementation of permanent arrangements to webstream all Assembly proceedings.⁵⁴

51 'Broadcasting Guidelines', Resolution agreed by the Assembly, 7 March 2002 (amended 17 March 2005 and 23 June 2005).

52 Guidelines, paragraph (5).

53 MoP 2004-08/833.

54 MoP 2004-08/1257.