

## Chapter 8 Records of the House

The following is a short description of some of the documents compiled by the Department of the Legislative Assembly which relate to proceedings in the House.

### **8.1 Votes and Proceedings**

The *Votes and Proceedings* (the *Votes*) comprise the official record of the proceedings in the House. In accordance with standing orders 30 and 31 they are compiled by the Clerk of the Legislative Assembly for each sitting day. A proof issue of the *Votes* is published on the evening of each sitting day. A final or "struck-off" copy is produced some days later. The struck off copy is signed by the Speaker and by the Clerk, printed by authority of the Parliament and eventually bound. A cumulative index is prepared of the *Votes*.

The *Votes* include a record of proceedings of all proceedings in the House, including proceedings when a bill or other matter is considered in detail.

A member may wish to object to the Speaker signing the *Votes* but must do so within three sitting days (S.O. 30). Other than by this method, the *Votes* may only be altered by motion, or by the Speaker directing the correction of an error. Proceedings have in the past been expunged on motion.<sup>1</sup> An alleged inaccuracy was once raised as a matter of privilege,<sup>2</sup> and motions have been passed altering the way divisions were recorded.<sup>3</sup>

At the conclusion of each session of Parliament the indexed *Votes and Proceedings* and certain other records and documents of the House are bound and published as the *Votes and Sessional Papers of the Legislative Assembly*. The other documents included are registers showing the history of bills; a report of members' attendance in divisions; a register of addresses and orders of the House for papers; sessional and select committees; business undisposed; proclamations; and statistics on business of the session.

The current standing orders adopted in 2006 provide for the recording of Members' attendance in the House. The practice has been adopted due to a number of reasons:

- The attendance of members is provided for in section 13A of the *Constitution Act 1902* which states that if a member of the Legislative Assembly "...fails for one whole session...to give his attendance in the House of which he is a member, unless excused in that behalf by the permission of that House entered upon its journals...his seat as a member of that House shall thereby become vacant." This provision requires attendance in the House – not merely in a committee room, in a party room or otherwise in the precincts of the Parliament. Recording the attendance of members in the *Votes and Proceedings* provides a systematic and public way to determine whether or not a member is absent from the House.
- A survey was conducted of the other Houses of Parliament in Australia, and

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<sup>1</sup> VP 14/05/1879, p. 511; VP 25/10/1887, p. 90; VP 17/12/1889, p. 37; VP 28/5/1997, p. 968.

<sup>2</sup> VP 26/09/1900, p. 347.

<sup>3</sup> VP 04/06/1998, pp. 715 and 717.

all record the attendance of members. Every House, except the Victorian Legislative Assembly and Legislative Council publish the attendance or otherwise of members in the House in the published record of their proceedings and in all cases members must actually enter the Chamber to be counted. In both Federal Houses, this has been the practice since 1901. In Victoria both Houses record members attendance but do not publish it, as this information is required for the payment of attendance fees.<sup>4</sup>

- In the recent past there have been several occasions when the Legislative Assembly has been asked to provide information for the purposes of a court case or for other reasons as to whether a member attended the House on a particular sitting day or days. On days such as Fridays, when members are not required in the House for Question Time and there are no divisions or quorums, unless a member participated in debate, it is impossible to state as a matter of fact that the member was in attendance. This would also be the case on any sitting day on which there were no divisions (or even if there were divisions and a member was not granted a pair) or a member did not contribute to debate. In such cases, it is for the protection of members that their attendance in the Chamber was recorded.
- It is established practice in any formal meeting to have the attendance of those attending recorded. As the *Votes and Proceedings* is the official record of the meeting of the Legislative Assembly, it was thought right and proper for the attendance of members to be recorded.

## **8.2 Business paper**

The business paper, which sets out all the notices of motions and orders of the day, is published by the Clerk under the authority of standing order 31 after each sitting for the next sitting day.

A notice of motion is a statement of intention to move a motion on a particular day whilst an order of the day is a bill or other matter which the House or Speaker has ordered to be taken into consideration on a particular day. Thus the contents of the business paper are the notices of motions given and all items not concluded at the end of a sitting which have been ordered to be taken into consideration or to be resumed at a later time.

The "notices" and "orders" are predominantly categorised into "Government Business" or "General Business". The other categories of business are "Business with Precedence" (S.O. 118) and "Business Taking the Place of Matters of Public Importance", which includes motions of no confidence in a Minister or the Speaker and censure of a member or the Speaker (if the last two proceedings are adjourned and set down for a later sitting day).

Under standing order 99 notices of motions take precedence of orders of the day and this is reflected in the traditional way "notices" are printed before "orders" on the business paper. In turn, under standing order 136, notices of motions are set down on the business paper in the order in which they are given. Similarly under standing

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<sup>4</sup> In 2001, a member raised as a matter of privilege, the fact that the attendance of members in the House, at some time during the sitting, had been recorded in the *Votes and Proceedings*, VP 01/06/2001, p. 1245. After considering the matter the Speaker agreed that the Victorian practice of the Clerks taking a note of the members present in the Chamber during the sitting as an administrative record only would be adopted. This was the practice until the adoption of the new standing orders in 2006.

order 168 orders of the day are dealt with in the order in which they appear on the business paper, although government business is taken in the order determined by the Leader of the House (S.O. 102). (See also Chapters 15 and 18 of Part One).

Other standing orders also determine the internal arrangement of individual items within each category of business.

In 1967, Speaker Ellis, in response to an inquiry about the duties and functions of the Speaker in relation to the business paper noted that it is “the bounden duty of the Speaker to exercise supervision over the business paper....It is therefore essential that the Speaker exercise the greatest care to see that no scandalous or improper matter appears on the printed paper unless there are compelling reasons for allowing it...[and] that all matters that are printed comply with the standing orders and the forms and practices of the House.”<sup>5</sup>

The role of the Speaker in relation to the business paper has been formalised under standing order 137. The standing order provides that any notice containing argument, unbecoming expressions or otherwise not conforming with the practice of the House may, under the authority of the Speaker, be amended by the Clerk or divided if it contains matters that are not relevant to each other. The Speaker can also order such notice to be not printed or removed from the business paper.

#### **8.2.1 Business taking the place of Matters of Public Importance**

Standing orders 112 and 113, which relate to motions of no confidence in a Minister and in the Speaker respectively, provide that a notice of motion must be given. Such notices then take the place of, and are called on at the time for, matters of public importance at the next sitting of the House.<sup>6</sup> This provision led to the creation of a new category of business on the paper – business taking the place of matters of public importance.<sup>7</sup> This business can be postponed or considered forthwith through a suspension of standing orders.<sup>8</sup>

If there are multiple no confidence notices then standing order 136 applies and they are set down in the order they are given. The order of the day for the resumption of an adjourned debate on a motion of no confidence in a Minister or Speaker must appear before a notice for a no confidence motion.<sup>9</sup> This reflects the desirability of the House concluding a debate on such a serious motion.

A similar practice on the business paper applies to motions of censure under standing orders 114 and 115.

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<sup>5</sup> PD 02/03/1967, pp. 3717-8.

<sup>6</sup> Motion of no confidence in the Speaker moved, pursuant to notice, that the Speaker no longer has the confidence of the House based on the House not sitting at the scheduled time of 2.15 p.m. the preceding day. The Speaker had taken the Chair after 2.15 p.m. and announced that, having received advice that some members were having difficulty attending the Parliament, left the Chair at 2.23 p.m. until the ringing of one long bell at 5.16 p.m. The no confidence motion was negated on division. PD 20/6/2001, pp. 14901-8; On one occasion, when the Speaker was involved in a matter being determined by the ICAC, no notice to move a motion of no confidence was given. Instead a member sought the leave of the House to suspend standing and sessional orders to permit the moving of a motion forthwith that the Speaker vacate the Chair until the House otherwise determines. Leave was not granted. VP 31/10/2000, p. 805. That same day a member spoke to a motion for urgent consideration, “That, in view of the serious allegations made against him, the Speaker do now vacate the Chair and the Deputy Speaker act in his stead until the House otherwise determines.” This question was also negated. VP 31/10/2000, p. 810.

<sup>7</sup> Category created VP 30/10/1996, p. 543.

<sup>8</sup> VP 27/06/2001, p. 1356; VP 28/06/2001, p. 1362.

<sup>9</sup> VP 30/10/1996, p. 543; PD 30/10/1996, pp. 5549-50, contrast SO 111.

It should be noted, that generally this would only occur in relation to a business paper other than for a Thursday when matters of public importance are usually not reached, or if they are, business is interrupted at 4.15 p.m. for the taking of private members' statements.

"Business taking the place of Matters of Public Importance", if any, will always be placed first on the business paper because in standing order 97 it has a place within the routine of business before "Business with Precedence" and "Government Business". (For further information on motions of no confidence or censure see section 12.7 of Part One).

### **8.2.2 Business with Precedence**

Within the routine of standing order 97 "Business with Precedence" is the next category to appear on the business paper. Business with precedence is defined and arranged for consideration in the sequence set out in standing order 118. Standing order 118(8) – "Business accorded precedence by the House" – is an item that might be set down for consideration at a certain time on a particular day, for example, when a joint sitting with the Legislative Council is ordered.

Standing order 5 provides precedence for the Address in Reply over general business. Standing order 5 states that debate on the Address in Reply to the Governor's Opening Speech shall take precedence of general business. Under the former standing orders of the House the Address in Reply had precedence of government and general business and standing and sessional orders were frequently suspended to enable government business to take precedence of the Address in Reply debate.<sup>10</sup> The adoption of the new provisions has removed the need for standing and sessional orders to be suspended for the government to conduct its business.<sup>11</sup> Standing and sessional orders will however still need to be suspended to allow general business to take precedence. This has occurred from time to time.<sup>12</sup>

### **8.2.3 Government business**

"Government Business" is the next category on the business paper. Under standing order 99 notices are listed before orders. In accordance with standing order 136 notices of motions for government business are listed in the order given which is usually by ministerial seniority.

Standing order 102 provides that Ministers (in effect the Leader of the House) may arrange government business in any order.<sup>13</sup> On occasion standing and sessional orders have been suspended to allow non-government business to be dealt with in government business time.<sup>14</sup>

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<sup>10</sup> VP 17/03/1994, p. 125; VP 12/04/1994, p. 136; VP 24/09/1997, p. 81; VP 15/10/1997, p. 125; VP 11/11/1997, p. 216; VP 09/09/1999, p. 47; VP 14/09/1999, p. 64; VP 15/09/1999, p. 69.

<sup>11</sup> Provision was made in the former standing orders for certain business to be considered during the currency of the Address in Reply debate including dissent from a Speaker's ruling, days and hours of sitting, adoption of sessional orders, and disallowance of statutory rules. Such items are considered to be government business and a separate standing order permitting their consideration before the Address in Reply is adopted is no longer required.

<sup>12</sup> VP 24/09/1997, p. 97; VP 16/09/1999, p. 79.

<sup>13</sup> See also PD 03/09/1992, p. 5494 where Speaker Rozzoli noted that the "programme" is an unofficial business paper, traditionally issued for the information of members. However, the Government can order its business in whatever sequence it sees fit.

<sup>14</sup> PD 19/11/1993, p. 5823.

#### **8.2.4 General Business (non-government business)**

Standing order 97, as amended by sessional order, provides that on general business days, business shall be considered from 10.00 a.m. to 2.00 p.m. in the following sequence:

- 10.00 a.m. Notices of Motions for Bills;
- 10.30 a.m. Orders of the Day for Bills;
- 11.30 a.m. Orders of the Day (not being for bills) then Notices of Motions (not being for bills); and
- 1.00 p.m. Orders of the Day (Committee Reports).

The current standing orders set out the procedure for establishing the program for general business days (S.O. 101). Under this procedure members are able to postpone items of business standing in their name by advising the Clerk in writing on the sitting day preceding a general business day<sup>15</sup> (see 12.3 of Part One). Postponed items remain on the paper in their relative order and are marked as postponed with a "P". This does not abrogate the rights of members to postpone, withdraw or discharge any items of business in their name when called on, on a general business day. Withdrawn items are removed and subsequent items remaining on the business paper are renumbered.

Under standing order 106 at the placing or disposal of business on the day prior to general business day certain items of general business may be granted precedence for the next day on motion of the House. Such items are denoted by an asterisk on the business paper.

At the end of general business, orders of the day for Committee Reports are listed in the order in which the reports are tabled.

Any general business notices of motions and orders of the day not commenced or completed 12 months from the date given shall lapse in accordance with standing order 105 and will be removed from the business paper.

All divisions called before 10.30 a.m. are deferred and conducted at 10.30 a.m. and any business then before the House is interrupted and recommenced after the division(s) (S.O. 187). If a division or divisions are deferred on general business days and for some reason are not conducted at the same sitting the question or questions will not be put until the next general business day.<sup>16</sup>

#### **8.2.5 Miscellaneous Matters**

##### *Guillotine Notice*

Whenever a guillotine notice is given standing order 90 requires that "the notice shall be published in the business paper". The notice is printed as a table under the heading of "Government Business". In addition each item subject to such a notice is denoted by an asterisk referable to a footnote that states "Orders marked \* are subject of notice under standing order 90".

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<sup>15</sup> Party Whips may also advise the Clerk in writing of which items of general business standing in the name of Members of their party are to be postponed.

<sup>16</sup> PD 20/9/2001, pp. 16975 and 16980 and PD 18/10/2001, pp. 17596-8.

### *Bills originating in the Legislative Council*

Legislative Council bills on the business paper are denoted by a dagger and footnoted "Orders marked † are bills forwarded from the Legislative Council".

### *Interrupted Mover's Speech agreeing to a bill in principle*

On general business days private members can only introduce legislation between 10.00 a.m. and 10.30 a.m. This means that a members' speech to agree to a bill in principle (formerly the second reading speech) is often interrupted at 10.30 a.m. The interrupted speech is listed on the business paper in general business under the heading "Resumption of Mover's Interrupted Speech". This category of business takes precedence over general business notices for bills not already moved.

### *Notice of motion to appoint a committee*

As with any business the House considers a notice of motion must be given in relation to the appointment of a committee. However, standing and sessional orders may be suspended to enable a motion to be moved to establish a committee to be moved without a notice of motion being first given.<sup>17</sup> When a motion appointing a committee is moved it can be debated and amended.

### *Notices of Motions*

Standing order 133 provides for members to give notices of motions for bills, government business, no confidence and censure motions and other business with precedence prior to questions without notice. All other notices of motions must be given immediately prior to Private Members' Statements.<sup>18</sup> Standing order 134 provides that at the time of giving notices in the House the member must hand up an original signed notice to a Clerk at the Table. This notice is used to compile the manuscript business paper. A notice containing argument, unbecoming expressions or otherwise not conforming with the practice of the House may be amended or divided if it contains matters that are not relevant to each other (S.O. 137). The original notice is kept with the primary sources used to compile the *Votes and Proceedings*. For further information on notices of motions see Chapter 15 of Part One.

### *Placing or Disposal of Business*

This proceeding provides an opportunity within the daily routine of business for notices or orders to be postponed, discharged or withdrawn. Standing order 100 provides an opportunity for government business notices to be postponed or withdrawn and orders to be postponed or, by motion, discharged within the daily routine of business. General business notices of motion can be withdrawn or postponed on general business days when called on and orders of the day may be postponed or, on motion, discharged on general business days when the matter is called on (S.O. 101).

The procedure for establishing the program for general business days is also set out in standing order 101. Members or their party whips advise the Clerk in writing prior to 1.00 p.m. on the day preceding general business day which general business

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<sup>17</sup> For example see VP 04/12/2003, p. 536 where standing and sessional orders were suspended to permit the consideration forthwith of a motion to appoint a standing committee on parliamentary privilege and ethics.

<sup>18</sup> This procedure was first adopted by sessional order in November 2005, VP 15/11/2005, pp. 1742-3. Prior to this all notices were given at the same time.

notices of motions for bills, orders of the day for bills, or notices of motions (not for bills) standing in their name on the business paper are to be postponed. The first ten notices not advised to be postponed will be deemed to be proceeding.<sup>19</sup>

#### *Orders of the Day*

An order of the day is a matter set down for consideration, or further consideration, by the House. The following are examples of the types of business that are listed as orders of the day on the business paper: the consideration of notices which are not concluded; adjourned debates on bills or motions; and the consideration of a bill or matter in detail.

#### *Bills*

The procedure for the passing of legislation is considered in detail in Chapter 20 of Part One. An important step in the process is when the Speaker declares the bill to have passed the House (formerly the third reading). This procedure means the bill has finished its passage through the House and is forwarded to the Council and thus removed from the business paper. Messages from the Council forwarding bills or returning bills with any amendments are listed as orders of the day on the business paper.

#### *Committee Reports*

Committee reports tabled or the receipt of reports tabled out of session and announced by the Clerk in the House are listed on the business paper in the order in which they were tabled. Committee reports listed for debate but not commenced or not completed within 12 months of being tabled lapse in accordance with standing order 306(7).

### **8.3 The Daily Programme**

A daily programme which lists business intended to be dealt with on a particular day, is prepared by the Leader of the House for each sitting day. It is posted on the Parliament's website and is made available to members before the House meets. The programme is issued for the guidance of members only and may be varied without notice.

### **8.4 Questions and Answers Paper**

Questions which members wish to propose to Ministers in writing (as opposed to oral questions asked in Question Time) are recorded in the official publication called *Questions and Answers*. Members' questions are published in full when the question is first asked and again when the answer is published. The publication is authorised by standing order 31(3). As with the business paper, the Speaker is responsible for supervising the production of the Questions and Answers Paper which requires the Clerk and his officers to ensure that no improper matter appears on it and that all questions comply with the standing orders and practices of the House.<sup>20</sup> Standing order 132(2) provides that a question containing argument, unbecoming expressions or otherwise not conforming with the practice of the House may be amended, divided if it contains matters that are not relevant to each other, or ordered not to be printed or removed from the Questions and Answers Paper under the authority of the Speaker.

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<sup>19</sup> This procedure was first adopted as a sessional order in November 2005, VP 29/11/2005, pp. 1795-6.

<sup>20</sup> See ruling of Speaker Ellis, PD 02/03/1967, pp. 3717-8.

The rules for questions are set out in Chapter 14 of Part One.

### **8.5 Statutory Rules and Instruments Paper**

The provisions of the *Interpretation Act 1987* require that a written notice of the making of a statutory rule be tabled in each House within 14 sitting days after it has been published in the *Government Gazette*. In the House, the Clerk tables the notices of the making of statutory rules and instruments forwarded from the Office of the Parliamentary Counsel (S.O. 32).

Under section 41(1) of the *Interpretation Act 1987*, notice of disallowance may be given:

- (a) at any time before written notice of a statutory rule is tabled; or
- (b) within 15 sitting days after a written notice of a statutory rule is tabled.

The Statutory Rules and Instruments Paper lists the date of gazettal of the rule or instrument, when and if tabled, and the last sitting day for the notice of disallowance to be given in the House. This document is published for the information of members on Tuesday of each week when the Assembly is sitting and the first Tuesday of each month when not sitting. A copy of each statutory rule and instrument is available for inspection in the Procedure Office (see section 12.12 of Part One).

### **8.6 Sessional Summary**

This publication is produced at the close of each session. It records information such as lists of members, business of the session, motions, petitions received, digest of bills passed and papers tabled during the session.

### **8.7 List of members, list of electorates and committees**

Lists of members, electorates and committees appointed by the Legislative Assembly including joint committees are prepared and distributed when changes occur. The members' list contains members' full names and titles, party affiliation and the party representation in the House.

### **8.8 Subpoena of records of the House**

From time to time the Clerk is summoned to produce documents related to the proceedings of the House before a court or bodies such as the Independent Commission Against Corruption.

On occasions this includes papers that have been laid on the Table of the House.<sup>21</sup> Leave to produce documents related to proceedings in the House or a committee should be given by the House.<sup>22</sup> This process enables the House to consider parliamentary privilege issues, if any. If the House is not sitting, the documents may be produced with the authority of the Speaker, who subsequently informs the House of the action.<sup>23</sup>

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<sup>21</sup> See PD 04/02/1954, p. 6 where the Speaker informed the House that he had authorised the Clerk to produce certain documents that had been laid upon the Table of the House to the Court of Petty Sessions.

<sup>22</sup> See *May*, p. 937 where it is noted that the House alone can take action upon petitions requiring an officer of the House to produce documents relating to the proceedings in the House or a committee.

<sup>23</sup> PD 04/02/1954, p. 6.

The Clerk may also be summoned to produce administrative documents such as records of employment. Such subpoenae are complied with in accordance with normal legal practice following consideration of privilege issues. The House is not involved in any action taken in relation to the subpoena of documents of an administrative nature, rather the documents are produced under the authority of the Clerk.<sup>24</sup> (See section 5.1.1 of Part Two in relation to the subpoena of documents held by members of Parliament).

## **8.9 Hansard**

### **8.9.1 The development of Hansard in the United Kingdom and in New South Wales**

*Hansard* is the printed record of the parliamentary debates and proceedings. The name derives from the name of the first printer of the parliamentary debates, Thomas Curzon Hansard, who later became the publisher of the official series of parliamentary debates, covering both Houses of the Parliament of the United Kingdom from 1803.<sup>25</sup>

*Hansard* is an edited record of what was said in the House. A proof copy is available online within 3 hours of the last House rising. A hard copy is available the day following sitting and minor corrections can be made prior to a final version being published.<sup>26</sup> During the sitting, members can ask the *Hansard* office at any time before publication to provide them with an advance printed proof copy of their own speech.

Parliamentary debates in New South Wales were not reported by *Hansard* staff until the session of 1879-80.<sup>27</sup> Prior to this, parliamentary proceedings appeared in newspaper reports and members, particularly those representing regional electorates, were of the opinion that these reports were often biased or incomplete.<sup>28</sup>

When *Hansard* was first established in New South Wales members were not provided with “proofs” of their speeches as it was considered that the revision would result in long delays in the publication of the parliamentary debates. The financial statement of the Treasurer was however, open to revision but only in-so-far as the verification of the figures was concerned. Today members receive a “proof” copy of *Hansard* the day following the sitting. Members are advised that corrections to *Hansard* should only relate to inaccuracies and that new matters cannot be introduced. Members are also advised that any suggestions for corrections to speeches made on Monday, Tuesday and Wednesday must be submitted by 4.00 p.m. on Thursday and for speeches delivered on Thursday and Friday by 4.00 p.m. on the following Monday to ensure the timely publication of the corrected version of *Hansard*. Members have not always had the liberty of correcting what was said by them in the House. In 1886, Speaker Barton noted in response to concerns about the accuracy of the *Hansard* reports that it was not the practice of the House to allow members of this House to correct the reports of their speeches. However, he noted that in future he would allow those matters which were of a technical or specialist

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<sup>24</sup> These documents are not afforded protection under article 9 of the *Bill of Rights* as they do not relate to “proceedings in Parliament.”

<sup>25</sup> *May*, pp. 258-9.

<sup>26</sup> This was not always the case see Ruling given by Speaker Barton, PD 15/07/1886, p. 3397.

<sup>27</sup> VP 03/05/1878, p. 288 – resolution passed to provide for the establishment of parliamentary reporting staff.

<sup>28</sup> See Hawker, Geoffrey, *The Parliament of New South Wales, 1856 – 1965, 1971*, p. 114.

nature and concepts with which the *Hansard* staff were unfamiliar to be revised and corrected.<sup>29</sup>

The editing of *Hansard* is something that has continued to enjoy the support of Speakers of the House. For instance, in 1974, Speaker Cameron noted that he supported the editing of *Hansard* arguing that "...if we get to the stage where speeches are recorded precisely as they are delivered, without the help of those benevolent corrections in matters of minor detail made by the staff, it may well be the source of embarrassment to many honourable members."<sup>30</sup>

Of course, *Hansard* reflects the differences between spoken and written English and has obvious mistakes corrected and redundancies removed. In the early days of *Hansard* there was a tendency towards sterilisation of the report and there were occasions when members questioned the way that *Hansard* recorded what they said in the House. For instance, on 10 June 1886 a member brought the attention of the House to the omission of his speech in the committee of the whole stage of a bill arguing that he did not think it was within the province of the *Hansard* reporters to judge what they would report and what they would not. He went on to note that the *Hansard* reporters had taken it upon themselves to omit mentioning that he had even spoken on the subject and that all members should be treated in the same fashion by the reporting staff. In response the Speaker advised the member that both in New South Wales and elsewhere matters debated in committee are not reported so fully as are debates in the House, unless in cases of exceptional importance. The Speaker also considered that any omission by *Hansard* had been inadvertent.<sup>31</sup>

Today such omissions would not be tolerated, and reports accord with the definition of the *Hansard* report published by the House of Commons Select Committee on Parliamentary Debates in 1907:

*...though not strictly verbatim, [Hansard] is substantially the verbatim report, with repetitions and redundancies omitted, and with obvious mistakes corrected, but which...leaves out nothing that adds to the meaning of the speech or illustrates the argument.*<sup>32</sup>

Apart from these simple principles *Hansard* has no editorial policy apart from the pursuit of accuracy and consistency. *Hansard* is not hampered by conceptions of news value, and no bias towards either persons or parties enters into its pages. The reporters are not without strong personal opinions but their work is absolutely uninfluenced by them. When a member rises to speak, *Hansard* staff work for that member. Above all, the editorship is not a political appointment.

Members often ask the Chair to order that the *Hansard* record be corrected when comments are made which imply that a member was lying to the House or when members have a difference of opinion as to what the truth entails.<sup>33</sup> However, the Speaker has no authority under the standing orders of the House to do so.<sup>34</sup> Despite

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<sup>29</sup> See PD 15/07/1886, p. 3397.

<sup>30</sup> PD 09/10/1974, p. 1749.

<sup>31</sup> PD 10/06/1886, p. 2599. See also PD 14/09/2003, pp. 4789-91.

<sup>32</sup> See *May*, p. 260.

<sup>33</sup> PD 30/10/1991, p. 3811; PD 03/07/2003, p. 2865.

<sup>34</sup> See comments by Acting Speaker Brown, PD 13/03/1975, pp. 4649-50; and PD 18/03/1975, p. 4769.

this, Speakers of the Legislative Assembly have commented that they do exercise a degree of control over the way *Hansard* records the proceedings of Parliament<sup>35</sup> and they can order that factual corrections be made to the *Hansard* record.<sup>36</sup> Members seeking to have the *Hansard* record corrected should wait until the *Hansard* is available in corrected form, before raising a matter of privilege relating to matters included in or omitted from *Hansard*.<sup>37</sup> Whilst, the Speaker has no authority to order that the *Hansard* record be corrected, members are able to make a personal explanation in relation to matters which they deem to be incorrect and that becomes part of the public record.<sup>38</sup> It is important to note that whilst members may make personal explanations about matters that are incorrect in the *Hansard* they cannot rise to make a personal explanation on the basis that in the course of debate remarks are made from the opposite side of the House which do not conform to the member's ideas.<sup>39</sup>

The copyright which is attached to the Parliamentary Debates is vested in and remains with the Attorney-General in right of the Crown. The Attorney-General has given the Parliament the power to waive Crown copyright in relation to *Hansard* in cases where it is considered appropriate. In such cases, permission is given to reprint material on the basis that:

- the source of the material is clearly acknowledged as “New South Wales Parliamentary Debates”;
- the material reprinted is not varied in any particular from the original, and any text omitted must be shown by the use of a series of dots – “...”; and
- care must be taken in the republication of *Hansard* material in order to avoid a breach of parliamentary privilege should a quotation of *Hansard* be taken out of its context and published in such a way as to reflect on the character of a member who is quoted in *Hansard*, or to reflect on the proceedings of Parliament itself, or to destroy its meaning.

The publication of *Hansard* is authorised by the House under standing order 367. It appears as a proof daily, a weekly pamphlet copy and, after prorogation of the Parliament, bound copies for each session. *Hansard* is also available on computer disk and copies of *Hansard* are also available in a number of public libraries across the State, including the State Library of NSW and university libraries. It is also available for sale. The full text of the Parliamentary Debates for the New South Wales Legislative Assembly from 1988 is available on the Internet.<sup>40</sup>

### **8.9.2 Expunging the record**

There is no provision for the Chair to order a reference to be struck from the Parliamentary record or to alter the *Hansard* record. Should a member wish to expunge the Parliamentary record a resolution of the House needs to be passed and the matter referred to generally needs to be one of an offensive nature.<sup>41</sup>

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<sup>35</sup> See comments by Speaker Rozzoli PD 01/05/1992, p. 3364.

<sup>36</sup> PD 15/10/1992, p. 7232.

<sup>37</sup> See ruling of Speaker Kelly, PD 02/11/1983, p. 2261.

<sup>38</sup> PD 03/07/2003, p. 2865.

<sup>39</sup> See ruling of Speaker Burke, PD 18/06/1931, p. 3406.

<sup>40</sup> The parliamentary debates from 1843 until 1880 were not recorded by *Hansard* but appeared in the *Sydney Morning Herald*. These debates are also available on the Parliament's website.

<sup>41</sup> PD 18/05/1993, p. 2178.

On one occasion a motion was moved by a member to expunge from the record the name of an individual mentioned in a speech in the House who was currently the subject of criminal charges. Following a number of reservations being expressed by other members about the ability of the governing party to amend the *Hansard* record of what has taken place in the House merely by passing a resolution, the motion was withdrawn by leave.<sup>42</sup> In contrast, in 1997 a motion was moved by an Opposition member to expunge certain accusatory words that had been withdrawn by a Minister which was agreed to by the House.<sup>43</sup> Members must seek the leave of the House to move a motion to expunge the *Hansard* record and only once leave is granted may the motion be moved.<sup>44</sup> With this agreement of the House a member does not have to give notice of a motion to expunge the *Hansard* record.<sup>45</sup>

### **8.9.3 Incorporation of material in Hansard**

Standing order 271 provides that “The incorporation of material in *Hansard* shall be by leave of the Speaker.” However in many circumstances the Speaker will only permit the member to read a document verbatim rather than formally incorporating it in *Hansard*. By doing this, the contents of the document are included as part of the official Parliamentary record.<sup>46</sup>

Material which has been incorporated in *Hansard* includes, second reading speeches (now referred to as the agreement in principle speech),<sup>47</sup> letters,<sup>48</sup> lists,<sup>49</sup> schedules,<sup>50</sup> sketch diagrams,<sup>51</sup> statutory declarations,<sup>52</sup> explanations of a bill,<sup>53</sup> tables,<sup>54</sup> agreements between members<sup>55</sup> and additional or background information to a bill.<sup>56</sup> On one occasion, a member sought leave to incorporate a letter into *Hansard* for deliberation by a legislation committee. The Acting Speaker ruled that there was no provision for so doing, but provided the member with a couple of avenues, i.e. either to read the letter so that it could be incorporated into the *Hansard* record or to make a submission to the legislation committee and tender the letter.<sup>57</sup> On another occasion, the Speaker upheld a point of order that visual material, which could not be incorporated into *Hansard*, should not be used excessively in the House. The Speaker did, however, note that it was in order for a member to quote from printed material on a poster.<sup>58</sup>

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<sup>42</sup> PD 12/09/1991, pp. 1145-6.

<sup>43</sup> PD 28/05/1997, pp. 9449-50.

<sup>44</sup> See PD 14/11/2002, p. 6845 where leave was sought for a member to move a motion to expunge the *Hansard* record but was not granted.

<sup>45</sup> See comments by Speaker Cooper, PD 15/03/1859, p. 209; Speaker Hay, PD 30/12/1863, p. 836; and Speaker Meagher, PD 01/09/1915, p. 1476.

<sup>46</sup> See for example, PD 27/11/1992, pp. 10472-3 where a member sought leave to incorporate a letter into *Hansard* for deliberation by a legislation committee. The Acting Speaker ruled that the member may read the letter on record or choose to make a submission to the legislation committee and tender the letter.

<sup>47</sup> PD 15/11/2002, p. 6891; VP 29/05/1997, p. 289.

<sup>48</sup> VP 23/09/1997, p. 78; VP 17/11/1998, p. 1084.

<sup>49</sup> PD 20/06/2003, p. 1799; VP 02/04/1998, p. 466; VP 22/10/1998, p. 983; VP 24/09/1996, p. 432.

<sup>50</sup> VP 18/11/1999, p. 269; VP 26/11/1996, p. 662.

<sup>51</sup> PD 07/05/1992, p. 4000.

<sup>52</sup> VP 16/11/1995, p. 402.

<sup>53</sup> PD 03/05/1994, p. 1760.

<sup>54</sup> VP 21/05/1996, p. 151. On one occasion a member submitted a table for incorporation into *Hansard* to which the Speaker ruled that the member could read the contents of the table but could not have it incorporated, PD 10/03/1993, p. 616.

<sup>55</sup> PD 31/10/1991, p. 4004 when the Premier tabled the Memorandum of Understanding signed between the Government and Independent Members of the House for incorporation into *Hansard*.

<sup>56</sup> PD 11/03/1993, p. 725; VP 14/10/1998, p. 930; VP 21/10/1998, p. 973

<sup>57</sup> PD 27/11/1992, pp. 10472-3.

<sup>58</sup> PD 09/03/1993, p. 456.

Speakers' rulings have indicated that the following types of material cannot be incorporated into *Hansard*:

- Photographs;<sup>59</sup>
- Graphs;<sup>60</sup> and
- Petitions.<sup>61</sup>

In 1969, Speaker Ellis, made a definitive ruling on the incorporation of statistical material in the *Hansard* record, emphasising that any such material must be brief, relevant and will only be incorporated with the approval of the Speaker if no other member objects. Speaker Ellis also advised all members that before tendering the material in the House for incorporation in *Hansard* that it should be produced to him in his room for examination.<sup>62</sup> This ruling and practice has been upheld by subsequent Speakers.<sup>63</sup>

#### **8.9.4 Parliamentary privilege attaching to Hansard**

The official publication of *Hansard* is absolutely privileged against any liability.<sup>64</sup> However, any subsequent republication of a proceeding in Parliament does not necessarily enjoy the same level of protection and liability can arise from the distribution of extracts of *Hansard*. For further information on the privilege attaching to the republication of *Hansard* see section 3.10.1 of Part Two.

Whilst the official versions of *Hansard* are absolutely privileged, parliamentary debates can be referred to in court proceedings in order to determine matters of fact or in order to determine the intent of legislation. The admissibility of *Hansard* in court proceedings is also given more detailed consideration in the section 3.4 of Part Two.

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<sup>59</sup> PD 16/08/1966, p. 193 (Speaker Ellis); PD 02/11/1976, p. 2182 (Speaker Kelly).

<sup>60</sup> PD 22/02/1989, p. 5066 and PD 27/07/1989, p. 8623 where Speaker Rozzoli advised that graphs are not usually incorporated into the Hansard record but that they could be tabled for the edification of all members. In a previous ruling, Speaker Rozzoli indicated that if graphs were capable of simple typesetting they may be incorporated in Hansard if leave is given, PD 20/10/1988, p. 2747.

<sup>61</sup> PD 04/04/1990, p. 1739.

<sup>62</sup> PD 18/03/1969, p. 4669.

<sup>63</sup> See for example, ruling of Speaker Kelly, PD 01/03/1978, p. 12214 and ruling of Speaker Rozzoli, PD 03/06/1988, p. 1551.

<sup>64</sup> See section 27 of the *Defamation Act 2005* (NSW).