

## INTRODUCTION

14.1 The practice of petitioning parliament to seek the redress of grievances, to request some action or to stop a proposed action dates back at least to the reign of King Edward I in the 13th century.<sup>1</sup> It has been described as the oldest parliamentary form, pre-dating bills and legislation. In fact, the terms 'bill' and 'petition' originally had the same meaning. Early legislation in England was actually based on petitions agreed to by the King.

14.2 The modern form of petitions developed in the 17th century. The rights of petitioners and the power of legislatures to deal with petitions were affirmed by resolutions of the House of Commons in 1669:

That it is an inherent right of every commoner in England to prepare and present petitions to the House of Commons in case of grievance, and of the House of Commons to receive the same.

That it is an undoubted right and privilege of the Commons to judge and determine, touching the nature and matter of such petitions, how far they are fit and unfit to be received.<sup>2</sup>

14.3 The style and form of petitions have changed over the centuries but the underlying intent and purpose have not. Petitions allow citizens of the ACT to request the Assembly to redress any personal, local or Territory-wide grievance they may present. Petitioners might ask for changes to a law, or to have an administrative decision reconsidered. Petitions can also request the redress of a personal grievance—for example, the correction of an administrative error.

14.4 Although petitions remain an important feature of the parliamentary day and an important way to bring the views of the community to the Assembly, the weight given to them has declined. In addition, it is now rare for a petitioner to be seeking redress of a specific personal injustice; typically, petitions now relate to matters of public policy. There are many more effective ways of seeking to influence the processes of government or pursue redress of a grievance. The use of parliamentary committees, the emergence of disciplined political parties, the growth of avenues for addressing grievances—for example, the Ombudsman and the various administrative law tribunals—and a 'campaigning' media have all provided alternative mechanisms for seeking redress or influencing parliament and the executive.

14.5 Over the life of each Assembly, an average of 21 petitions containing 1 092 signatures have been presented annually. Significantly, on average another 9.5 out-of-order petitions containing 821 signatures were tabled annually (see Appendix 13).

14.6 The largest single petition was lodged on 27 June 1996. The terms of the petition called for the Assembly to vote against the government's proposed restricted shopping

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<sup>1</sup> *House of Representatives Practice*, p. 611.

<sup>2</sup> *May*, p. 932.

hours legislation. The petition contained 39 874 signatures.<sup>3</sup> Other issues that have resulted in a large number of signatures, often on multiple petitions, were those opposing the closure of the Royal Canberra Hospital on Acton Peninsula (62 981 signatures in nine petitions);<sup>4</sup> the battery cage system of egg production (10 986 signatures); smoking in enclosed public areas (12 571 signatures); support for small business (31 000 signatures); the proposed sale of ACTEW (10 679 signatures); and pay rates for ACT firefighters (17 066 signatures). More recently, the proposed closure of government schools generated a large number of petitions containing significant numbers of signatures. A petition does not require a minimum number of signatories. In 1994 a petition from one person was presented.<sup>5</sup>

## **RULES RELATING TO PETITIONS**

**14.7** Petitioners cannot present a petition to the Assembly in person; rather they must request a Member to present it on their behalf, whether that be a Member from their electorate or another Member. Although not the practice in most jurisdictions in Australia, the Speaker of the Assembly has accepted and lodged petitions for presentation.<sup>6</sup>

**14.8** Petitions can only be received if they relate to matters over which the Assembly has jurisdiction. They cannot request redress of matters which are the responsibility of other legislatures, for example, the Commonwealth. They can relate to public or personal matters, though personal grievances are more commonly dealt with by non-public direct interaction with Members or bodies such as the Ombudsman and the Administrative Appeals Tribunal.

**14.9** There are many rules within the standing orders associated with the form and content of petitions and their presentation. To ensure a petition is in order, persons initiating a petition should be aware of these rules.

**14.10** A petition is considered to be in order when it meets the following requirements of the standing orders. These requirements are that a petition:<sup>7</sup>

- is legible—fairly written, typewritten, printed or reproduced by mechanical process without interlineation or erasure;
- does not contain any indication that it has been sponsored by a Member;
- must be addressed to the Speaker and Members of the Legislative Assembly;
- contains a request for action or remedy and for that request to be printed on every page;
- is in English or be accompanied by a translation certified to be correct by a person whose name and address appear on the translation;
- contains at least the signature and address of at least one person on the sheet on which the petition is written;
- contains the names and addresses of the petitioners and their own signatures;<sup>8</sup>
- is signed only by ACT residents;
- does not include attachments;
- does not attack a named person or use intemperate or offensive language;

<sup>3</sup> MoP 1994-96/389. The legislation in question was passed later that sitting day. The issue remained controversial and the Act was repealed when a private Member's bill, which the government did not oppose, was agreed to by the Assembly on 14 May 1997.

<sup>4</sup> The hospital was closed in 1991 and the former hospital buildings were demolished in 1997.

<sup>5</sup> MoP 1994-96/553 (seeking security of tenure for the venue of Belconnen Trash 'n' Treasure market).

<sup>6</sup> MoP 2004-08/753.

<sup>7</sup> Standing orders 85-96.

<sup>8</sup> Standing order 89 provides that '... persons unable to write shall affix their marks in the presence of a witness, who shall, as such, also affix his or her signature and address, and the address of the petitioner'.

- is not lodged by a Member who has signed the petition as a petitioner;
- does not contain signatures pasted or otherwise transferred to the petition;
- if from a corporation, is made under its common seal;<sup>9</sup> and
- relates to a matter within the jurisdiction of the Territory and within ministerial responsibility of the Territory.<sup>10</sup>

14.11 A recommended form of a petition is shown at the end of this chapter.

## PARLIAMENTARY PRIVILEGE

14.12 A petition presented to the Assembly attracts absolute privilege. However, the status of a document being circulated in the community (ostensibly) to gather signatures prior to presentation to a parliamentary chamber has been the subject of some debate. Section 9 of the Bill of Rights 1688, which applies in the ACT, protects the proceedings in parliament from impeachment in any court or tribunal.<sup>11</sup>

14.13 Section 16 of the *Parliamentary Privileges Act 1987* (Cwlth) declares that proceedings in parliament include:

- 2(b) the presentation or submission of a document to a House or a committee;
- 2(c) the preparation of a document for purposes of or incidental to the transaction of any such business; ...

The ambit of the phrase ‘the preparation of a document’ has been the subject of some debate.

14.14 The Senate Standing Committee of Privileges considered the extent of protection provided to petitions following the reference of a matter by the Senate.<sup>12</sup> The committee concluded that ‘the act of circulating a petition is not, and indeed never has been, privileged.’<sup>13</sup> The committee’s conclusion was based on a number of considerations: that ‘the circulation of a petition is not essential for its presentation’; that the granting of absolute privilege to the circulation of a petition would ‘give a petitioner the means of ignoring the civil and criminal law’; and that, given the comprehensive nature of the Parliamentary Privileges Act, the absence of any ‘specific provision to grant ... statutory protection to the circulation of petitions’ indicates that the Parliament did not intend to grant such protection.<sup>14</sup>

14.15 The significance of the committee’s first point—that circulation of a petition is not a necessary precondition for its presentation—is that a petition may be presented with only one signature, thus obviating the need for circulation, and hence publication, of the petition’s contents prior to presentation. The act of presentation would be privileged. Where the document did not comply with the Assembly’s rules with regard to petitions—for example, by including material defamatory of a named person—it could not be certified by the Clerk’s office (see paragraph 14.21).

9 For example, MoP 1992-94/525 (Rotary Club of Canberra Belconnen Incorporated, re. Belconnen Trash ‘n Treasure).

10 Standing order 94.

11 Section 9, Freedom of Speech—That the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament: *Bill of Rights 1688* 1 *William & Mary* sess 2c2.

12 The question before the committee was ‘... whether the circulation of a petition containing defamatory material for the purpose of gaining signatures and subsequent submission to the Senate is or ought to be privileged and how such issues should be determined and in what form’. See Senate Standing Committee of Privileges, 11<sup>th</sup> Report, *The Circulation of Petitions*, June 1988, p. 2, paragraph 5.

13 Senate Standing Committee of Privileges, 11<sup>th</sup> Report, *The Circulation of Petitions*, June 1988, p. 7

14 Senate Standing Committee of Privileges, 11<sup>th</sup> Report, *The Circulation of Petitions*, June 1988, pp. 5-6.

14.16 The right of citizens to bring matters to the attention of the Assembly is not diminished by this conclusion. A petition that the Clerk could not certify as being in compliance with standing orders can still be tabled as a paper with leave of the Assembly or if the Member having carriage of the petition can convince a Minister to table it on the grounds that the matter is in the public interest (see paragraph 14.21).

14.17 As the Senate committee also pointed out, an action for defamation arising out of the circulation of a petition would require a court to interpret the reach of the Parliamentary Privileges Act having regard to the content of the petition and the motives of the petitioner.<sup>15</sup> It should also be noted that various abuses of the right of petition have been dealt with as contempts.<sup>16</sup>

## MEMBER'S RESPONSIBILITY

14.18 Only Members may lodge petitions for presentation to the Assembly, but Members may not lodge petitions to which they themselves are signatories. Standing order 97 states that 'Every Member lodging a petition shall take care that the petition conforms to these standing orders.' In reality, this is difficult. Members are not permitted to be seen to be sponsoring petitions;<sup>17</sup> so there is limited control over their form and content. Almost all petitions are community initiated, and while information on how they should be structured is publicly available, the number of out-of-order petitions appears to indicate that contact with Members before petitions are prepared is limited.

14.19 A Member proposing to lodge a petition with the Clerk for presentation to the Assembly is required to sign the front page of the petition and indicate the number of signatures the petition contains.<sup>18</sup>

## LODGEMENT AND PRESENTATION

14.20 While it is usual for Members to lodge all petitions that have been forwarded to them, they are not obliged to do so. The act of lodging a petition for presentation in no way implies that the Member presenting it is necessarily in agreement with the issues raised.

14.21 Every petition is required to be lodged with the Clerk's office by 5 pm on the day before the meeting of the Assembly at which it is proposed that the petition be presented. The petition is then checked by the Clerk or Deputy Clerk, who certifies that the petition conforms to the standing orders.<sup>19</sup> If a petition is found to be out of order, it may be tabled as a paper in accordance with standing order 83A. The Manager of Government Business is approached by the Chamber Support Office to determine, in accordance with standing order 83A, whether a Minister will table the out-of-order petition as a paper.

14.22 Standing order 74, which establishes the routine of business for a sitting of the Assembly, requires that petitions are presented as the first item of business following the prayer

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15 It should be noted that a dissenting report was submitted by Senator Peter Durack, a former Attorney-General, regretting that the committee had not considered the specific case that gave rise to the inquiry, where it was asserted that an individual seeking to raise a genuine issue was intimidated by the threat of legal action from doing so. Consideration of the specific case would have required the committee to make a finding with regard to contempt, whereas the inquiry, as conducted, was a largely 'academic' consideration of 'whether there is or ought to be a legal immunity in respect of the circulation of a petition'. Senate Standing Committee of Privileges, 11th Report, *The Circulation of Petitions*, June 1988, pp. 13-6.

16 See *House of Representatives Practice*, p. 619-20 and May, pp. 131-2 and 935-6.

17 Standing order 95.

18 Standing order 96.

19 Standing order 83.

or reflection. However, there is another opportunity for a Member to present a petition. Under standing order 84, a petition referring to a motion or an order of the day may be presented when the matter is called on. In this circumstance, there may have been no assessment of the petition in terms of its conformity to the standing orders. In principle, this does not override the requirement for the petition to be certified as 'in order' by the Clerk. In practice, it would be expected that the Member presenting the petition would, in accordance with standing order 83, lodge the petition with the Clerk by 5 pm the previous day.

**14.23** Each sitting morning at 10 am following the prayer or reflection, the Speaker calls on the Clerk to announce the petitions lodged for presentation. The Clerk announces in respect of each petition presented, the Member who lodged the petition, the identity and number of petitioners and the subject matter of the petition.<sup>20</sup> If more than one petition is lodged on the same subject matter, the petitions will be grouped together. The Clerk then advises the Assembly that the full terms of the petitions will be recorded in *Hansard* and a copy referred to the appropriate Minister. At this point, the Clerk announces any ministerial responses to petitions previously presented.<sup>21</sup> Though the Assembly standing orders do not specifically provide that each petition shall be received by the Assembly,<sup>22</sup> they do acknowledge that this is the case, standing order 91 providing that all petitions shall be received only as petitions of the parties signing the same.<sup>23</sup>

**14.24** It is usual to count as signatories to petitions only residents or citizens of the Australian Capital Territory. Non-resident signatories are not included in the count. For example, in the Second Assembly, 11 petitions with 19 032 signatures from interstate residents relating to the availability of X-rated material were lodged with the Clerk. They were tabled as out-of-order petitions.<sup>24</sup>

**14.25** The Assembly has adopted a practice whereby Members are not provided with the names and addresses of petition signatories once petitions are lodged. Nor are these personal details recorded in the *Minutes of Proceedings or Hansard*. The petitions containing the original signatures are retained by the Secretariat along with the original minutes of proceedings. In accordance with the provisions of standing order 212, these documents, together with tabled papers, may be viewed only with the Speaker's permission.

## Questions on presentation

**14.26** No discussion of the subject matter of a petition is allowed when it is presented to the Assembly. There is only one question that may be proposed by a Member, and that is that the petition be referred to a committee. Standing order 99 does not specify what the committee is required to do with the petition but the assumption is that it would inquire into the issues raised and report to the Assembly.<sup>25</sup>

**14.27** There have been relatively few attempts to have petitions referred to committees. The first was on 28 August 1997<sup>26</sup> when a Member successfully moved that a petition relating to the Curtin shops be referred to the Standing Committee on Planning and

20 Standing order 98.

21 MoP 1995-97/209(2), 239, 277(2), 477.

22 For example, standing order 208(b) of the House of Representatives provides that each petition is received by the House, unless a motion that it not be received is moved immediately and is agreed to.

23 And see standing orders 92 and 100 and footnote 25.

24 MoP 1992-94/89, 127.

25 It is problematical what would occur should a Member seek to move a motion that a petition not be received following its presentation. As standing order 208(b) of the House of Representatives makes provision for such a motion the Speaker may very well be obliged to accept and propose the question on such a motion given the provisions of Assembly standing order 275.

26 MoP 1995-97/751, 817.

Environment. Unusually, on 21 October 1999<sup>27</sup> an out-of-order petition was referred to the Standing Committee on Urban Services for inquiry into and report on its terms as part of an ongoing inquiry. More recently in the Sixth Assembly, a Member successfully moved that a petition regarding a direct land grant be referred to the Standing Committee on Planning and Environment.<sup>28</sup> It is worth noting that, less than three weeks later, the committee advised the Assembly, through a statement made under standing order 246A, that it had resolved not to conduct an inquiry into the terms of the petition.

## **REFERENCE TO MINISTERS AND MINISTERS' RESPONSES**

14.28 Standing order 100 stipulates that a copy of each petition presented to and received by the Assembly is referred to the Minister responsible for the administration of the matter that is the subject of the petition (or to the Minister whose portfolio responsibilities most closely match the issues raised). Accordingly, following presentation the Clerk communicates the terms of petitions to the responsible Ministers. The petition documents containing the original signatures are retained by the Secretariat and filed with the original minutes. They remain confidential and may only be viewed with the Speaker's permission.

14.29 A Minister must lodge a response with the Clerk for presentation to the Assembly within three months of the petition being presented.<sup>29</sup>

## **PETITIONS THAT DO NOT CONFORM TO STANDING ORDERS**

14.30 There are many reasons why a petition may not conform to the standing orders. Most commonly, petitions are considered out of order because they are incorrectly addressed to the Chief Minister or to a portfolio Minister and not to the Speaker and Members of the Assembly. Other reasons include photocopies (rather than originals) of petitions being lodged and pages containing only signatures without the terms of the petition being attached.

14.31 The practice of seeking leave to table out-of-order petitions as papers commenced in 1989 when a Member presented an out-of-order petition on radiotherapy machines for the ACT and Queanbeyan and made a statement in relation to the paper.<sup>30</sup> The Assembly's process for receiving out-of-order petitions has evolved in recognition of the fact that residents, in good faith, have signed petitions which, through no fault of theirs, did not conform to the standing orders.<sup>31</sup> However, that in itself did not make the issues raised in such petitions any less valid.

14.32 The process was formalised in 1995 with the adoption of standing order 83A, which permitted out-of-order petitions to be tabled as papers at the discretion of a Minister. This was the result of a review of the standing orders by the Standing Committee on Administration and Procedure.<sup>32</sup> Prior to this amendment, Members were required to seek leave—a time consuming process that gave greater prominence to petitions that did not meet the requirements of the standing orders. Since 1989, 162 out-of-order petitions have been tabled.

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27 MoP 1998-2001/591.

28 MoP 2004-08/554.

29 Standing order 100. See MoP 2004-08/1563.

30 MoP 1989-91/133.

31 The largest out-of-order petition was lodged in the Fifth Assembly relating to pharmacies in supermarkets and contained 35 000 signatures.

32 Standing Committee on Administration and Procedure, *Standing Orders and Citizen's Right of Reply*, dated 28 April 1995.

**14.33** Under standing order 94 a petition can also be ruled out of order if the Speaker is of the opinion that its subject matter is not within the ministerial responsibility of the Territory, reflects on the character or actions of a named person, is expressed in inappropriate terms or is otherwise in breach of standing orders. The committee was concerned that some residents might seek to use the opportunity to lodge petitions to make offensive or otherwise unacceptable allegations, thus taking advantage of the protections offered by parliamentary privilege.

**14.34** The committee also developed a proforma petition document for Members to distribute to residents who were considering petitioning the Assembly. This was done to avoid out-of-order petitions continuing to be lodged. The assumption was that it was unrealistic to expect residents to seek advice from a Member or the Clerk on every occasion before preparing a petition.

**RECOMMENDED STYLE OF PETITION****Petition**

To the Speaker and Members of the Legislative Assembly for the Australian Capital Territory

This petition of certain residents of the Australian Capital Territory draws to the attention of the Assembly that: (outline situation which needs change)

Your petitioners therefore request the Assembly to: (detail the action which the Legislative Assembly should take)

	NAME (please print)	ADDRESS	SIGNATURE
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
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\* **The request for action must appear on every page that has signatures.**

\* **All signatures must be original and at least one signature must appear on each page.**