

PETITIONING PARLIAMENT

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The right of petitioning Parliament is a fundamental right of the citizen, allowing any individual or body of individuals to take grievances directly before Parliament. It is one of the most direct means of communication between the people and the Parliament. It is by this means that people can voice their concerns to the House on matters of public interest.¹

INTRODUCTION

Many Australians are probably unaware that they have a statutory² right to petition — to request action — for the redress of grievances. In effect, this is a right to protest in a specific way. Originally, petitions were addressed to the sovereign — an ancient practice dating back in British history to before the Norman conquest.³ But as the power of the sovereign gradually diminished and Parliament assumed greater power, it became more common for petitions to be addressed to Parliament. Indeed, the redress of grievances was considered an important function of the early Parliaments. Section 13 of the *Bill of Rights* 1689⁴ declared:

And that for the redress of grievances and for the amending, strengthening and preserving of the laws, Parliament ought to be held more frequently.

The right to petition Parliament, the power of the House to receive petitions, and the absolute privilege afforded to petitions were affirmed by resolutions of the House of Commons in 1669:

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

That it is the undoubted right and privilege of the Commons to judge and determine concerning the nature and matter of such petitions, how far they are to be received ...

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1 Standing Committee on Procedure, Report No 267, *Responses to Petitions*, (1990), para 2. Generally on petitioning the Commonwealth Parliament, see J R Odgers, *Australian Senate Practice* (6th ed 1991) and A R Browning (ed), *House of Representatives Practice* (2nd ed 1989).

2 *Bill of Rights* 1689, section 5, discussed below.

3 W S Holdsworth, *A History of English Law* (1938 ed) Vol 10, 696 ff.

4 I Will and Mary, sess 2, c 2 (1689). The *Bill of Rights* is sometimes given the date 1688 because the *Declaration of Right* was passed on 13 February 1689 and at that time and until the *Calendar (New Style) Act* 1750, the new calendar year began on 25 March rather than on 1 January. However, the *Declaration* was not enacted in statutory form, as the *Bill of Rights*, until 25 October 1689.

That no court whatsoever hath power to judge or censure any petition presented to the House of Commons, and received by them, unless transmitted from thence, or the matter complained of by them ...⁵

This article traces the historical evolution of the right to petition, considers the significance of the right today, especially in Australia, discusses the procedural requirements for exercise of the right and what action follows from the presentation of a petition, examines recent Commonwealth and New South Wales statistics on petitioning, and concludes by weighing up the pros and cons of petitioning as a form of protest activity.

HISTORICAL EVOLUTION

Prominent political right

Following the Crown prosecution in 1688 of the Archbishop of Canterbury and six other bishops on charges of seditious libel for petitioning King James II, "praying" that he not insist on the reading in churches of the Declaration of Indulgence (by which James sought to lift restrictions on Roman Catholics), charges on which the bishops were subsequently acquitted,⁶ Parliament sought to entrench the right to petition by including it as one of the rights declared in the *Bill of Rights* 1689. Section 5 stated:

That it is the right of the subjects to petition the King and all commitments and prosecutions for such petitioning are illegal.

Exercise of the right to petition involves more than just the formal presentation of a petition to Parliament. It involves people meeting to discuss their grievances, preparing and signing statements of their grievances and dissent, and petitioners going together to present their petition to Parliament.⁷ Thus, elements of freedom of association, freedom of expression and freedom of assembly are necessary constituents of the right to petition.

The right to petition would probably not, today, be considered an important right. So why did it feature prominently, particularly in the 17th century during the struggle for sovereignty between Parliament and the Stuart kings? The answer seems to be that the right to petition was regarded as a right to protest to the sovereign or Parliament. The petition itself was a record of that protest. Until the early part of the 19th century, there were few newspapers, and those few had a limited circulation over a small geographical area.⁸ The media barely existed to record protests in the way they do today. Yet, to have any impact, it was essential that the protest be recorded, and the petition was a practical way of doing so. Thus, a tradition developed that protests would culminate in a formal petition which would be presented, usually, to Parliament.

The significance attributed to the right to petition as a constitutional right is evident from the place it attains in the history of the United States Federal and State Bills of Rights. A study of the background to the First Amendment to

⁵ D Fellman, *The Constitutional Right of Association* (1963) 4-5, citing *Cobbett's Parliamentary Debates* (1669) 432-33.

⁶ *The Seven Bishops' case* (1688) 12 St Tr 427.

⁷ W S Holdsworth, *supra* n 3, 700.

⁸ Discussed more fully in R P Handley, "Public Order, Petitioning and Freedom of Assembly" (1986) 7 *J Legal History* 123, 130.

the United States Constitution reveals evidence of this. The Bill of Rights amendments to the Constitution were predicated by the Declaration and Resolves of the First Continental Congress of 1774, which recited how

Assemblies have been frequently dissolved, contrary to the rights of the people, when they attempted to deliberate on grievances; and their dutiful, humble, loyal and reasonable petitions to the Crown for redress, have been repeatedly treated with contempt, by His Majesty's Ministers of State, ...

and resolved that the people

have a right peaceably to assemble, consider of their grievances, and petition the King; and all prosecutions, prohibitory proclamations, and commitments for the same are illegal.⁹

The Pennsylvania Declaration of Rights 1776 expressly declared the right of the people to assemble and petition for redress of their grievances.¹⁰ Virginia's ratification of the Federal Constitution in 1788 proposed Bill of Rights amendments including such a right,¹¹ and North Carolina's ratification was conditional upon the adoption of a Bill of Rights in which the right of assembly and the right to petition would be incorporated.¹²

When Madison's proposed first amendment to the Constitution, that

The freedom of speech and the press, and the right of people peaceably to assemble and consult for their common good, and to apply to the government for the redress of grievances, shall not be infringed,

came to be debated in the United States House of Representatives on 15 August 1789, there was some debate on the necessity for the inclusion of a right of assembly. Mr. Tucker (South Carolina) recognised that a right of assembly was crucial because "it promoted the more fundamental goal of petitioning the government, an act subsequent in time".¹³ The First Amendment, subsequently approved and ratified, states:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

That these freedoms comprise the First Amendment to the Constitution is an indication of their importance.

In Britain, in the late 18th century, the significance of the right is evident in what the Prime Minister, William Pitt (the Younger), said when speaking in favour of the Seditious Meetings Bill 1795 during a House of Commons debate:

[N]o-one would venture to deny the right of the people to express their opinions on political men and measures, and to discuss and assert their right of petitioning all branches of the legislature; nor was there any man who would be farther from encroaching on that right than himself. It was undoubtedly a most valuable privilege ...¹⁴

⁹ B Schwarz, *The Bill of Rights — A Documentary History* (1971) Vol i, 216.

¹⁰ *Ibid* 266 - Article XVI.

¹¹ *Ibid* Vol ii, 765 - Article 15.

¹² *Ibid* 933, 968.

¹³ *Ibid* 1089-1090; K Lipez, "The Law of Demonstrations: The Demonstrators, the Police, the Courts" (1967) 44 *Denver L J* 499, 534-535.

¹⁴ House of Commons, *Parliamentary History* (1795) Vol 32, 274.

Charles Fox, opposing the Bill, spoke of the right of people

to discuss the topics from which their grievances arose. In all instances they have a right to complain by petition, and to remonstrate to either House of Parliament.¹⁵

Later, Fox went on:

I admire the British constitution, because it gives scope to the people to exercise the right of political discussion; not merely with the permission of a magistrate, or under the control of an executive force (as proposed by the Bill), but on all occasions to state, and in bold and plain words, the grievances which they feel, and the redress they desire.¹⁶

In decline

The relatively late (19th century) perception of freedom of association, freedom of expression and freedom of assembly as specific claims, was probably caused, at least in part, by people believing that the constitutional protection afforded to the right to petition, in effect, constituted a right to protest to the sovereign and Parliament. However, the protection afforded to protest activity by the right to petition came to be doubted in the late 18th and early 19th centuries, when the British Parliament passed legislation imposing severe restrictions on public meetings and demonstrations. This was an attempt by Parliament to stop the growth of radical political movements which many members of the ruling class thought of as a precursor to revolution, like that which had occurred in France. With the suppression of meetings and demonstrations, people began to perceive specific rights of speech, association and assembly as components of their "liberty".¹⁷ In the early years of the 19th century, with more widespread education, an increase in literacy, and an increase in the number, circulation, and geographic penetration of newspapers, these new claims became more widely accepted. On the one hand, the right to petition had been superseded by other more specific claims; on the other hand, the petition itself, the record of the protest, was less and less required as protest became more widely reported in the newspapers, and as newspapers were read by an increasing proportion of the population.

There were also other reasons for the decline in the exercise of the right to petition. The increase in the number and size of petitions to Parliament (this was a time of rapidly expanding population and concentration of the population in the towns) meant that, by 1831, the debating of petitions was dominating the business of the House of Commons. A member presenting a petition enjoyed four opportunities of addressing the House on the petition and, as a result, the presentation of petitions was seriously disrupting Government business.¹⁸ In desperation, the House, in 1836, adopted a procedural rule effectively preventing debate on the presentation of a petition, except in rare cases. This had the effect of severely limiting the effectiveness of the petition

¹⁵ *Ibid* 279.

¹⁶ *Ibid* 283.

¹⁷ R P Handley, *supra* n 8, 135.

¹⁸ C Leys, "Petitioning in the Nineteenth Centuries" (1955) 3 *Political Studies* 45, 48.

itself as a form of protest.¹⁹ The large number of petitions presented probably also devalued their impact.²⁰

At the same time, the political process was becoming more sophisticated and new channels for protest were developing, in particular, through the fledgling trade union movement. Thus, other avenues for protest were emerging as petitioning fell into decline. In due course, the right to petition came to be thought of as merely the formal presentation of a petition to Parliament.

THE RIGHT TO PETITION TODAY

In the United States, the significance of the right to petition, entrenched in the Bill of Rights, is still recognised by some judges. In *Williams v Wallace*, Johnson J said:

The law is clear that the right to petition one's government for the redress of grievances may be exercised in large groups. Indeed, where, as here, minorities have been harassed, coerced or intimidated, group association may be the only realistic way of exercising such rights.²¹

Furthermore, during the drafting of the International Covenant on Civil and Political Rights, at the sixth session of the Commission on Human Rights in 1950, there was a proposal for a second paragraph to be added to Article 21 (the Right of Peaceful Assembly), providing that "[e]veryone has the right to petition the government for the redress of grievances", but, for reasons not recorded, this was not voted on.²² Article 25 of the Covenant does, however, guarantee the right and opportunity of every citizen to take part in the conduct of public affairs, both directly or through freely chosen representatives, to vote at elections, and to have access to the public service of his or her country.²³

IN AUSTRALIA

The *Bill of Rights* 1689 (Imp) continues to apply in all Australian jurisdictions. In New South Wales, Victoria and the Australian Capital Territory, where the application of imperial statutes has been reviewed, the *Bill of Rights* has been specifically retained as a statute of constitutional and historical significance, along with a number of other statutes such as *Magna Carta* and the *Habeas Corpus Acts*.²⁴ Thus, all citizens²⁵ have a right to petition the sovereign and Parliament.

¹⁹ G Champion (ed), *Erskine May A Treatise on the Law, Privileges, Proceedings and Usage of Parliament* (14th ed 1946) 705, 1011-1012.

²⁰ R P Handley, *supra* n 8, 138-141.

²¹ (1965) 240 F Supp 100, 106. See also *De Jonge v Oregon* (1937) 299 US 353. And for an earlier case, see *United States v Cruickshank* (1876) 92 US 542, 552 *per* Waite CJ.

²² M J Bossuyt, *Guide to the "Travaux Préparatoires" of the International Covenant on Civil and Political Rights* (1987) 419.

²³ For example, K J Partsch, "Freedom of Conscience and Expression, Political Freedoms" in L Henkin (ed), *The International Bill of Rights* (1981) 209, 238 ff.

²⁴ Imperial Acts Application Act, 1969 (NSW); Imperial Acts Application Act 1980 (Vic) and Imperial Laws Re-enactment Act 1980 (Vic); Imperial Acts Application Act 1986 (ACT). Section 10 of the Bill of Rights (in particular, "excessive fines"

The *Bill of Rights* 1689 is still, of course, only an Act of Parliament and can, therefore, be amended by later legislation. However, one of the presumptions developed by the courts for use in statutory interpretation is the presumption in favour of individual liberty. As McCullough J said in *R v Hallstrom, ex parte W (No 2)*:

There is a canon of construction that Parliament is presumed not to enact legislation which interferes with the liberty of the subject without making it clear that this was its intention.²⁶

Where there are unclear words which purport to limit individual liberty, these will be strictly and narrowly construed in favour of the citizen.

A Parliament wishing to limit individual liberty must, therefore, express its intention in clear and express words to ensure that the limitation will be given effect by the courts. The use of such clear and express words in proposed legislation will, it is hoped, alert members of Parliament, parliamentary committees (for example, the Senate Standing Committees on the Scrutiny of Bills and on Regulations and Ordinances), and other public commentators, to the effect of the proposed legislation so that proper scrutiny and debate will ensue.

Some jurists have argued that the *Bill of Rights* 1689 is part of a fabric of "silent constitutional principles". Justice Murphy advanced this view in *Victoria v Australian Building Construction Employees' and Builders Labourers' Federation*:

Our Constitution is affected by the operation of silent constitutional principles, which are not mentioned in the Constitution. In my opinion they include many of the great principles of human rights stated in the English constitutional instruments (the *Magna Carta*, the *Declaration of Rights* and the *Bill of Rights*).²⁷

However, in a later case in which Murphy J expressed a similar view, Gibbs CJ, Mason, Brennan and Dawson JJ all cast doubt on this notion.²⁸

ought not to be imposed) was recently referred to by Kirby P in his judgment in *Smith v The Queen* (1991) 25 NSWLR 1. In this case, Kirby P's fellow judges did not agree with his conclusion that an excessive fine had been imposed. See J G Starke, "Durability of the Bill of Rights 1688 as part of Australian Law" (1991) 65 *ALJ* 695.

25 The *Bill of Rights* refers to "subjects" of the King: presumably, therefore, all citizens and permanent residents would be entitled to exercise this right.

26 [1986] QB 1090, 1104, quoted in J Bell & G Engel, *Cross on Statutory Interpretation* (2nd ed 1987) 177. See also E A Driedger, *The Interpretation of Statutes* (1974) 137.

27 (1982) 152 CLR 25, 108-109. See also *Sillery v R* (1981) 55 ALJR 509, 513. Discussed by N O'Neill, "Constitutional Rights in Australia" (1987) 17 *F L Rev* 85.

28 *Miller v TCN Channel Nine* (1986) 67 ALR 321 per Gibbs CJ 327, per Mason J 334-335, per Brennan J 361-362, and per Dawson J 377. The notion of a common law doctrine of fundamental rights was also specifically rejected by the New South Wales Court of Appeal in *Building Construction Employees and Builders Labourers Federation v Minister for Industrial Relations* (1987) 7 NSWLR 372. Discussed by N O'Neill, "Blue-eyed Babies may be murdered. Dicey's First Principle upheld in the Court of Appeal" (1987) 12 *Legal Service Bulletin* 2. The NSW Court of Appeal followed the Privy Council decision in *Liyanage v The*

PROCEDURAL REQUIREMENTS

A petition is a request for action made by one or more citizens or residents. The subject of the request must be within the power of the Parliament. So, for example, a petition to the Commonwealth Parliament must relate to a matter of Federal rather than State responsibility.

Parliamentary standing orders require that a petition must conform to certain requirements. The text must be "fairly written, typed or printed without interlineation or erasure".²⁹ It must be in English or accompanied by a certified English translation. "No letters, affidavits, or other documents" may be attached to it.³⁰ The page on which the petition is written must be signed by at least one person whose address must also be stated. The action requested by the petition (the "prayer") must be stated on each page on which the petitioners sign their names and state their addresses. A petition by a corporation must bear its corporate seal.

The language of the petition must be "respectful, decorous, and temperate"³¹ and the petition must not contain irrelevant statements.³² Generally, no reference should be made in the petition to any debate in Parliament.³³ In New South Wales, "[n]o petition shall either directly or indirectly ask for a grant of public money".³⁴ The petition should be addressed to the Speaker/President of the House, state briefly the relevant facts, and conclude by stating the action requested. There must be no indication of any sponsorship by a member of the House. The recommended form for a petition to the House of Representatives is generally available on request from the petitions officer of each House of Parliament together with an information sheet on the rules affecting the presentation of petitions.³⁵

A petition must be lodged with the Clerk of the House within the time specified in the Standing Orders, before the meeting of the House at which it is proposed to present the petition. In the case of the Senate, this is 3 hours before the sitting (by 5 pm on the previous day if the Senate is sitting at 9 am or 10 am); in the case of the House of Representatives, by 12 noon on the previous day. For the New South Wales Legislative Council and Legislative Assembly, petitions must be lodged at least two hours prior to the meeting of the House.³⁶

The petition must be certified by the Clerk as being in conformity with Standing Orders. For example, if the Clerk decides that the language of the petition is not "respectful, decorous and temperate", the Clerk may decline to

Queen [1967] 1 AC 259, 284-285, and a statement by Lord Reid in *British Railways Board v Picken* [1974] AC 765, 782.

29 Senate Standing Order (hereafter 'SO') 70(1).

30 Senate SO 70(7).

31 For example, not insulting the Queen, the Governor-General, Members of Parliament or the judiciary. A R Browning, *supra* n 1, 748.

32 Senate SO 71(2).

33 Senate SO71(1).

34 NSW Legislative Council SO 46; NSW Legislative Assembly SO 96. On 10 December 1991, a petition was ruled out of order in the Legislative Council on this ground.

35 For the recommended form of a petition to the House of Representatives, see below 307.

36 NSW Legislative Assembly SO 81.

certify the petition, and will return the petition to the Member proposing to present the petition, explaining why the petition is not in order.³⁷ Petitions received by Parliament are protected by absolute privilege.³⁸ Thus, any abuse of the privilege, for example by presenting a petition including false or scandalous allegations against any person, or containing gross misrepresentations (therefore, not "respectful, decorous or temperate"), or by presenting a petition knowing or having good reason to believe that it contains forged or fictitious signatures, may be considered a contempt of Parliament.³⁹ With respect to the Commonwealth Parliament, the law as to parliamentary privilege and contempt has been restated in the Parliamentary Privileges Act 1987 (Cth). Section 16⁴⁰ provides that the presentation of documents to a House, including the preparation of those documents, is covered by absolute privilege. However, the Senate Committee on Privilege, in its report *The Circulation of Petitions* (1988), considered that the act of circulating "a petition for the purpose of gaining signatures and subsequent submission" to Parliament was not privileged.⁴¹ Section 4 of the 1987 Act states that "conduct (including the use of words) does not constitute an offence against a House unless it amounts, or is intended or likely to amount to an improper interference" with the House, its committees or its members.⁴²

Each petition must be presented by a member of the House whose name appears at the beginning of the petition together with, in the case of the Commonwealth Parliament, a statement of the number of signatories. The member need not be the petitioners' local member. The member must not also be a signatory. Although a member is not bound to comply with a request to present a petition, traditionally, the member will present a petition regardless of his or her views, and the presentation is not taken to mean that the member agrees with the views expressed in the petition.⁴³

The presentation of petitions takes place in accordance with Standing Orders, usually shortly after the commencement of the sitting.⁴⁴ In the Senate and House of Representatives, the presentation of petitions takes place after prayers as the first item of business, in the Senate on each sitting day, and in the House of Representatives on each sitting Thursday.⁴⁵ The Clerk announces the name of the member presenting the petition, who the petition is from, the number of signatories to the petition, and a short summary of the action requested by the petition.⁴⁶ No discussion of the subject-matter of the petition

37 A R Browning, *supra* n 1, 750. For examples, see J R Odgers, *supra* n 1, 292-293.

38 A R Browning, *supra* n 1, 745.

39 *Ibid* 752.

40 Section 16(1) declares that s 9 of the *Bill of Rights*, 1688 applies to the Parliament of the Commonwealth.

41 Senate Committee on Privilege Report, Report No 46, *The Circulation of Petitions*, (1988), para 25.

42 See also A R Browning, *supra* n 1, 753.

43 *Ibid* 749; J R Odgers, *supra* n 1, 295-296.

44 In the NSW Legislative Assembly, item 3 in the order of business after Ministerial Statements and Questions (SO 74), except on Thursdays, when the Presentation of Petitions is item 9 (Sessional Order adopted 13 November 1991).

45 In the NSW Parliament, petitions may be presented on each sitting day.

46 Until 1972, in the case of the House of Representatives, and 1974 in the case of the Senate, petitions were presented personally by members. But with the

takes place — even a statement by the presenting member that he/she does not agree with the petition is improper⁴⁷ — and the petition is deemed to have been received by the House unless, rarely, a member moves that a petition not be received,⁴⁸ or that a petition be printed, or be referred to a committee.⁴⁹

The presentation of the petition is recorded in the official minutes of the House for that day, the *Votes and Proceedings*, and the text of the petition is printed in *Hansard*. In the case of the House of Representatives, Standing Order 132 requires that a copy of each petition presented is "referred by the Clerk to the Minister responsible for the administration of the matter which is the subject of the petition". However, while Standing Order 132 states that the Minister *may* respond to a petition by lodging a response with the Clerk, for announcement after the Clerk has announced all that day's petitions, there is no obligation to do so. In the Senate, there is not even provision in the Standing Orders for referral to the responsible Minister. In the New South Wales Legislative Council and Legislative Assembly, a copy of every petition received must be referred by the Clerk to the responsible Minister. No provision is made for any ministerial response.

ACTION ON PETITIONS

The object of petitioning Parliament is to draw attention to a particular grievance and request that Parliament acts to redress the grievance. Do petitions achieve this object? The House of Representatives Standing Committee on Procedure stated in its 1990 Report:

[T]he Committee is concerned that despite the considerable effort spent by citizens preparing and circulating petitions to gather signatures, it is rare that further action is taken once a petition has been presented in, and received by, the House and copies forwarded to the relevant Minister.⁵⁰

Standing Order 132 (referral of a petition to the responsible Minister who may respond) was adopted by the House of Representatives on 18 April 1972 and came into operation on 20 April 1972. During debate on the new Standing Order,

[M]any members expressed dissatisfaction with the lack of effective follow-up procedures for petitions and argued that Standing Order 132 did not go far enough in satisfying the needs and expectations of petitioners. It was stated that the provision would probably "transfer the petition from one pigeonhole in the basement of this building to a pigeonhole in the Minister's office".⁵¹

Opposition Members moved two amendments to the proposed Standing Order:

increased number of petitions from the early 1970s, this became too time consuming. A R Browning, *supra* n 1, 750; J R Odgers, *supra* n 1, 289.

47 For example, J R Odgers, *supra* n 1, 296.

48 J R Odgers notes that "there is no record of any petition, conforming with the Standing Orders, being rejected by the Senate". However, the NSW Legislative Assembly rejected a petition for abortion law reform in April 1971. J R Odgers, *supra* n 1, 297.

49 In 1970, the Select Committee on Wildlife Conservation was appointed following a motion on a petition on the export of kangaroo products: Standing Committee on Procedure (1990) *supra* n 1, para 6.

50 Standing Committee on Procedure (1990) *supra* n 1, para 2.

51 *Ibid* para 11, quoting H R Deb 1972, Vol 77, 1707.

[O]ne proposed that Ministers should report back to the House within 21 days of the presentation of the petition or the presentation of a series of petitions. The second amendment proposed the appointment of a Petitions Committee to which all petitions would be referred for examination and reference to the appropriate Department. The amendments were defeated.⁵²

In 1988, following a 1986 report by the House of Representatives Standing Committee on Procedure,⁵³ Standing Order 132 was amended to provide that the Minister to whom a petition is referred

may respond to a petition by lodging a response with the Clerk for presentation to the House, such response being announced at the end of the petitions announcement.

However, in a 1990 report, the Standing Committee noted that this amendment had not proved effective:

In nearly three years of operation of the sessional order there have been no instances of any responses being announced to, or tabled in, the House. (This compares unfavourably to U.K. House of Commons where although Ministers are not obliged to respond to petitions, approximately 70% of petitions do receive a response.)⁵⁴

In its 1990 report, the Standing Committee referred briefly to follow-up procedures in other comparable legislatures. In Canada, petitions to the House of Commons are referred to the relevant government departments whose response must be tabled in the House within 45 days. In a number of legislatures, including New Zealand and India, petitions are referred to a Petitions Committee. In New Zealand, the Clerk of the Petitions Committee sends petitions to the appropriate department for a response. The response is then considered at a Committee hearing, and representations may be made by the petitioner(s) (who may appear in person, be represented by counsel or by the Member who presented the petition), and the relevant department. The Committee then prepares a report, including recommendations if appropriate, which is referred to Cabinet.⁵⁵

In its 1990 report, the Standing Committee concluded that the failure of Ministers to respond to petitions indicated a need for the House to *order* Ministers to respond and for responses to be tabled within a specified time. The Committee therefore recommended that:

Standing Order 132 be amended to provide that Ministers respond to petitions within 21 sitting days of their referral by the House:

Provided that: a Minister is not required to respond again to a petition which is the same as one presented previously.⁵⁶

To date, there has been no formal response from the Government to the Committee's recommendation. However, the Department of the House of Representatives Annual Report for 1991 states:

In a letter to the Committee, the Leader of the House indicated that he was not in favour of the Committee's recommendation.⁵⁷

⁵² *Ibid* para 11.

⁵³ Standing Committee on Procedure Report No 108, *Days and Hours of Sitting and the Effective Use of the Time of the House* (1986).

⁵⁴ Standing Committee on Procedure (1990) *supra* n 1, para 14.

⁵⁵ J R Odgers, *supra* n 1, 298-299.

⁵⁶ Standing Committee on Procedure (1990) *supra* n 1, para 21.

The Government's failure to respond formally to the Committee's recommendation is to be regretted. If the right to petition — "one of the most direct means of communication between people and Parliament"⁵⁸ — is to continue to have meaning, then, it is suggested, Parliament should debate the Standing Committee's recommendations. In a democracy, where, one assumes, Parliament wishes to be seen to be responsive to its electorate, some ministerial response to a petition does not seem to be unduly unreasonable or burdensome.

With regard to the Senate, where there is no provision for referral to the responsible Minister, Odgers notes that:

It is hoped ... that the time will come when all petitions received by the Senate will automatically stand referred to the standing committees.⁵⁹

STATISTICS

Until the early 1970s, there were few petitions to the Commonwealth Parliament, as the figures in Tables 1 and 2⁶⁰ indicate: in 1969, for example, 90 petitions were received by the House of Representatives; in 1968-69, 48 petitions were received by the Senate. But there then seems to have been a realisation that petitioning Parliament was another means of bringing an issue to the public's and, in particular, to Parliament's attention. As mentioned earlier, the presentation of a petition in Parliament ensures mention of the grievance in Parliament, a record of the petition in the *Votes and Proceedings* of Parliament and in *Hansard*, and, in the case of the House of Representatives (and the New South Wales Legislative Council and Assembly) reference of the petition to the responsible Minister. Ten years later, in 1979, 2366 petitions were received by the House of Representatives; in 1978-80, 2148 petitions were received by the Senate.

The figures suggest that petitioning the House of Representatives is more popular than petitioning the Senate, although the numbers for 1990 and 1991 are close. Presumably, the greater number of petitions presented to the House of Representatives is because the House has single member electorates, rather than the broader State/Territory representation in the Senate (the role of the Senate being regarded more as a house of review for legislation than a place where problems can be fixed), and the House of Representatives includes amongst its members the Prime Minister and a larger number of Ministers than are to be found in the Senate.

In New South Wales, as Tables 3 and 4⁶¹ indicate, there are many more petitions presented to the Legislative Assembly than to the Legislative Council. Statistics for the New South Wales Parliament are not readily available. The author compiled these tables by laboriously counting the petitions received in the parliamentary sessions. Their accuracy cannot therefore be guaranteed!

One of the problems to which the large growth in the number of petitions has given rise is the pressure on parliamentary time and the additional work for parliamentary support staff. With regard to the latter, the Commonwealth

⁵⁷ Department of the House of Representatives, *Annual Report* (1991), 58.

⁵⁸ Standing Committee on Procedure, *supra* n 1, para 2.

⁵⁹ J R Odgers, *supra* n 1, 300.

⁶⁰ See below 304-305.

⁶¹ See below 306.

Departments of the Senate and the House of Representatives adopted a computerised petitions registration system in the Budget sittings of 1990 which eliminates some of time-consuming, labour-intensive aspects of the necessary clerical support.

The House of Representatives Standing Committee on Procedure has now produced a number of reports addressing the problem of how best to handle petitions.⁶² In its 1986 report, the Committee found that:

A majority of the petitions presented are duplications of petitions presented at an earlier time. Of the 2955 petitions presented in 1985 there were 305 different petitions. That is, only one in 10 was an original petition.⁶³

A petition in the same terms was presented on 94 occasions, 70 of these presentations by only four members.⁶⁴ This practice of duplicating petitions was used to try ensure greater exposure of the grievance.

The 1986 report made a recommendation, subsequently adopted, that the presentation of petitions in the House of Representatives should be restricted to one day per week — Thursday was chosen — and that the number of signatories to each petition should be recorded and announced as an indication of the relative support for that petition.⁶⁵ Where a number of similar petitions in the same terms are presented by different members on the same day, they are grouped together by the Clerk for the announcement, although the full terms of the individual petitions are printed in *Hansard*.⁶⁶

Petitions presented to Parliament cover a wide range of issues and vary widely in the number of signatories. An examination of *Hansard* for the House of Representatives for Thursday 19 December 1991, for example, shows that 36 petitions were presented: on Croatia (8, there being 5 different forms), Abortion (8, 4 different forms), ABC funding (1), the Arms Trade (5, 3 different forms), Telecom (1), SBS (1), No 2 Flight Air Training Corps (1), UN Convention on the Rights of the Child (1), the Cobar Social Security Office (1), the Civil Aviation Authority (1), National Estate Forests (1), Human Rights Violations: Myanmar (Burma) (1), Austudy (1), the deportation of Mr Aka Vana (1), Avalon Airfield (1), Medicare (1), and the Dili Massacre (1). The number of signatories varied from 9 to 99,955 (one of the petitions on Croatia).

With regard to the Senate, remembering that petitions may be presented in the Senate on any sitting day, taking for example Wednesday 18 December 1991, *Hansard* records that six petitions were presented: on the Constitutional Monarchy (2 in the same terms), Smoke-free International Flights (1), Medicare: Abortions (1), Child-care Fee Relief Scheme (1), Arms Trade (1). The number of signatories varied between 32 and 321.

In the New South Wales Parliament, taking Wednesday 25 September 1991⁶⁷ as an example for the Legislative Assembly, 27 petitions were presented: Cooks River Pollution (1), Engadine-Heathcote Police (1), Family

62 Report No 20 (1972); Report No 108 (1986); Report No 267 (1990).

63 Standing Committee on Procedure (1986) *supra* n 53, para 115.

64 *Ibid* para 117.

65 *Ibid* para 121.

66 A R Browning, *supra* n 1, 750.

67 The latest *Hansard* available at the time of writing.

Relief Bill (1), Firearms Legislation (1), Hunter Region Health Services (5), Marrickville District Hospital (1), Paddington Traffic (1), Prince Henry Hospital (1), Quakers Hill Pedestrian Bridge (1), Royal Agricultural Society Showground (1), Royal Hospital For Women (1), Royal National Park Walking Tracks (1), St. Joseph's Hospital (1), Sydney Harbour Foreshores (1), Unanderra Police Station (1), Walker Estates (1), Woollahra Traffic (1), Woolloomooloo Finger Wharf (1).

In the Legislative Council, taking Tuesday 10 December 1991⁶⁸ as an example, five petitions were presented but only four received: NSW Forestry Commission (1), Community Learning Centres (ruled out of order under Standing Order 46 — "no petition shall either directly or indirectly pray for a grant of public money"), Abortion Services (1), use of stray dogs for scientific research (1), desexing of domestic cats (1). The number of petitions varied between 18 and 88.

CONCLUSION

Petitioning may not be the most effective way to protest about a matter or seek the redress of a grievance. Apart from making direct representations to a local member, or using the media to publicise a grievance, there has, in recent years, been an increase in the number of agencies to whom a complaint can be made. There has been a growth in the number of parliamentary committees with terms of reference specific to certain activities: it may be appropriate to make representations to a particular committee. Procedures have also been established for the review of administrative decisions made by government departments and agencies. For example, in the Commonwealth Government, many departments involved in large volume decision-making affecting individual members of the public, have set up internal review mechanisms.⁶⁹ After an internal review, appeal may lie to an administrative tribunal such as the Veterans' Review Board, the Student Assistance Review Tribunal, the Social Security Appeals Tribunal, the Immigration Review Tribunal, or the Administrative Appeals Tribunal. Alternatively, complaints about maladministration may be made to the Ombudsman, or concerning discrimination, to an equal opportunity agency.

However, despite broad expansion of review procedures, if a campaign on a particular issue is being mounted, petitioning may be considered as an avenue to be pursued. The very action of preparing a petition and canvassing signatures may be a useful means of drawing public attention to the subject of the petition, and strengthening the direction and resolve of those mounting the campaign by providing a focus for the protest activity.

There need, however, be few petitioners — one petitioner, any citizen or resident, is sufficient. The other *pros* of lodging a petition are the public exposure of the grievance by its presentation in Parliament, the informing of members of Parliament, the protection afforded by absolute privilege, the record of the petition in the *Votes and Proceedings* of the House and its

⁶⁸ Information supplied by the Petitions Officer.

⁶⁹ For example, the Department of Social Security: Social Security Act 1991, Part 6.1, ss 1239-1243.

printing in *Hansard*, and its referral, in the House of Representatives (not the Senate) and the New South Wales Houses, to the responsible Minister.

The *cons*, on the other hand, are the absence of any debate on petitions in Parliament, and the lack of any obligation on the responsible Minister (or anybody else) to respond to the petition. The latter, it could be argued, makes the exercise somewhat futile, unless, of course, Parliament were to resolve to direct Ministers to respond, and/or to set up a Petitions Committee to consider the grievances raised and action requested. In this regard, the House of Representatives should at least debate the report of its own Standing Committee on Procedure,⁷⁰ which considers follow-up action on petitions and recommends that the responsible Minister be directed to respond to a petition within 21 sitting days.

⁷⁰ *Supra* n 1.

TABLE 1
PETITIONS TO THE HOUSE OF REPRESENTATIVES

Year		Petitions					
1901	224	1924	4	1947	93	1971	723
1902	96	1925	3	1948	3	1972	1130
1903	178	1926	2	1949	3	1973	1677
1904	17	1927	1	1950	2	1974	883
1905	132	1928	3	1951	9	1975	2043
1906	5	1929	-	1952	9	1976	1987
1907	88	1930	3	1953	21	1977	1420
1908	18	1931	1	1954	14	1978	1340
1909	7	1932	3	1955	8	1979	2366
1910	33	1933	16	1956	7	1980	1923
1911	7	1934	-	1957	50	1981	2900
1912	7	1935	-	1958	37	1982	2094
1913	-	1936	1	1959	43	1983	1885
1914	6	1937	-	1960	29	1984	2315
1915	5	1938	2	1961	30	1985	2955
1916	9	1939	-	1962	22	1986	5528
1917	3	1940	3	1963	140	1987	3622
1918	9	1941	3	1964	58	1988	1289
1919	2	1942	2	1965	41	1989	1690
1920	1	1943	1	1966	104	1990	564
1921	2	1944	-	1967	70	1991	824
1922	1	1945	-	1969	90		
1923	-	1946	2	1970	494		

The number of signatories to petitions has only been recorded since 15 March 1988:

Year	Signatories
1988	293,075
1989	812,318
1990	569,473
1991	481,569

Sources: A R Browning, *supra* n1; Department of the House of Representatives Annual Reports for 1989-90 (Cth P P No. 149 of 1990) and 1990-1991 (Cth P P No. 242 of 1991); House of Representatives, Work of the Session for the Autumn and Budget Sittings of 1991.

TABLE 2
PETITIONS TO THE SENATE

Year	Petitions				
1901-2	97	1943-44	1	1974	44
1903	104	1946-48	4	1974-75	1154
1904	8	1951-53	4	1976-77	628
1905	6	1953-54	2	1977	403
1906	1	1954	5	1978-80	2148
1907-8	14	1954-55	5	1980-81	712
1909	2	1956-57	1	1982-83	325
1910	7	1957-58	4	1983-1984	1730
1911	30	1958	2	1984	870
1912	1	1959-60	1	1985	1093
1914-17	3	1961	1	1986	1262
1917-19	2	1962-63	8	1987	1211
1920-21	2	1964-66	1	1988	780
1923-24	2	1968-69	48	1989	882
1929-31	2	1970-72	221	1990	404
1932-1934	5	1973	119	1991	779
1940	1				

The number of signatories to petitions has only been recorded since 1988:

Year	Signatories
1988	221,301
1989	327,000
1990	92,000
1991	109,560

Sources: J R Odgers, *supra* n 1, 287; Business of the Senate 1984-1991.

TABLE 3
NSW LEGISLATIVE ASSEMBLY

Parliament	Session	Dates	No of Petitions
47th	1	28.10.81 - 26.5.82	485
	2	30. 6.82 - 4.8.82	13
	3	17. 8.82 - 9.6.83	646
	4	16. 8.82 - 5.3.84	429
48th	1	1. 5.84 - 25.7.84	427
	2	14. 8.84 - 5.2.86	1407
	3	19. 2.86 - 22.2.88	1061
49th	1	27. 4.88 - 10.8.88	84
	2	17. 8.88 - 14.2.89	1324
	3	21. 2.90 - 8.2.91	1097
	4	20. 2.91 - 3.5.91	Not available at time of compilation.

Sources: Legislative Assembly Sessional Summaries.

TABLE 4
NSW LEGISLATIVE COUNCIL

Parliament	Session	Dates	No of Petitions
46th	3	12. 8.80 - 24.6.81	40
	4	12. 8.81 - 28.8.81	4
47th	1	28.10.81 - 26.5.82	6
	2	30. 6.82 - 4.8.82	0
	3	17. 8.82 - 9.6.83	73
	4	16. 8.83 - 5.3.84	28
48th	Information unavailable		
49th	Information unavailable		
50th	1	2. 7.91 - 31.1.92	74

Source: Abstracts of Petitions received by the Legislative Council.

THE RECOMMENDED FORM OF A PETITION TO THE HOUSE OF REPRESENTATIVES

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

The petition of certain ...

Here identify, in general terms, who the petitioners are; for example:

- citizens of Australia
- or
- residents of the State of ...
- or
- electors of the Division of ...

draws to the attention of the House }
 or } ...
 points out to the House }

Here give the circumstances of the case

Your petitioners therefore pray that the House }
 or }
 request the House to } ...
 or }
 ask the House to }

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

NAME	SIGNATURE	ADDRESS
1		
2		
3		
4		
4		

Source: House of Representatives Factsheet No 11, *Petitions*, June 1991, 5.