

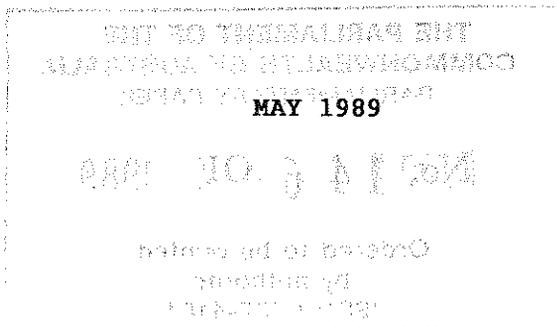
THE PARLIAMENT OF THE
COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES
STANDING COMMITTEE ON PROCEDURE

35TH PARLIAMENT

FIFTH REPORT

THE ELECTION OF SPEAKER



THE PARLIAMENT OF THE
COMMONWEALTH OF AUSTRALIA

DEPARTMENT OF THE ATTORNEY-GENERAL
PARLIAMENTS AND ELECTIONS DIVISION

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**THE PARLIAMENT OF THE
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THE ELECTION OF SPEAKER

Introduction

1. On 6 June 1988 the Leader of the House requested that the Standing Committee on Procedure consider the matters raised in a notice of motion given by the Member for Corio concerning the rules for the election of Speaker of the House of Representatives.¹ The motion proposed that the Member with the longest continuous service who is not a Minister or Opposition office holder preside at any election of the Speaker of the House. It is this specific proposal that is the subject of the committee's report.

2. In its deliberations the committee has considered the current provisions governing the election of Speaker in the House and relevant precedents as well as developments in the equivalent procedures in both the United Kingdom and Canada. The committee has concluded that a change should be made to the procedure for the election of Speaker at the first sitting of a Parliament or at any other time when the position becomes vacant.

Current Provisions

3. Section 35 of the Constitution provides that, before proceeding to the despatch of any other business, the House shall choose a Member to be the Speaker of the House. Standing orders 2, 12, 20, 21 and 22 make provision for the election of the Speaker at the opening of a Parliament and when a vacancy occurs in the office of Speaker. In the House of Representatives it is

1. See H.R. Deb. (29.8.88) 1193-4.

The motion was moved in the House on 29 September 1988 but, not being reaccorded priority by the Selection Committee, has since been removed from the Notice Paper.

the Clerk who acts as chairman of the House during the election of Speaker and any Member may propose a Member then present for Speaker and move that the Member proposed "Do take the Chair of this House as Speaker". If there is more than one proposal debate may ensue and at the close of the debate a ballot is conducted. Standing orders provide that debate must be relevant to the election and they contain detailed provisions for balloting procedures.

4. The procedure for the election of Speaker in the Australian House of Representatives developed from the practice of the United Kingdom House of Commons, where for over three centuries it was the Clerk of the House who presided over the election.²

5. In outlining the Clerk's role House of Representatives Practice states:

The Clerk's duties under the standing orders during the election are to deal only with what might be described as the 'mechanical' aspects.

The mechanical aspects referred to include: the obligation to call on a Member to speak, to draw attention to the fact that a Member's speech time had expired, and to put the question if the closure is moved. It further states that many questions as to the role of the Clerk remain undetermined and expresses doubts as to his power to name a Member and to act in cases of grave disorder.³

6. There have been two occasions when the Clerk has been placed in a somewhat difficult position. In 1909 during the election of Speaker Salmon the Clerk gave a casting vote with the "Noes" on the question that the debate be adjourned and the proceedings were the subject of a motion the following day during which Members acknowledged that the Clerk had been placed in an extremely difficult situation. During the election of Speaker

2. HC 111 (1971-72) xiii.

3. House of Representatives Practice, p.200.

Bell in 1934 the action of the Clerk in ordering a division and appointing tellers was questioned. In 1956 the Clerk was asked for a ruling as to whether it would be in order to nominate scrutineers while the ballot for the election of Speaker was in progress.⁴

Committee deliberations

7. In the course of its deliberations the committee considered reforms in both the United Kingdom and Canada that have addressed the procedure for the election of Speaker. In 1972 the United Kingdom House of Commons Select Committee on Procedure identified one of the areas of concern to be the vulnerable position of the House when the Clerk was presiding over proceedings. Whilst there was no case of the Clerk being challenged when in the Chair, the concern was expressed that the House was vulnerable because the Clerk was powerless to deal with certain actions such as points of order and dilatory motions. The select committee recommended that the Member with the longest unbroken period of service who is present in the House on the back-benches should occupy the Chair except on occasions where the Speaker announces his retirement in mid session, in which case he should occupy the Chair if possible until his successor is elected. The House of Commons accepted the recommendation and embodied the procedure in standing orders.

8. Similarly, in Canada, the House of Commons acted on the recommendations of the McGrath Committee and in 1986 introduced major changes that included the provision that the Member who has had the longest period of unbroken service (as determined by reference to his or her position on the list published in the Canada Gazette), and who is neither a Minister of the Crown nor holds any office within the House, will preside at the election of Speaker at the opening of a Parliament.

9. There are two major advantages of having the Member with the longest service in the House preside during the election of

4. Ibid, pp200-201.

Speaker with appropriate powers and authority. Firstly, it would give some recognition for service in the House and secondly, it would remove the House from a potentially vulnerable situation as the Member presiding could be vested with the powers of the Speaker to apply the standing orders. In addition, it would leave the Clerk free to conduct any ballots or special ballots that may be necessary.

10. It would not be appropriate for a Minister, a party leader, a deputy party leader or a party whip to preside as there may be a conflict with their existing roles and it is assumed that any candidate for the position of Speaker would not preside. The committee believes the role should not be compulsory and that the length of service should be calculated as cumulative rather than continuous service. In the event of more than one eligible Member fulfilling the criterion for the length of service it is expected that, through consultation, commonsense will prevail.

11. The Member presiding should have a deliberative vote in the election of Speaker and in any division in the House. It is proposed that, in the event of a division, the Member presiding would vote by stating to the House whether he or she is voting with the "Ayes" or "Noes". Proposed standing order 12 sets out the provisions to be followed in the event of an equality of votes in the election of Speaker. Should there be an equality of votes in any division in the House, the motion would not be carried as the question would not have been determined by a majority of votes.

Conclusion and recommendation

12. Although the present procedure, with the Clerk taking the Chair for the election of Speaker, has a long tradition with few problems or disruptions, the committee is of the view that having

a Member preside is more appropriate in that it gives the House the opportunity to recognise and honour longstanding service by a Member and that, being an elected representative, a Member will have more authority and power under the standing orders to deal with any difficulties that may arise.

13. The committee proposes that standing orders 2, 12, 20 and 21 be amended to reflect its conclusions. Other amendments to take account of changes in electoral provisions and modernisation of language have been incorporated. The major changes proposed are contained in paragraphs 2(f) and (g) of the proposed standing orders.

14. It is therefore recommended that standing orders 2, 12, 20 and 21 be omitted and the following standing orders substituted:

Meeting of new Parliament

2. On the first day of the meeting of a Parliament for the despatch of business after a dissolution, pursuant to the Governor-General's Proclamation, Members having met at the time and place appointed:

- (a) The Clerk shall read the Proclamation calling Parliament together.
- (b) The House shall await a message from the Deputies appointed by the Governor-General desiring the attendance of Members to hear the Commission read.
- (c) The House shall attend at the place named in the message to hear the Commission read. After the reading of the Commission the House shall return to its own Chamber.
- (d) The writs showing the Members elected shall be presented by the Clerk, and the Members shall then be sworn, or make affirmation, as prescribed by the Constitution.

- (e) The House shall then proceed to elect a Speaker.
- (f) Until a Speaker is elected, the Chair shall be taken by that Member available, not being a Minister or Assistant Minister or a party leader or deputy party leader or a party whip, who has served for the longest period as a Member of the House.
- (g) The Member presiding under the provisions of paragraph (f) shall enjoy all those powers which are exercised by the Speaker during proceedings except that he or she:
 - (i) shall be entitled to vote in the election of Speaker but shall not have a casting vote in the event of there being an equality of votes cast for two candidates; and
 - (ii) in all other cases shall have a deliberative vote and shall vote by stating to the House whether he or she is voting with the "Ayes" or "Noes".
- (h) The Speaker having presented himself or herself to the Governor-General, and having reported that fact to the House, a Minister shall then inform the House at what time the Governor-General will declare the causes of the calling together of the Parliament; and the House may then suspend its sitting until that time, when it shall again attend and await a message from the Governor-General.

Election of Speaker

12. The election of Speaker shall be conducted in the following manner:

- (a) At the opening of Parliament, after the Members present have been sworn, or whenever the office of Speaker becomes vacant, a Member addressing the Member presiding shall propose some Member, then present, to the House for election as Speaker, and move that the Member

"Do take the Chair of this House as Speaker", which motion shall be seconded. A Member when proposed and seconded shall inform the House whether nomination is accepted.

(b) The Member presiding shall then ask "Is there any further proposal?", and if there is no further proposal, the Member presiding shall say "The time for proposals has expired". No Member may then address the House or propose any other Member, and the Member presiding shall, without question put, declare the Member so proposed and seconded to have been elected as Speaker, and such Member shall be conducted to the Chair by that Member's proposer and seconder, and shall take the Chair of the House as Speaker.

(c) If more than one Member is proposed as Speaker, the Member presiding shall, after the second proposal and after each subsequent proposal (if any) is made and seconded, ask "Is there any further proposal?", and if there is no further proposal, the Member presiding shall say "The time for proposals has expired".

(d) When the time for proposals has expired, debate may ensue, but it shall be relevant to the election.

(e) No Member may speak for more than 5 minutes.

(f) At any time during the debate a motion may be made by a Minister rising in his or her place, and without notice, and whether any other Member is addressing the Chair or not, "That the question be now put". The Member presiding shall then put the question, without debate, "That the question be now put". In the event of the numbers being equal the question shall be decided in the negative. Upon the carrying of the question "That the question be now put", or upon the cessation of the debate otherwise, the election shall be proceeded with as provided in this standing order.

(g) Before the House proceeds to a ballot the bells shall be rung as in a division.

- (h) When only 2 Members are proposed and seconded as Speaker, each Member shall deliver to the Clerk, a ballot paper in writing, containing the name of the candidate for whom that Member votes and the votes shall be counted by the Clerks at the Table; and the candidate who has the greater number of votes shall be the Speaker, and be conducted to the Chair.
- (i) When more than 2 Members are so proposed and seconded, the votes shall be taken in like manner, and the Member who has the greatest number of votes shall be the Speaker, provided he or she has also a majority of the votes of the Members present; but if no candidate has such majority, the name of the candidate having the smallest number of votes shall be excluded from subsequent ballots, and a fresh ballot shall take place; and this shall be done as often as necessary, until one candidate is declared to be elected as Speaker by such majority, when such Member shall be conducted to the Chair.
- (j) If at any ballot it is impossible by reason of the equality of votes to determine which name shall be excluded from subsequent ballots, a special ballot shall take place at which there shall be submitted only the names of those candidates who have received equal votes. At such special ballot each Member shall write on his or her ballot-paper only the name of the candidate he or she wishes to retain. The candidate whose name appears upon the smallest number of ballot-papers shall then be excluded from subsequent ballots.
- (k) At any time after the result of the first ballot is declared, but before the commencement of the second or other subsequent ballot, a candidate may withdraw his or her name from the election which shall then proceed as if he or she had not been nominated.
- (l) If by reason of equality of votes a ballot or special ballot is rendered inconclusive, the Member presiding shall so declare, and unless by a withdrawal another ballot or (as the case may be) another special ballot is rendered unnecessary, the Member presiding shall cause

such other ballot or special ballot to be taken. If after the counting of votes the equality continues the Member presiding shall so declare. Thereupon the sitting shall be suspended for 30 minutes and when the House re-assembles the votes shall be taken again, unless this is rendered unnecessary by a withdrawal.

- (m) Whenever at any stage a withdrawal leaves only one candidate remaining that Member shall without further voting, be declared elected as Speaker, and shall then be conducted to the Chair.
- (n) Having been conducted to the Chair, the Member elected returns acknowledgments to the House for the honour conferred, and thereupon sits down in the Chair, and then the Mace (which before lay under the Table) shall be laid upon the Table.
- (o) The Speaker having been congratulated, a Minister shall inform the House at what time the Governor-General will be pleased to receive the House for the purpose of presenting the Speaker to the Governor-General, and the sitting of the House shall then be suspended until that time.
- (p) Before proceeding to any business, the Speaker with the House, shall present himself or herself to the Governor-General; and, on returning, shall pass through the Chamber, and, having resumed the Chair, shall report the presentation to the Governor-General.

Vacancy in Speakership during session

20. When a vacancy has occurred in the office of Speaker during a session, the Clerk shall report the same to the House at its next sitting, and the House shall either forthwith, or at its next sitting, proceed to the election of a new Speaker in the manner provided in standing order 12.

Vacancy in Speakership during recess

21. When a vacancy has occurred in the office of Speaker during a recess, the Clerk shall, on the opening of the next session, report the same to the House on its return from hearing the Governor-General's Speech, or from attending to hear the Commission read, as the case may be, and the House shall forthwith proceed to the election of a new Speaker in the manner provided in standing order 12.

DON CAMERON
Acting Chairman

Parliament House
9 May 1989