

Members

THE MEMBER'S ROLE

This chapter is confined, in the main, to the role of the private Member, who may be generally defined as a Member who does not hold any of the following positions: Prime Minister, Speaker, Minister, Leader of the Opposition, Deputy Leader of the Opposition, or Leader of a recognised party.¹ The commonly used term backbencher, which is sometimes used as a synonym of the term private Member, strictly refers to a Member who sits on a back bench as opposed to those Members who sit on the front benches which are reserved for Ministers and members of the opposition executive.

It is a rare occurrence for a person to be elected as a Member of the House of Representatives unless he is a member of one of the 3 political parties presently represented in the House.² Since 1949 when the membership of the House was increased to about its present number, there have been only 2 instances when an independent has been elected,³ while there have been 6 occasions when Members have sat as independents after resigning from their party during the course of a Parliament.⁴

If a Member is elected with the support of a political party, it is not unreasonable for the party to expect that the Member will testify his loyalty and support by his actions in the House. Most decisions of the House are determined on party lines and, thus, a Member's vote will usually be in accord with the policies of his party.

An exception to this rule arises in the relatively rare case of a 'free vote'. A free vote may occur when a party has no particular policy on a matter or when a party feels that Members should be permitted to exercise their responsibility in accordance with conscience. A free vote may also be extended to matters affecting the functioning of the House, such as changes to the standing orders.⁵

The private Member has a number of distinct and sometimes divided roles. His responsibilities and loyalties lie with:

- the House of Representatives but with an overriding duty to the national interest;
- his constituents and the party branches within his electorate—he has a primary duty to represent their interests, and
- the parliamentary party and also the party nationally.

These roles are discussed briefly below.

Parliamentary

The national Parliament is the forum for debating and publicising matters of national and international importance. The role played by the Member in the House is

¹ See Ch. on 'The structure of the House' for discussion of the Ministry and office holders.

² Since the general election in 1949 the only other party represented in the House has been the Australian Labour Party (Anti-Communist) in 1955 which comprised 7 former members of the Australian Labor Party, VP 1954-55/161; H.R. Deb. (19.4.55)3. For an analysis of party affiliations of Members since 1901 see Appendix 10.

³ Mr L. W. Nott in 1949 and Mr S. J. Benson in 1966

(Mr Benson had resigned from the ALP during the previous Parliament on 31.8.66).

⁴ St. John, E. H. (Lib.)—resignation statement 15.4.69. Bate, H. J. (Lib.)—resigned 10.10.72. Gorton, J. G. (Lib.)—resigned 23.5.75. Chipp, D. L. (Lib.)—resigned 24.3.77. Wentworth, W. C. (Lib.)—resignation statement 11.10.77. Richardson, P. A. (Lib.)—resigned 14.10.77.

⁵ See Ch. on 'Business of the House and the sitting day'.

the one with which the general observer is most familiar. It is the Chamber role which probably attracts the most publicity but, at the same time, it is the one which is probably least demanding of a Member's time.

During the period 1970-1980 the House met on an average of 69 days in each year, with the normal sitting periods extending from February-June and August-December. Most of the time of the House is taken up with the consideration of bills, the discussion of matters of public importance, question time, and debates on substantive motions, ministerial statements and the motion for the adjournment of the House. Thus many opportunities are available, within the existing system, which allow the perceptive private Member to fulfil his role of scrutinising the actions of the Government and of influencing the direction of national policy.

Since 1970 the House of Representatives has sought to strengthen its ability to scrutinise the actions and policies of the Government, mainly through the creation of committees.⁶ This has placed considerable demands on the time of the private Member as committee meetings are held during sitting and non-sitting periods and, in some instances, a committee may have to hold its hearings in many places throughout Australia. In order to make a substantive contribution to the work of a committee, a Member must invest a considerable amount of his time in becoming familiar with the subject-matter of the inquiry. This may involve private research or the evaluation of research undertaken on his behalf by the committee secretariat or the Legislative Research Service of the Parliamentary Library. Committees are given wide powers of investigation and study, and their reports testify to the thoroughness of their work and the consequent stature of their conclusions. They are valuable vehicles for acquiring and disseminating information and supplement the normal parliamentary role of a private Member considerably.

The volume of legislation and the increasing breadth and complexity of government activity in recent times has required the private Member to narrow his range of interest and activity, and to specialise in areas which have a particular concern to him.

Constituency

The electoral Divisions in Australia have an average population of about 116 000 people and range in area from 17 square kilometres to 2.29 million square kilometres. Members provide a direct link between the constituents and the federal administration. Constituents constantly seek the assistance of their local Member in securing the redress of some grievance or help with various problems of living in a controlled society. Many of the complaints or calls for assistance fall within the areas of social welfare, immigration and taxation. A Member will also deal with problems concerning family law, postal and telephone services, employment, housing, health and education— even the task of just filling out forms. Many Commonwealth and State functions overlap and when this occurs cross referrals of problems are made between Federal and State Members, regardless of political affiliations.

A Member has an important influence and standing outside Parliament and has a wide range of contacts with government bodies, political parties, and the community as a whole. Personal intervention by a Member normally commands priority attention by departments. If the problem of a constituent is purely an administrative one, the Member may contact the department or authority concerned where the case will be dealt with by the relevant section. If the problem is urgent, the Member may approach the Minister direct or, if he feels the case requires public ventilation, he may put a question to the Minister or raise the matter in debate.

⁶ See also Ch. on 'Parliamentary committees'.

A Member may also make representations to the Government on behalf of his electorate as a whole on matters which are peculiar to the electorate. The building of an airport or other major project within the electorate, or the closing down of a local industry which would cause high unemployment in the area, are examples of this type of representation closely related to local circumstances.

Party⁷

A Member will rarely challenge effectively the policies of his party on the floor of the House because of the strong tradition of party loyalty that exists in Australia. However policy can be changed both in the party room and through the system of party committees.

All parties hold meetings, usually weekly when the Parliament is sitting, at which proposals are put before the parliamentary parties and attitudes are determined.

Both the Australian Labor Party and the Liberal-National Country Parties make extensive use of back bench party committees, each committee specialising in a particular area of government. These committees scrutinise legislative proposals and government policy, and, to some degree, may develop party policy. They enable private Members to have detailed discussions with senior departmental officials and may provide a platform for hearing the attitudes of community groups and organisations on particular matters.

NUMBER OF MEMBERS

The Constitution provides that:

- the House of Representatives shall be composed of Members directly chosen by the people of the Commonwealth⁸;
- the number of Members shall be, as nearly as practicable, twice the number of Senators⁹, sometimes referred to as the nexus;
- original States must have a minimum of 5 Members¹⁰, but no minimum number is prescribed for new States¹¹;
- 75 Members were to be elected to the 1st Parliament¹², and
- the Parliament can make laws to vary the number of Members.¹³

The process of determining the number of Members for the several States is laid down in the Representation Act¹⁴:

- the Chief Australian Electoral Officer ascertains the population of the Commonwealth (excluding the people of any Territory), and the population of each State, and provides a certificate to the relevant Minister containing this information. A copy of the certificate is published in the Gazette and copies are tabled in both Houses of the Parliament, and

7 See also Ch. on 'The structure of the House'.

8 Constitution, s. 24; see also Ch. on 'Elections and the electoral system'.

9 Constitution, s. 24. In order to maintain the 2:1 ratio, any major variation in the membership of the House would be in the terms of 12 Members or multiples of 12, except by admitting new States; see also *Quick and Garran*, p. 460.

10 Constitution, s. 24 (this now has significance only in respect of Tasmania).

11 Constitution, s. 121; *Quick and Garran*, p. 970.

12 Constitution, s. 26.

13 Constitution, s. 27.

14 In passing the Representation Act in 1905 the Parliament prescribed a different procedure for determining the quota from that provided in s. 24 of the Constitution.

- the Chief Australian Electoral Officer, immediately after the issue of the certificate, determines the number of Members as follows:
 - a quota is obtained by dividing the population of the Commonwealth, as shown by the certificate, by twice the number of Senators for the States, and
 - the number of Members to be chosen in each State is determined by dividing the population of the State, as shown by the certificate, by the quota. If on this division there is a remainder greater than one-half of the quota, one more Member is chosen in the State. A copy of the determination is forwarded to the Minister.

In recognition of the need for regular redistributions, based on the most recent population statistics, amendments were made to the Commonwealth Electoral Act, the Census and Statistics Act and the Representation Act in 1977¹⁵ to ensure that a determination of the representation entitlement of the several States is made by the Chief Australian Electoral Officer during the twelfth month of the life of a House of Representatives. Where, as a result, the representation entitlement of any State is altered, a redistribution of that State is effected.

At an ordinary general election, that is, a general election of the House of Representatives next following a House of Representatives that expired or was dissolved at or toward the end of the period of 3 years from the first meeting of that House, the number of Members to be chosen in each State is in accordance with the last determination made before that election. At a general election, not being an ordinary general election, the number of Members to be chosen in each State is in accordance with the determination in accordance with which the State is, for the time being, distributed into electoral Divisions.

A 1977 High Court decision held that the 4 Senators representing the Australian Capital Territory and the Northern Territory are not to be included in the number of Senators used in determining the quota for Members of the House and that the population of the Territories is not to be included in this calculation.¹⁶

A list showing the number of Members of the House of Representatives in each Parliament since 1901 is shown at Appendix 11. As indicated in the appendix only 2 significant variations in the number of Members has occurred since 1901, that is, in 1949¹⁷ and 1977. Following the 1980 general election representation of the States and Territories was as follows:

New South Wales	43
Victoria	33
Queensland	19
South Australia	11
Western Australia	11
Tasmania	5
Australian Capital Territory	2
Northern Territory	1
	125

Territorial representation

The Parliament may admit new States to the Commonwealth or establish new States, and may determine the extent of representation of new States in either House.¹⁸ The Parliament may also make laws for the government of any Commonwealth Territory and determine the extent and terms of representation of any such Territory in

¹⁵ Acts Nos 14, 15 and 16 of 1977, respectively; H.R. Deb. (23.2.77)402-03.

¹⁶ *Attorney-General (NSW) (ex rel. McKellar) v. Commonwealth* (1978) 139 CLR 527.

¹⁷ The *Representation Act* 1948 also increased the number of Senators in each State from 6 to 10 (Act No. 16 of 1948).

¹⁸ Constitution, s. 121.

either House.¹⁹ Thus, the Parliament has determined that the Australian Capital Territory and the Northern Territory shall be represented in both the House of Representatives and the Senate.

A Member for the Northern Territory was first elected on 16 December 1922.²⁰ At that time the Member was subject to certain 'disabilities' which prevented him from:

- voting on any question in the House;
- being counted as a Member in determining whether a quorum of the House was present;
- being chosen as Speaker or Chairman of Committees or performing their duties, or
- being counted for determining a question where an absolute majority was required under section 57 or 128 of the Constitution.

The Act was amended in 1936 to allow the Member for the Northern Territory to vote on any motion for the disallowance of any ordinance of the Northern Territory or on any amendment of any such motion.²¹ It was again amended in 1959 to allow the Member to vote on any question in connection with bills relating solely to the Northern Territory, and upon any motion, and amendment to such motion, for disallowance of a regulation made under an ordinance of the Territory.²² In 1968, with the growth of population, all disabilities were removed.²³

A Member for the Australian Capital Territory was first elected on 10 December 1949. The Member was subject to disabilities similar to those affecting the Member for the Northern Territory as at 1948.²⁴ The Act was amended in 1959 to allow the Member to vote on any question in connection with bills relating solely to the Australian Capital Territory, and on any motion, and amendment to such motion, for disallowance of an ordinance of the Territory, regulation made under an ordinance, or modification or variation of the plan of lay-out of the city of Canberra.²⁵ In 1966 all disabilities were removed.²⁶ In 1973 the number of Members representing the Australian Capital Territory in the House was increased to 2²⁷ and earlier Acts relating to Australian Capital Territory representation were repealed.

In 1975 a challenge was brought before the High Court concerning the constitutionality of territorial representatives sitting in the Parliament. The decision handed down upheld the right of the Territories to be represented in both the House of Representatives and the Senate.²⁸

QUALIFICATIONS AND DISQUALIFICATIONS

In order to be eligible to become a Member of the House of Representatives a person must be ²⁹:

- not less than 18 years of age;

¹⁹ Constitution, s. 122.

²⁰ *Northern Territory Representation Act* 1922 (Act No. 18 of 1922).

²¹ *Northern Territory Representation Act* 1936 (Act No. 65 of 1936).

²² *Northern Territory Representation Act* 1959 (Act No. 27 of 1959).

²³ *Northern Territory Representation Act* 1968 (Act No. 11 of 1968).

²⁴ *Australian Capital Territory Representation Act* 1948 (Act No. 57 of 1948).

²⁵ *Australian Capital Territory Representation Act* 1959 (Act No. 31 of 1959); *Australian Capital*

Territory Representation Act (No. 2) 1959 (Act No. 91 of 1959).

²⁶ *Australian Capital Territory Representation Act* 1966 (Act No. 3 of 1966).

²⁷ *Australian Capital Territory Representation (House of Representatives) Act* 1973 (Act No. 111 of 1973).

²⁸ *Western Australia v. Commonwealth* (1975) 134 CLR 201 (Territories Representation Case).

²⁹ The Parliament has laid down these qualifications in place of those prescribed in the Constitution, s. 34.

- a British subject (either natural born or naturalised) who has been resident in the Commonwealth for at least 3 years, and
- an elector, or qualified to become an elector, who is entitled to vote in a House of Representatives election.³⁰

A person is incapable of being chosen or of sitting as a Member of the House of Representatives if he:

- is a subject or citizen of a foreign power or is under an acknowledgment of allegiance, obedience or adherence to a foreign power;
- is convicted (attainted) of treason;
- has been convicted and is under sentence or subject to sentence for an offence punishable by imprisonment for 1 year or longer under a State or Commonwealth law;
- is an undischarged bankrupt or insolvent;
- holds an office of profit under the Crown or any pension payable during the pleasure of the Crown out of any Commonwealth revenues, but this does not apply to:
 - Commonwealth Ministers;
 - State Ministers;
 - officers or members of the Queen's Armed Forces in receipt of pay, half-pay or pension;
 - officers or members of the Armed Forces of the Commonwealth in receipt of pay but whose services are not wholly employed by the Commonwealth, or
 - the offices of President of the Senate and Speaker of the House;
- has any direct or indirect pecuniary interest in any agreement with the Commonwealth Public Service in any way other than as a member in common with other members of an incorporated company consisting of more than 25 persons³¹;
- has been convicted of bribery or undue influence or attempted bribery or undue influence at an election, disqualification being for 2 years from date of conviction³², or
- has been found by the Court of Disputed Returns to have committed or attempted to commit bribery or undue influence when a candidate, disqualification being for 2 years from date of finding.³³

A person is also disqualified by virtue of not being eligible as an elector, in accordance with sub-section 69(1) of the Commonwealth Electoral Act, if he:

- is of unsound mind, or
- is the holder of a temporary entry permit or is a prohibited immigrant under the terms of the *Migration Act 1958*.³⁴

No person who nominates as a Member of the House of Representatives can be at the date of nomination, or at any time less than 14 days prior to the date of nomination, a member of a State Parliament. In addition, no person who has resigned from a State Parliament and has the right, under State law, if not elected to the House of Representatives, to be re-elected to the State Parliament without the holding of a poll, is capable of being nominated as a Member of the House.³⁵

30 *Commonwealth Electoral Act 1918*, s. 69. By virtue of s. 7 of the *Australian Citizenship Act 1948*, an Australian citizen or a citizen of certain prescribed countries has the status of a British subject.

31 *Constitution*, s. 4.

32 *Commonwealth Electoral Act 1918*, s. 211.

33 *Commonwealth Electoral Act 1918*, s. 211.

34 *Commonwealth Electoral Act 1918*, s. 39.

35 *Commonwealth Electoral Act 1918*, s. 70.

A Member of either the House of Representatives or the Senate is incapable of being chosen or of sitting as a Member of the other House.³⁶ Thus, a Member of either House must resign if he wishes to stand as a candidate for election to the other House. Recent resignations from the Senate to contest a House of Representatives election have been:

- in 1968 former Senator Gorton successfully contested a by-election for the Division of Higgins;
- in 1977 former Senator Hall was an unsuccessful candidate at the general election for the Division of Hawker;
- in 1980 former Senator Wriedt was an unsuccessful candidate at the general election for the Division of Denison, and
- in 1981 former Senator Rocher successfully contested a by-election for the Division of Curtin.

Challenges to membership under Constitution

The House may, by resolution, refer any question concerning the qualifications of a Member to the Court of Disputed Returns.³⁷ There has been no instance of the House taking such action, but cases have occurred in the Senate.

Section 44(v)

On 4 April 1975 a witness appearing before the Joint Committee on Pecuniary Interests alleged, in a written submission, that Senator Webster (also a member of the committee) was disqualified from sitting as a Senator under the terms of section 44(v) of the Constitution. The witness alleged that Senator Webster was a director, manager, secretary and substantial shareholder in a company which had had at least 9 contracts with Commonwealth Government departments from 1964 to 1974.³⁸ On 15 April 1975 the chairman of the committee wrote to the President of the Senate informing him of the allegation.³⁹ The letter was read to the Senate by the President on 15 April⁴⁰ and on 22 April the Senate agreed to a resolution referring the following questions to the Court of Disputed Returns:

- whether Senator Webster was incapable of being chosen or of sitting as a Senator, and
- whether Senator Webster has become incapable of sitting as a Senator.⁴¹

Chief Justice Barwick handed down his decision on 24 June 1975 and answered 'No' to the 2 questions referred to the Court by the Senate.⁴² The Chief Justice, in his judgment said that the facts refuted any suggestion of any lack of integrity on the part of Senator Webster, or of any intention on his part to allow the Crown to influence him in the performance of his obligations as a member of the Senate and further that there was at no time any agreement of any kind between Senator Webster and the Public Service of the Commonwealth.⁴³

³⁶ Constitution, s. 43.

³⁷ *Commonwealth Electoral Act* 1918, s. 203; and see Ch. on 'Elections and the electoral system'.

³⁸ 'Declaration of Interests', *Joint Committee on Pecuniary Interests of Members of Parliament*, Transcript of Evidence, Vol. 2, 5 March-15 April, AGPS, Canberra, 1975, p. 1503.

³⁹ 'Qualifications of Senator Webster', *Reference to Court of Disputed Returns*, PP 113(1975)11.

⁴⁰ J 1974-75/597.

⁴¹ J 1974-75/628-9.

⁴² J 1974-75/821.

⁴³ *In re Webster* (1975) 132 CLR 270.

Section 44(iv)

On 3 September 1975 the Queensland Parliament chose Albert Patrick Field to fill a casual vacancy caused by the death of Senator Milliner. On 9 September a motion was moved in the Senate to have his eligibility referred to the Standing Committee of Disputed Returns and Qualifications on the ground that he was not eligible to be chosen as a Senator on 3 September because he had not legally resigned from an office of profit under the Crown.⁴⁴ The motion was defeated and Senator Field was sworn in.⁴⁵ A writ was served on Senator Field on 1 October 1975 challenging his eligibility to sit in the Senate.⁴⁶ The Senate then granted him leave of absence for 1 month.⁴⁷ The Senate was dissolved on 11 November and the matter did not come to court.

A person who accepts an office of profit under the Crown is disqualified from membership of the Parliament from the date he is appointed to and accepts the office rather than from the time he commences his duties or receives a salary.⁴⁸

Section 45(ii)

There has been no precedent in the House of Representatives of the seat of a Member being vacated because he has become bankrupt. Therefore, while a seat is vacated at the instant that the Member is declared bankrupt, the machinery for bringing this fact to the attention of the House is not established. The proper channel of communication would seem to be between the court and the Speaker and this could be achieved most effectively by a notification from the Registrar of Bankruptcy to the Clerk of the House who would then advise the Speaker. The Speaker would then inform the House, if it were sitting, and issue a writ for a by-election as soon as it was convenient to the various political parties in the House and the Chief Australian Electoral Officer. If the House was not sitting, the Speaker could issue the writ as soon as convenient and not wait for the House to re-convene.

Penalty for sitting while ineligible

The Constitution states that, until the Parliament otherwise provides, any person declared by the Constitution to be incapable of sitting as a Member shall be liable to pay £ 100 (\$200) to any person who sues for it in a court of competent jurisdiction for each day on which he so sits. The case of Senator Webster (*see* p. 169) prompted the Government in April 1975 to introduce the Common Informers (Parliamentary Disqualifications) Bill, one of the main provisions of which was to fix a maximum penalty for a past breach. As under the constitutional provision a penalty of \$200 per day could amount to an enormous sum where the infringement did not become apparent until years after it had occurred, the Act⁴⁹ provides for the recovery of a penalty of \$200 in respect of a past breach and \$200 per day for the period during which the Member sits while disqualified after being served with the originating process. The Act also restricts suits to a period no earlier than 12 months before the day on which the suit is instituted. The High Court of Australia is specified as the court in which common informer proceedings are to be brought.

SWEARING-IN

The Constitution provides that every Member of the House of Representatives, before taking his seat, must make and subscribe an oath or affirmation of allegiance before

44 J 1974-75/905-06; S. Deb. (9.9.75)603.

45 J 1974-75/905-06.

46 *Odgers*, p. 107.

47 J 1974-75/928.

48 Opinion of Solicitor-General relating to appointment of Senator Gair as Ambassador to Ireland, dated 4 April 1974; and *see Odgers*, pp. 43-5.

49 *Common Informers (Parliamentary Disqualifications) Act 1975* (Act No. 28 of 1975).

the Governor-General or some person authorised by him.⁵⁰ The oath or affirmation takes the following form:

OATH.

I, *A.B.*, do swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her heirs and successors according to law. SO HELP ME GOD!

AFFIRMATION.

I, *A.B.*, do solemnly and sincerely affirm and declare that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her heirs and successors according to law.⁵¹

The oath of allegiance need not necessarily be made on the authorised version of the Holy Bible although this is the usual practice in Australia. A Member may recite the oath while holding the New Testament or the Gospels in his hand, or in the case of a Jew, who feels free to take an oath, he may make it on the *Pentateuch*, that is, on a copy of the 5 Mosaic books of the Old Testament, or on the whole of the Old Testament. There would be no defect in an oath made on a Roman Catholic missal if the maker regards the oath as binding his conscience. Every Member taking an oath should take it in a manner which affects his conscience regardless of whether a Holy Book is used or not.⁵²

The oath or affirmation of allegiance taken by all Members at the beginning of a new Parliament is normally administered by a Deputy appointed by the Governor-General, who is usually a Justice of the High Court.⁵³ The Deputy is ushered into the Chamber and conducted to the Chair by the Serjeant-at-Arms. His commission from the Governor-General to administer the oath or affirmation is read to the House by the Clerk.⁵⁴

The taking of the oath or affirmation follows the tabling by the Clerk of the returns to the writs for the general election, showing the Member elected for each electoral Division.⁵⁵ No Member may take part in any proceedings of the House until he has been sworn-in.⁵⁶

All Members elected for that Parliament are called by the Clerk in turn and approach the Table in groups of approximately 12, make their oath or affirmation, and sign (subscribe) the oath or affirmation form. The Ministry is usually sworn-in first, followed by the opposition executive. Other Members are sworn-in in the order which causes least disruption in the Chamber. The number of Members sworn-in is inserted on Attestation Forms which are signed by the Deputy, thus attesting that those oaths and affirmations were made before him that day. Members stand while the Deputy then retires, preceded by the Serjeant-at-Arms.

Members not sworn-in at this stage may be sworn-in later in the day's proceedings or on a subsequent sitting day by the Speaker who receives a commission from the Governor-General to administer the oath or affirmation. This commission is tabled by the Speaker.⁵⁷ Those Members elected at by-elections during the course of a Parliament are also sworn-in by the Speaker. In the case of a vacancy in the Speakership and the election of a new Speaker another commission is provided.⁵⁸ The oath or affirmation is

50 Constitution, s. 42.

51 Constitution, Schedule.

52 Advice of Attorney-General's Department, dated 16 February 1962.

53 See also Ch. on 'The parliamentary calendar'.

54 VP 1980-81/3.

55 S.O. 2 (d).

56 On the opening day of the 21st Parliament a Member who had not been sworn-in entered the House during the election of the Speaker. Having been advised that he could not take his seat until sworn-in, he withdrew and was later sworn-in by the Speaker, VP 1954-55/8.

57 VP 1980-81/6-7.

58 VP 1974-75/582.

actually read by the Member in the presence of the Clerk at the head of the Table. The oath or affirmation form is then signed by the Member and passed to the Speaker for attestation.

The authority from the Governor-General to the Speaker to administer oaths or affirmations to Members is customarily renewed when a new Governor-General is appointed, although this practice may not be strictly necessary.⁵⁹

In the event of the demise of the Crown, the House of Commons meets immediately and Members again take the oath.⁶⁰ This practice is not followed in Australia.⁶¹

NEW MEMBERS

Before a new Member elected at a by-election takes his seat, the Speaker announces the return of the writ for that Division and, after admitting the new Member to the Chamber, administers the oath or affirmation. This procedure usually takes place at the beginning of a day's proceedings, immediately after Prayers.⁶²

It is customary for a new Member elected at a by-election, on being admitted, to be escorted to the Table by 2 Members of his own party. This custom is derived from the House of Commons which resolved on 23 February 1688 that 'in compliance with an ancient order and custom, they are introduced to the table between two Members, making their obeisances as they go up, that they may be the better known to the House'.⁶³

Maiden speech

The term 'maiden speech' is used to describe the first speech made by a newly elected Member in the House even though the Member may have had previous parliamentary experience in a State Parliament. In a new Parliament, a newly elected Member normally makes his first speech during the Address in Reply debate. A speech made in relation to a condolence motion is not regarded as a maiden speech.⁶⁴

There is a convention in the House that a maiden speech is heard without interjection⁶⁵ or interruption, and the Chair will normally draw the attention of the House to the fact that a Member is making his maiden speech.⁶⁶ In return for this courtesy the Member should not be unduly provocative. There have been occasions, however, when a Member's maiden speech has not been heard in silence.⁶⁷ It is also customary not to make other than kindly references to the maiden speech of a Member.⁶⁸ In 1967 a Member moved an amendment to a motion to take note of a ministerial statement during his maiden speech.⁶⁹

In the House of Commons it is a customary courtesy for the Chair to call a new Member who has not previously spoken, in preference to another Member who has risen at the same time. This privilege is not conceded unless claimed during the Parliament to which the Member was first elected.⁷⁰ This practice is not observed in the House of Representatives.

A tape of a Member's maiden speech is taken and a copy made available to the Member.

59 Advice of Attorney-General's Department, dated 24 July 1969.

60 *May*, p. 269.

61 VP 1934-36/511-12; VP 1951-53/255,257.

62 VP 1978-80/927.

63 *May*, p. 338.

64 See H.R. Deb. (25.2.64)19; H.R. Deb. (10.3.64)415.

65 H.R. Deb. (23.2.50)91.

66 H.R. Deb. (3.12.80)339.

67 H.R. Deb. (25.3.76)1046; H.R. Deb. (26.11.80)99.

68 H.R. Deb. (13.4.54)364.

69 H.R. Deb. (16.5.67)2166-72; VP 1967-68/116.

70 *May*, p. 416.

Seats in the Chamber

A Member is allocated a seat at the beginning of his parliamentary career. In a new Parliament a Member is entitled to retain the seat he occupied at the end of the previous Parliament⁷¹, provided that the respective parties are occupying the same relative positions in the Chamber as in the previous Parliament. Any question regarding seating in the Chamber is determined by the Speaker.⁷² The front bench on the right of the Speaker's Chair is reserved for Ministers.⁷³ Members of the opposition executive occupy the corresponding bench on the left of the Speaker's Chair.⁷⁴

PECUNIARY INTEREST

In the House of Representatives the pecuniary interests of Ministers and Members are governed by precedent and practice established in accordance with sections 44 and 45 of the Constitution, standing orders 196 and 326, and the practice of the House of Commons as provided in standing order 1.

Section 44(v) of the Constitution states that any person who has any direct or indirect pecuniary interest in any agreement with the Public Service of the Commonwealth otherwise than as a member and in common with the other members of an incorporated company consisting of more than 25 persons shall be incapable of being chosen or of sitting as a Senator or a Member of the House of Representatives (see p. 169 for case of Senator Webster).

Section 45(iii) provides that if a Senator or Member of the House of Representatives directly or indirectly takes or agrees to take any fee or honorarium for services rendered to the Commonwealth, or for services rendered in the Parliament to any person or State, his place shall thereupon become vacant. There are no recorded cases of any action taken under this section.

Standing order 196 states that a Member may not vote in a division on a question in which he has a direct pecuniary interest not held in common with the rest of the subjects of the Crown. However, the rule does not apply to a question on a matter of public policy. A Member's vote can only be challenged by means of a substantive motion moved immediately following the completion of a division. If the motion is carried, the vote of the Member is disallowed.

Public policy can be defined as government policy, not identifying any particular person individually and immediately. All legislation which comes before the House deals with matters of public policy and there is no provision in the standing orders for private bills.⁷⁵

There have been a number of challenges in the House on the ground of pecuniary interest and in each case the motion was negatived or ruled out of order. May states:

... no Member who has a direct pecuniary interest in a question shall be allowed to vote upon it: but, in order to operate as a disqualification, this interest must be immediate and personal, and not merely of a general or remote character. On 17 July 1811, the rule was thus explained by Mr. Speaker Abbot: 'This interest must be a direct pecuniary interest, and separately belonging to the persons whose votes were questioned, and not in common with the rest of his Majesty's subjects, or on a matter of state policy'.⁷⁶

71 S.O. 34.

72 S.O. 33.

73 S.O. 32.

74 See also Ch. on 'Parliament House and the House of Representatives Chamber'.

75 'Declaration of Interests', *Joint Committee on Pecuniary Interests of Members of Parliament*, Transcript of Evidence, Vol. 1, 30 January -27 February, AGPS, Canberra, 1975, p. 65.

76 *May*, p. 407.

Therefore, it would seem highly unlikely that a Member could draw unto himself a disqualification of voting rights in the House because the House is primarily, if not solely, concerned with matters of public or State interest.

A case occurred in 1923 when the Speaker, on a motion to disallow a Member's vote, delivered a lengthy statement in which he referred to the above reference in *May* and certain cases in the State Parliaments. He drew attention to the vital distinction which had to be made between public and private bills and quoted the opinion of a distinguished Speaker of the Victorian Legislative Assembly that the practice was correctly stated that the rules governing a matter of pecuniary interest did not apply to questions of public policy, or to public questions at all.⁷⁷

In 1924 the question was raised as to whether the votes of certain Members, who were interested shareholders in a company which was involved in the receipt of a large sum from the Government, should be allowed. The Speaker made it quite clear that it was not his decision to rule on the matter as the responsibility lay with the House although he felt it his duty to point out, as he had on a previous occasion, the precedents and practice involved. The Speaker suggested that, if Members considered the matter sufficiently important, it might be debated as a matter of privilege following the moving of a substantive motion. No further action was taken.⁷⁸

In 1934 the Speaker was asked to rule whether certain Members were in order in recording a vote if they were directly interested as participants in the distribution of the money raised by means of the legislation. The Speaker stated that he could not have a knowledge of the private business of Members and therefore was not in a position to know whether certain Members have, or have not, a pecuniary interest in the bill. He referred to the relevant standing order and advised that the words 'not held in common with the rest of the subjects of the Crown' really decided the issue. The matter was not further pursued.⁷⁹

In 1948 the Chair in ruling on a point of order stated that 'the honourable Members referred to are interested financially in the ownership of certain commercial broadcasting stations, but only jointly and severally with other people. Therefore, they are entitled to vote on the measure now before the House'.⁸⁰ A similar case was recorded in 1951 when the Speaker ruled that a Member who is financially interested in a bill, other than as a shareholder in a company under discussion, should declare himself. The Speaker concluded his remarks by saying that it was not his duty to make an inquiry.⁸¹

In 1957⁸² and 1958⁸³ when the House was dealing with banking legislation the Chair ruled out of order any challenge to a Member's vote, the ground of the ruling being that the vote was cast on a matter of public policy.

Personal interest in committee inquiry

Standing order 326 states that no Member may sit on a committee if he is personally interested in the inquiry before the committee. No instances have occurred in the House of a Member not sitting on a committee for the reason that he was **pecuniarily** interested.

In 1955 Mr Morgan (Member for Reid), a member of the Committee of Privileges, took no active part as a member of the committee during the course of an inquiry in which he was personally interested.

77 VP 1923-24/179-80; H.R. Deb. (23.8.23)3380-3.

78 VP 1923-24/405; H.R. Deb. (11.9.24)4334-7.

79 H.R. Deb. (12.12.34)1130.

80 H.R. Deb. (24.11.48)3470.

81 H.R. Deb. (15.11.51)2154. For a precedent of a Member declaring his interest in a bill before a division is taken see H.R. Deb. (3.11.77)2817.

82 VP 1957-58/282; H.R. Deb. (21.11.57) 2447-9.

83 VP 1958/30; H.R. Deb. (19.3.58)478-9.

On the appointment of Members to the Select Committee on the Grievances of Yirrkala Aborigines, a Minister on a point of order raised the question as to whether a Member, who was a litigant in related court proceedings and who had been nominated to serve on the committee, was personally interested in the matters to be inquired into by the committee. The Speaker stated that, in his opinion, 'the Chair was not able to determine whether or not a Member was personally interested in a committee of inquiry and could not properly be called on to so decide. A Member must be guided by his own feelings in the matter and by the dictates of respect due to the House and to himself. Having regard to the existence of the Standing Order and its terms, it was likely that if a matter of this kind were to be brought to issue, it would be one for the House to decide'.⁸⁴ The Member served on the committee.

Parliamentary committee on pecuniary interest

In 1974 both Houses agreed to the appointment of a Joint Committee on Pecuniary Interests of Members of Parliament⁸⁵, which reported on 30 September 1975.⁸⁶ In its conclusions the committee stated:

Some of the reasons advanced for not instituting a register of pecuniary interests were as follows: that it would involve a considerable invasion of privacy; that it could easily be evaded; that it would assume that Members of Parliament were not persons of integrity; that there would be considerable problems in defining accurately all potentially conflicting interests; that it would require the creation of a large enforcement organisation; that it would be inequitable to require some classes of persons to register their interests whilst other persons were subject to no such requirements; and that it would deter potential candidates from seeking to enter Parliament.

The arguments relating to difficulties of definition, ease of evasion, administrative complexity and the assumption of integrity impugned lost much of their force if the register was considered not as a means of detecting fraud amongst Members of Parliament, but as a means of enabling the public to form an opinion as to the weight it should attach to the views or decisions of its elected representatives in the light of the interests which those representatives held. The invasion of privacy and potential deterrent effect on candidates would be minimised by only requiring disclosure of interests in non-specific terms and permitting access to the information in a manner designed to preclude its mischievous use.

On 6 November 1975 the chairman of the committee moved the following motion in the House:

That the House of Representatives, noting the Report of the Joint Committee on Pecuniary Interests of Members of Parliament presented to both Houses on 30 September 1975 and accepting the recommendations made by the Joint Committee, resolves as follows: That—

Part A: Members of Parliament

- (i) Each Member shall disclose—
 - (a) The names of all companies in which he has a beneficial interest in any shareholding, whether as an individual, a member of another company, or a partner, or through a trust.
 - (b) The precise location of any realty in which he has a beneficial interest.
 - (c) The names of all companies of which he is a director whether remunerated or not.
 - (d) Any sponsored travel.
- (ii) Where a change occurs in respect of any of the matters that a Member is required to disclose under paragraph (i) he shall make a disclosure in respect of the change.
- (iii) In making a disclosure pursuant to paragraph (i)(a) or paragraph (ii) a Member may, but need not, disclose the actual value or extent of any such shareholding.

⁸⁴ VP 1962-63/559; H.R. Deb. (19.9.63)1176-9.

⁸⁵ VP 1974-75/173-4; J 1974-75/236.

⁸⁶ VP 1974-75/923; 'Pecuniary Interests of Members of Parliament', *Report of Joint Committee*, PP 182(1975)46.

- (iv) The disclosures under paragraphs (i), (ii) and (iii) shall be in writing, supported by a statutory declaration and shall be furnished to the Parliamentary Registrar to be appointed pursuant to this resolution.
- (v) The Parliamentary Registrar shall file the disclosures made in accordance with the preceding paragraph in a register to be called the *Register of Pecuniary Interests*.
- (vi) The Register of Pecuniary Interests shall be in loose-leaf form.
- (vii) The Parliamentary Registrar shall permit a person to inspect the disclosures made by a particular Member on the following conditions:
 - (a) An application shall be made to the Parliamentary Registrar.
 - (b) The application shall be in writing, signed by the applicant, and shall set out—
 - (1) the applicant's full name, address and occupation;
 - (2) the name of the Member concerned; and
 - (3) the applicant's reason for seeking the inspection.
 - (c) An application shall relate only to one Member.
 - (d) Upon receipt of an application under this paragraph the Registrar shall notify the Member personally of the application and acquaint the Member with the reasons set out in the application for seeking the inspection. The Member thus notified may, within seven days from the day of notification, submit a case to the Registrar opposing the application.
 - (e) The Parliamentary Registrar shall consider the application and any objections to it and if after such consideration he is satisfied that a bona fide reason exists for the application he shall, with the approval of the President in respect to Senators or the Speaker in respect to Members of the House of Representatives, permit inspection of the disclosures.
- (viii) The Parliamentary Registrar shall be appointed by the Speaker of the House of Representatives and the President of the Senate and shall be directly responsible to them.

*Part B: Minister of the Crown—
Parliamentary Staff—The Media*

- (i) On assuming office, a Minister of the Crown should dispose of any shares in a public or private company which might be seen to be affected by decisions taken within the Minister's sphere of responsibility and resign from any directorships of public companies.
- (ii) Ministers of the Crown and Opposition Leaders and Members of Parliament appointed as their Parliamentary Spokesmen, should require all staff employed in their offices to make declarations in writing disclosing—
 - (a) The names of all companies in which they have a beneficial interest in any shareholding, whether as an individual, a member of another company, or a partner, or through a trust.
 - (b) The precise location of any realty in which they have a beneficial interest.
 - (c) The names of all companies of which they are directors whether remunerated or not.
 - (d) Any sponsored travel.
 - (e) Any change in respect of the above particulars.
- (iii) A copy of the declaration made by each staff member under the preceding paragraph should be given to the Prime Minister.
- (iv) A Media Council which is representative of all the component parts of the media should be established with an independent chairman. It should be equipped not only with powers to devise and administer an appropriate and effective media register of pecuniary interests, but with all other necessary powers to ensure that it enjoys the respect of both the communications industry itself and the public.
- (v) Until such time as the Media Council referred to in the preceding paragraph is established the provisions of paragraphs (i) to (vii) of Part A of this resolution shall apply *mutatis mutandis* to the directors, executives, editors and journalists of those media organisations accredited to or using the facilities of the Parliament House and to all other journalists accredited to, using the facilities of, or working in or from Parliament House.

- (vi) The Parliamentary Registrar shall maintain a separate register to be called the Media Register in respect to disclosures made in accordance with the preceding paragraph.

Part C: General

- (i) A Joint Standing Committee on Pecuniary Interests, to consist of four Senators and five Members of the House of Representatives, be appointed with power to supervise generally the operation of the Register of Pecuniary Interests, the Media Register and to modify, on the authority of both Houses of the Parliament, the disclosure requirements set out in paragraphs (i) to (vii) of Part A and paragraph (v) of Part B of this resolution. In addition the Committee should have power—
- (a) to draft a Code of Conduct based on standing orders, conventions, practices and rulings of the Presiding Officers of the Australian and United Kingdom Parliaments and such other guidelines as it may consider appropriate;
 - (b) to supervise the Code of Conduct agreed to by both Houses of the Parliament, and
 - (c) to act during recess, and to send for persons, papers and records.
- (ii) The Parliamentary Registrar should be the Clerk of the Joint Standing Committee.
- (iii) Joint Standing Orders should be adopted to give effect to this resolution.

Part D: Message to the Senate

A message to be sent to the Senate acquainting it of this resolution and requesting its concurrence.⁸⁷

Debate on the motion was adjourned, and the motion lapsed on the dissolution of both Houses on 11 November 1975. A notice of motion, similar to the above motion, was placed on the Notice Paper by a private Member in 1976 but lapsed on prorogation in 1977 and has not been revived.⁸⁸

Government committee on public duty and private interest

On 15 February 1978 the Prime Minister announced the appointment of a government committee to inquire into matters relating to public duty and private interest, to be chaired by the Chief Judge of the Federal Court of Australia, Sir Nigel Bowen, with the following terms of reference:

1. To recommend whether a statement of principles can be drawn up on the nature of private interests, pecuniary or otherwise, which could conflict with the public duty of any or all persons holding positions of public trust in relation to the Commonwealth.
2. To recommend whether principles can be defined which would promote the avoidance and if necessary the resolution of any conflicts of interest which the inquiry may, under paragraph (1) above, find to be possible.
3. In the event of a finding under paragraph (2) above that principles can be defined, to recommend what those principles should be.
4. Without limiting the scope of paragraph (3) above, to recommend whether or not a register under judicial or other supervision should be maintained so that, in the event of allegations of impropriety, the allegation may be open to judicial investigation and report.
5. For the purposes of paragraph (1) above, 'persons holding positions of public trust in relation to the Commonwealth' to include the following:
 - (a) Ministers;
 - (b) Senators and Members of the House of Representatives;
 - (c) Staff of (a) and (b);
 - (d) Members of the Australian Public Service; and
 - (e) Such other persons or classes of persons which in the opinion of the Committee ought to be included.⁸⁹

⁸⁷ VP 1974-75/1115-17.

⁸⁸ NP 2(19.2.76)12-14.

⁸⁹ 'Public duty and private interest inquiry', *Commonwealth Record*, 3, 6, 13-19 February 1978, p. 123.

The report of the committee, dated July 1979, was tabled on 22 November 1979.⁹⁰ The committee concluded that:

- it would not be possible to draw up a completely comprehensive and satisfactory statement of principles on the nature of private interest, pecuniary or otherwise;
- it is possible to refine principles which would promote the avoidance and if necessary the resolution of conflicts of interest;
- a statement of such principles would constitute a Code of Conduct;
- generally provisions for the enforcement of the Code of Conduct should be built into existing basic disciplinary procedures but for occasional areas of particular importance special machinery in the form of a Public Integrity Commission be established, and
- there is insufficient justification at the present time to introduce a system of compulsory registration of office holders' interests, but instead reliance should be placed on the Code of Conduct which includes a requirement for ad hoc declarations of interest.

In rejecting a system of compulsory registration, the committee said:

In forming its judgment it [the Committee] has been influenced by two particular considerations. One is a belief it developed during the course of its deliberations that, however tightly the specifications for a register might be drawn, it would be impossible to list all private interests which could give rise to conflict situations; in consequence, in many of these situations an office holder and the public which he serves would need to rely upon the Code of Conduct, with its provision for *ad hoc* disclosure of interests, for reassurance rather than upon any list of interests that may have been set down in a register. The other consideration is the longer term consequences for office holders' privacy which the Committee can foresee.

The Committee has given careful consideration to the arguments for registration but it is not convinced that they outweigh those against it. It believes that, if registers of pecuniary interests of office holders are instituted, the first step has been taken on a slippery slope that is likely to lead to a much wider system of disclosure and unjustified invasions of privacy than its first proponents contemplated. The deficiencies of a limited register would be quickly exposed by media probing and by the opportunity for political advantage that might be derived from allegations suggesting particular conflicts of interest not disclosed by the register. Restricted access to disclosed information, if that were the procedure adopted, would come under attack as it did in the United States during the 1970s. Unless provision was made for the public to have access to the information in the register, registration would be likely to become immediately unacceptable. Once the discrediting process started, the alternatives would be to leave the existing rules, accept that they were imperfect and did not cover all possible conflict situations, or else begin 'tightening up' by extending the interests to be disclosed and opening the register to public scrutiny. If the first course were followed, the supposed symbolic value of a register would dissipate; if the second, privacy would suffer.⁹¹

The committee recommended that the following Code of Conduct be adopted for general application to all office holders:

CODE OF CONDUCT

Under the system of government which operates in Australia the main legislative and executive functions of government are carried out by Ministers, Members of Parliament, public servants and statutory office holders. Each category of office holder has a duty to discharge responsibilities entrusted by the Constitution and the laws made under the Constitution according to the highest standards of conduct. The public is entitled to have confidence in the integrity of its government. Office holders may be required by the nature of public office to accept restrictions on certain areas of their private conduct beyond those imposed on ordinary citizens.

⁹⁰ VP 1978-80/1238-9; H.R. Deb. (22.11.79)3374-81; 'Public duty and private interest', *Report of the Committee of Inquiry*, PP 353(1979).

⁹¹ PP 353(1979)52-3.

The following Code of Conduct embodies principles which should be observed by all four categories of office holders.

1. An office holder should perform the duties of his office impartially, uninfluenced by fear or favour.
2. An office holder should be frank and honest in official dealings with colleagues.
3. An office holder should avoid situations in which his private interest, whether pecuniary or otherwise, conflicts or might reasonably be thought to conflict with his public duty.
4. When an office holder possesses, directly or indirectly, an interest which conflicts or might reasonably be thought to conflict with his public duty, or improperly to influence his conduct in the discharge of his responsibilities in respect of some matter with which he is concerned, he should disclose that interest according to the prescribed procedures. Should circumstances change after an initial disclosure has been made, so that new or additional facts become material, the office holder should disclose the further information.
5. When the interests of members of his immediate family are involved, the office holder should disclose those interests, to the extent that they are known to him. Members of the immediate family will ordinarily comprise only the office holder's spouse and dependent children, but may include other members of his household or family when their interests are closely connected with his.
6. When an office holder (other than a Member of Parliament) possesses an interest which conflicts or might reasonably be thought to conflict with the duties of his office and such interest is not prescribed as a qualification for that office, he should forthwith divest himself of that interest, secure his removal from the duties in question, or obtain the authorisation of his superior or colleagues to continue to discharge the duties. Transfer to a trustee or to a member of the office holder's family is not a sufficient divestment for the purpose. If immediate divestment would work significant hardship on the office holder, possession of the interest should be disclosed to colleagues or superiors and authorisation obtained for temporary retention pending divestment.
7. An office holder should not use information obtained in the course of official duties to gain directly or indirectly a pecuniary advantage for himself or for any other person. In particular, an office holder should scrupulously avoid investments or other transactions about which he has, or might reasonably be thought to have, early or confidential information which might confer on him an unfair or improper advantage over other persons.
8. An office holder should not:
 - (a) solicit or accept from any person any remuneration or benefit for the discharge of the duties of his office over and above the official remuneration;
 - (b) solicit or accept any benefit, advantage or promise of future advantage whether for himself, his immediate family or any business concern or trust with which he is associated from persons who are in, or seek to be in, any contractual or special relationship with government;
 - (c) except as may be permitted under the rules applicable to his office, accept any gift, hospitality or concessional travel offered in connection with the discharge of the duties to his office.

The impression should be avoided that any person can improperly influence the office holder or unduly enjoy his favour.

9. An office holder should be scrupulous in his use of public property and services, and should not permit their misuse by other persons.
10. An office holder should not allow the pursuit of his private interest to interfere with the proper discharge of his public duties.⁹²

In considering the means by which a Code of Conduct might be brought into effect, the committee stated:

Broadly, the Committee expects statements of principle, such as are embodied in a draft Code of Conduct applicable to office holders, to be manifest in such forms as the Standing Orders, resolutions and conventions of a legislative body, or the staff rules and guidelines of an executive body. They may require supplementing by additional rules, sometimes reflecting mini-

⁹² PP 353(1979)31-2.

more standards more onerous or restrictive than the general principle, sometimes explaining or enlarging upon a qualification to the general principles already incorporated in the Code of Conduct, to make them fit more satisfactorily the cases of particular groups of office holders within wider categories.⁹³

The main recommendations in relation to the Parliament were:

- the Senate and the House of Representatives be invited to consider:
 - amending their standing orders to include new standing orders requiring, respectively, Senators and Members of the House of Representatives to conform to the Code of Conduct; or
 - passing a resolution adopting the Code of Conduct, and providing that a subsequent breach of the Code of Conduct should constitute misconduct and a breach of the privileges of Parliament;
- the House of Representatives be invited to consider the desirability of strengthening standing order 196;
- the Senate and the House of Representatives be invited to consider adopting whether by standing order or resolution, requirements along the lines of the resolution of the British House of Commons of 22 May 1974:

That, in any debate or proceeding of the House or its committees or transactions or communications which a Member may have with other Members or with Ministers or servants of the Crown, he shall disclose any relevant pecuniary interest or benefit of whatever nature, whether direct or indirect, that he may have had, may have or may be expecting to have;
- the Senate and the House of Representatives be invited to consider including in such standing order or resolution provisions:
 - that a declaration of interest should be made at the earliest opportunity when speaking in debate or taking part in committee proceedings, and
 - that such declarations should be automatically recorded as part of the official record and indexed in Hansard for convenience of reference;
- the Senate be invited to consider its standing order 292 and that the House of Representatives be invited to consider its standing order 326 to determine whether any amendment is required to avoid conflicts of interest in respect of committee members;
- each House consider the adoption of a practice that its Presiding Officer:
 - should resign all directorships in public companies and private companies which engage in significant trading operations, but may retain directorships in private companies which operate family farms, or pastoral holdings or investments, but not otherwise;
 - should cease to engage in professional practice, and
 - should cease to be involved in the daily routine work of any business, and
- each House of the Parliament be invited to:
 - establish a Standing Ethics Committee empowered to:
 - report to the House, from time to time, on any changes in the Code of Conduct that it deems desirable, and
 - receive, investigate and report upon any complaints of departures by Members from the Code of Conduct, and, in particular, upon allegations involving conflicts of interest, and

⁹³ PP 353(1979)32.

- determine the procedures for the operation of the committee and the extent of its powers.

The committee also made the following recommendations in relation to the staff of Members:

- responsibility for the proper conduct of the staff of Members of Parliament remain with the Member they have been appointed to assist;
- Members of Parliament ensure that their staff are familiar with the Code of Conduct and conform to it;
- such staff disclose to their Members any interests which they have that are likely, or might reasonably appear likely, to cause conflicts of interest;
- when dealing with office holders, the staff of Members of Parliament declare personal interests according to the same rules as apply to their Members, and
- a Member of Parliament instructing a member of his staff to make representations on his behalf to an office holder acquaint the member of staff with the substance of any declaration of interest he would have been required to make had he made the representation himself, and direct that the information be communicated to the office holder when the representation is being made.

In relation to the enforcement of the Code of Conduct with respect to the occasional cases of particular importance, the committee recommended that:

- a statutory body, to be known as the Public Integrity Commission, be created, comprising part-time members appointed by the Prime Minister after consultation with the Leader of the Opposition;
- its chairman be a retired judge or person likely to be acceptable as of sufficient standing and experience;
- there be a standing panel of 5 (or 7) members from whom 3, one of whom might be the chairman himself, would be selected by the chairman for a particular inquiry;
- a secretariat be established and located in an administratively convenient department or authority;
- the Commission have the powers of a Royal Commission under the *Royal Commissions Act* 1902, including power to compel persons to attend, be sworn and give evidence, and to produce documents, and
- the Commission have:
 - power to employ counsel to assist it, with provision for examination of witnesses by counsel equivalent to section 6FA of the *Royal Commissions Act* 1902;
 - the same privileges and protection as a Royal Commission, and
 - power to take evidence in private when it considers it to be in the public interest so to do.

In order to largely remove any difficulty and injustice which persons involved in an inquiry might face, the committee recommended certain principles for the guidance of the proposed Public Integrity Commission, which can be paraphrased as follows:

- before any person becomes involved, the commission must be satisfied that there are circumstances which affect him and which it proposes to investigate;
- before any person involved is called as a witness, he should be informed of any allegations made against him and of the substance of evidence supporting the allegations;
- he should be given an adequate opportunity to prepare his case and of being assisted by legal advisers, and his legal expenses should normally be met out of public funds;

- he should have the opportunity of being examined by his own solicitor or counsel and of stating his case in public at the inquiry;
- any material witnesses he wishes called should be heard if reasonably practicable, and
- he should have the opportunity for cross-examination of witnesses giving evidence which might affect him.

In presenting the report the Deputy Prime Minister indicated the Government's broad acceptance of the recommendations, including full acceptance of the recommendations relating to Ministers.⁹⁴ Debate was resumed on the report on 21 May 1980 when the House was informed that 'the Government found the arguments against a general register compelling' and that the government emphasis would be on disclosure of interest 'when the relevance of a particular interest becomes apparent'.⁹⁵ The House was further informed that the only major matters then outstanding on which decision and action was required related to:

- the application of the Code of Conduct to Members of Parliament and establishment of procedures relating to their duties and responsibilities, and
- the establishment of machinery for dealing with conflict of interest cases, namely, the establishment of an Ethics Committee (in each House) and a Public Integrity Commission.

It was stated that the Government intended to initiate the necessary measures to give effect to these proposals. In relation to the role of the Public Integrity Commission, it was emphasised that it would deal with exceptional cases where a high degree of public concern is evident. The commission would be an investigating and fact-finding body only, and would be required to report its findings to the person or body by whom the matter was referred. Any consequential disciplinary action would be the responsibility of that person or body.

At the dissolution of the 31st Parliament on 19 September 1980 these matters had not been finalised.

PAYMENT OF MEMBERS

As indicated earlier, the duties of a Member of Parliament are wide-ranging and demanding in terms of time and energy. Payment of Members therefore reflects not only the status and position of Members but the importance, responsibility, difficulty and constancy of their work. In this context it is recognised that Members are occupied full-time in their parliamentary duties and that most of them are fully dependent on their parliamentary allowance.⁹⁶

The first report of the Remuneration Tribunal in 1974 (reiterated in the 1977 Review) contains the following statement of principle in relation to the payment of Members:

That the Parliamentary salary should not be so low as to constitute an entry barrier to gifted and highly-qualified persons is beyond argument. The salary level at which this barrier may be created for an increasing number of well-educated and experienced persons in the professions and in technological and business pursuits is a matter of judgment. We deem it of special im-

⁹⁴ H.R. Deb. (22.11.79)3374-81; and see Ch. on 'The structure of the House'.

⁹⁵ VP 1978-80/1522-3; H.R. Deb. (21.5.80)3026-36. The subject matter of sections of the report on Public Duty and Private Interest formed the basis of a motion debated in the House on 26 May 1981 relat-

ing to sponsored overseas travel of Members, VP1980-81/285; H.R. Deb (26.5.81)2522-33.

⁹⁶ 'Salaries and allowances of Members of the Parliament of the Commonwealth', *Report of Inquiry*, PP 284(1971).

portance that the Parliament attract as Members sufficient numbers of able persons to ensure in the ministries of the future the breadth of expertise and experience required to meet the demands of government.⁹⁷

The authority for payment of salaries and allowances to Members of Parliament and Ministers was expressly provided for in the Constitution⁹⁸, which was an extension of the practice followed by the various State Parliaments. Thus, while it was not a new innovation, Australia nevertheless preceded the House of Commons in this regard which did not make permanent provision for the payment of Members until 1911.⁹⁹

Prior to 1973 the Parliament had always determined the salaries and allowances to be paid to Ministers and Members by means of legislation.¹⁰⁰ No set pattern was followed by the various Governments or Parliament in arriving at the rates of salaries and allowances to be paid. Governments had either arrived at conclusions from their own investigatory sources or responded to pressure from party and political forces. On occasions, but not before 1952, adjustments of remuneration were preceded by a report of an independent committee of inquiry.¹⁰¹

In 1952¹⁰², 1955¹⁰³, 1959¹⁰⁴ and 1971¹⁰⁵ committees of inquiry made recommendations to the Government most of which were accepted and formed the basis of legislation.¹⁰⁶

Apart from recommending actual changes in allowances and entitlements of Members, the 1971 report recommended that consideration be given to the establishment, under legislation, of an independent 3-man tribunal to report and make recommendations on future adjustments of allowances to Members. It was emphasised however that the Parliament or the Government should not be prevented from rejecting recommendations or from taking action not in accordance with what is recommended by the tribunal.

As a result of the 1971 report the Remuneration Tribunal Act came into operation on 19 December 1973. The tribunal is required to make at the one time reports and determinations annually not only for Members of Parliament but also for judges and public office holders. The Act also establishes a second tribunal for academic salaries.¹⁰⁷

The tribunal's reports and determinations¹⁰⁸ are made to the Minister who shall cause copies to be laid before each House within 15 sitting days after receipt by him. If within a further 15 sitting days, either House disapproves of a determination, the determination ceases to operate as from the date of disapproval.¹⁰⁹

On 2 occasions Remuneration Tribunal determinations have been disapproved. The 1974 determinations with regard to Members, Ministers, First Division Officers of the Public Service and statutory office holders were disapproved by the Senate.¹¹⁰ In 1978 the House of Representatives disapproved the determinations relating to increases in allowances payable to Ministers, and additional salaries and allowances payable to office holders of the Parliament.¹¹¹ In relation to the 1979 Review, the Parliament

97 'Remuneration Tribunal Act', *Reports and Determinations*, PP 94(1974)8.

98 Constitution, ss. 48, 66; and see Ch. on 'The structure of the House'.

99 *May*, p. 11.

100 *Ministers of State Act 1952 and Parliamentary Allowances Act 1952*.

101 The 2 exceptions since 1952 were 1964 and 1968.

102 'Salaries and allowances of Members of the national Parliament', *Report of Committee of Enquiry*, Govt. Pr., Canberra, 1952.

103 'Salaries and allowances of Members of the Commonwealth Parliament', *Report of committee of inquiry*, PP 7(1956-57).

104 'Salaries and allowances of Members of the Commonwealth Parliament', *Report of committee of inquiry*, PP 15(1959-60).

105 PP 284(1971).

106 For a brief history of allowances of Members since 1901 see PP 284(1971)6-11.

107 *Remuneration Tribunal Act 1973* (short title amended in 1974 to Remuneration Tribunals Act).

108 The Tribunal has made reports and determinations annually since 1974 usually in the form of an annual review.

109 For disallowance of determinations see Ch. on 'Legislation'.

110 J 1974-75/78-80.

111 VP 1978-80/350.

passed legislation to effect changes to the determinations of the tribunal. In the case of Members, steps were taken to ensure that automatic application of national wage case decisions on a twice yearly basis were not applied. In the case of Ministers and office holders, the tribunal had proposed increased salaries and allowances with the object of readjusting relativities. Steps were taken to increase salaries in respect of indexation increases since the previous review only.¹¹²

A Member is paid his salary and allowances from the date of the election:

- to the date of dissolution, if he does not seek re-election, or
- to and including the day before the election, if he re-nominates but is defeated at the election.

A Member who is re-elected is paid continuously.

Ministers and office holders receive an additional salary and in some cases an additional special allowance and travelling allowance as well as the basic parliamentary allowance payable to all Members.¹¹³ An additional salary and/or allowance is paid to holders of the following positions¹¹⁴:

Prime Minister
 President of the Senate
 Speaker of the House of Representatives
 Ministers
 Leader of the Opposition
 Deputy Leader of the Opposition
 Leader of the Opposition in the Senate
 Leader of a minority non-government party recognised in the Senate or House of Representatives
 Chairman of Committees in the Senate
 Chairman of Committees in the House of Representatives
 Deputy Leader of the Opposition in the Senate
 Government Whip in the House of Representatives
 Opposition Whip in the House of Representatives
 Government Whip in the Senate
 Opposition Whip in the Senate
 Third Party Whip in the House of Representatives
 Deputy Government Whip in the House of Representatives
 Second Non-Government Party Whip in the Senate
 Deputy Government Whip in the Senate
 Deputy Opposition Whip in the Senate
 Deputy Opposition Whip in the House of Representatives
 Deputy Chairman of Committees in the Senate
 Deputy Chairman of Committees in the House of Representatives
 Chairman of the Joint Parliamentary Committee of Public Accounts
 Chairman of the Parliamentary Standing Committee on Public Works
 Chairman of the Joint Committee on Foreign Affairs and Defence
 Chairman of a parliamentary committee concerned with public affairs

If the Speaker is re-elected as a Member, the additional salary and allowance payable to the Speaker continue to be paid until the close of business on the day before a new Speaker is elected. If the Speaker does not seek re-election as a Member (the case

112 *Remuneration and Allowances Act 1979* (Act No. 140 of 1979); *Ministers of State Amendment Act 1979* (Act No. 141 of 1979); and see H.R. Deb. (23.7.79)575.

113. See also Ch. on 'The structure of the House'.

114 For details of rates see latest determinations of the Remuneration Tribunal. For details of certain statutory provisions see *Parliamentary Allowances Act 1952*.

of Sir John McLeay) or is defeated at the election (the case of Sir William Aston), the additional salary and allowance continue to be paid, in the form of *ex gratia* payments, until the close of business on the day before a new Speaker is elected. These payments are continued because certain administrative functions continue to be performed by the Speaker between the date of dissolution and the election of a new Speaker. For the purposes of exercising any powers or functions under a law of the Commonwealth the incumbent Speaker is, therefore, deemed to continue to be the Presiding Officer for this purpose under the *Parliamentary Presiding Officers Act 1965*.

In the case of the Chairman of Committees, his additional salary and allowance cease:

- at the date of dissolution, if he does not seek re-election as a Member, or
- on the day before the election, if he is defeated at the election.

If the Chairman of Committees is re-elected as a Member, his additional salary and allowance continue to be paid until the close of business on the day before his successor is elected, as he too may have administrative functions to perform under the *Parliamentary Presiding Officers Act*.

The additional salary (and allowance, where applicable) payable to chairmen of parliamentary committees and Deputy Chairmen of Committees cease at the date of dissolution.

Other allowances and entitlements

The Remuneration Tribunal also determines Members' electorate allowances, travelling allowances, and certain other entitlements and facilities.¹¹⁵ The electorate allowance is a special allowance for expenses necessarily incurred by a Member in the performance of his parliamentary duties and is designed to cover, in particular, private vehicle running expenses, any accommodation expenses within the electorate in excess of existing entitlement, accommodation expenses when travelling within Australia on party committee business, entertainment expenses, and donations and subscriptions. Two rates of electorate allowance are paid, one for electorates of less than 5000 square kilometres in area and the other for electorates of 5000 square kilometres or more.

A travelling allowance is paid to cover expenses incurred in overnight stays away from the electorate on parliamentary business, which includes nights spent in Canberra during the sittings of the House, and, in the larger electorates, for a restricted number of overnight stays within the electorate.

A Parliamentary Secretary to a Minister of State, appointed pursuant to the *Parliamentary Secretaries Act 1980*, is entitled to a limited reimbursement for expenses reasonably and necessarily incurred in respect of holding or performing the functions of that position.

Members of Parliament are entitled to travel warrants and airline credit cards, first-class airline or train travel on parliamentary or electorate business, a private vehicle allowance when travelling to or from Canberra on parliamentary business, a charter transport allowance for the service of the electorate, government car transport under certain conditions and a government paid telephone and postage allowance. Each Member is provided with a Federal Members' Authority Telephone Card which allows him to make trunk calls and send phonograms within Australia at government expense. Members are also provided with office accommodation in Parliament House and in their electorate and are entitled to employ one electorate secretary and one other staff

¹¹⁵ For details of rates see latest determinations of the Remuneration Tribunal. For details of certain statutory provisions see *Parliamentary Allowances Act 1952*.

member who may be located either in Canberra or in the electorate. In some of the larger electorates a second office and electorate secretary are provided. After a Member has completed 3 years' service in the Parliament he is credited with the cost of one round-the-world first-class air ticket each Parliament which can be drawn on for one or more overseas study journeys. Certain travel entitlements are also available to a Member's spouse and dependent children.

A Member who retires after serving in the Parliament for 20 years or the life of 7 Parliaments is eligible for a Life Gold Pass entitling the ex-Member to travel within Australia at government expense on airlines and by rail and bus. Members who have served 1 year as Prime Minister or 6 years as a Minister, Leader of the Opposition or Speaker are also eligible for Life Gold Passes. Members who do not qualify for a Life Gold Pass may travel within Australia at government expense for limited periods after their retirement, according to their length of service.

Compensation for Members in the event of death or injury while on official business is by means of *ex gratia* cover on the same basis as that provided for Commonwealth employees under the *Compensation (Commonwealth Government Employees) Act 1971*.

Parliamentary retiring allowances¹¹⁶

All Members contribute to a compulsory retirement benefits scheme¹¹⁷ under which benefits are paid to former Members, their widows or widowers, and orphan children.

The superannuation scheme is administered by the Department of Finance under the direction of the Parliamentary Retiring Allowances Trust which consists of 5 trustees, namely, the Minister for Finance (or a Minister authorised by the Minister for Finance) who is the presiding trustee, and 2 Senators and 2 Members of the House of Representatives who are appointed by their respective Houses (*see* p. 193). Contributions are a fixed percentage of:

- the parliamentary allowance payable from time to time, and
- any additional salary, or allowance in the nature of salary, payable from time to time by reason of service as Prime Minister, a Minister or office holder of the Parliament.

The contributions are paid to the Consolidated Revenue Fund.

In respect of contributions payable from the parliamentary allowance, if a Member's period of parliamentary service is less than 18 years, the rate of contribution is 11½ per cent of the monthly amount of the allowance. On completing 18 years' service the contribution rate of a Member reduces to 5½ per cent.

Those Members who receive an additional salary as outlined above are also required to contribute in respect of that additional salary at the rate of 11½ per cent of the monthly amount. On attaining their maximum additional retiring allowance entitlement the contribution rate also reduces to 5½ per cent and ceases to be payable at any time when the additional salary is no longer received.

A Member's period of parliamentary service, which governs the nature and level of benefits payable upon his retirement or death, means the period during which he was entitled to receive a parliamentary allowance. Subject to certain conditions, the period may include any earlier period of service in the Commonwealth Parliament or a State Parliament or the Northern Territory Legislative Assembly or may be notionally extended by virtue of prior membership of another superannuation scheme.

¹¹⁶ For full details *see* *Parliamentary Contributory Superannuation Scheme Handbook*, Department of Finance, Canberra, 21 April 1981, from which most of the following text is taken.

¹¹⁷ *Parliamentary Retiring Allowances Act 1948* (short title amended in 1978 to *Parliamentary Contributory Superannuation Act*).

On retirement from the Parliament, a Member is entitled to a retiring allowance if he has:

- (a) completed 12 or more years service; or
- (b) has on 4 occasions ceased to be a Member on the dissolution or expiration of the House or on the expiration of his term of office, or
- (c) if retirement is involuntary and he has completed not less than 8 years service or has on 3 occasions ceased to be a Member on the dissolution or expiration of the House or on the expiration of his term of office.

A Member with less than 8 years service who qualifies for a retiring allowance under (b) or (c) above is deemed to have had 8 years service.

A Member who does not qualify for a retiring allowance is entitled to a lump sum payment consisting of:

- a refund of contributions;
- a supplement, and
- a refund of the amount of any lump sum benefit payed to the Commonwealth on becoming a Member.

The amount of the supplement payable is:

- if retirement is involuntary—2½ times, or
- if retirement is deemed to be voluntary—1½ times

the contributions paid by the Member, or where the period of service exceeds 8 years, the contributions paid in respect of the last 8 years of service.

The rates of retiring allowance payable to retired Members are expressed as a percentage of the parliamentary allowance payable from time to time:

Complete years of service	Percentage of parliamentary allowance
8	50
9	52.5
10	55
11	57.5
12	60
13	62.5
14	65
15	67.5
16	70
17	72.5
18 or more	75

Where a Member has received additional salary as Prime Minister, a Minister or an office holder in the Parliament, the percentage of the parliamentary allowance that is payable as a retiring allowance is increased in accord with a fixed formula.

As retiring allowance entitlements are expressed as a percentage of the parliamentary allowance payable from time to time, the actual amount of the retiring allowance will increase each time the parliamentary allowance payable to serving Members is increased.

VACANCY

During the course of a Parliament a Member's place may become vacant by resignation, absence without leave, expulsion, ineligibility or death. When a vacancy occurs

the Speaker issues a writ for the election of a new Member.¹¹⁸ If the Speaker is absent from the Commonwealth, or there is no Speaker, the Governor-General in Council may issue the writ.¹¹⁹ A by-election writ may be issued by the Acting Speaker performing the duties of the Speaker during the Speaker's absence within the Commonwealth.¹²⁰

Resignation

A Member may resign his seat in the House by writing to the Speaker or, if there is no Speaker or he is absent from the Commonwealth, to the Governor-General.¹²¹ The resignation takes effect and the Member's seat becomes vacant from the time the letter of resignation is received by the Speaker or the Governor-General.¹²²

To be effective a resignation must be in writing, signed by the Member who wishes to resign, and received by the Speaker. A resignation by telegram is not effective.¹²³

A resignation that is in writing signed by another person at the direction of the Member, where the Member is physically unable to sign the resignation himself but is mentally capable of understanding the nature of the resignation and of authorising that other person to sign it on his behalf, would meet the constitutional requirements regarding resignation, provided these facts are able to be established satisfactorily. However, strict signature should be insisted upon whenever possible in view of the importance of the question and the advice of the Attorney-General should be sought in specific cases if the matter arises in practice.¹²⁴

Absence without leave

A Member's place becomes vacant if, without permission of the House, he does not attend the House for 2 consecutive months of any session of the Parliament.¹²⁵ It could be interpreted that the phrase **attend the House** means **attend the House when it is sitting**¹²⁶, but in order that the position of Members is not placed in doubt it is normal practice at the end of a period of sittings for a Minister to move 'That leave of absence be given to every Member of the House of Representatives from the determination of this sitting of the House to the date of its next sitting'. This motion is moved to cover the absence of Members from the House between the Autumn and Budget period of sittings and the Budget and Autumn period of sittings. The motion is still moved even though it is known that there will be a dissolution of the House pending an election.¹²⁷

No Member's place has become vacant because of him being absent without leave but, in 1903, the seat of a Queensland Senator (Senator Ferguson) became vacant when he failed to attend the Senate for 2 consecutive months.¹²⁸ The Serjeant-at-Arms, who records the attendance of Members in the House, advises the whip of the relevant party when a Member has been absent for about 6 weeks. The whip informs the leader of the party who normally either moves for the House to grant the Member leave of absence or arranges for the Leader of the House to do so.

If an absent Member is an independent or has not kept his party whip informed of his intentions, then the Serjeant-at-Arms contacts the Member after a 6 weeks' absence

118 VP 1977/261.

119 Constitution, s. 33; *see also* Ch. on 'Elections and the electoral system'.

120 S.O. 14.

121 Constitution, s. 37. *See* VP 1980-81/77 for examples of both methods.

122 Advice of Attorney-General's Department, dated 19 May 1964.

123 Advice of Attorney-General's Department, dated 26 February and 9 March 1960.

124 Opinion of Attorney-General, dated 3 August 1977.

125 Constitution, s. 38.

126 Opinion of Solicitor-General, dated 13 September 1935.

127 VP 1978-80/1694.

128 J 1903/211.

to ensure that he is aware of the consequence of an absence from the House without leave for a period of 2 months. If a motion for leave was not moved by 7 days before the 2 months had elapsed, it is probable that the Speaker or an officer of the House would then advise the Member by telegram or telephone of his situation.

A motion to grant leave of absence does not require notice, states the cause and period of leave, and has priority over all other business.¹²⁹ Such a motion is normally moved by the Leader of the House or by the leader of the party to which the Member belongs. Leave is usually granted for reasons such as parliamentary or public business overseas, or ill health. During both World Wars leave for long periods was granted to several Members who were serving in the Armed Forces. There have been a few occasions when Members have been granted leave without having been sworn in. The longest period of absence was in relation to the Member for the Northern Territory (Mr Blain) who was granted leave, without having been sworn in as a Member, from 8 October 1943 to 26 September 1945 while he was a prisoner of war.¹³⁰ A Member who has been granted leave of absence by the House is excused from service in the House and on any committee.¹³¹ Another Member may be appointed to a committee to serve in the place of a Member granted leave of absence by the House.¹³² A Member, who has been granted leave, forfeits it if he attends the House before his leave expires.¹³³

If a seat became vacant because a Member was absent for 2 consecutive months without the permission of the House, the appropriate procedure would appear to be for the Speaker to advise the House of the facts and to inform the House of his intention to issue a writ for the election of a Member for the relevant electoral Division.

Death

The death of a sitting Member is usually announced to the House at the first opportunity on the next day of sitting following the Member's death. The standing orders provide that precedence will be ordinarily given by courtesy to a motion of condolence¹³⁴, which is moved without notice. The motion of condolence is usually moved by the Prime Minister and seconded by the Leader of the Opposition, and may be supported by other Members.¹³⁵ At the conclusion of the speeches the Speaker puts the question and asks Members to signify their approval of the motion by rising in their places. After a suitable period of silence, the Speaker thanks the House. The sitting of the House is then normally suspended for a few hours as a mark of respect.¹³⁶ On the death of a Minister or office holder of either House, the House adjourns until the next day of sitting. The House does not normally suspend the sitting after the condolence motion is agreed to in respect of a sitting Senator.

The practice of the House also ensures that the death of a former Member or Senator is recorded. In cases where a condolence motion is not moved, the Speaker makes brief mention of the death of the former Member and then invites Members to rise in their places as a mark of respect to the memory of the deceased. It is usual for the Speaker to convey a message of sympathy from the House to the relatives of the deceased.

The Speaker normally accepts, as proof of the death of a Member, an announcement in the media or a statement from a source accepted as reliable, such as a member of the family or party. The Speaker has never called for the production of a death certificate before declaring a seat vacant.

129 S.O. 35.

130 VP 1943-44/29; VP 1944-45/21; VP 1945-46/37; VP 1945-46/260.

131 S.O. 36.

132 VP 1948-49/13.

133 S.O. 37.

134 S.O. 157.

135 See also Ch. on 'Motions'.

136 VP 1980-81/77-8.

In December 1967, Prime Minister Holt was presumed to have died by drowning although his body was never found. The Commonwealth and Victoria police investigated the disappearance of Mr Holt and their joint report satisfied both the Attorney-General and the Secretary of his Department that there was overwhelming evidence that Mr Holt had died by drowning.¹³⁷ The Speaker was satisfied beyond doubt that a vacancy had occurred, and consequently declared the seat vacant and issued a writ for the election of a new Member on 19 January 1968.¹³⁸

Expulsion

The House derives its power to expel Members from the privileges and practice of the House of Commons passed to the Australian Parliament under section 49 of the Constitution. Members have been expelled from the House of Commons for a range of reasons including forgery, perjury, fraud, open rebellion and corruption in the administration of justice.¹³⁹

The House of Representatives has expelled a Member on one occasion only. On 11 November 1920, the Prime Minister moved, as a matter of privilege:

That, in the opinion of this House, the honorable Member for Kalgoorlie, the Honorable Hugh Mahon, having, by seditious and disloyal utterances at a public meeting on Sunday last, been guilty of conduct unfitting him to remain a Member of this House and inconsistent with the oath of allegiance which he has taken as a Member of this House, be expelled this House.

The speech to which the motion referred was delivered at a public meeting on Richmond Reserve, Melbourne and concerned British policy in Ireland at that time. The Leader of the Opposition moved an amendment to omit all words after 'That' and substitute the following words:

this House, whilst being opposed to all sedition and disloyalty and the subversion of constitutional means for the redress of grievances, is of opinion that the allegations made against the honorable Member for Kalgoorlie, the Honorable Hugh Mahon, should not be dealt with by this House for the following reasons:—

- (a) The allegations made against the honorable Member do not concern his conduct in Parliament or the discipline of Parliament.
- (b) That Parliament is not a proper tribunal to try a charge of sedition arising from the exercise of civilian rights of free speech at a public assembly of citizens.
- (c) That the judicature is especially established and equipped and has ample power under the law to bring any person to public trial for the offence of sedition alleged against the honorable Member.
- (d) That every citizen so charged is entitled to a public trial by a jury of his peers, where he would have the right to exclude by challenge biassed persons from the jury panel, and that this fundamental principle of British justice should not be departed from in this case.

The amendment was negatived and the original motion was agreed to on division.¹⁴⁰

Mr Mahon did not attend the House during the debate on his expulsion. He did however send the Prime Minister a letter which was read to the House during the course of the debate. In the letter he denied that anything he had said at the public meeting was seditious, or disloyal to the Sovereign, and indicated that his attack was directed against the British Government. Mr Mahon also stated that he knew the decision to expel him had already been made in the party room and that his presence in the House would not alter that decision.¹⁴¹ After the motion of expulsion was agreed to,

137 Advice of Attorney-General's Department, dated 10 January 1968.

138 VP 1968-69/2.

139 *May*, pp. 132-3.

140 VP 1920-21/431-2.

141 H.R. Deb. (11.11.20)6382-3.

a further motion was moved declaring the seat vacant which was agreed to on division.¹⁴² Mr Mahon stood for re-election in the resulting by-election but was defeated.

ATTENDANCE

The Clerk of the House keeps a Members' roll for each State which shows the name of the Member elected for each Division, the dates of his election, of making the oath or affirmation, and of ceasing to be a Member, and the reason for cessation of membership.¹⁴³ On each day of sitting the names of Members who attend in the Chamber are taken by the Serjeant-at-Arms and the names of absent Members are recorded in the Votes and Proceedings.¹⁴⁴ A List of Members and Attendance Roll is published in each sessional volume of the Votes and Proceedings.

TITLES ACCORDED TO MEMBERS

M.P. (Member of Parliament)

Members of the House of Representatives are designated M.P. not M.H.R. This was the decision of the Federal Cabinet in 1901¹⁴⁵ a decision which has since been reaffirmed in 1951¹⁴⁶ and in 1965.¹⁴⁷

Honourable

All Members of the 1st Parliament of the Commonwealth of Australia were granted the privilege by the King to use the title 'Honourable' for life within the Commonwealth of Australia.¹⁴⁸ Members subsequently elected do not hold this title except in the instances that follow.

It is established custom for a Member who is elected Speaker to use the title 'Honourable' during his period of office and to be granted the privilege of retaining the title for life if he serves in the office for 3 or more years. This privilege is granted by the Sovereign on the recommendation of the Governor-General. The following former Speakers have been granted the privilege:

G. J. Bell
J. S. Rosevear
Sir John McLeay
Sir William Aston
J. F. Cope

The Hon. J. F. Cope was granted the privilege even though he had served only 2 years as Speaker.

A Member who becomes a Minister is appointed to the Executive Council. Members of the Executive Council may use the title 'Honourable' while they remain Executive Councillors. It rests with the Governor-General to continue or terminate membership of the Executive Council and consequently the right to the title. With one exception, Ministers appointed to the Executive Council have not in the past had their appointment to the Council terminated upon termination of their commission and hence have retained the title 'Honourable' for life.¹⁴⁹

142 VP 1920-21/433.

143 S.O. 30.

144 S.O. 31.

145 H.R. Deb. (24.7.01)2939.

146 H.R. Deb. (6.7.51)1134.

147 H.R. Deb. (21.10.65)2058.

148 *Members of 1st Parliament of the Commonwealth*
—*Title of 'Honourable'*, PP 21 (1904).

149 See also Ch. on 'The structure of the House' (case of Senator Sheil).

Members of the House of Representatives are referred to in the Chamber as 'honourable Members'. In order to guard against all appearance of personality in debate a Member must not refer to another Member by name, but only by the name of the electoral Division he represents.¹⁵⁰ A Member is therefore referred to in the Chamber as 'the honourable Member for . . .'. Ministers, the Leader and Deputy Leader of the Opposition, and the Speaker and Chairman of Committees are referred to by the name of their office.¹⁵¹ The use of the term 'honourable' in the Chamber originates in House of Commons' practice. The question of using the name of a Member in the House instead of the electorate name was considered by the Standing Orders Committee in its 1972 report.¹⁵² The committee recommended no change to the existing practice.

Right Honourable

The title 'Right Honourable' is granted to Members of the Sovereign's Privy Council. The Prime Minister of the day and other senior members of the Government are usually appointed to the Council, and they normally remain Privy Councillors for life. Prime Ministers Deakin and Whitlam declined to become Privy Councillors. It is not appropriate to use the letters P.C. together with the title.

Academic and other titles

The use of academic and other titles, where appropriate, in House documents was also considered in the 1972 Standing Orders Committee report.¹⁵³ The House agreed with the recommendation of the committee that the title 'Doctor' or 'Reverend' or a substantive military, academic or professional title could be used by Members in House documents.¹⁵⁴

Father of the House

The longest continuous serving Member of the House is customarily designated 'Father of the House'. This is a completely informal designation and has no functions attached to it. The Father of the House in the House of Commons presides during the election of the Speaker. At the commencement of the 32nd Parliament the Rt Hon. Sir William McMahon was the longest serving Member, having been elected in 1949. A record term of 51 years, from 1901 to 1952, was served by the Right Honourable W. M. Hughes.

DRESS AND CONDUCT

While the standard of dress in the Chamber is a matter for the individual judgment of each Member¹⁵⁵, the ultimate discretion rests with the Speaker. Male Members normally wear a jacket and tie and it has been ruled that a Member is not permitted to remove his coat in the Chamber.¹⁵⁶ In 1977 the Speaker indicated that it was acceptable for Members to wear tailored 'safari' suits without a tie.¹⁵⁷ Members may wear hats in the Chamber but not while entering or leaving¹⁵⁸ or while speaking.¹⁵⁹

¹⁵⁰ S.O. 80.

¹⁵¹ H.R. Deb. (5.5.76)1946.

¹⁵² *Standing Orders Committee Report*, PP 20(1972).

¹⁵³ PP 20(1972).

¹⁵⁴ VP 1970-72/1013.

¹⁵⁵ H.R. Deb. (17.2.77)172; *see also* 'Senators' dress in

the Senate Chamber', *Report of Senate House Committee*, PP 235(1971).

¹⁵⁶ H.R. Deb. (26.2.59)318.

¹⁵⁷ H.R. Deb. (17.2.77)172.

¹⁵⁸ H.R. Deb. (23.3.50)1197-8.

¹⁵⁹ H.R. Deb. (10.3.26)1476.

The conduct of Members in the Chamber is governed by the standing orders and practice and is interpreted with some discretion by the Chair. It has always been the practice of the House not to permit the reading of newspapers in the Chamber, although latterly this has been accepted if done discreetly, but it is in order for a Member to refer to books or newspapers when they are actually connected with his speech.¹⁶⁰ Members may not smoke in the Chamber.¹⁶¹

The Chair has also ruled that¹⁶²:

- a Member may keep his hands in his pockets while speaking¹⁶³;
- the kicking of Chamber desks is disorderly¹⁶⁴;
- a Member may distribute books to other Members in the Chamber¹⁶⁵;
- climbing over seats is not fitting behaviour¹⁶⁶, and
- a Member should not sit on the arm of a seat.¹⁶⁷

SERVICE ON NON-PARLIAMENTARY ORGANISATIONS

Two Members of the House, usually one government Member and one opposition Member, are appointed by motion in the House to serve on the following bodies for the periods indicated¹⁶⁸:

- Council of the Australian Institute of Aboriginal Studies—for a period determined in accordance with the resolution of the House¹⁶⁹;
- Council of the Australian National University—for a period as is fixed by the House, not exceeding 3 years¹⁷⁰;
- Council of the National Library of Australia (one Member only)—for a period as is fixed by the House, not exceeding 3 years¹⁷¹, and
- Parliamentary Retiring Allowances Trust—while remaining a Member.¹⁷²

The Prime Minister and the Leader of the Opposition each appoint one Member of the Parliament to serve on the Australian Council for Union Training.¹⁷³ Tenure is until the dissolution or expiration of the House of Representatives as elected at the time of the appointment. The Prime Minister and the Leader of the Opposition nominate 3 and 2 Members of Parliament, respectively, for appointment by the Governor-General to the Advisory Council for Inter-government Relations. Tenure is for 3 years while remaining a Member of Parliament, or until the first sitting day of the House after a general election.¹⁷⁴

One Member has been appointed by the Minister for Science and Technology to the Advisory Council of the Commonwealth Scientific and Industrial Research Organization. The appointment terminates on the first sitting day after the next general election.¹⁷⁵

160 H.R. Deb. (6.11.73)2791.

161 H.R. Deb. (24.10.52)3742.

162 For general rules for Member's conduct in, and manner and right of, debate see Ch. on 'Control and conduct of debate'.

163 H.R. Deb. (8.6.39)1530.

164 H.R. Deb. (28.11.51)2832.

165 H.R. Deb. (4.5.50)2227-8.

166 H.R. Deb. (8.6.55)1561.

167 H.R. Deb. (25.7.74)695-6.

168 For details of membership see daily Notice Paper.

169 *Australian Institute of Aboriginal Studies Act 1964*; VP 1978-80/28.

170 *Australian National University Act 1946*; VP 1978-80/763.

171 *National Library Act 1960*; VP 1978-80/666.

172 *Parliamentary Contributory Superannuation Act 1948* (short title amended in 1978); VP 1978-80/24. A trustee who has ceased to be a Member by reason of dissolution or expiration of the House does not thereby cease to be a trustee until he ceases to receive a parliamentary allowance.

173 *Trade Union Training Authority Act 1975*.

174 *Advisory Council for Inter-government Relations Act 1976*.

175 *Science and Industry Research Act 1949*. The Act does not require that a Member be appointed.