

# Members

## THE MEMBER'S ROLE

This chapter is confined, in the main, to the role of the private Member<sup>1</sup>, who may be defined generally as a Member who does not hold any of the following positions: Prime Minister, Speaker, Minister, Parliamentary Secretary, Leader of the Opposition, Deputy Leader of the Opposition, or leader of a recognised party.<sup>2</sup> 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.

Most Members of the House of Representatives are elected as members of one of the established political parties represented in the House.<sup>3</sup> 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 loyalty and support by 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 or her party.

One 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 responsibilities in accordance with their consciences. A free vote may also be extended to matters affecting the functioning of the House, such as changes to the standing orders.<sup>4</sup>

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

- the House of Representatives but with an overriding duty to the national interest;
- constituents—he or she has a primary duty to represent their interests, and
- his or her political party.

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 the one with which the general observer is most familiar. In the Chamber (or in the additional forum provided by the Main Committee) Members participate in public debate of legislation and government policy. They also have opportunities to elicit information from the Government, and to raise matters of their own concern for discussion. It is this

1 See Ch. on 'House, Government and Opposition' for discussion of the Ministry and office holders.

2 The definition of a private Member for the purpose of private Members' business is wider than this—see Ch. on 'Private Members' Business'.

3 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 seven 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.

4 See Ch. on 'Routine of business and the sitting day'.

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.

Since the late 1960s 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.<sup>5</sup> 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 decide to hold 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 time in becoming familiar with the subject-matter of the inquiry. This may involve private research or the evaluation of research undertaken by the committee secretariat. Committees are given wide powers of investigation and study, and their reports testify to the thoroughness of their work. 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 typical private Member to narrow his or her range of interest and activity, and to specialise in areas which are of particular concern.

## Constituency

The electoral Divisions in Australia have an average population of about 120 000 people (77 000 electors) and range in area from 26 square kilometres to over 2.2 million square kilometres. Members provide a direct link between their constituents and the federal administration. Constituents constantly seek the assistance of their local Member in securing the redress of grievances or help with various problems they may encounter. 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 ranging from family law, postal and telephone services, employment, housing and health to 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 typically has a wide range of contacts with government bodies, political parties, and the community as a whole. Personal intervention by a Member traditionally commands priority attention by departments. In many cases the Member or the Member's assistants will contact the department or authority concerned, where the case will be dealt with by the relevant section. In other cases, the Member may approach the Minister direct. If the Member feels the case requires public ventilation, he or she may bring the matter before the House—for instance, by addressing a question to the responsible Minister, by raising it during a grievance debate or by speaking on it during an adjournment debate. It is more common however for the concerns or grievances of citizens to be dealt with by means of representations to departments and authorities, or Ministers, and for them to be raised in the House only if such representations fail.

A Member may also make representations to the Government on behalf of his or her 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 prospect of difficulties in a local industry which would cause unemployment or other problems for the area, are examples of this type of representation closely related to local circumstances. Such

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<sup>5</sup> See also Ch. on 'Parliamentary committees'.

matters are more likely to be the subject of questions on notice or to be raised in the House than are problems of individual constituents.

### Party<sup>6</sup>

A Member will rarely challenge effectively the policies of his or her 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 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 can enable private government 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

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 three significant variations in the number of Members have occurred since 1901, that is, in 1949, 1977 and 1984.<sup>7</sup> Following the 1996 general election representation of the States and Territories was as follows:

New South Wales .....	50
Victoria .....	37
Queensland .....	26
Western Australia .....	14
South Australia .....	12
Tasmania .....	5
Australian Capital Territory ...	3
Northern Territory .....	1
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The process of determining the number of Members for the several States is laid down in the Commonwealth Electoral Act. This, and the history of the increase in the membership of the House since Federation, is covered in detail in the Chapter on 'Elections and the electoral system'.

### 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.<sup>8</sup> 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 either House.<sup>9</sup> Thus, the Parliament has determined that the Australian Capital Territory and the

<sup>6</sup> See also Ch. on 'House, Government and Opposition'.

<sup>7</sup> The *Representation Act 1948* and *Representation Act 1983* increased the number of Senators in each State from 6 to 10 and from 10 to 12 respectively.

<sup>8</sup> Constitution, s. 121.

<sup>9</sup> Constitution, s. 122.

Northern Territory shall be represented in both the House of Representatives and the Senate. For a description of earlier provisions for the representation of the Australian Capital Territory and the Northern Territory and limitations on Members representing the Territories in earlier years *see* pp. 168–9 of the second edition.

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.<sup>10</sup>

In 1983 the provisions for Australian Capital Territory and Northern Territory representation were inserted in the Commonwealth Electoral Act<sup>11</sup> and earlier specific legislation was repealed. In 1984 the Commonwealth Electoral Act was amended<sup>12</sup> to provide that the Territories of Cocos (Keeling) Islands and Christmas Island be included as part of the Northern Territory for Federal electoral purposes, each of the two territories forming a district of the Northern Territory electoral Division.<sup>13</sup>

In 1988, amendments to the Commonwealth Electoral Act provided for the Territories to be represented in proportion to their populations, population quotas being determined in the same manner as for the original States under section 48 of the Act, subject to provisos that:

- the Australian Capital Territory and the Northern Territory each have at least one Member; and
- any other Commonwealth Territory be entitled to separate representation only if its population exceeds one half of a quota under section 48; until so entitled the Territories of Cocos (Keeling) Islands and Christmas Island would continue to be included in the electoral Division of the Northern Territory.<sup>14</sup>

## QUALIFICATIONS AND DISQUALIFICATIONS

In order to be eligible to become a Member of the House of Representatives a person must<sup>15</sup>:

- have reached the age of 18 years;
- be an Australian citizen; and
- be an elector, or qualified to become an elector, who is entitled to vote in a House of Representatives election.<sup>16</sup>

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

- 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 be sentenced for an offence punishable by imprisonment for one year or longer under a State or Commonwealth law;

<sup>10</sup> *Western Australia v. Commonwealth* (1975) 134 CLR 201 (Territories Representation Case).

<sup>11</sup> *Commonwealth Electoral Act 1918*, ss. 51, 52.

<sup>12</sup> *Christmas Island Administration (Miscellaneous Amendments) Act 1984* and *Cocos (Keeling) Islands Self-Determination (Consequential Amendments) Act 1984*.

<sup>13</sup> *Commonwealth Electoral Act 1918*, ss. 4, 79.

<sup>14</sup> *Electoral and Referendum Amendment Act 1989* (Act 24 of 1990). The Territory of Norfolk Island is not represented.

<sup>15</sup> The Parliament has laid down these qualifications in place of those prescribed in the Constitution, s. 34.

<sup>16</sup> *Commonwealth Electoral Act 1918*, s. 163.

- is an undischarged bankrupt or insolvent;
- holds any 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 persons<sup>17</sup>;
- has been convicted of bribery, undue influence or interference with political liberty or attempted bribery, undue influence or interference with political liberty, disqualification being for two years from the date of conviction<sup>18</sup>; 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 two years from the date of the finding.<sup>19</sup>

A person is also disqualified by virtue of not being eligible as an elector, in accordance with section 163 of the Commonwealth Electoral Act, if the person is of unsound mind.<sup>20</sup>

No person who nominates as a Member of the House of Representatives can be at the hour of nomination a member of a State Parliament, the Northern Territory Legislative Assembly or the Australian Capital Territory Legislative Assembly.<sup>21</sup>

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.<sup>22</sup> Thus, a Member of either House must resign if he or she wishes to stand as a candidate for election to the other House.

## Challenges to membership

The House may, by resolution, refer any question concerning the qualifications of a Member to the Court of Disputed Returns.<sup>23</sup> There has been no instance of the House taking such action, but cases have occurred in the Senate. A Member's qualifications may also be challenged by way of a petition to the Court of Disputed Returns challenging the validity of his or her election on the grounds of eligibility (many such petitions have related to alleged irregularities in connection with elections—*see* Chapter on 'Elections and the electoral system' and Appendix 13 for a full listing).

### *Section 44(i.) of the Constitution*

The 1992 petition in relation to the election of Mr Cleary (*see* 44(iv.) below) also alleged that other candidates at the by-election were ineligible for election on the ground

17 Constitution, s. 44.

18 *Commonwealth Electoral Act 1918*, s. 386.

19 *Commonwealth Electoral Act 1918*, s. 386.

20 *Commonwealth Electoral Act 1918*, s. 93.

21 *Commonwealth Electoral Act 1918*, s. 164.

22 Constitution, s. 43.

23 *Commonwealth Electoral Act 1918*, s. 376; and *see* Ch. on 'Elections and the electoral system'.

that, although naturalised Australian citizens, they were each, by virtue of their holding dual nationality, subject or a citizen or entitled to the rights or privileges of a subject or citizen of a foreign power. As the election was declared void the necessity for the Court to rule on the status of these other candidates did not arise, but the matter was addressed in the Court's reasons for judgment. The justices agreed that dual citizenship in itself would not be a disqualification under section 44(i.) provided that a person had taken 'reasonable steps' to renounce his or her foreign nationality. The majority of justices found that the candidates concerned in this case had not taken such reasonable steps, as they had omitted to take action open to them to seek release from or discharge of their original citizenships.<sup>24</sup>

#### *Section 44(iv.) of the Constitution*

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.<sup>25</sup> The motion was defeated and Senator Field was sworn in.<sup>26</sup> A writ was served on Senator Field on 1 October 1975 challenging his eligibility to sit in the Senate.<sup>27</sup> The Senate then granted him leave of absence for 1 month.<sup>28</sup> The Senate was dissolved on 11 November and the matter did not come to court.

On 11 April 1992 Mr Philip Cleary was elected at a by-election for the Division of Wills. Mr Cleary, a teacher, had been on leave without pay at the time of nomination and polling, but had resigned from his teaching position before the declaration of the poll. A petition to the Court of Disputed Returns disputed the election on the ground that Mr Cleary had held an office of profit under the Crown by reason, inter alia, of his being an officer of the Education Department of Victoria.

The Court ruled on 25 November 1992 that Mr Cleary had not been duly elected and that his election was absolutely void. In its reasons for judgment the Court found unanimously that, as a permanent officer in the teaching service, Mr Cleary had held an office of profit under the Crown, that it was irrelevant that he was on leave without pay, and that the section applied to State as well as Commonwealth officers. The majority judgment of the Court was that the word 'chosen' in section 44(iv.) related to the whole process of being elected, which commenced from and included the day of nomination, and that Mr Cleary was therefore 'incapable of being chosen'.<sup>29</sup> Mr Cleary was subsequently elected as the Member for Wills at the March 1993 general election.

On 2 March 1996 Miss J. Kelly was elected for the Division of Lindsay. At the time of her nomination Miss Kelly had been an officer of the Royal Australian Air Force, although she had, at her request, been transferred to the RAAF Reserve before the date of the poll. A petition to the Court of Disputed Returns challenged the election on the basis of section 44(iv.). Before the decision of the Court it became common ground between the parties that Miss Kelly had been incapable of being chosen as a Member of the House of Representatives while serving as an officer of the RAAF at the time of her nomination as a candidate. The Court ruled

24 *Sykes v. Cleary* (1992) 109 ALR 577.

25 J 1974-75/905-6; S. Deb. (9.9.75) 603.

26 J 1974-75/905-6.

27 *Odgers*, 6th edn, pp. 152-3.

28 J 1974-75/928.

29 *Sykes v. Cleary* (1992) 109 ALR 577. VP 1990-92/1907.

on 11 September 1996 that Miss Kelly had not been duly elected and that her election was absolutely void.<sup>30</sup> A new election was held for the Division of Lindsay and Miss Kelly was elected.

The view has been taken that a person who accepts an office of profit under the Crown is disqualified from membership of the Parliament from the date of appointment to and acceptance of the office rather than from the time he or she commences his or her duties or receives a salary.<sup>31</sup>

#### *Section 44(v.) of the Constitution*

In 1975 a witness appearing before the Joint Committee on Pecuniary Interests alleged 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 contracts with Commonwealth government departments between 1964 and 1974.<sup>32</sup> On 15 April 1975 the chair of the committee wrote to the President of the Senate informing him of the allegation.<sup>33</sup> The letter was read to the Senate by the President on 15 April<sup>34</sup> 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 had become incapable of sitting as a Senator.<sup>35</sup>

The two questions referred to the Court by the Senate were answered in the negative.<sup>36</sup> 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.<sup>37</sup>

#### *Section 45(ii.) of the Constitution*

The interpretation and application of section 45(ii.) arose in the House in 1977 in connection with Mr M. Baume, MP, who, before entering Parliament, had been a member of a stockbroking firm which had collapsed. On 5 May 1977 a motion was moved that the question of whether his place had become vacant pursuant to section 45(ii.) should be referred to the Court of Disputed Returns for determination. It was argued that an agreement made by Mr Baume with the appointed trustee of the firm constituted a deed of arrangement or, alternatively, that he received benefits as a consequence of arrangements made by other members of the firm under Part X of the Bankruptcy Act. Speaking against the motion the Attorney-General tabled three legal opinions, including a joint opinion by himself and the Solicitor-General, to the effect that

30 *Free v Kelly & Anor*, Judgment 11 September 1996, (No. S94 of 1996). Miss Kelly was also ordered to pay two thirds of the petitioner's costs. A further basis of challenge under s. 44(i.), that at the time of nomination Miss Kelly held dual Australian and New Zealand citizenship, was not pursued at the trial of the petition.

31 Opinion of Solicitor-General relating to appointment of Senator Gair as Ambassador to Ireland, dated 4 April 1974; and see *Odgers*, 6th edn, pp. 56-7.

32 '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.

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

34 J 1974-75/597.

35 J 1974-75/628-9.

36 J 1974-75/821.

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

the matters in question did not come within the scope of section 45(ii.) and stated that the deed executed by Mr Baume was not a deed of arrangement within the meaning of the Bankruptcy Act, not being a deed executed by him as a debtor under the Act as a deed of arrangement. On the question of whether Mr Baume had received benefits under the Bankruptcy Act as a result of deeds executed by other members of the firm, the opinions were to the effect that while benefits had been conferred, these were not the benefits to which section 45(ii.) refers, and that the provision applies where a debtor takes benefits as a party to a transaction, as distinct from receiving benefits as a non-participant. The Attorney-General argued that the question of law was quite clear. He said there was no need for the matter to be referred to the Court of Disputed Returns and that the Government wanted it to be decided by the House. The motion for referral was negatived.<sup>38</sup>

There has been no precedent in the House of Representatives of the seat of a Member being vacated because he or she 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 by a notification 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 following the usual consultations. If the House was not sitting, the Speaker could issue the writ as soon as convenient and not wait for the House to reconvene.

#### *Commonwealth Electoral Act s. 163*

Senator W. R. Wood, it transpired, had not been an Australian citizen at the time of his election, as required by subsection 163(1) of the Commonwealth Electoral Act, although he had believed himself to be a citizen and subsequently became one. On 16 February 1988 the Senate referred the following questions to the Court of Disputed Returns:

- whether there was a vacancy in the representation of New South Wales in the Senate for the place for which Senator Wood had been returned;
- if so, whether such vacancy could be filled by the further counting or recounting of ballot papers cast for candidates for election for Senators for New South Wales at the election;
- alternatively, whether in the circumstances there was a casual vacancy for one Senator for the State of New South Wales within the meaning of section 15 of the Constitution.<sup>39</sup>

The decision of the court, handed down on 12 May 1988, was to the effect that there was a vacancy, that the vacancy was not a casual vacancy within the meaning of section 15 of the Constitution, and that the vacancy could be filled by the further counting or recounting of ballot papers. The court held that Mr Wood had not been eligible for election, that a vacancy had existed since the election, and that a recount should be conducted as if Mr Wood had died before polling day but with his name remaining on the ballot paper and attracting votes and with votes cast for him given to the candidate next in the order of the voter's preference.<sup>40</sup> Following a recount the court declared Ms I. P. Dunn, of the same party as Mr Wood, to be the elected candidate.<sup>41</sup>

<sup>38</sup> H. R. Deb. (5.5.77) 1598-1608. See also PP 131 (1981) 33-4.

<sup>39</sup> S. Deb. (16.2.88) 3-16.

<sup>40</sup> 'Citizenship of Senator Wood', *Reference to Court of Disputed Returns*, Judgment 12 May 1988.

<sup>41</sup> J 1987-89/845.



## 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. 155) prompted the enactment of the Common Informers (Parliamentary Disqualifications) Act, 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 Act<sup>42</sup> now 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.

## Consequences of Member sitting while ineligible

In an early decision concerning the eligibility of a person chosen to fill a vacancy in the Senate, the High Court observed ‘... the return is regarded *ex necessitate* as valid for some purposes unless and until it is successfully impeached. Thus the proceedings of the Senate as a House of Parliament are not invalidated by the presence of a Senator without title.’<sup>43</sup>

## SWEARING-IN

The Constitution provides that every Member of the House of Representatives, before taking his or her seat, must make and subscribe an oath or affirmation of allegiance before the Governor-General or some person authorised by the Governor-General.<sup>44</sup> 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.<sup>45</sup>

The oath of allegiance need not necessarily be made on the authorised version of the Holy Bible although this has been the common practice. A Member may recite the oath while holding another form of Christian holy book, or, in respect of a non-Christian faith, a book or work of such a nature. The essential requirement is that every Member taking an oath should take it in a manner which affects his or her conscience regardless of whether a holy book is used or not.<sup>46</sup>

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

43 *Vardon v. O’Loughlin* (1907) 5 CLR 201 at 208.

44 Constitution, s. 42.

45 Constitution, Schedule.

46 Advice of Attorney-General’s Department, dated 16 February 1962.

The oath or affirmation of allegiance taken by all Members at the beginning of a new Parliament is normally administered by a person authorised by the Governor-General, who is usually a Justice of the High Court.<sup>47</sup> This person is ushered into the Chamber and conducted to the Chair by the Serjeant-at-Arms. The commission from the Governor-General to administer the oath or affirmation is read to the House by the Clerk.<sup>48</sup>

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.<sup>49</sup> No Member may take part in any proceedings of the House until sworn in.<sup>50</sup>

All Members elected for that Parliament are called by the Clerk in turn and approach the Table in groups of approximately ten to twelve, 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 then sworn in. The numbers of Members who have sworn an oath or made an affirmation are inserted on Attestation Forms which are signed by the person authorised.

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.<sup>51</sup> 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. A new Member elected at a by-election has been sworn in by an Acting Speaker, an authority for him or her to administer the oath or affirmation during any absence of the Speaker having been issued by the Governor-General.<sup>52</sup> The oath or affirmation is sworn or made 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.<sup>53</sup>

In the event of the demise of the Crown, the House of Commons meets immediately and Members again take the oath.<sup>54</sup> This practice is not followed in Australia.<sup>55</sup>

## NEW MEMBERS

Before a new Member elected at a by-election takes his or her 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, as described above. This procedure usually takes place at the beginning of a day's proceedings, immediately after Prayers.<sup>56</sup>

It is customary for a new Member elected at a by-election, on being admitted, to be escorted to the Table by two Members of the Member's own party. This custom is

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

48 VP 1996/2-3.

49 S.O. 2(d).

50 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.

51 VP 1996/9.

52 VP 1974-75/582; VP 1987-88/773.

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

54 *May*, p. 229.

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

56 VP 1978-80/927.

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’.<sup>57</sup>

### First speech

The term ‘first speech’ is used to describe the first speech made by a Member following his or her first election to the House, even though the Member may have had previous parliamentary experience in a State Parliament or the Senate. In a new Parliament, a newly elected Member normally makes his or her first speech during the Address in Reply debate. A speech made in relation to a condolence motion is not regarded as a first speech, nor is the asking of a question without notice.<sup>58</sup> A speech by a newly elected Member in his or her capacity as Minister or opposition spokesperson—for example, a Minister’s second reading speech on a bill or the opposition speech in reply, or a speech in reply on a matter of public importance—is also not regarded as a first speech, which has been declared to be ‘a speech of a Member’s choice that is made at the time of his or her own choosing’.<sup>59</sup> It is considered that a Member should not make a 90 second statement or a speech in the adjournment debate until he or she has made a first speech.

There is a convention in the House that a first speech is heard without interjection<sup>60</sup> or interruption, and the Chair will normally draw the attention of the House to the fact that a Member is making a first speech.<sup>61</sup> In return for this courtesy the Member should not be unduly provocative. There have been occasions, however, when a Member’s first speech has not been heard in silence.<sup>62</sup> It has also been customary not to make other than kindly references to the first speech of a Member<sup>63</sup>, although this convention has also not always been observed. In 1967 a Member moved an amendment to a motion to take note of a ministerial statement during his first speech.<sup>64</sup>

A video recording of a Member’s first speech is taken and a copy made available to the Member.

### PECUNIARY INTEREST

In the House of Representatives matters to do with 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 by resolutions of the House.

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. 155 for case of Senator Webster).

<sup>57</sup> *May*, p. 299.

<sup>58</sup> *See* H.R. Deb. (25.2.64) 19; H.R. Deb. (10.3.64) 415; H.R. Deb. (1.5.96) 156.

<sup>59</sup> H.R. Deb. (9.5.90) 83; H.R. Deb. (17.5.90) 746.

<sup>60</sup> H.R. Deb. (23.2.50) 91.

<sup>61</sup> H.R. Deb. (5.9.91) 816.

<sup>62</sup> H.R. Deb. (25.3.76) 1046; H.R. Deb. (26.11.80) 99.

<sup>63</sup> H.R. Deb. (13.4.54) 364.

<sup>64</sup> H.R. Deb. (16.5.67) 2166–72; VP 1967–68/116.

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, the place of the Senator or Member shall thereupon become vacant. There are no recorded cases of any substantive action taken under this section.

Standing order 196 states that a Member may not vote in a division on a question in which he or she 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. Public policy can be defined as government policy, not identifying any particular person individually and immediately.

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.

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. On this matter *May* states:

No Member who has a direct pecuniary interest in a question is 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 explained thus 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'.<sup>65</sup>

It would seem highly unlikely that a Member could become subject to a disqualification of voting rights in the House because the House is primarily concerned with matters of public or state interest. 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.<sup>66</sup>

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-mentioned 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 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.<sup>67</sup>

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.<sup>68</sup>

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

<sup>65</sup> *May*, p. 354.

<sup>66</sup> '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.

<sup>67</sup> VP 1923–24/179–80; H.R. Deb. (23.8.23) 3380–3.

<sup>68</sup> VP 1923–24/405; H.R. Deb. (11.9.24) 4334–7.

know whether certain Members had, or did not have, 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.<sup>69</sup>

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'.<sup>70</sup> A similar case was recorded in 1951 when the Speaker ruled that a Member who was 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.<sup>71</sup>

In 1957<sup>72</sup> and 1958<sup>73</sup>, 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.

In 1984 the House resolved, *inter alia*, that Members must declare any relevant interest at the beginning of a speech (in the House, in the then committee of the whole or in a committee), and if proposing to vote in a division. It was not necessary to declare an interest when directing a question in accordance with standing order 142 or 143. In 1988 the requirement was abolished, following a report from the Committee of Members' Interests which expressed doubt that the requirement served any useful purpose.<sup>74</sup> Members of course are still free to make such a declaration, and from time to time do so.<sup>75</sup>

### Professional advocacy

The matter of professional advocacy first arose in the House of Representatives in 1950 in relation to the appearance of a Member, Dr Evatt, before the High Court on behalf of certain clients.<sup>76</sup> In 1951 the Speaker responded to a request as to the interpretation of a resolution of the House of Commons in 1858 which sought to prevent Members from promoting or advocating in the House matters which they had been concerned with as advocates—for example in court proceedings. The Speaker ruled that the resolution was binding on all Members, excepting the Attorney-General when appearing in court on behalf of the Commonwealth.<sup>77</sup> In the same year the Speaker also ruled that Dr Evatt could not speak or vote in the House on a certain bill as he had appeared in court on a case dealing with the matter. Dr Evatt maintained that the ruling was based on a misconception, the rule having applied to Members of the House of Commons who may have been engaged as professional advocates to promote bills and endeavour to have them accepted by the House. He also assured the Chair that he had received no retainer nor given any undertaking to act in any way on anybody's behalf in

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

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

71 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.

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

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

74 VP 1983-84/945-6; 'Report relating to the need for oral declarations of interests by Members', PP 261 (1988) 8; VP 1987-89/961.

75 H.R. Deb. (16.12.92) 3940.

76 H.R. Deb. (25.10.50) 1391-405; H.R. Deb. (26.10.50) 1546-56.1

77 H.R. Deb. (8.3.51) 175; VP 1950-51/323; H.R. Deb. (13.3.51) 329-30.

connection with his duties as a Member. Standing orders were suspended to enable him to speak and his vote was not challenged on any division on the bill.<sup>78</sup>

The matter arose again in 1954 at the time when a notice of motion in the name of Dr Evatt to print a royal commission report was to be called on (the then method of initiating debate on a report). The Speaker expressed the view that a Member, having spoken and voted on a measure before the House, was precluded from taking part in any court action arising therefrom and that Dr Evatt had had no right therefore to appear before that royal commission as a counsel. It was his further view that, having so appeared, he should not discuss in the House any reports or matter that arose out of the proceedings at the time he was there as a barrister. Standing orders were then suspended to enable Dr Evatt to proceed with his motion, and he also voted in associated divisions.<sup>79</sup>

Two points would appear to emerge from these cases:

- the suspensions of standing orders were in relation to standing order 1 which enables the House, when its own standing orders and practice do not cover the situation, to resort to the practice of the House of Commons, and
- the House, by agreeing to the suspensions of standing orders and by permitting Dr Evatt to vote without challenge, had a different view from the Speaker concerning the matter.

### **Personal interest in committee inquiry<sup>80</sup>**

Standing order 326 states that no Member may sit on a committee if 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 or she was **pecuniarily** interested. It should be noted that the requirements for oral declaration introduced by the 1984 resolution mentioned above, but abolished on 30 November 1988, also referred to committee proceedings. Members have been advised to declare at committee meetings any matters, whether of pecuniary or other interest, where there may be, or may be perceived to be, a possible conflict of interest.

On a number of occasions members of the Committee of Privileges have taken no active part in inquiries in which they have had some form of prior interest or involvement. On some occasions the Members have been replaced for the inquiries in question.<sup>81</sup>

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'.<sup>82</sup> The Member served on the committee.

78 VP 1951-53/65-6, 68-70; H.R. Deb. (10.7.51) 1211-12.

79 VP 1954-55/133-4, 246; H.R. Deb. (28.10.54) 2467-8.

80 See also Chapter on 'Parliamentary committees'.

81 VP 1993-95/605.

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

### Parliamentary committee on pecuniary interest

In 1974 both Houses agreed to the appointment of a Joint Committee on Pecuniary Interests of Members of Parliament<sup>83</sup>, which reported on 30 September 1975.<sup>84</sup> The committee, inter alia, recommended:

- compulsory registration of the interests of Senators and Members, disclosures to be filed in a Register of Pecuniary Interests;
- that, subject to certain conditions, disclosures should be able to be inspected by members of the public;
- that a parliamentary registrar should be appointed, answerable to the President and the Speaker; and
- that a joint standing committee be appointed to supervise generally the operation of the register and a proposed media register, and that the committee have power to draft a code of conduct based on standing orders, practices, rulings and conventions.

A motion to give effect to the recommendations was moved<sup>85</sup> but lapsed on the dissolution of both Houses in November 1975. Notice of a similar motion was given in 1976,<sup>86</sup> but it lapsed on prorogation in 1977.

### 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. The terms of reference encompassed office holders and members of the Australian Public Service, as well as Members, Senators and Ministers. The report of the committee was presented on 22 November 1979.<sup>87</sup> The committee concluded, inter alia, 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 was 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 was insufficient justification at that time to introduce a system of compulsory registration of office holders' interests, but instead reliance should be placed on the code of conduct which included a requirement for ad hoc declarations of interest.

The committee included a proposed code of conduct in its report, and made detailed recommendations to do with the implementation and application of the proposals. It was, for instance, suggested that each House appoint an ethics committee to receive, investigate and report on complaints of departures from the code of conduct and, in

83 VP 1974-75/173-4; J 1974-75/236.

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

85 VP 1974-75/1115-17.

86 NP 2 (19.2.76) 12-14.

87 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).

particular, upon allegations involving conflict of interest. The Government announced its broad acceptance of the recommendations, and accepted in full recommendations relating to Ministers and introduced detailed procedures concerning Ministers. The report was debated in the House, but final decisions were not made, *inter alia*, in so far as Senators and Members were concerned.

### **Registration—Committee of Members' Interests**

Standing order 28A, adopted on 9 October 1984, provides for a Committee of Members' Interests to be appointed at the commencement of each Parliament. Under the standing order the committee is required:

- to inquire into and report upon the arrangements made for the compilation, maintenance and accessibility of a Register of Members' Interests;
- to consider any proposals made by Members and others as to the form and content of the register;
- to consider any specific complaints made in relation to the registering or declaring of interests;
- to consider what changes to any code of conduct adopted by the House are necessary or desirable;
- to consider what classes of person (if any) other than Members ought to be required to register and declare their interests; and
- to make recommendations upon these and any other matters which are relevant.

The committee is required to prepare and present a report on its operations as soon as practicable after 31 December each year, and it also has power to report from time to time.<sup>88</sup>

The substantive requirements insofar as Members are concerned were established by resolutions of 9 October 1984 a.m., and modified by the House on 21 March 1985, 13 February 1986, 22 October 1986, 30 November 1988 and 9 November 1994. The principal provisions are:

- Within 28 days of making an oath or affirmation, each Member is required to provide to the Registrar of Members' Interests a statement of the Member's registrable interests and the registrable interests of which the Member is aware of the Member's spouse and any children wholly or mainly dependent on the Member for support, in accordance with resolutions adopted by the House and in a form determined by the Committee of Members' Interests from time to time. The statement is to include:
  - in the case of new Members, interests held at the date of the Member's election;
  - in the case of re-elected Members of the immediately preceding Parliament, interests held at the date of dissolution of that Parliament;
 and changes in interests between these dates and the date of the statement.
- Members are required to notify any alterations to those interests to the Registrar within 28 days of the alteration occurring.
- The registrable interests include:
  - shareholdings in public and private companies;
  - family and business trusts and nominee companies, subject to certain conditions;
  - real estate, including the location and the purpose for which it is owned;

<sup>88</sup> VP 1983–84/943–4; H.R. Deb. (9.10.84) 1867–76.



- registered directorships of companies;
- partnerships, including the nature of the interests and the activities of the partnerships;
- liabilities, indicating the nature of the liability and the creditor concerned;
- the nature of any bonds, debentures and like investments;
- savings or investment accounts, indicating their nature and the name of the bank or other institution concerned;
- the nature of any other assets, excluding household and personal effects, each valued at over \$5000;
- the nature of any other substantial sources of income;
- gifts valued at more than \$500 from official sources or more than \$200 from other sources provided that a gift from family members or personal friends in a purely personal capacity need not be registered unless the Member judges that an appearance of conflict of interest may be seen to exist;
- sponsored travel or hospitality received;
- membership of any organisation where a conflict of interest with a Member's public duty could foreseeably arise or be seen to arise; and
- any other interests where a conflict of interest with a Member's public duties could foreseeably arise or be seen to arise.

- At the commencement of each Parliament and at other times as necessary, the Speaker is required to appoint an officer of the Department of the House of Representatives as the Registrar of Members' Interests. That officer also serves as secretary to the Committee of Members' Interests.
- The Registrar, in accordance with procedures adopted by the Committee of Members' Interests, is required to maintain a register of Members' interests in a form determined by the committee.
- As soon as possible after the commencement of each Parliament, the Chair of the Committee of Members' Interests is required to table a copy of the completed register, and to also table as required notifications by Members of alterations of interests.
- The Register of Members' Interests is required to be available for inspection by any person under conditions laid down by the committee.<sup>89</sup> These provide that the register may be viewed by appointment between 10.00 a.m. and 12 noon and 2.00 p.m. and 4 p.m. (Monday–Friday). Notes may be made, but persons inspecting the register are not permitted to make photocopies of any part of it.

On 13 February 1986 the House resolved that any Member who:

- knowingly fails to provide a statement of registrable interests to the Registrar of Members' Interests by the due date;
- knowingly fails to notify any alteration of those interests to the Registrar of Members' Interests within 28 days of the change occurring; or
- knowingly, provides false or misleading information to the Registrar of Members' Interests—

'shall be guilty of a serious contempt of the House of Representatives and shall be dealt with by the House accordingly'.

<sup>89</sup> VP 1983–84/945–6; H.R. Deb. (9.10.84) 1876–9.

The terms of the relevant resolutions of the House are reproduced as an attachment to this publication.

### **Draft framework of ethical principles**

In June 1995 the Speaker tabled for discussion the draft proposals of a working group of Members and Senators on a code of conduct for Members of Parliament entitled *Framework of ethical principles for Members and Senators*.<sup>90</sup> The principles listed were intended to provide a framework of reference for Members and Senators in the discharge of their responsibilities, and outlined the minimum standards of behaviour which the group felt the Australian people had a right to expect of their elected representatives. The paper set out principles under the following headings:

- loyalty to the nation and regard for its laws;
- diligence and economy;
- respect for the dignity and privacy of others;
- integrity;
- primacy of the public interest;
- proper exercise of influence;
- personal conduct; and
- additional responsibilities of parliamentary office holders.

The Speaker also tabled the working group's draft *Framework of ethical principles for Ministers and Presiding Officers*. At the time of publication, the House had not made decisions on the proposals.

## **MEMBERS' REMUNERATION AND ENTITLEMENTS**

The authority for payment of salaries and allowances to Members of Parliament and Ministers was expressly provided for in the Constitution<sup>91</sup>, which reflected the practice followed by various State Parliaments. Thus, while it was not an innovation, Australia nevertheless preceded in this regard the House of Commons which did not make permanent provision for the payment of Members until 1911.<sup>92</sup> For a summary of the history of remuneration arrangements for Members see pp. 181–3 of the second edition.

Under the *Remuneration and Allowances Act 1990* Members receive a basic salary at the minimum rate of salary payable to Senior Executive Service Band 2 officers in the Australian Public Service. The amount payable thus varies over time in accordance with changes in the sums payable to officers at this level in the public service.

Under arrangements applying before 1990, when the Remuneration Tribunal had the authority to determine the level of Members' salaries, Remuneration Tribunal determinations were disapproved on occasions<sup>93</sup> and the Parliament has also passed legislation to change determinations which have already come into effect.<sup>94</sup>

A Member is paid salary and allowances from and including the day of the election, to and including:

- the day of dissolution, if not seeking re-election; or

90 H.R. Deb. (21.6.95) 1983–4.

91 Constitution, ss. 48, 66; and see Ch. on 'House, Government and Opposition'.

92 May, p. 16.

93 J 1974–75/78–80; VP 1978–80/350.

94 *Remuneration and Allowances Alteration Act 1986* (Act No. 105 of 1986); H.R. Deb. (19.8.86) 252–6; and see *Remuneration and Allowances Act 1990* (Act No. 71 of 1990).

- the day before the election, if re-nominating but 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 additional travelling allowance as well as the basic parliamentary salary and allowance payable to all Members.<sup>95</sup> An additional salary is paid to holders of a number of offices, including the Prime Minister, the Presiding Officers and their Deputies, Ministers, Opposition Leaders and their Deputies, Whips, members of the Speaker's panel, and chairs of parliamentary committees. The *Remuneration and Allowances Act 1990* specifies the offices involved, provides that, for the purposes of the provisions, 'parliamentary committees' means committees concerned with public affairs rather than the domestic affairs of the Parliament, and provides that increases in the rates of additional salary occur at the same time and in the same proportion as increases in the basic salary payable to Members. Where new offices are established or the title of an existing office is varied the additional salary payable is determined by the Remuneration Tribunal.<sup>96</sup>

If the Speaker is re-elected as a Member, the additional salary payable to the Speaker continues to be paid until and including the day before a Speaker is elected in the subsequent Parliament. If the Speaker does not seek re-election as a Member, is defeated at the election or resigns, the additional salary and allowance continue to be paid until and including 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 or resignation 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 deemed to continue to be the Presiding Officer for this purpose under the terms of the *Parliamentary Presiding Officers Act 1965*.

In the case of the Deputy Speaker, entitlement to additional salary ceases:

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

If the Deputy Speaker is re-elected as a Member, additional salary continues to be paid until and including the day before a successor is elected—he or she may also have administrative functions to perform under the *Parliamentary Presiding Officers Act*.

The additional salary payable to members of the Speaker's panel in the House of Representatives and to chairs of parliamentary committees ceases at the date of dissolution. The additional salary payable to Ministers continues until a new Ministry is selected and sworn in by the Governor-General.

## Electorate allowance and other entitlements

The Remuneration Tribunal determines Members' electorate allowances and certain other entitlements.<sup>97</sup> The electorate allowance is a special allowance for expenses necessarily incurred by a Member in the performance of parliamentary duties. The rate of electorate allowance is set by the Remuneration Tribunal and at the time of writing

<sup>95</sup> See also Ch. on 'House, Government and Opposition'.

<sup>96</sup> *Remuneration Tribunal Act 1973*, subsection 7(1).

<sup>97</sup> For details of rates see latest determinations of the Remuneration Tribunal. For details of certain statutory provisions see *Parliamentary Allowances Act 1952*. The High Court has held that the Executive Government does not have the power to increase an allowance beyond that determined by the Remuneration Tribunal pursuant to the Act. *Brown v. West* (1990) 64 ALJR 204. Following this decision the *Parliamentary Entitlements Act 1990* was passed, providing a statutory framework for the provision of benefits. It identified various entitlements and provided that Members, office holders and Ministers were entitled to such additional benefits as may be determined by the Remuneration Tribunal or prescribed by regulations, although this does not extend to benefits in the nature of remuneration (Act No. 28 of 1990, s. 5).

three rates were applicable, depending on the size of a Member's electorate. A Member's electorate allowance is not taxed at source, however it is taxable. Expenditure incurred may be deductible from income if substantiated.

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, overnight stays in connection with meetings of parliamentary committees and a limited number of overnight stays within the electorate, the actual entitlement depending on the size of electorate. Travelling allowance is also payable, on a limited basis, for meetings of a Member's parliamentary party and for meetings of party committees.

Members are entitled to a number of other benefits in matters such as travel, telephone and postage services and motor vehicles. Depending on their length of service, Members are also entitled to travel at government expense after they cease to be Members of Parliament. For the latest details of such entitlements reference should be had to the most recent Remuneration Tribunal determinations.

Members are provided with office accommodation in Parliament House and in their electorate and are entitled to employ one electorate secretary and two other staff members 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. The number and level of Members' staff, the location and extent of office accommodation outside Parliament House and the nature of office furniture and equipment for these offices are determined by the Minister for Administrative Services.

Compensation for Members (and their families) in the event of death or injury in connection with official business is by means of *ex gratia* cover. Payments have paralleled the entitlements Commonwealth employees receive under the *Safety, Rehabilitation and Compensation Act 1988*.

### **Superannuation benefits**

All Members contribute to a compulsory retirement benefits scheme<sup>98</sup> under which benefits are paid to former Members, their widows or widowers, and orphan children.

The Act provides, among other things, for the administration of the scheme, the rate of contributions and the level of benefits. The normal rate of contribution is 11½% of the basic parliamentary salary, but after a Member becomes entitled to the maximum retiring allowance, this is reduced to 5¾%. Members who do not serve long enough to qualify for a retiring allowance receive lump-sum payments. Those who serve not less than eight years or in three Parliaments qualify for a retiring allowance. The rate of allowance depends on the Member's length of service, and can range from 50% to 75% of the basic parliamentary salary payable from time to time. The scheme also provides for additional contributions and entitlements in respect of the holders of offices such as Ministers. Benefits are also payable to widows, widowers and orphaned children of former Members. A maximum of 50 per cent of retiring allowance entitlement may be converted to a lump sum payment.

<sup>98</sup> For full details see *Parliamentary Contributory Superannuation Scheme Handbook*, Department of Finance, Canberra, March 1995, on which the following text is based; and see *Parliamentary Contributory Superannuation Act 1948*.

## 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 or her election, of making the oath or affirmation, and of ceasing to be a Member, and the reason for cessation of membership.<sup>99</sup> 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.<sup>100</sup> A List of Members and an Attendance Roll are published in each sessional volume of the Votes and Proceedings.

A Member's presence at a committee meeting or at the Main Committee alone is not counted for the purposes of recording attendance at a sitting of the House—this is recorded only in respect of attendance in the House itself.<sup>101</sup>

## VACANCY

During the course of a Parliament a Member's place may become vacant by resignation, absence without leave, ineligibility or death. When a vacancy occurs the Speaker issues a writ for the election of a new Member.<sup>102</sup> If the Speaker is absent from the Commonwealth, or there is no Speaker, the Governor-General in Council may issue the writ.<sup>103</sup> 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.<sup>104</sup>

## Resignation

A Member may resign his or her seat in the House by writing to the Speaker or, if there is no Speaker or if the Speaker is absent from the Commonwealth, to the Governor-General.<sup>105</sup> 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.<sup>106</sup>

To be effective a resignation must be in writing, signed by the Member who wishes to resign, and be received by the Speaker.

The receipt by the Speaker of a facsimile of a Member's letter of resignation, the Speaker having satisfied himself as to the authenticity of the facsimile by telephone contact with the Clerk who had the original copy of the letter in Canberra, has been held to comply with these requirements.<sup>107</sup> A resignation by telegram is not effective.<sup>108</sup>

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 personally but is mentally capable of understanding the nature of the resignation and of authorising that other person to sign it on his or her behalf, would meet the constitutional requirements regarding resignation, provided these facts are able to be established satisfactorily. However, it has been considered that strict signature should be insisted upon whenever

99 S.O. 30.

100 S.O. 31.

101 H.R. Deb. (8.6.94) 1671.

102 VP 1977/261.

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

104 S.O. 14.

105 Constitution, s. 37. *See* VP 1980–83/77 for examples of both methods.

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

107 Advice of Attorney-General's Department, dated 4 March 1981.

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

possible in view of the importance of the question and legal advice should be sought in specific cases if the matter arises in practice.<sup>109</sup>

### Absence without leave

A Member's place becomes vacant if, without permission of the House, he or she does not attend the House for two consecutive months of any session of the Parliament.<sup>110</sup> It could be interpreted that the phrase **attend the House** means **attend the House when it is sitting**<sup>111</sup>, 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 main periods of sittings each year. The motion is still moved even though it is known that there will be a dissolution of the House pending an election.<sup>112</sup>

No Member's place has become vacant because of the Member 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 two consecutive months.<sup>113</sup> 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 six weeks. The leader of the Member's party 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 the party whip informed of his or her intentions, then the Serjeant-at-Arms contacts the Member after six weeks' absence to ensure that the Member is aware of the consequence of an absence from the House without leave for a period of two months.

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.<sup>114</sup> 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.<sup>115</sup> A Member who has been granted leave of absence by the House is excused from service in the House and on any committee.<sup>116</sup> Another Member may be appointed to a committee to serve in the place of a Member granted leave of absence by the House.<sup>117</sup> A Member who has been granted leave forfeits it if he or she attends the House before the leave expires.<sup>118</sup>

If a seat became vacant because a Member was absent for two consecutive months without the permission of the House, the appropriate procedure would appear to be for

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

110 Constitution, s. 38.

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

112 VP 1978-80/1694.

113 J 1903/211.

114 S.O. 35.

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

116 S.O. 36.

117 VP 1948-49/13.

118 S.O. 37.

the Speaker to advise the House of the facts and to inform the House of his or her 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 condolence<sup>119</sup>, 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.<sup>120</sup> Speech time limits do not apply. 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.<sup>121</sup> On the death of a Prime Minister or senior office holder—for example, a Presiding Officer or party leader—the House traditionally 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 but may do so in respect of a Senate Minister.

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.

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.<sup>122</sup> 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.<sup>123</sup>

## Expulsion

Section 8 of the *Parliamentary Privileges Act 1987* provides that the House does not have power to expel a Member. Before this provision was enacted the House had the power to expel Members derived from the privileges and practice of the House of Commons passed to the Australian Parliament under section 49 of the Constitution.

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

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

119 S.O. 157.

120 See also Ch. on 'Motions'.

121 VP 1980–83/77–8.

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

123 VP 1968–69/2.

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 in Melbourne, and concerned British policy in Ireland at that time. The Leader of the Opposition moved an amendment to the effect that the allegations against Mr Mahon should not be dealt with by the House, and that a charge of sedition should be tried before a court, but the amendment was negatived and the original motion was agreed to on division.<sup>124</sup> After the motion of expulsion was agreed to, a further motion was moved declaring the seat vacant which was agreed to on division.<sup>125</sup> Mr Mahon stood for re-election in the resulting by-election but was defeated.

## TITLES ACCORDED TO MEMBERS

### M.P. (Member of Parliament)

Members of the House of Representatives are designated MP and not MHR. This was the decision of the Federal Cabinet in 1901<sup>126</sup>—a decision which has since been reaffirmed in 1951<sup>127</sup> and in 1965.<sup>128</sup>

### 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.<sup>129</sup> 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 or her period of office and to be granted the privilege of retaining the title for life if he or she serves in the office for three or more years. The following former Speakers have been granted the privilege:

G. J. Bell  
 J. S. Rosevear  
 Sir John McLeay  
 Sir William Aston  
 J. F. Cope  
 Dr H. A. Jenkins  
 J. Child  
 L. B. McLeay

The Hon. J. F. Cope and the Hon. Dr. H. A. Jenkins were granted the privilege even though they had served less than three years as Speaker. The privilege used to be granted by the Sovereign on the recommendation of the Governor-General. The power to grant the privilege has now been delegated to the Governor-General.

Members of the Executive Council have the title 'Honourable' while they remain Executive Councillors. A Member who becomes a Minister is appointed to the Executive Council. It rests with the Governor-General to continue or terminate

124 VP 1920–21/431–2; H.R. Deb. (11.11.20) 6382–3.

125 VP 1920–21/433.

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

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

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

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



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.<sup>130</sup> Parliamentary Secretaries also have the title 'Honourable' when, as has been the recent practice, they have been appointed to the Executive Council.

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 or she represents.<sup>131</sup> A Member is therefore referred to in the Chamber as 'the honourable Member for . . .'. Ministers, the Leader and Deputy Leader of the Opposition, the Leader and the Deputy Leader of third parties, and the Speaker, Deputy Speaker and Second Deputy Speaker are referred to by the name of their office.<sup>132</sup> 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.<sup>133</sup> The committee recommended no change to the existing practice.

The title 'Right Honourable' is granted to members of the Sovereign's Privy Council. Formerly, Prime Ministers and senior Ministers were appointed to the Privy Council.<sup>134</sup>

### 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.<sup>135</sup> 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.<sup>136</sup>

### Longest serving Member of the House

Traditionally the longest continuous serving Member of the House has been referred to as the 'Father of the House'. This was a completely informal designation and had 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 38th Parliament the Right Honourable I. McC. Sinclair was the longest serving Member, having been elected in 1963. A record term of 51 years, from 1901 to 1952, was served by the Right Honourable W. M. Hughes.

The Procedure Committee has recommended that the Member with the longest continuous service (not being a Minister, Assistant Minister, Parliamentary Secretary, party leader or deputy leader, or a party whip) take the Chair during the election of the Speaker, in place of the Clerk.<sup>137</sup> At the time of writing, no action had been taken by the House on this recommendation.

130 See also Ch. on 'House, Government and Opposition' (case of Senator Sheil).

131 S.O. 80.

132 H.R. Deb. (5.5.76) 1946.

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

134 If they so chose—Members of the Australian Labor Party generally did not become Privy Counsellors and the practice was not re-introduced in 1996 following the election of the Howard Government.

135 PP 20 (1972).

136 VP 1970–72/1013.

137 Standing Committee on Procedure, *Procedures for the Opening of Parliament*, PP 159 (1995).

## DRESS AND CONDUCT

While the standard of dress in the Chamber is a matter for the individual judgment of each Member<sup>138</sup>, the ultimate discretion rests with the Speaker. In 1983 Speaker Jenkins stated that his rule in the application of this discretion was 'neatness, cleanliness and decency'.<sup>139</sup> Male Members normally wear a jacket and tie and it has been held that a Member is not permitted to remove his jacket in the Chamber.<sup>140</sup> Members without a jacket are not prevented from entering the Chamber for a division, or for the purpose of forming a quorum, but are expected to put a jacket on if they wish to remain. In 1977 the Speaker indicated that it was acceptable for Members to wear tailored 'safari' suits without a tie<sup>141</sup>, and in more recent times a number of Members have not worn ties, whether wearing safari suits or not. Members may wear hats in the Chamber but not while entering or leaving<sup>142</sup> or while speaking.<sup>143</sup>

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. It is in order for a Member to refer to books or newspapers when they are actually connected with the Member's speech.<sup>144</sup> Members may not smoke in the Chamber<sup>145</sup> and refreshments may not be brought into, or consumed in, the Chamber.<sup>146</sup> Mobile phones may not be brought into the Chamber.<sup>147</sup>

The Chair has also ruled that<sup>148</sup>:

- a Member may keep his hands in his pockets while speaking<sup>149</sup>;
- the kicking of Chamber desks is disorderly<sup>150</sup>;
- a Member may distribute books to other Members in the Chamber<sup>151</sup>;
- climbing over seats is not fitting behaviour<sup>152</sup>; and
- a Member should not sit on the arm of a seat.<sup>153</sup>

(*And see* Chapter on 'Parliament House and the House of Representatives Chamber').

## SERVICE ON NON-PARLIAMENTARY ORGANISATIONS

Members of the House are appointed by motion in the House to serve on the following bodies for the periods indicated<sup>154</sup>:

138 H.R. Deb. (17.2.77) 172; *see also* 'Senators' dress in the Senate Chamber', *Report of Senate House Committee*, PP 235 (1971).

139 H.R. Deb. (8.9.83) 573.

140 H.R. Deb. (26.2.59) 318.

141 H.R. Deb. (17.2.77) 172.

142 H.R. Deb. (23.3.50) 1197-8.

143 H.R. Deb. (10.3.26) 1476.

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

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

146 *May*, p. 392.

147 H.R. Deb. (21.9.94) 1259.

148 For general rules for Members' conduct in, and manner and right of, debate *see* Ch. on 'Control and conduct of debate'.

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

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

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

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

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

154 For details of membership *see* daily Notice Paper. The House may discharge or replace the Members it appoints to such bodies.

- Advisory Council on Australian Archives (one Member)—for a period as is fixed by the House, not exceeding three years<sup>155</sup>;
- Council of the National Library of Australia (one Member)—for a period as is fixed by the House, not exceeding three years<sup>156</sup>, and
- Parliamentary Retiring Allowances Trust (two Members)—while remaining a Member.<sup>157</sup>

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155 *Archives Act 1983*; VP 1996/289.

156 *National Library Act 1960*; VP 1993–95/2576.

157 *Parliamentary Contributory Superannuation Act 1948*; VP 1996/289. 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 or she ceases to receive a parliamentary allowance.

1. The first part of the document discusses the importance of maintaining accurate records of all transactions. This is essential for ensuring the integrity of the financial statements and for providing a clear audit trail. The records should be kept up-to-date and should be easily accessible to all relevant parties.

2. The second part of the document outlines the various methods used to collect and analyze data. These methods include interviews, surveys, and focus groups. Each method has its own strengths and weaknesses, and it is important to choose the most appropriate method for the specific research objectives.

3. The third part of the document describes the process of data analysis. This involves identifying patterns and trends in the data, and then interpreting these findings in the context of the research objectives. It is important to be objective and unbiased in this process, and to avoid drawing conclusions that are not supported by the data.

4. The final part of the document discusses the importance of reporting the results of the research. This involves presenting the findings in a clear and concise manner, and providing a detailed explanation of the methods used and the limitations of the study. It is important to be transparent and honest in this process, and to provide a clear and accurate picture of the research findings.