



Members

THE MEMBER'S ROLE

This chapter is confined, in the main, to the role of the private Member,¹ 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.² 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.

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 legislation and discussing 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 Federation Chamber) 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 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 government, mainly through the creation of committees.³ This has placed considerable demands on the time of the private Member, as committee meetings are held during both sitting and non-sitting periods and committees may hold hearings in many places throughout Australia. In order to make a substantive contribution to the work of a committee, a Member needs to invest a considerable amount of time in becoming familiar with the subject-matter of the inquiry. 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.

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 'Non-government business'.

³ See also Ch. on 'Parliamentary committees'.

The volume of legislation and the increasing breadth and complexity of government activity in recent times have 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 vary in population around an average of about 150 000 people and vary greatly in other respects,⁴ ranging from inner-city electorates of a few square kilometres to electorates that are larger in area than many countries.

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 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. 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.

Party

Most Members of the House of Representatives are elected as members of one of the political parties represented in the House.⁵ 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 demonstrate loyalty and support in his or her 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

4 For sociodemographic analysis of electorates see P. Nelson, 'Electoral division rankings: 2006 Census (2009 electoral boundaries)', *Parliamentary Library research paper*, no. 18, 2009–10.

5 In recent Parliaments there have been up to five independents elected. For an analysis of party affiliations of Members since 1901 see Appendix 10. See also 'Political parties' in Chapter on 'House, Government and Opposition'.

consciences. A free vote may also be extended to matters affecting the functioning of the House, such as changes to the standing orders.⁶

While Members rarely challenge the policies of their parties effectively on the floor of the House because of the strong tradition of party loyalty that exists in Australia, policy can be influenced and 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 Party/Nationals make extensive use of backbench party committees, each committee specialising in a particular area of government. These committees scrutinise legislative proposals and government policy, and may help 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.

THE MEMBER AND THE HOUSE IN THE DEMOCRATIC PROCESS

Members of the House hold office only with the support of the electorate and must retain its confidence at the next election to remain in office. As a result the influence which citizens exert on individual Members and their parties is a fundamental strength of the democratic system.

Members are influenced by what they perceive to be public opinion, by other parliamentarians and by the people they meet in performing their parliamentary and electorate duties. They are also informed and influenced by specific representations made to them by way of requests by groups and individuals for support of particular causes, expressed points of view or expressions of interest in some government activity, or requests for assistance in dealings with government departments and instrumentalities.

Representations may be made by individuals acting on their own account or as part of an organised campaign. Major campaigns, for example, have been launched on such issues as abortion law reform and family law legislation. These campaigns may be supplemented by other measures, such as telephone campaigns and by the sending of delegations to speak to Members personally.

Representations may also be made to Members, especially Ministers, by professional lobbyists and highly organised pressure groups, such as industry associations and trade unions, which may have significant staff and financial resources.

Accessibility of Members to citizens in the electorate is important for the proper operation of the democratic process. Members are conscious of the importance of being accessible to their constituents and of identifying and promoting the interests of their electorates. This has been summarised as follows:

They accept that generally the seats of all MPs will depend on the overall performance of the party, but they believe that they themselves are in a slightly better position because of the work they do in their electorates. Most of them certainly behave as if they were firmly convinced that their future was dependent on the contribution they make to the condition of their electorates and its residents, rather than anything they might do in the parliament.⁷

In short, the democratic system makes Members responsible and responsive to the constituents they represent and to the Australian electorate generally. This is not to ignore

⁶ See 'Free votes' in Ch. on 'Order of business and the sitting day'.

⁷ David Solomon, *Inside the Australian Parliament*, George Allen & Unwin, Sydney, 1978, p. 126.

the fine balance which must at times be struck between leading and responding to the people. Edmund Burke's view of this still carries weight:

Your representative owes you, not his industry only; but his judgement, and he betrays, instead of serving you, if he sacrifices it to your opinion.⁸

In turn, it may be considered that the House must be responsive to the views of its Members and, through them, to the electorate at large, if it is to be effective as a democratic institution.

QUALIFICATIONS AND DISQUALIFICATIONS

Constitutional provisions

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 attainted (convicted) 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;
- 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
- 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.⁹

(Office holders of the Parliament, such as the Speaker and President, do not hold offices under the Crown.)

A Member of the House of Representatives also becomes disqualified if he or she:

- takes the benefit, whether by assignment, composition, or otherwise, of any law relating to bankrupt or insolvent debtors; or
- 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.¹⁰

⁸ 'Speech to the electors of Bristol, 1774', quoted in Michael Rush, *Parliament and the public*, Longman, London, 1976, p. 55.

⁹ Constitution, s. 44. In 1997 the House of Representatives Standing Committee on Legal and Constitutional Affairs recommended changes to the provisions of this section: *Aspects of section 44 of the Australian Constitution*, PP 85 (1997).

¹⁰ Constitution, s. 45.

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.¹¹ Thus, a Member of either House must resign if he or she wishes to stand as a candidate for election to the other House.

Electoral Act provisions

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

- 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.¹²

A person is incapable of being chosen or of sitting as a Member if he or she has been convicted of bribery, undue influence or interference with political liberty, 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 conviction or finding.¹³

A person is 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.¹⁴

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.¹⁵

Challenges to membership

The House may, by resolution, refer any question concerning the qualifications of a Member to the Court of Disputed Returns.¹⁶ There has been no instance of the House referring a matter to the Court, although motions to do so have been debated and negated.¹⁷ Cases have occurred in the Senate. The ability of the House to refer such a matter to the Court of Disputed Returns does not mean that the House cannot itself act, and it has done so.¹⁸

A person's qualifications to serve as a Member 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 (such petitions may also relate to alleged irregularities in connection with elections—see Chapter on 'Elections and the electoral system', and see 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

11 Constitution, s. 43.

12 *Commonwealth Electoral Act 1918*, s. 163. The Parliament has laid down these qualifications in place of those prescribed in s. 34 of the Constitution. There is thus no upper age limit. The oldest Member when first elected was Sir Edward Braddon in 1901, aged 71 years. The youngest to be elected were W. Roy in 2010, aged 20, and E.W. Corboy in 1918, aged 22 (by-election). Until 1973 the minimum qualification age was 21.

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

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

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

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

17 Cases of Mr Entsch and Mr Baume, see p.138.

18 Case of Mr Entsch, see p.138.

that, although naturalised Australian citizens, they were each, by virtue of their holding dual nationality, a 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.¹⁹

In 1998 the election of Mrs Heather Hill as a Senator for Queensland was challenged by petitions to the Court of Disputed Returns. Mrs Hill had been born in the United Kingdom but had become an Australian citizen before nomination. She renounced her British citizenship after the election. The Court ruled that Mrs Hill was at the date of her nomination a subject or citizen of a foreign power within the meaning of s. 44(i) and had not been duly elected.²⁰

Section 44(iv) of the Constitution

On 3 September 1975 the Queensland Parliament chose Mr Albert 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.²¹ The motion was defeated and Senator Field was sworn in.²² A writ was served on Senator Field on 1 October 1975 challenging his eligibility to sit in the Senate.²³ The Senate then granted him leave of absence for one month.²⁴ 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

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

20 *Sue v. Hill* (1999) 163 ALR 648. The reasons for judgment stated that the United Kingdom has been a foreign power for the purposes of s. 44(i) since, at the latest, the passage of the *Australia Act 1986*.

21 J 1974-75/905-6; S. Deb. (9.9.1975) 603.

22 J 1974-75/905-6.

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

24 J 1974-75/928.

chosen'.²⁵ 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 on 11 September 1996 that Miss Kelly had not been duly elected and that her election was absolutely void.²⁶ A new election was held for the division of Lindsay and Miss Kelly was elected.

Also in 1996 was the case of Ms J. Ferris, who was elected as a Senator for South Australia. However, between the date of nomination and the declaration of the result Ms Ferris had been employed by a Parliamentary Secretary and, anticipating a challenge under section 44(iv), she resigned before taking her seat. The South Australian Parliament subsequently appointed her to the casual vacancy thus created.²⁷

The view has been expressed 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.²⁸

The provisions of section 44(iv) concerning 'any pension payable during the pleasure of the Crown out of any of the revenues of the Commonwealth' have not been subject to judicial determination. It may be considered that a pension payable under the provisions of an Act of the Commonwealth Parliament would not be caught by the term 'payable during the pleasure of the Crown'.²⁹

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 1974.³⁰ On 15 April 1975 the chair of the committee wrote to the President of the Senate informing him of the allegation.³¹ The letter was read to the Senate by the President on 15 April³² and on 22 April the Senate agreed to a resolution referring the following questions to the Court of Disputed Returns:

²⁵ *Sykes v. Cleary* (1992) 109 ALR 577. VP 1990-92/1907.

²⁶ *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), a claim that at the time of nomination Miss Kelly held dual Australian and New Zealand citizenship, was not pursued at the trial of the petition.

²⁷ For further details and discussion see *Odgers*, 13th edn, pp. 161-2.

²⁸ 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.

²⁹ And see advice by Australian Government Solicitor, dated 4 March 2005.

³⁰ Joint Committee on Pecuniary Interests of Members of Parliament, *Declaration of interests*, Transcript of evidence, Vol. 2, 5 March - 15 April, AGPS, Canberra, 1975, p. 1503.

³¹ 'Qualifications of Senator Webster', *Reference to Court of Disputed Returns*, PP 113 (1975) 11.

³² J 1974-75/597.

- 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.³³

The two questions referred to the Court by the Senate were answered in the negative.³⁴ 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.³⁵

On 10 June 1999 a motion was moved in the House—

That the following question be referred to the Court of Disputed Returns for determination, pursuant to section 376 of the *Commonwealth Electoral Act 1918*: Whether the place of the honourable Member for Leichhardt (Mr Entsch) has become vacant pursuant to the provisions of section 44(v) of the Constitution.

The Attorney-General moved, as an amendment—

That all words after ‘That’ be omitted with a view to substituting the following words: ‘the House determines that the Member for Leichhardt does not have any direct or indirect pecuniary interest with the Public Service of the Commonwealth within the meaning of section 44(v) of the Constitution by reason of any contract entered into by Cape York Concrete Pty Ltd since 3 October 1998 and the Member for Leichhardt is therefore not incapable of sitting as a Member of this House’.

The amendment and amended motion were carried. Attempts to rescind them and to censure the Attorney-General for ‘usurping the role of the High Court in its capacity to act as the Court of Disputed Returns’ were negated.³⁶

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 whether the place of the Honourable Member for Macarthur [Mr Baume] has become vacant pursuant to the provisions of section 45(ii) of the Constitution of the Commonwealth of Australia be referred for determination to the Court of Disputed Returns pursuant to section 203 of the Commonwealth Electoral Act.³⁷

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 presented three legal opinions, including a joint opinion by himself and the Solicitor-General, to the effect that 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

³³ J 1974–75/628–9.

³⁴ J 1974–75/821.

³⁵ *In re Webster* (1975) 132 CLR 270.

³⁶ VP 1998–2001/594–607. H.R. Deb. (10.6.1999) 6720–35. See also ‘Interpretation of the Constitution or the law’ in Ch. on ‘The Speaker, Deputy Speakers and officers’ for note of Speaker’s decision on the validity of the amendment.

³⁷ H.R. Deb. (5.5.1977) 1598–1610; VP 1977/108–12.

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.³⁸

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.

Section 163 of the Commonwealth Electoral Act

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.³⁹

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.⁴⁰ Following a recount the court declared Ms I. P. Dunn, of the same party as Mr Wood, to be the elected candidate.⁴¹

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

38 H. R. Deb. (5.5.1977) 1598–1608. *See also* PP 131 (1981) 33–4.

39 S. Deb. (16.2.1988) 3–16.

40 *In re Wood* (1988) 167 CLR 145.

41 J 1987–89/845.

the Governor-General or some person authorised by the Governor-General.⁴² 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.⁴³

The oath of allegiance need not necessarily be made on the authorised version of the 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.⁴⁴

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.⁴⁵ 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.⁴⁶

The taking of the oath or affirmation follows the presentation by the Clerk of the returns to the writs for the general election, showing the Member elected for each electoral division.⁴⁷ A Member may not take part in any proceedings of the House until sworn in.⁴⁸ It is also considered that a Member should not participate in the work of committees until sworn in.

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 subscribe (sign) 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 presented to the House by the Speaker.⁴⁹ 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

42 Constitution, s. 42.

43 Constitution, Schedule.

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

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

46 E.g. VP 2010-12/2.

47 S.O. 4(e).

48 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.

49 E.g. VP 2010-12/7.

her to administer the oath or affirmation during any absence of the Speaker having been issued by the Governor-General.⁵⁰ 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,⁵¹ although this practice may not be strictly necessary.⁵²

In the event of the demise of the Crown, the UK House of Commons meets immediately and Members again take the oath.⁵³ This practice is not followed in Australia.⁵⁴

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.⁵⁵ This procedure has often taken place at the beginning of a day's proceedings, immediately after Prayers,⁵⁶ but 2 p.m. has been used with increasing frequency.⁵⁷

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 derived from the UK 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'.⁵⁸

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,⁵⁹ 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. Members elected at by-elections have sometimes made their first speeches in debate on Appropriation Bills to which the normal rule of relevance does not apply. The relevance rule has been suspended to allow Members to make first speeches during debate on bills to which the rule would otherwise have applied.⁶⁰ Standing and sessional orders have been suspended to allow a Member elected at a by-election to make a statement—in effect a first speech—for a period not exceeding 20 minutes.⁶¹

50 VP 1974–75/582; VP 1987–88/773.

51 E.g. VP 2008–10/517.

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

53 *May*, 24th edn, p. 154.

54 VP 1934–36/511–12; VP 1951–53/255, 257.

55 If the Member is not present the announcement of the return of the writ may be made one or more days before the admission of the Member, e.g. VP 2008–09/513, 532.

56 E.g. VP 1993–95/1613.

57 E.g. VP 1998–2001/1069; 1668; VP 2008–10/575–6.

58 *May*, 24th edn, p. 374.

59 That is, first ever election—election to a different seat is not counted. (Prior to 1996 the term used was 'maiden speech'.)

60 E.g. VP 1998–2001/1800, 2510; VP 2008–10/452–3, 611, 651.

61 VP 2002–04/708.

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.⁶² 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'.⁶³ It is considered that a Member should not make a 90 second or three minute 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 interjection⁶⁴ or interruption, and the Chair will normally draw the attention of the House to the fact that a Member is making a first speech.⁶⁵ 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.⁶⁶ It has also been customary not to make other than kindly references to the first speech of a Member,⁶⁷ 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.⁶⁸

A recording of a Member's first speech is taken from the televised proceedings of the House and a copy made available to the Member.

PECUNIARY INTEREST

In the House of Representatives matters to do with the pecuniary interests of Members⁶⁹ are governed by precedent and practice established in accordance with sections 44 and 45 of the Constitution, standing orders 134 and 231 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* page 137 for cases of Senator Webster and Mr Entsch).

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 134(a) states that a Member may not vote in a division on a question about a matter, other than public policy, in which he or she has a particular direct pecuniary interest. Public policy can be defined as government policy, not identifying any particular person individually and immediately.

62 E.g. *see* H.R. Deb. (25.2.1964) 19; H.R. Deb. (10.3.1964) 415; H.R. Deb. (1.5.1996) 156; H.R. Deb. (14.2.2008) 394.

63 H.R. Deb. (9.5.1990) 1983; H.R. Deb. (17.5.1990) 746.

64 H.R. Deb. (23.2.1950) 91.

65 E.g. H.R. Deb. (5.9.1991) 816; H.R. Deb. (11.10.2000) 21235; H.R. Deb. (15.10.2008) 9235; H.R. Deb. (29.9.2010) 159.

66 H.R. Deb. (25.3.1976) 1046; H.R. Deb. (26.11.1980) 99.

67 H.R. Deb. (13.4.1954) 364.

68 H.R. Deb. (16.5.1967) 2166–72; VP 1967–68/116.

69 Certain additional considerations relating to Ministers are covered in the Chapter on 'House, Government and Opposition'.

A Member's vote can only be challenged on the grounds of pecuniary interest 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.⁷⁰ On this matter *May* states:

A motion may be made, however, to object to a vote of a Member who has a direct pecuniary interest in a question. Such an interest must be immediate and personal. 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'.⁷¹

It would seem highly unlikely that a Member would become subject to a disqualification of voting rights in the House of Representatives 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.⁷²

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

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 a statement in *May* similar to the above-mentioned reference and certain cases in the State Parliaments. He drew attention to the 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.⁷³

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.⁷⁴

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 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.⁷⁵

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

70 S.O. 134(b).

71 *May*, 24th edn, p. 83.

72 Joint Committee on Pecuniary Interests of Members of Parliament, *Declaration of interests*, Transcript of evidence, vol. 1, 30 January – 27 February, AGPS, Canberra, 1975, p. 65.

73 VP 1923–24/179–80; H.R. Deb. (23.8.1923) 3380–3.

74 VP 1923–24/405; H.R. Deb. (11.9.1924) 4334–7.

75 H.R. Deb. (12.12.1934) 1130.

vote on the measure now before the House'.⁷⁶ 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.⁷⁷

In 1957⁷⁸ and 1958,⁷⁹ 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. This distinction was recognised in 2006 in response to a point of order before the House voted on a bill to provide for the sale of a health insurance fund.⁸⁰

In 1998 a Member concluded that he should not vote on a bill containing, inter alia, an amendment to the Parliamentary Contributory Superannuation Act which he understood dealt with an anomaly in respect of his own superannuation entitlements.⁸¹ Even in this case it could be argued that the issue was one of public policy and that the amendments in question would have effect in respect of others in similar circumstances (the Member was not identified personally and immediately).

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 1988 the requirement was abolished, following a report from the Committee of Members' Interests which expressed doubt that the requirement served any useful purpose.⁸² Members of course are still free to make such a declaration, and from time to time do so.⁸³

In the UK House of Commons declarations of relevant interests are required in debate and other proceedings, and when giving notice, including notice of questions. However, it is recognised that during certain proceedings, such as oral questions, declaration may not be practicable.⁸⁴

For summaries of the recommendations of the Joint Committee on Pecuniary Interests of Members of Parliament (1974–5),⁸⁵ and the (government) Committee on Public Duty and Private Interest (1978–9)⁸⁶ see earlier editions.⁸⁷

Personal interest in committee inquiry

Standing order 231 states that no Member may sit on a committee if he or she has a particular direct pecuniary interest in a matter under inquiry by 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. The requirements for oral declaration

⁷⁶ H.R. Deb. (24.11.1948) 3470.

⁷⁷ H.R. Deb. (15.11.1951) 2154. For a precedent of a Member declaring his interest in a bill before a division is taken see H.R. Deb. (3.11.1977) 2817.

⁷⁸ VP 1957–58/282; H.R. Deb. (21.11.1957) 2447–9.

⁷⁹ VP 1958/30; H.R. Deb. (19.3.1958) 478–9.

⁸⁰ H.R. Deb. (2.11.2006) 60.

⁸¹ Superannuation Legislation (Commonwealth Employment) Repeal and Amendment Bill 1998, Schedule 11. In the event the only divisions (from which the Member abstained) occurred on opposition second reading and detailed stage amendments, VP 1998–2001/110–113.

⁸² 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.

⁸³ E.g. H.R. Deb (16.12.1992) 3940; H.R. Deb. (9.8.2007) 125 (Main Committee).

⁸⁴ See *May*, 24th edn, pp. 80–2.

⁸⁵ Joint Committee on Pecuniary Interests of Members of Parliament, *Declaration of interests*, PP 182 (1975) 46.

⁸⁶ Committee of Inquiry into Public Duty and Private Interest, *Report*, PP 353 (1979).

⁸⁷ At pp. 146–7 of the 4th edition.

introduced by the resolution mentioned above, in force from 1984 to 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. (For further discussion *see* ‘Pecuniary and personal interest’ in Chapter on ‘Parliamentary committees’.)

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.⁸⁸ In 1951 the Speaker responded to a request as to the interpretation of a resolution of the UK 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.⁸⁹ The Speaker ruled that the resolution was binding on all Members, excepting the Attorney-General when appearing in court on behalf of the Commonwealth.⁹⁰ 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 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.⁹¹

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, Dr Evatt 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.⁹²

Two points would appear to emerge from these cases:

- the suspensions of standing orders were in relation to then standing order 1 (since omitted) which enabled the House, when its own standing orders and practice did 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.

⁸⁸ H.R. Deb. (25.10.1950) 1391–405; H.R. Deb. (26.10.1950) 1546–56.

⁸⁹ *May*, 24th edn, p. 257.

⁹⁰ H.R. Deb. (8.3.1951) 175; VP 1950–51/323; H.R. Deb. (13.3.1951) 329–30.

⁹¹ VP 1951–53/65–6, 68–70; H.R. Deb. (10.7.1951) 1211–12.

⁹² VP 1954–55/133–4, 246; H.R. Deb. (28.10.1954) 2467–8.

Lobbying for reward or consideration

In 1995 the UK House of Commons strengthened an earlier resolution referring to lobbying for reward or consideration, providing:

‘... that in particular, no Members of the House shall, in consideration of any remuneration, fee, payment, reward or benefit in kind, direct or indirect, which the Member or any member of his or her family has received, is receiving, or expects to receive, advocate or initiate any cause or matter on behalf of any outside body or individual; or urge any Member of either House of Parliament, including Ministers, to do so, by means of any speech, Question, Motion, introduction of a Bill, or amendment to a Motion or Bill.’⁹³

Such action in the Australian Parliament could result in the disqualification of the Member or Senator concerned, his or her seat becoming vacant pursuant to section 45(iii) of the Constitution (*see* page 142). Contempt of the House and offences against the Criminal Code could also be involved—*see* Chapter on ‘Parliamentary Privilege’.

Registration—Committee of Privileges and Members’ Interests

Standing order 216 provides for a Committee of Privileges and Members’ Interests⁹⁴ to be appointed at the commencement of each Parliament. In relation to Members’ interests 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 proposals made by Members and others on the form and content of the register;
- to consider specific complaints about registering or declaring interests;
- to consider possible changes to any code of conduct adopted by the House; and
- to consider whether specified persons (other than Members) ought to be required to register and declare their interests.

The committee is required to prepare and present a report on its operations in connection with the registration and declaration of Members’ interests as soon as practicable after 31 December each year, and it also has power to report when it sees fit.

The substantive requirements insofar as Members are concerned were established by resolution of the House.⁹⁵ 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 Privileges and 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.

⁹³ *May*, 24th edn, p. 79. The resolution was strengthened in 2002 to include approaches to Ministers and public servants.

⁹⁴ Prior to 2008 the Committee of Members’ Interests was separate from the Committee of Privileges.

⁹⁵ Resolutions of 9 October 1984 a.m., and modified by the House on 13 February 1986, 22 October 1986, 30 November 1988, 9 November 1994, 6 November 2003 and 13 February 2008 (a.m.). The terms of the resolutions are reproduced as an attachment to the *Standing Orders*.

- 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;
 - 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 \$7500;
 - the nature of any other substantial sources of income;
 - gifts valued at more than \$750 from official sources or more than \$300 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;
 - any sponsored travel or hospitality received where the value of the sponsored travel or hospitality exceeds \$300;
 - 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 employee of the Department of the House of Representatives as the Registrar of Members’ Interests.⁹⁶ That person also assists the Committee of Privileges and Members’ Interests in relation to matters concerning Members’ interests.
- The Registrar, in accordance with procedures adopted by the Committee of Privileges and 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 Privileges and Members’ Interests is required to present a copy of the completed register, and to also present as required notifications by Members of alterations of interests.⁹⁷
- The Register of Members’ Interests is required to be available for inspection by any person under conditions laid down by the committee.⁹⁸ [Since the start of the 43rd

⁹⁶ Commonly the Deputy Clerk.

⁹⁷ Copies of notifications received after the last presentation in a Parliament and before dissolution have also been presented, by leave—e.g. VP 2008–10/168.

⁹⁸ VP 1983–84/945–6; H.R. Deb. (9.10.1984) 1876–9.

Parliament in 2010 the Register has been published on the Parliament House website.]

Explanatory notes authorised by the Committee of Privileges and Members' Interests provide guidance on the interpretation of the requirements. The Speaker has no responsibility in relation to the requirements other than the responsibility to appoint an employee of the Department of the House as the Registrar.⁹⁹

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'.

Proposed code of conduct

In June 1995 the Speaker presented 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*.¹⁰⁰ 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.

In 2008, in a report concerning an exchange between two Members, the Committee of Privileges and Members' Interests indicated that it proposed to review the issue of a Code of Conduct.¹⁰¹ The Speaker later said that he would refer a matter concerning actions by a Member outside the House to the committee as an example of an incident of concern.¹⁰²

On 23 November 2010, the House of Representatives referred the development of a draft Code of Conduct for Members of Parliament to the Committee of Privileges and Members' Interests. The Committee was to consult with the equivalent committee in the Senate with the aim of developing a uniform code and uniform processes for its implementation for Members and Senators.¹⁰³ The committee presented its work on the inquiry as a discussion paper in November 2011,¹⁰⁴ including the following draft code of conduct:

Draft Code of Conduct for Members of the House of Representatives

Purpose of the Code

The purpose of the code is to provide a framework of reference for Members in the discharge of their responsibilities. It outlines the standards of behaviour which the Australian people can expect of their elected representatives. It refers to the key ethical principles which should guide the consideration of Members.

99 H.R. Deb. (26.3.2007) 39, 123. *See also* H.R. Deb. (19.9.1994) 1039.

100 H.R. Deb. (21.6.1995) 1983–4.

101 H.R. Deb. (23.10.2008) 10184.

102 H.R. Deb. (4.12.2008) 12725.

103 VP 2010–12/236.

104 Standing Committee of Privileges and Members' Interests, *Draft code of conduct for Members of Parliament, discussion paper*, November 2011.

It is by adherence to these standards that Members can maintain and strengthen the public's trust and confidence in the integrity of the parliamentary institution and not undertake any action which would bring the House of Representatives, or its Members generally, into disrepute.

Scope of the Code

The Code applies to Members in all aspects of their public life. It does not seek to regulate what Members do in their purely private and personal lives.

The Code complements the obligations on Members to abide by the standing orders and the rulings of the Chair.

Members who are Ministers have other obligations relating to the Ministerial Code of Conduct. Members who hold a Parliamentary Office must have particular regard for the proper exercise of influence and use of information gained from their duties as office holders. They must also be accountable for their administrative actions and for their conduct related to these duties.

Key Principles

1. Loyalty to the Nation and Regard for its Laws

Members must be loyal to Australia and its people. They must uphold the laws of Australia and ensure that their conduct does not breach or evade those laws.

2. Diligence and Economy

Members must exercise due diligence in performing their official duties to the best of their ability. They must apply public resources, including the use of their entitlements, economically and only for the purposes for which they are intended.

3. Respect for the Dignity and Privacy of Others

Members must have due regard for the rights and obligations of all Australians. They must respect the privacy of others and safeguard information obtained in confidence in the course of their duties. They must avoid unjustifiable or illegal discrimination against others and exercise responsibly their rights and privileges as Members.

4. Integrity

Members must at all times act honestly, strive to maintain the public trust placed in them, and advance the common good of the people of Australia.

5. Primacy of the Public Interest

Members must base their conduct on a consideration of the public interest, avoid conflict between personal interests and the requirements of public duty, and resolve any conflict, real or apparent, quickly and in favour of the public interest.

Members must exercise the influence gained from their public office only to advance the public interest. They must not obtain improperly any property or benefit, whether for themselves or another. They also must not seek to affect improperly any process undertaken by officials or members of the public.

6. Personal Conduct

Members must ensure that their personal conduct is consistent with the dignity of the Parliament. They should act at all times in a manner which will tend to maintain and strengthen the public's trust and confidence in the integrity of the Parliament and its Members.

Registration of interests

Members shall meet the requirements of the House in respect of the registration of their interests in the Register of Members' Interests. Members also should draw attention to any relevant interests relating to votes of the House (SO 134) or the inquiries of committees (SO 271).

Duties in relation to the Parliamentary Integrity Commissioner

The application of this Code will be a matter for the House of Representatives, the Committee of Privileges, Ethics and Members' Interests and the Parliamentary Integrity Commissioner in accordance with the relevant standing orders and resolutions of the House.

Members shall cooperate at all stages with any investigation into their conduct by, or under the authority of, the House.

Additional Guidance

In individually considering these principles, Members should also have regard to:

- sections 44 and 45 of the Constitution;
- provisions of the Parliamentary Entitlements Act 1990;
- standing and sessional orders and resolutions of the House of Representatives.

MEMBERS' REMUNERATION AND ENTITLEMENTS

Review of Parliamentary Entitlements

The Committee of Review of Parliamentary Entitlements was appointed by the Government in 2009, following a report by the Australian National Audit Office that had been critical of the administration of parliamentary entitlements.¹⁰⁵

The committee found the existing arrangements to be complex and ambiguous, and made recommendations which aimed to ensure that Members and Senators are given relevant and adequate resources to do their jobs within a simplified, transparent and accountable framework that has regard to contemporary community standards. In its report the committee separated remuneration from 'tools of trade' such as office facilities and transport. Among the committee's recommendations were that remuneration be set by Remuneration Tribunal determination and not be subject to disallowance by the Parliament, that the base rate of electorate allowance be incorporated into parliamentary salary, and that tools of trade entitlements be regulated by a single piece of legislation. It also made specific recommendations in relation to various entitlements.¹⁰⁶

As noted below, legislation was introduced in 2011 to implement some of the committee's recommendations. Information in the following paragraphs is likely to be subject to further change as other recommendations are implemented.

Salaries

The authority for payment of salaries to Members of Parliament and Ministers was expressly provided for in the Constitution,¹⁰⁷ which reflected the practice followed by various State Parliaments. Thus, while it was not an innovation, Australia nevertheless preceded in this regard the UK House of Commons which did not make permanent provision for the payment of Members until 1911.¹⁰⁸ For a summary of the earlier history of remuneration arrangements for Members *see* pages 181–3 of the second edition.

Remuneration of Members of the House of Representatives and Senators is set by the *Remuneration and Allowances Act 1990*. The Act was amended in 2011 to provide for the parliamentary base salary to be determined by the Remuneration Tribunal, to require the Tribunal to publish reasons for its decisions in relation to parliamentary remuneration and to remove the Parliament's ability to disallow parliamentary remuneration determinations made by the Tribunal.¹⁰⁹ Information on the current rates of salary can be found on the Remuneration Tribunal's website.¹¹⁰

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. The Remuneration Tribunal determines the additional salary paid to holders of a number of offices, including the Presiding Officers and their Deputies, Opposition

¹⁰⁵ Australian National Audit Office, *Administration of Parliamentarians' Entitlements by the Department of Finance and Deregulation*, Performance audit report no. 3, 2009–10.

¹⁰⁶ Committee of Review of Parliamentary Entitlements, *Committee Report*, April 2010.

¹⁰⁷ Constitution, ss. 48, 66 (in s. 48 the payment to Members and Senators is referred to as an allowance).

¹⁰⁸ *May*, 24th edn, p. 52.

¹⁰⁹ *Remuneration and Other Legislation Amendment Act 2011*. These changes implemented a major recommendation of the Committee of Review of Parliamentary Entitlements. Prior to these changes Members and Senators received a base salary linked to a reference salary (that of Principal Executive Officer Band A) as determined by the Remuneration Tribunal. However, the effect of the determination on the parliamentary base salary could be modified by regulation, as was done to override the increase in salary for the 2008–09 year.

¹¹⁰ www.remtribunal.gov.au.

Leaders and their Deputies, whips, shadow ministers, Manager of Opposition Business, members of the Speaker's panel, and chairs and deputy chairs of parliamentary committees.¹¹¹ The *Remuneration and Allowances Act 1990* provides that, for the purposes of the provisions, 'parliamentary committees' means committees concerned with public affairs rather than the domestic affairs of 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.¹¹² The Remuneration Tribunal advises the Government on the additional salary payable to Ministers.¹¹³

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
- the day before the election, if re-nominating but defeated at the election.

A Member who is re-elected is paid continuously.

The additional salary payable to the Speaker continues to be paid until and including the day before the next Speaker is elected, even if the Speaker does not seek re-election at an election as a Member, is defeated at the election or resigns. 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, as he or she may also have administrative functions to perform under the *Parliamentary Presiding Officers Act*.

The additional salary payable to whips, members of the Speaker's panel and 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.¹¹⁴

Electorate allowance and other entitlements

The Remuneration Tribunal determines Members' electorate allowances and certain other entitlements. 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. Three rates are applicable, depending on the size of a Member's electorate. A Member's electorate allowance is not

111 See also section on 'Leaders and office holders' in Ch. on 'House, Government and Opposition'. Additional salaries for shadow ministers and the Manager of Opposition Business commenced in 2011, see Remuneration Tribunal, *Review of the remuneration of Members of Parliament: initial report*, December 2011.

112 *Remuneration Tribunal Act 1973*, subsection 7(1).

113 *Remuneration Tribunal Act 1973*, ss 6, 8. See section on 'Ministerial salaries' in Ch. on 'House, Government and Opposition'.

114 Pursuant to s. 64 of the Constitution a Minister may continue in office (for up to 3 months) although no longer a Member.

taxed at source; however, amounts not expended for electorate purposes may be assessed as part of a Member's taxable income.¹¹⁵

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 may also have entitlements to travel at government expense after they cease to be Members of Parliament.¹¹⁶

Members are provided with office accommodation in Parliament House and in their electorate and are entitled to employ three full-time staff members, or equivalent part-time staff. One staff member may be located in Canberra. In some of the larger electorates a second office and an additional staff member are provided. Each Member also has a limited budget to employ casual staff. 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, including computer services, for these offices are determined by the Minister for Finance and Deregulation. Electorate staff are employed under the *Members of Parliament (Staff) Act 1984*.

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*.¹¹⁷

Superannuation benefits

The *Parliamentary Superannuation Act 2004* introduced new parliamentary superannuation arrangements for persons who first became members of the Federal Parliament, or returned to the Parliament after a previous period in Parliament, at or after the 2004 general election. Under these arrangements employer contributions of 15.4% of total parliamentary salaries (but not including certain allowances such as electorate allowance) are paid into a superannuation fund or retirement savings account nominated by the Member or Senator. These Members also have access to salary-sacrifice arrangements in respect of superannuation contributions.

Members and Senators who were sitting members of Parliament immediately before the 2004 general election were not affected by the new arrangements while they

115 For latest details of entitlements and rates of allowances reference should be had to the most recent relevant Remuneration Tribunal determinations (available on the Tribunal website at www.remtribunal.gov.au) and Parliamentary Entitlements Regulations (SR 1997 No. 318 as amended). 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 (s. 5).

116 For details see Remuneration Tribunal determinations and *Members of Parliament (Life Gold Pass) Act 2002*. At the end of 2011 the travel entitlements of former Members were under review, see Remuneration Tribunal, *Review of the remuneration of Members of Parliament: initial report*, December 2011.

117 Coverage of Members and Senators by a workers' compensation scheme has been proposed, see Remuneration Tribunal, *Review of the remuneration of Members of Parliament: initial report*, December 2011.

continued to remain in Parliament and remained covered by the former defined benefits scheme described in earlier editions, established by the *Parliamentary Contributory Superannuation Act 1948*.¹¹⁸

A Member whose place becomes vacant through the operation of section 44 paragraph (i) of the Constitution, concerning allegiance to a foreign power, or paragraph (ii) concerning treason or conviction for an offence, or through section 45 paragraph (iii), as it relates to services rendered in the Parliament, is entitled to a refund of employee contributions only.¹¹⁹ Under the *Crimes (Superannuation Benefits) Act 1989* a similarly restricted entitlement may apply to a Member convicted of certain offences, including a Member so convicted after resignation.¹²⁰

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.¹²¹ 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.¹²² 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 in the Federation Chamber alone is not counted for the purposes of recording attendance at a sitting of the House. This is because the record of attendance is maintained to record compliance with section 38 of the Constitution, which is only satisfied by attendance in the Chamber of the House—see 'Absence without leave' at page 155.

Leave of absence

A motion to grant leave of absence does not require notice, states the cause and period of leave (for individually identified Members), and has priority over all other business.¹²³ Leave is usually granted for reasons such as parliamentary or public business overseas, ill health or maternity/paternity.¹²⁴ A further motion may be moved to extend the period of leave.¹²⁵ 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.¹²⁶

118 See 4th edn, pp. 151–2. However, when determining current salaries, the Remuneration Tribunal can now determine that a proportion is not to be counted for the purposes of the 1948 Act.

119 *Parliamentary Contributory Superannuation Act 1948*, s. 22.

120 The provision was relevant in respect of Mr A. Theophanous, a former Member convicted of corruption committed while a Member (on 22.5.2002).

121 S.O. 25.

122 S.O. 27(c). The entry also indicates if an absent Member has been granted leave.

123 S.O. 26(a).

124 E.g. VP 2004–07/142; VP 2010–12/76. Leave has been granted for urgent private business, H.R. Deb. (17.10.1935) 833.

Speaker Holder ruled in 1906 that leave of absence may be asked for any reason whatever, but that it is for the House to determine whether it shall be granted, H.R. Deb. (18.6.1906) 1430–31.

125 E.g. VP 2004–07/648.

126 VP 1943–44/29; VP 1944–45/21; VP 1945–46/37; VP 1945–46/260.

A Member who has been granted leave of absence by the House is excused from the service of the House or on any committee. The leave is forfeited if the Member attends in the Chamber of the House before the end of the period of leave.¹²⁷ Another Member may be appointed to a committee to serve in the place of a Member granted leave of absence by the House.¹²⁸

Service of the House means attendance in the Chamber,¹²⁹ and is interpreted as appearing on the floor of the Chamber—Members on leave may be present in the public gallery. Members have placed questions on the Notice Paper while on leave. However, they may not lodge notices while on leave, as these must be delivered to the Clerk at the Table in the Chamber. Members on leave have participated in committee proceedings. A committee chair granted maternity leave has continued to serve as chair and participate in committee business, for example by editing and approving the draft report. She did not attend committee meetings which were chaired by the Deputy Chair in her absence.

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.¹³⁰ If the Speaker is absent from the Commonwealth, or there is no Speaker, the Governor-General in Council may issue the writ.¹³¹ The writ may be issued by the Acting Speaker performing the duties of the Speaker during the Speaker's absence.¹³²

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.¹³³ 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. The Member cannot specify a future time for the resignation to take effect.¹³⁴ 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.¹³⁵ A resignation by telegram has been held not to be effective.¹³⁶

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

127 S.O. 26(b).

128 VP 1948–49/13.

129 S.O. 2.

130 E.g. VP 1977/261; VP 1998–2001/1610; VP 2008–09/447.

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

132 S.O. 18(a). E.g. VP 1996–98/489.

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

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

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

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

other person to sign it on his or her behalf, would meet the constitutional requirements regarding resignation, provided these facts were able to be established satisfactorily. However, it has been considered that signature should be insisted upon whenever possible in view of the importance of the question, and legal advice should be sought in specific cases if the matter arises in practice.¹³⁷

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.¹³⁸ This constitutional requirement is not met by attendance at a committee of the House, including the Federation Chamber.¹³⁹ It could be interpreted that the phrase 'attend the House' means attend the House when it is sitting,¹⁴⁰ 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.¹⁴¹

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.¹⁴² 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 absence¹⁴³ 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.

If a seat became vacant because a Member was absent, the appropriate procedure would appear to be for the Speaker to advise the House of the facts and, depending on the electoral cycle, to inform the House of his or her intention to issue a writ for the election of a Member for the relevant electoral division.

Ineligibility

Pursuant to section 45 of the Constitution a Member's place immediately becomes vacant should he or she become ineligible because of the operation of that section or section 44—see 'Qualifications and disqualifications' at page 134.

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

138 Constitution, s. 38.

139 Opinion of Senior General Counsel, Attorney-General's Department, dated 22 June 1995. The advice had been sought by the Clerk of the House in response to a Procedure Committee recommendation that the matter be clarified—Standing Committee on Procedure, *Time for review: bills, questions and working hours*, PP 194 (1995) 17. As noted in the opinion, the Main Committee [i.e. Federation Chamber] was in effect a Committee of the Whole House. *And see* H.R. Deb. (8.6.1994) 1671; H.R. Deb. (1.4.2004) 28009; (11.5.2004) 28145; H.R. Deb. (19.6.2008) 5462.

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

141 VP 1978–80/1694.

142 J 1903/211.

143 In practice a seconder is not called for the party leader's motion.

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* page 137) prompted the enactment of the *Common Informers (Parliamentary Disqualifications) Act 1975*, 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 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.’¹⁴⁴

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. Standing order 49 provides that precedence will be ordinarily given by courtesy to a motion of condolence, 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.¹⁴⁵ 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.¹⁴⁶ 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 following a condolence motion in respect of a sitting Senator¹⁴⁷ 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.

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

145 *See also* ‘Motion of condolence’ in Chapter on ‘Motions’, and ‘Adjournment of the House for special reason’ in Chapter on ‘Order of business and the sitting day’.

146 The most recent references to deaths of sitting Members are : VP 1977/235 (Hon. R. F. X. Connor); VP 1979/747 (Hon. F. E. Stewart—House adjourned to next day of sitting); VP 1980–83/77–8 (Hon. E. L. Robinson); VP 1998–2001/1531 (Mr G. S. Wilton). VP 1998–2001/2261, 2263–4 (Mr P. E. Nugent—death announced at the special sitting in Melbourne, condolences when House next met in Canberra).

147 *E.g.* VP 2005–07/1833.

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 the Attorney's Department that there was overwhelming evidence that Mr Holt had died by drowning.¹⁴⁸ 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 1968.¹⁴⁹

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 UK House of Commons passed to the Australian Parliament under section 49 of the Constitution.

The House of Representatives 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 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.¹⁵⁰ After the motion of expulsion was agreed to, a further motion was moved declaring the seat vacant which was agreed to on division.¹⁵¹ Mr Mahon stood for re-election in the resulting by-election but was not successful.

TITLES ACCORDED TO MEMBERS

MP (Member of Parliament)

Members of the House of Representatives are designated MP and not MHR. This was the decision of the Federal Cabinet in 1901¹⁵²—a decision which has since been reaffirmed in 1951¹⁵³ and in 1965.¹⁵⁴ The title is not retained by former Members.

A Member's status as a Member does not depend on the meeting of the Parliament, nor on the Member taking his or her seat or making the oath or affirmation. A Member is technically regarded as a Member from the day of election—that is, when he or she is, in

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

149 VP 1968-69/2.

150 VP 1920-21/431-2; H.R. Deb. (11.11.1920) 6382-3.

151 VP 1920-21/433.

152 H.R. Deb. (24.7.1901) 2939.

153 H.R. Deb. (6.7.1951) 1134.

154 H.R. Deb. (21.10.1965) 2058.

the words of the Constitution, ‘chosen by the people’. A new Member is entitled to use the title MP once this status is officially confirmed by the declaration of the poll.

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.¹⁵⁵ Members subsequently elected do not hold this title except in the instances described in the following paragraphs.

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 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.¹⁵⁶ Parliamentary Secretaries also have the title ‘Honourable’ when, as has been the recent practice, they have been appointed to the Executive Council.¹⁵⁷ A Member may also retain the title from previous service as a state Minister, or as a member of a Legislative Council in some States.

Speaker Harry Jenkins, elected in 2008, has not used the title ‘honourable’. However it was previously the custom for a Member 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 served in the office for three or more years.¹⁵⁸

Members of the House of Representatives are referred to in the Chamber as ‘honourable Members’. The use of the term ‘honourable’ in the Chamber originates in UK House of Commons’ 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.¹⁵⁹

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.¹⁶⁰ 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.¹⁶¹

Longest serving Member

Traditionally, the Member of the House with the longest continuous service was referred to as the ‘Father of the House’. This was a completely informal designation and

155 *Members of 1st Parliament of the Commonwealth—Title of ‘Honourable’*, PP 21 (1904).

156 See also Ch. on ‘House, Government and Opposition’ (case of Senator Sheil).

157 Since 2000 Parliamentary Secretaries have been technically ‘Ministers of State’ for constitutional purposes and thus automatically appointed.

158 See earlier editions for further detail.

159 If they so chose—Members of the Australian Labor Party generally did not become Privy Councillors and the practice was not re-introduced in 1996 following the election of the Howard Government. The last Member to hold this title was the Rt Hon. I. McC. Sinclair (retired 31.8.1998). Mr Sinclair and the Rt Hon. Sir Billy Snedden were both Privy Councillors before becoming Speaker.

160 PP 20 (1972).

161 VP 1970–72/1013.

had no functions attached to it. At the commencement of the 43rd Parliament the Hon. P. M. Ruddock was the longest serving Member, having been elected in 1973. A record term of 51 years, from 1901 to 1952, was served by the Right Honourable W. M. Hughes.

DRESS AND CONDUCT IN THE CHAMBER

While the standard of dress in the Chamber is a matter for the individual judgment of each Member,¹⁶² 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’.¹⁶³ In a statement to the House in 1999, Speaker Andrew noted that Members had traditionally chosen to dress in a formal manner similar to that generally accepted in business and professional circles, and that this was entirely appropriate; that it was widely accepted throughout the community that the standards should involve good trousers, a jacket, collar and tie for men and a similar standard of formality for women; and that these standards applied equally to staff occupying the advisers boxes, members of the press gallery and guests in the distinguished visitors gallery. The Speaker said he did not propose to apply this standard rigidly. For example, it would be acceptable for Members to remove jackets if the air-conditioning failed, and it was accepted practice that Members hurrying to attend a division or quorum might arrive without a jacket. However, they should leave the Chamber at the conclusion of the count.¹⁶⁴ In 2005 this statement was endorsed by Speaker Hawker, who reminded Members of the accepted practice that Members should choose to dress in a formal manner in keeping with business and professional standards. He noted that while he did not intend to apply the standards rigidly, it was not in keeping with the dignity of the House for Members to arrive in casual or sports wear.¹⁶⁵ Clothes with printed slogans are not generally acceptable in the Chamber, and Members so attired have been warned by the Chair to dress more appropriately.

Rulings from earlier years include: that a Member was not permitted to remove his jacket in the Chamber;¹⁶⁶ that it was acceptable for Members to wear tailored ‘safari’ suits without a tie;¹⁶⁷ and that Members were permitted to wear hats in the Chamber but not while entering or leaving¹⁶⁸ or while speaking.¹⁶⁹

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.¹⁷⁰ Members may not smoke in the Chamber¹⁷¹ and refreshments (apart from water) may not be brought into, or consumed in, the Chamber.¹⁷² Mobile phones must not be used for

162 H.R. Deb. (17.2.1977) 172; *see also* Senate House Committee, *Senators’ dress in the Senate Chamber*, PP 235 (1971).

163 H.R. Deb. (8.9.1983) 573.

164 H.R. Deb. (11.3.1999) 3787–88, VP 1999/3716.

165 H.R. Deb. (13.9.2005) 16–17.

166 H.R. Deb. (26.2.1959) 318.

167 H.R. Deb. (17.2.1977) 172.

168 H.R. Deb. (23.3.1950) 1197–8.

169 H.R. Deb. (10.3.1926) 1476.

170 H.R. Deb. (6.11.1973) 2791.

171 H.R. Deb. (24.10.1952) 3742. Smoking is these days prohibited inside Parliament House.

172 E.g. H.R. Deb. (18.6.2007) 33.

voice calls and any audible signal from phones or pagers must be turned off. Members who have allowed phones to ring have been directed by the Chair to apologise to the House.¹⁷³ However, text messaging is permitted and notebook computers may be used for emails, if done discreetly and so as not to interrupt the proceedings of the House.¹⁷⁴ The use of cameras, including mobile phone cameras,¹⁷⁵ and i-pods¹⁷⁶ on the floor of the House is not permitted.

The Chair has also ruled that:¹⁷⁷

- a Member may keep his hands in his pockets while speaking;¹⁷⁸
- the beating of hands on¹⁷⁹ or kicking¹⁸⁰ of Chamber desks is disorderly;
- a Member may distribute books to other Members in the Chamber;¹⁸¹
- a Member may not distribute apples to other Members in the Chamber;¹⁸²
- climbing over seats is not fitting behaviour;¹⁸³
- a Member should not sit on the arm of a seat,¹⁸⁴ and
- a Minister who had tossed papers onto the Table was required to retrieve them.¹⁸⁵

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:

- Advisory Council on Australian Archives (one Member)—for a period as is fixed by the House, not exceeding three years;¹⁸⁶
- Council of the National Library of Australia (one Member)—for a period as is fixed by the House, not exceeding three years;¹⁸⁷ and
- Parliamentary Retiring Allowances Trust (two Members)—while remaining a Member.¹⁸⁸

Details of Members appointed to these bodies are printed in the Notice Paper. The House may discharge or replace the Members it has appointed.

173 H.R. Deb.(11.9.1996) 4060; H.R. Deb.(26.11.1997) 11272; H.R. Deb. (13.2.2003) 11782; H.R. Deb. (16.6.2008) 4844.

174 H.R. Deb. (16.9.2003) 20151.

175 H.R. Deb. (27.5.2004) 29398–9; H.R. Deb. (18.3.2010) 2917–18, 3011–13—Speaker stated that he would regard a Member found to have used a mobile device to take a photograph during proceedings as having behaved in a most disorderly manner and subject to disciplinary action. The general question of mobile devices was referred to the Committee of Privileges and Members' Interests, see Appendix 25.

176 H.R. Deb. (14.9.2006) 87.

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

178 H.R. Deb. (8.6.1939) 1530.

179 H.R. Deb. (25.3.1997) 2881.

180 H.R. Deb. (28.11.1951) 2832.

181 H.R. Deb. (4.5.1950) 2227–8.

182 H.R. Deb. (1.6.2004) 29652–4.

183 H.R. Deb. (8.6.1955) 1561.

184 H.R. Deb. (25.7.1974) 695–6.

185 H.R. Deb. (28.8.2000) 19405, and see H.R. Deb. (17.6.2004) 30785.

186 *Archives Act 1983*; VP 1996–98/289.

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

188 *Parliamentary Contributory Superannuation Act 1948*; VP 1996–98/289. 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.